

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE BANAYO, ACCUSED-APPELLANT.

G.R. No. 86938. March 22, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Dante Banayo, was charged with the crime of rape in Criminal Case No. 4474-SP before the Regional Trial Court, Fourth Judicial Region, Branch 31, San Pablo City. The complaint filed in said case on October 11, 1985 reads, as follows (p. 1, Rollo):

"The undersigned Complainant and 3rd Assistant City Fiscal accuse DANTE BANAYO of the crime of RAPE, defined and penalized under Article 335 of the Revised Penal Code, committed as follows:

"That on or about August 4, 1985, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named with lewd design, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously rape and have sexual relations with undersigned complainant ANSELMA MAGAMPON, by hitting her at the head thereby making her unconscious and then had sexual intercourse with her."

"CONTRARY TO LAW."

Upon being arraigned on November 28, 1985, the accused-appellant entered the plea of not guilty to the offense charged. After trial on the merits, the trial court rendered its decision on March 7, 1988, the dispositive portion of which, reads (p. 75, Rollo):

"WHEREFORE, the Court finds DANTE BANAYO guilty beyond reasonable doubt of the crime of Rape, as defined and penalized under Article 335 of the Revised Penal Code, and imposes upon him the penalty of Reclusion Perpetua, with all the accessory penalties provided for by law; to indemnify Anselma Magampon in the sum of P20,000.00; and pay the costs.

"SO ORDERED."

The version of the plaintiff-appellee was summarized by the trial court, as follows (pp. 71-73, Rollo):

"x x x: The victim, Anselma Magampon, 21 years old, single, was a waitress at Solid Cafe, a restaurant situated at San Pedro Street, San Pablo City. On August 4, 1985, at about 8:00 o'clock (should be 10 o'clock) in the evening, she was walking on her way home to Triangulo, Brgy. San Gabriel, San Pablo City. She was alone and had just come from work. While walking by the side of the premises of Franklin Baker Company, Philippines, she was hit on her head from behind and when she looked back, she saw the accused Dante Banayo. She was about to run when she was hit again on the head. She lapsed into unconsciousness and could not recall anything thereafter. Upon regaining her senses, she found herself lying down at the foot of a banana plant. There is a mango tree nearby on the north; on the left were banana plants and near the fence were foliage (sic) of thick grasses. She found the place to be in Teomora Subdivision, San Gabriel, San Pablo City, about 350 to 400 meters away from the house of her father, where she resides. Her panty and pants were down

to her heels. Traumatized by the experience she got up, pulled her panty and pants up and walked groggily to her house, her head and genital organs (sic) bleeding.

"When she arrived in her house her father, Francisco Magampon, was still awake. Seeing her in that condition her father asked what happened to her. She was not able to give a comprehensive answer because she has not fully regained her senses. She was bruised and felt pain over all (sic) her body. Francisco requested a neighbor, Crispin Fule, to bring Anselma to the hospital and from his house, Francisco went to the Police Precinct near the San Pablo City Public Market to make a report. After making the report he went with a policeman to the San Pablo City District Hospital, arriving at the hospital about 2:00 o'clock the next morning, August 5, 1985. Anselma was treated and examined thoroughly by Dra. Nora Peñaloza. She issued a Medico Legal Certificate, Exhibit 'C'. As per medical certificate the findings were the following:

'P.E.

1. Bleeding wound (2) about 3 cm. in length, occiput;

2. Hematoma:

- Both arms, lateral aspect, about 4 x 3 cm.;

- anterior chest wall near the left breast, about 4x4 cm.;

- posterior chest wall (back) 5 x 4 cm.;

- both anterior-thighs, about 8 x 4 cm;

3. Hymen not intact, old lacerations at 6 and 9 o'clock positions. Hymenal tears edematous.'

According to Dra. Peñaloza, the bleeding wound at the occiput could have been caused by a blunt instrument, like a fall and the head coming in contact with a hard object. The hematoma or swollen portions of the skin are caused by extra vaciation (sic) of blood vessels x x x. Dra. Peñaloza further declared that the hymen was inflamed, secondary secondary (sic) to trauma; that the examination of Anselma's vagina was negative for spermatozoa and that she was no longer a virgin.

"x x x.

"Anselma was discharged from the hospital after three days. One week after her discharge she and her father went to the place where she was molested and indicated to him the exact place where she was after she regained consciousness on the night of August 4, 1985."

