

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BOYET POMENTEL Y LESNIANA, ACCUSED-APPELLANT.*G.R. No. 87781. December 11, 1992*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-87781/>**BELLOSILLO, J.:**

This is an appeal from the decision of the court a quo convicting accused BOYET POMENTEL Y LESNIANA of the crime of rape committed against complaining witness Belinda P. Diaz, imposing upon him a prison term of reclusion perpetua, and ordering him to indemnify the offended party in the amount of P20,000.00.[1] In the other rape case against the same accused,[2] he was acquitted on the ground that the complaining witness, Erlinda Dionisio, did not appear in court to testify for the prosecution.

Erlinda Dionisio, 22, and Belinda Diaz, 19, missionaries of Christ The Living God Fellowship, were then assigned in Banca-Banca, Nagcarlan, Laguna, where they stayed temporarily in the house of their fellow missionary, Zeny Coroza, situated in the adjoining barangay of Dagat-Dagatan, Liliw, Laguna. They were the only ones residing in that house that evening, occupying one of the adjoining rooms in the second floor. Zeny Coroza was out at that time.

In the early morning of 20 February 1986, at around 1 o'clock, Erlinda and Belinda were roused from their sleep by some noise downstairs. Before Erlinda could go down to find out what it was, a man suddenly appeared and ordered the light to be turned off and threatened to kill if disobeyed. Fearful, Erlinda complied, then retreated to be by the side of Belinda. The stranger then asked them to choose between their honor or their life. They remained speechless, gripped in fear. He asked them who would first submit to him. Erlinda, apparently protective of younger Belinda, offered herself so that the latter would be spared. Then the intruder grabbed Erlinda, pushed her down the floor, and ordered her to strip. Unfortunately for her, despite her resistance, she could not overcome her aggressor who, at 25, was still at the prime of his youth. He removed his shorts, laid on top of her, then sexually abused her, in plain view of Belinda who was seated on the bed, trembling, unable to utter a word.[3] His daily grind as a bakery worker ("nagmamasa ng harina") accorded him muscular limbering to overwhelm feminine resistance.

After he was through with Erlinda, he went to bed and placed himself between the two women. He told them that what they were experiencing was not of his liking, rather, it was fate that brought them together. Meanwhile, Erlinda and Belinda, perhaps to divert his lustful mind and thwart his evil designs, recited verses from the Bible.

After a brief respite, however, he vented his libido on Belinda. He dragged her to the adjoining room, pushed her to the steel bed and threatened to snuff out her life if she resisted. Later, he moved her to the floor, apparently finding the steel bed uncomfortable for copulation. Then he abused Belinda who, like Erlinda, tried to scream and resist but was likewise subdued by the superior might of the aggressor. When it was over, he brought Belinda back to Erlinda in the other room, and then left.[4]

Believing that he had already left for good, Erlinda and Belinda wanted to go to their nearest neighbor, about a

hundred meters away, across the river. But after some fifteen (15) minutes, the rapist reappeared. He turned on the light, thus unknowingly enabling his victims to clearly identify him. He was wearing a pair of red shorts. His upper torso was bare, with a distinctive "white scar" on his chest. Then he turned off the light, told them to undress, and sexually abused them one after the other. After unleashing his satyriasis on his hapless victims, he disappeared.[5]

Erlinda and Belinda then hurriedly went to their neighbor whom they wanted to see earlier, a cousin of Zeny Coroza.[6] They informed him that someone destroyed the lock of their main door. They could not tell him exactly what happened to them obviously because of the scandal it may bring to the religious community and the entire neighborhood.

The following day, the victims came to Manila and reported their misfortune to Sister Mary Benitez, the leader of their religious group, who accordingly gave them advise and counselling.[7] While in Manila, the two missionary sisters were informed that a man who answered the description of their attacker was in the custody of the police. Hence, they went to the police station to confirm the report. True enough, the man who raped them was there.

They went to the NBI Medico-Legal Section for physical examination. Dr. Carmelita B. Belgica found no sign of extragenital injuries on them but only recently healed lacerations the age of which was compatible with the sexual intercourse on or about the date of the rape.[8]

On 17 March 1986, Erlinda and Belinda executed their sworn statements. On 22 October 1986 the Provincial Fiscal of Laguna charged accused Boyet Pomentel y Lesniana with rape on two counts in separate Informations.[9]

In this appeal, accused-appellant assails the trial court for giving undue credence to the uncorroborated testimony of Belinda Diaz and in finding him guilty of the charge. He contends that the testimony of the offended party as to her conduct before and after carnal intercourse belies the use of force and intimidation. He cites several opportunities for escape which Belinda (and Erlinda, for that matter) could have taken advantage of but did not, and that there were moments when one of them was left alone in one room while the other was being ravaged in another, yet, no attempt to flee was made. Considering the outrage being then committed against their person, their natural reaction would have been to shout for help or dash for freedom, instead of meekly submitting to the accused.

We are not persuaded. The seeming unnatural reactions of the two innocent victims are easily understandable. They were young religious missionaries then in Liliw, Laguna, to preach the Gospel. They were strangers in the locality and hardly knew anyone except the cousin of a member of their congregation. Thus, when they were confronted by the rapist in the dead of the night, they were simply horrified. They could only resign themselves to the inevitable. They were in constant threat by their knife-wielding attacker.

