

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENEMECIO L. BORJA, ACCUSED-APPELLANT.

G.R. No. 85821. October 31, 1990

Ponente: MELENCIO-HERREA, J.

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MELENCIO-HERREA, J.:

Convicted by the Regional Trial Court of Toledo City, (Branch 29)* of the crime of Rape and sentenced to suffer the penalty of reclusion perpetua, accused-appellant Enemecio L. Borja is now before us on appeal.

In substance, the evidence for the prosecution follows:

On 17 November 1984, at about 6:00 o'clock in the evening, complainant Virginia L. Baring, 18, was resting at her quarters at the Atlas Socio Economic Project, Abaca Township, Poog, Toledo City, where she was then working. There, accused Enemecio L. Borja, a distant relative, showed up, and requested her to accompany him outside the township to buy some toothache tablets for his wife. Suspiciously, she asked him if there were no one else to go with them, to which the accused retorted - "Do you not trust me, we are relatives?" Disarmed by his reply, Virginia reluctantly went with him (TSN, pp. 2-10, 31 July 1985).

They passed along a footpath, Enemecio walking slightly ahead of Virginia (TSN, p. 6, 18 February 1986). The place was not well lighted, there being no lamp post. The only illumination was provided by a bulb on a fence lining the pathway (TSN, p. 6, 27 January 1987). About sixty meters away from the quarters, Enemecio suddenly turned around, faced Virginia, and hugged her. A "holihod" (a round sharp pointed instrument, used for punching holes in shoes, about six inches in length and about one-half inch in diameter) was in his hand. He covered her mouth with his palm, continually kissed her on the cheeks and bit her upper lip. He was successful in removing her "maong" pants and her panty. She was then forced to lie down on the ground (TSN; pp. 12-18, 31 July 1985; p. 8, 18 February 1986; p. 7, 4 April 1986).

Virginia tried to get up but Enemecio struck her with his fists on her head, left arm and on the breast. During cross-examination, she narrated that the blows somewhat caused her to lose consciousness for when she regained her senses, Enemecio was already on top of her deflowering her (TSN, pp. 9-11, 18 February 1986). The pain made her shout (TSN, pp. 18-19, 31 July 1985). Even then, she struggled to free herself to no avail. In her estimation, Enemecio succeeded in satisfying his lust in about twenty minutes (ibid, pp. 20-21).

His evil desire consummated. Enemecio threatened Virginia not to mention a word of the incident to anyone, or else, he would kill her (ibid, pp. 21-22). On their way back, they met Eduardo Silva, a co-worker, who was asked by Enemecio if his (Enemecio's) wife was looking for him to which Eduardo answered in the negative. Eduardo noticed that Virginia kept silent (TSN, pp. 3-4, 21 January 1987). After Enemecio and Virginia parted ways, she returned directly to her quarters where she burst into tears. A little later, co-employees Tirso Villarmia and Edwin Tingal arrived and to whom she revealed her harrowing experience. They, in turn, advised her to report the matter to her parents (TSN, pp. 22-26, 31 July 1985).

Early the next day, 18 November 1984, Virginia, accompanied by Tirso Villarmia, went home to her parents at Carcar, Cebu, to tell them of the outrage on her person. Her mother, Visitacion Baring, recalled that they arrived at about 6:30 in the morning (TSN, pp. 4-6, 17 July 1987). After the parents were told, they decided to go back to Toledo City to report the crime to the Barangay Captain. The latter told them to go to the police, who in turn, advised Virginia to undergo a medical examination (TSN; p. 28-29, 31 July 1985; pp. 4-5, 17 July 1987).

The next day, on 19 November, Virginia went to the City Health Officer of Toledo City for examination (TSN, p. 3, 24 June 1986). The doctor's Physical Injuries Report (Exh. D, D1 - D2) detailed the following findings:

- "1. Hematoma located at the left upper outer quadrant left breast.
- "2. Linear abrasion located at the right elbow.
- "3. Slight swelling with tenderness located at the left occiput - head.
- "4. Lacerated wound - upper lip.
- "5. On internal examination: Lacerated hymen with slight bleeding located at the following areas: 5, 7, and 9 o'clock."

In his defense, Enemecio admitted having had carnal knowledge of Virginia on the date alleged but maintained that force was not employed. His story was that on 17 November 1984, at about 6 o'clock in the evening, he invited Virginia to go out of the township. While passing along a narrow road, Virginia placed her hand over his shoulder. He gestured back by placing his hand over her shoulders (TSN, pp. 7-8, 14 October 1987). She confessed that she loved him. He responded and replied that he loved her, too. Then, they descended to the cornfield some fourteen (14) meters from the road and embraced and kissed each other (TSN, pp. 2-3, 18 March 1988). No signs of resistance were shown by Virginia. On the contrary, she welcomed his advances (Rollo, p. 61). He removed all his clothes and then proceeded to remove hers gradually (TSN, p. 3, 18 March 1988). They passionately made love thereafter (ibid, pp. 4-5).

After evaluating the conflicting versions, the Trial Court tilted the judicial scales in favor of the prosecution, pronounced Enemecio guilty sentenced him to reclusion perpetua, and ordered him to indemnify Virginia in the amount of P20,000.00 as moral damages.