On the part of the accused-appellant, he testified that (p. 73, Rollo):

"x x x he courted Anselma Magampon and in the end he was able to secure her love and they became

sweethearts in July, 1985. She was a waitress at the Solid Cafe in San Pablo City, when he first met her and he was a storekeeper at a store near the Solid Cafe owned by one Yolanda Bautista. This relationship resulted into several sexual intercours. Later on, the accused appeared to have cooled off and Anselma Magampon, noticing the dry treatment asked the accused to marry him. He told her that he was not yet in a position to marry her. She became angry and she threatened him. Later on the father of Anselma talked to him and told him to marry Anselma. He told him that he was not yet ready to marry Anselma.

"He denied that he hit her in the head while she was walking on August 4, 1985 at 10:00 o'clock in the evening because he was in Barangay Palakpakin in the evening of August 4, 1985, in the house of his baptismal sponsor, Ayong Atienza; that, in fact he had been staying in the house of Ayong Atienza since July, 1985."

As in most appeals in rape cases, the issue raised involve the credibility of the victim. Here is one instance. The accused-appellant assigns a single error committed by the trial court, that is (p. 5, Brief for the accused-appellant; p. 86, Rollo):

"The Honorable Trial Court erred in holding that the inconsistencies, contradictions and improbabilities in complainant's testimony as merely minor which do not affect her credibility."

In support thereto, he alleges that "x x x, the testimony of complainant is punctuated, if not riddled, with material and gross inconsistencies, contradictions, lies and improbabilities which render incredible her story and cast a serious doubt on the veracity of her complaint." (ibid)

We shall enumerate the inconsistencies referred to by the accused-appellant and, at the same time, rule on them:

(1) Private complainant categorically asserted that prior to the incident in question, she never had any sexual intercourse with a man. However, this was belied by the Medico-Legal Certificate wherein it was stated, inter alia, that her "hymen (was) not intact, (with) old lacerations at 6 and 9 o'clock positions," supra, and the testimony of the attending physician that this finding indicates that there was a previous contact.

Although there exists a discrepancy between the claim of private complainant that prior to August 4, 1985, she never had any sexual relations with any man (p. 6, tsn, August 26, 1986), on one hand, and the Medico Legal Certificate and the testimony of the attending physician that "x x x, the fact that I stated here that the hymen is no longer intact of (sic) old lacerations at 6 and 9 o'clock positions indicates that there was a previous contact" (p. 6, tsn, May 19, 1987), on the other hand, this does not render private complainant's testimony less credible (People v. Fernandez, G.R. No. 80228, September 12, 1988, 165 SCRA 302). Inconsistency on matters of minor details, like in this case, does not detract from the actual fact of rape (People v. Cayago, G.R. No. L-47398, March 14, 1988, 158 SCRA 586; People v. Aragon, G.R. No. 51736, August 4, 1988, 164 SCRA 78; People v. Partulan, G.R. No. 75294, December 14, 1987, 156 SCRA 489). It must be stressed once more that virginity is not an essential element of the crime of rape. We even said in the case of People v. Hortillano, G.R. No. 71116, September 19, 1989, 177 SCRA 729, that the fact that the victim has had several sexual liaisons will not rule out the crime of rape.

2) The attending physician admitted on cross-examination that despite a thorough physical examination conducted on private complainant, she found no evidence of any spermatozoa.

The absence of spermatozoa in the vagina or thereabouts does not negate the commission of rape. The important consideration in rape is penetration and not emission (People v. Abonada, G.R. No. 50041, January 27, 1989, 169 SCRA 530; People v. Tabago, G.R. No. 69778, November 8, 1988, 167 SCRA 65; People v. Selfaison, 110 Phil. 839; People v. Ludovice, et al., G.R. No. L-34986, March 23, 1984, 128 SCRA 361; People v. Felix, et al., G.R. Nos. 62281-82, July 16, 1984, 130 SCRA 456; People v. Calimquim, G.R. No. 61255, October 28, 1983, 125 SCRA 499; People v. Ando, G.R. No. 81403, December 20, 1989, 180 SCRA 412). It may be that the sperm cells

were emitted outside the vagina (People v. Eclarinal, et al., G.R. No. 83308, February 12, 1990, 182 SCRA 106). Or, the non-appearance of spermatozoa in the vagina of private complainant could be due to the lack of ejaculation on the part of the accused-appellant (People v. Somera, G.R. No. L-47275, February 21, 1989, 170 SCRA 428). The fact of penetration was established by the testimony of private complainant that when she regained consciousness, her vagina ached most and it was bleeding:

"Q. Can you tell us what particular part of your body was hacked (sic) most at the time, if any?

"A. My vaginal organ (harap).

"Q. And why did you say it was aching?

"A. That is what I felt.

"x x x.

"Q. Besides the bleeding from (sic) your head, was there any other part of your body which bleed? (sic)

"A. Yes, sir.

"Q. What else?

"A. My genital organ was also bleeding." (p. 6, tsn, July 24, 1986)

This was corroborated by the findings in the Medico-Legal Certificate and the testimony of the attending physician:

"Q.

Now, under No. 3, another finding, there is (sic) old lacerations at 6 o'clock of the hymen which you also stated that the same is not intact, now in layman's language what is hymenal tears edematous?

"A.

It is no longer intact due to old lacerations but the hymenal tears edematous, it means "namamaga o paga". It means secondary to trauma." (p. 4, tsn, May 19, 1987)

3) The presence of hematoma on both arms, thighs and chest indicates, according to the attending physician, signs of physical struggle. This is contradictory to the testimony of private complainant that she was unconscious during the time that she was raped.

The attending physician testified in the direct examination that:

"Q.

Now, hematoma on both arms, on the chest wall both anterior and posterior and on both thighs which are all anterior, would you be able to tell also the Court would (sic) have had caused this hematoma?

"WITNESS

"A.

Hematoma in layman's term is 'pasa.' It means swollen which have been inflicted by someone. It is due to extravasation. Extravasation of clotted blood secondary to breakage of capillaries. Capillaries are small blood vessels in the body.

"FISCAL GAJITOS

"Q.

Would you be able (sic) to indicate also that this hematoma could have been caused by struggle?

"A.

It could be, struggle is trauma." (pp. 4-5, tsn, May 19, 1987).

On cross-examination regarding this subject matter, she testified that:

"Q.

Now, in findings No. 2, where you indicated hematoma on the arms, as well as on the thighs, that would indicate what you have already stated, Doctora, that those were signs of physical struggle?

"A.

Physical Struggle." (p. 6, May 19, 1987)

Correlating her testimony in the cross-examination with her testimony in the direct examination, there was no categorical statement made by her that the presence of hematomas on the different parts of private complainant's body were signs of physical struggle. On the contrary, she only stated in the direct examination the probability that these have been caused by struggle. Her statement in the cross-examination should be understood in this light. We are in conformity with the observations made by the Solicitor General that the hematomas could have also resulted because the private complainant fell on the ground when she was rendered unconscious by the blows on her head by the accused-appellant, or because she was probably dragged by the accused-appellant from the place where she was hit on the head and rendered unconscious to the place where she regained consciousness, or because the accused-appellant forced himself upon her.

4) In the position where private complainant's pants and panty were pulled down to her heels, a rapist would find it very inconvenient, if not difficult and unpleasurable, to penetrate the victim. If, indeed, the accused-appellant raped private complainant, it would be most unnatural for him to subject himself to difficulty when he could have easily removed private complainant's pants and panty, they being in a deserted place and he had all the time in the world.

Apparently, the accused-appellant failed to read the testimony of private complainant in full. Her account when she regained consciousness was, as follows:

"Q.

Where were you when you regained consciousness?

"A.

When I regained consciousness I was already at the foot of a banana tree and I noticed that my pants were down including my panty." (p. 6, tsn, July 24, 1986)

The questions propounded by the trial court clarified this testimony of private complainant:

"Q.

When you said that you regained consciousness under a banana tree and you said that your panty and trousers were brought down up to your ankles, were your two legs inside the pants that you were wearing?

"A.

It was pulled down and I found it at the side of my feet. It was taken away from my feet.

"Q.

Why did you testify that your pants and your panty were down to your ankles and you said now that your feet were free from the pants and the panty?

"A.

I never said something like that, your Honor.

"Q.

You stated at Question No. 7 of this statement you gave to the police on August 4, 1985 that the pants and panty you were wearing were ... nakababa hanggang sa paanan ko.... could you explain that phrase?

"A.

It was pulled down and I saw the panty and the pants near by feet.

"Q.

Are you telling us that these items were completely removed from your body?

"A.

Yes, your Honor." (p. 13, tsn, August 26, 1986).

5) As borne out by the testimony of private complainant, the side of Franklin Baker was lighted and illuminated by several electric posts. No person in his right mind, intending to commit a crime, would do so in a well-lighted place where he could easily be identified.