Hence, this appeal, with the following Assignments of Error:

- "1. The Court a quo erred in holding that force was employed by the appellant in attaining his purpose of having sexual intercourse with the complainant.
- "2. The Court a quo erred in holding that the sexual intercourse was committed at the time when the complaining witness was unconscious.
- "3. The Court a quo erred in convicting the appellant despite absence of sufficient evidence for a valid conviction."

In a nutshell, the appeal is anchored on the defense that the sexual congress was with the consent and cooperation of Virginia. Thus, Enemecio denies that he had threatened Virginia with an "holihod," claiming that the latter is not a deadly weapon but a small pointed tool and it is inconceivable that Virginia would not have been able to defend her honor and chastity at the threat of a puny "holihod." He further contends that if he had forced sex on Virginia, the latter would have suffered numerous bruises considering that barbed wire lined both sides of the narrow pathway where they were. In addition, he expresses wonder that Virginia made no loud outcries despite the fact that the place was only sixty (60) meters away from her sleeping quarters and forty (40) meters away from the nearest residential house.

Enemecio further maintains that if it were true that he had raped Virginia, she would have said so immediately to Eduardo Silva whom they met on their way back to her quarters. He even questions Virginia's having gone to her parents in Carcar, Cebu, to disclose the occurrence to them instead of reporting the matter to the local authorities or to the security force of the township.

In his Brief, Enemecio theorized that the rape charge was brought only for the purpose of showing Tirso Villarmia, Virginia's boyfriend, who came to know of the incident, that her "sexual tryst" with Enemecio was a forced one, which scheme succeeded as Tirso eventually married Virginia.

In short, as in most rape cases, the credibility of the victim is put to an acid test. We find Enemecio's submissions, however, unpersuasive, the circumstance of force and intimidation having been proven by testimonial and documentary evidence.

That force was employed is apparent in the Physical Injuries Report (Exhibits D, D1 - D2). The injuries and bruises sustained by Virginia are clearly indicated therein. The "linear abrasion at the right elbow" confirms the struggle that took place between barbed wire fences. The "hematoma at the left breast," and the slight swelling with tenderness located at the left cociput-head" substantiates Virginia's allegation that Enemecio hit her with his fists on different parts of her body immediately prior to the dastardly act. The "lacerated wound - upper lip" establishes Virginia's testimony that Enemecio had bitten it. The injuries listed in the medical certificate are herein referred to not to prove those injuries per se but to substantiate the use of force.

Other physical indications of force are Virginia's panty with detached garter (Exhibits A, A-1) and her denim pants with a torn portion just below the zipper (Exhibit B). These mutely but eloquently indicate the violence with which they were hastily removed, as against Enemecio's claim of having gradually removed the same.

Contrary to Enemecio's protestations, Virginia could not have made loud outcries as he had covered her mouth with his hand. Added to this, was the continued threat of the "holihod," a weapon which, while not ordinarily classified as deadly, could, like any pointed tool, be capable of piercing human flesh if it could go through leathered shoes and soles. The combination was enough to instill fear into Virginia and cow her to submit to Enemecio's lewd desires. In fact, the combined circumstances had rendered her unconscious.

The fact that Virginia did not disclose to Eduardo Silva, whom she met upon their return, the assault on her chastity cannot be taken against her credibility. She must have still been in a state of shock for the abuse perpetrated on her person besides the fact that she could not openly flaunt the disgrace that befell her to a mere passerby whose ability to help her could have been nil.

Neither do we find anything wrong in Virginia's resolve to return home to Carcar, Cebu, fifty (50) kilometers distant, to confide to her parents the ignominy she had suffered at the hands of the accused. Rather, it was a most natural reaction for a daughter. Her parents were the most logical persons to turn to for understanding, advice, solace, and vindication of the wrong inflicted on her, not to mention the fact that family honor was also inevitably involved. And, indeed, together, they lost no time in going back to Toledo City to report to the local authorities, as a starter in their quest for justice.

The defense had subjected Virginia to stringent cross-examination in an attempt to entangle her in contradictions, and to prove that she was fully conscious all throughout the criminal encounter and had consented thereto. She remained steadfast and fully credible, however. There may have been slight inconsistencies in her testimony, but this is understandable considering that she was rendered unconscious, and had undergone a traumatic experience. The mere circumstance that she was testifying in the presence of strangers on an intimate matter not usually even mentioned in public might have caused her not a little embarrassment and confusion that rendered her narration

less than perfect (People v. Mancilla, G.R. No. 47628, 15 May 89, 173 SCRA 373).

Finally, the contention that the rape charge was feigned to cover up for Virginia's infidelity to her boyfriend, by making it appear that she was forcibly deprived of her virginity, is simply preposterous. This Court has consistently held that the testimony of a rape victim as to who abused her is credible, where she has no motive to testify against the accused except to vindicate the wrongful act against her honor (People v. Lopez, G.R. No. 47299, 19 February 1986, 141 SCRA 385; People v. Nunez, G. R. No. 54445, 12 May 1989, 173 SCRA 274), and where, as in this case, her testimony is buttressed by indubitable evidence of guilt.

WHEREFORE, the appealed judgment is hereby AFFIRMED, with the modification that the indemnity awarded to Virginia L. Baring is hereby increased to P30,000.00 (People vs. Puragoso, G. R. No. 50872, 18 October 1989). Costs against the accused-appellant, Enemecio L. Borja.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

* Judge Jose P. Burgos, presiding.

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