Private complainant testified that it was at 10:00 o'clock in the evening when she was hit on the head (pp. 4-5, tsn, July 24, 1986). At this time of night, it is normal for people in the provinces to be inside their houses and already asleep. It is of common knowledge that rural folks retire earlier than city dwellers. This explains why the incident passed unnoticed (*People v. Germino, et al.*, G.R. No. 65424, December 26, 1984, 133 SCRA 827).

6) Private complainant gave her statement to the police only on August 13, 1985 or more than a week after the occurrence of the alleged incident. This delay in giving her statement to the police, which delay was not at all justified subjected to serious doubt her motive in instituting the complaint.

We do not believe that a negative implication should be drawn from private complainant's failure to give her statement to the police immediately. The delay in reporting the incident to the authorities is not an indication of a fabricated charge taking into account the fact that immediately after the incident, private complainant took the earliest opportunity to have herself examined physically, driven to take this step by the grievous outrage she must have felt after having been sexually attacked (*People v. Tamayao*, G.R. No. 56699, January 28, 1983, 120 SCRA 412). It has long been held that no young Filipina of decent repute would publicly admit that she had been criminally abused and ravished unless that is the truth. It is her natural instinct to protect her honor (*People v. Cruz, Sr.*, G.R. No. 71462, June 30, 1987, 151 SCRA 609, cited in *People v. Bulosan*, G.R. No. 58404, April 15, 1988, 160 SCRA 492). Considering the inbred modesty and antipathy of a Filipino woman to air in public things that affect her honor, it is hard to conceive that private complainant would assume and admit the ignominy she had undergone if this were not true (*People v. Angsiako*, G.R. No. L-44223, August 30, 1984, 131 SCRA 482 cited in *People v. Mustacisa*, G.R. No. 51777, March 25, 1988, 159 SCRA 227).

7) Private complainant failed to immediately identify her alleged assailant. It was only after she was discharged from the hospital that she informed her father of what allegedly happened.

Private complainant's failure to inform her father immediately concerning the identity of the accused-appellant and the incident that happened was satisfactorily explained by her. According to her, she was very dizzy and her whole body ached:

"Q.

And you want to convey to this Court that during the entire time that you were confined at the hospital, you were very dizzy?

"A.

Yes, sir." (p. 9, tsn, August 26, 1986)

"x x x.

"Q.

Now, you stated again on cross examination that you were able to reach home after regaining consciousness at Teomora Subdivision but that you did not tell anybody as to what happened to you, why did you not tell anybody what happened to you?

"A.

Because at that time sir, I was very dizzy.

"Q.

What was your physical condition at the time aside from being dizzy?

"A.

My whole body was very painful.

"Q.

You also stated that you saw your father at your house at the time that you arrived, is that so?

"A.

Yes, sir.

"Q.

Do you remember being asked by anybody in your household as to what happened to you?

"A.

They were asking me but I was not able to answer them because I was so dizzy, sir." (p. 12, tsn, August 26, 1986)

8) During the entire length of private complainant's testimony, she never used the word "rape" to describe what happened to her. She merely stated that she was "molested" which is totally different in legal meaning from "rape."

That is not so. To be precise, neither did private complainant use the word "molested" to describe what happened to her. Actually, she merely replied to the interrogations of the fiscal and the counsel of the accused-appellant who used the words molested, sexually molested, assaulted, raped, interchangeably in narrating the incident.

9) Private complainant testified that the crime was committed in Teomora Subdivision but in her sworn statement to the police she stated that the crime took place inside a house at PNR Compound, San Pablo City.

It is obvious that the accused-appellant deliberately omitted to read private complainant's sworn statement in its entirety. He confined his argument only on the fifth question therein:

"T:

Kailan at saan nangyari and bagay na ito?

"S:

Noong Linggo ng gabi, ika-4 ng Agosto 1985, ang oras ay humigit (sic) alas 10:00 ng gabi, duon sa isang bahay sa PNR Compound, Lunsod na ito." (Exhibit B)

This statement, by itself, contradicts private complainant's testimony in court that the rape incident happened at Teomora Subdivision. However, private complainant expounded this prior statement in her answer to the seventh question in the same sworn statement:

"T:

Papaano naman nagawa sa iyo ang bagay na ito?

"S:

Naglalakad po ako nuon duon sa may tagiliran ng PNR compound, malapit sa Franklin Baker, ngayon po ay may bigla na lamang pumalo sa aking ulo, at iyong aking lingon ay nakita ko na si Dante pala ang pumalo sa akin, tapos po ay akma sana akong tatakbo, nang ako ay paluing muli sa ulo nitong si Dante, at hindi ko na po alam ang nangyari at nang ako ay magising ay nasa tabi na ako ng isang punong saging sa may Teomora Village, Lunsod na ito, na nakababa hanggang sa may paa ko iyong aking suot na pantalon pati na iyong aking suot na panty ay nakababa rin hanggang sa may paanan ko." (ibid)

Summing up, the arguments that the accused-appellant presented were inadequate to tilt the scale in his favor. He failed to destroy the credibility of private complainant. There is no cogent reason to depart from the well-settled rule that the findings of fact of the trial court on the credibility of witnesses should be accorded the highest respect because it has the advantage of observing the demeanor of witnesses and can discern if a witness is telling the truth (*People v. Orita*, G.R. No. 88724, April 3, 1990, 184 SCRA 105; *People v. Samson*, G.R. No. 55520, August 25, 1989, 176 SCRA 710). We quote with favor the trial court's finding regarding the testimony of private complainant (pp. 73-74, Rollo):

"x x x. The version of the complainant bears all the earmarks of spontaneity, candidness and credibility. Thus immediately after she was hit two times by the accused on the head, she lapsed into unconsciousness and when she regained her senses she was alone in a deserted place with her pants and panty down to her heels. She knew then that she was raped because of the pains she feel (sic) all over her body. She was able to walk home nonetheless even in a groggy condition. It is understandable that she was not able to tell her father immediately what happened to her not only because of her traumatic experience but also because of the pains she was enduring and she has not also fully recovered her senses. She was however brought to the hospital and fully examined by Dra. Peñaloza. Her tell-tale injuries are mute testimony of the fact that she was indeed raped. x x x. Equally important is the complainant's disclosure in open court of her tragedy and also her revelation to the doctor who treated her, which led to an examination of her private parts and lay her open to risks of future public ridicule. Arrayed against all these evidences is the bare denial of the accused and the claim that she is his sweetheart, corroborated by his witness Luzviminda Bautista. We cannot accept the defense of denial against the testimony of Anselma which had the ring of truth all throughout. x x x."

The bare contention of the accused-appellant that the complaint was the handiwork of a woman who was spurned by her lover by refusing to marry her after she had yielded her body and soul does not inspire belief. Private respondent would not expose herself to the ordeal of a public trial if she were not motivated solely by a desire to have the accused-appellant who had ravished and shamed her placed behind bars. Neither is the accused-appellant's defense of alibi tenable. It was not corroborated by Ayong Atienza, the person in whose house he was allegedly staying at the time. Besides, it was not physically impossible for him to have been at the scene of

the crime (People v. Villapando, G.R. No. 73656, October 5, 1989, 178 SCRA 341; People v. Yeban, et al., G.R. Nos. 90279-81, October 11, 1990) because Barangay Palakpakin is just less than an hour ride to Solid Cafe (p. 7, tsn, June 25, 1987) and Solid Cafe was just less than a kilometer to the place where the rape was committed (see p. 4, tsn, July 24, 1986). Moreover, the accused-appellant was positively identified by private complainant (People v. Villapando, supra):

"Q.

How did you know that it was Dante Banayo when you said he came from behind when he hit you on the head?

"A.

Because when I looked back it was he whom I saw.

"Q.

What was the condition of the place with respect to visibility when you were hit on the head by Dante Banayo?

"A.

It was bright in that place because of the light, sir.

"Q.

Where was the light coming from and what kind of light?

"A.

The side of the Franklin Baker has bulbs every side of the Franklin Baker.

"Q.

What happened to you when you were hit on the head by Dante Banayo?

"A.

I was able to run when I was hit again on the head by Dante Banayo." (p. 5, tsn, July 24, 1986)

Aside from this, private complainant could not have been mistaken in identifying the accused-appellant because he was her customer at Solid Cafe:

"Q.

Going back to Dante Banayo before that incident, did you know Dante Banayo?

"A.

Yes, sir.

"Q.

How well did you know him?

"A.

I knew him because he was my customer at the Solid Cafe.

"Q.

How long had he been your customer at the Solid Cafe before August 4, 1985?

"A.

More or less one (1) month, sir." (p. 7, *ibid*)

We, therefore, find that the guilt of the accused-appellant for the crime of rape has been proven beyond reasonable doubt.

ACCORDINGLY, the decision appealed from is hereby **AFFIRMED** subject to the modification that the civil indemnity is increased to P40,000.00.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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