Thus, it bears repeating that the element of force or violence necessary for a conviction for rape is relative.[10] Much will depend on the factual situation present in every case, the personal circumstances of the parties involved, e.g., the age, physical build, occupation or calling of the victim, as well as the time, place and manner of committing the offense. But, definitely, consent obtained by fear of personal violence is no consent at all.[11]

The workings of a human mind when placed under emotional stress are unpredictable and people react differently. Some may shout; some may faint; and some may be shocked into insensibility; while others may openly welcome the intrusion.[12]

In an attempt to impair the credibility of Belinda, appellant cites the inability of the two victims to immediately leave the Coroza house to seek help after he left them the first time. This is not correct. Undoubtedly, they

attempted to leave but they had just been through a shocking experience and were in a confused state of mind, perhaps incapable of rational judgment at that time, when their ravager suddenly reappeared. As correctly observed by the Solicitor General, they did not anticipate the insatiable appetite of appellant for sex.

The accused argues that the trial court should, have sustained his defense of alibi. He maintains that at around 9 o'clock in the evening of 19 February 1986, he went to bed with his wife, Magdalena, in the house of his in-laws in Dagatan, Nagcarlan, Laguna, as the latter were then staying in the field near their farm, and that he woke up at 6 o'clock the following morning.[13] His alibi was corroborated by his wife who testified that on 19 February 1986 her husband left the house for work at 6 o'clock in the morning and returned home at 5 o'clock in the afternoon. She said that he was with her the entire night because when she was awakened at about 2 o'clock the following morning by their seven-month old baby, who was then hungry, he was in the room.

As correctly observed by the trial court, the alibi of appellant was "too shallow a defense." Dagatan, Nagcarlan, where appellant purportedly slept on the night in question, is relatively close to Dagat-dagatan, Liliw, and can easily be traversed on foot in thirty (30) minutes, although they belong to different municipalities.[14] Thus, it was not physically impossible for Pomentel to be present at the scene of the crime at the time of its commission.[15]

Moreover, the identity of the accused as the rapist was conclusively established by Belinda. Thus -

"Fiscal:

"Q: Will you be able to identify the accused?

"A: Yes, sir.

"Q: Why?

"A: Because he has identifying marks on his chest.

"Q: You testified earlier that you put off the light when the man came to your room, Why are you now saying that you can identify the man from his marks?

"A: Because at the second time that he returned, it was he who put on the light and when he put on the light, I was facing him and I noticed that he has (sic) some white marks on his chest.

"Q: Was the accused wearing dress (sic)?

"A: He was only wearing shorts.

"Q: What happened next when you saw the man switching on the light?

"A: I just kept quiet, sir, and I just remember what I saw on him." [16]

The telltale "white scar" on appellant's chest, which Belinda saw, is not disputed. Certainly, Belinda could not have seen such distinctive identifying mark had he not appeared half naked and switched on the light before raping them.

Indeed, it is inconceivable that Belinda, a religious missionary, would make up a story on the commission of rape against her and Erlinda, and falsely testify against the accused whom they both never knew before. Neither is there indication of any ill motive on their part to charge him with sexual perversion and placing them under public contempt and ridicule.

There may be some apprehension on the physiological capacity of the accused to consummate sex four (4) times within a span of one hour. Those who cannot do it perhaps may not believe it. But We need only quote Our

decision in one case where We held:

"As to the claim of appellant that it was physically impossible for him to have committed the three rapes, in succession within a period of three to four hours, Dra. Lolita Mercado, an expert witness categorically declared in court that Mario Ramos is capable of raping any woman, and based on her examination of Ramos, it is possible that in three and one half (3-1/2) minutes after the first he can again have the next sexual coition. Appellant's sexual prowess was likewise attested to on cross-examination by his wife x x x x

x x x x

"At any rate, on the matter of sexual outlet, there are high-rating individuals belonging to the so-called sexual athlete class. The noted sexologist Kinsey says that intervals between climaxes may range from 10 seconds to 3 minutes." [17]

In the case before Us, the accused was not only 31 at the time of the commission of the offense, as in the Ramos case, but younger by six years at 25. Belinda was only 19, while Erlinda, 22, was barely past her teens. Knowing as he did that the venue of his sexual orgy was so isolated that the nearest neighbor was across the river a hundred meters away, the accused had every reason to feel on top of the situation. He was confident that he had completely terrorized his faint-hearted victims who were now gripped in fear that he could freely abuse them with impunity.

In the crime of rape, ejaculation is not always required. Penetration, however slight, may be enough. Hence, in the instant case, ejaculation is not even mentioned; it may be presumed, though. In these four instances of rape, however, there may have been no ejaculation in every case. The series of rapes may not have always been followed by ejaculation and yet four rapes may have been consummated. In other words, there may have been ejaculation in the first instance; there may have been none in the second; or there could have been ejaculation in the first and second, and none in the third; or there could have been in the first, second or third, and none in the fourth. Any way, the accused here is convicted only for one rape.

On the element of time, admittedly the victims could hardly keep accurate time in view of their tension, anxiety, fear, and the ordeal they went through against their will. In fact, on cross-examination, Belinda could not be sure how long the whole episode took place, or the span of time between the successive incidents. Her fifteen minutes could have been an hour; her hour could have been half a day. To the offended, after their defloration, time was no longer of the essence.

In fine, We hold that the guilt of the accused-appellant has been clearly proved beyond reasonable doubt.

WHEREFORE, the decision of the court a quo, convicting the accused-appellant BOYET POMENTEL Y LESNIANA of the crime of RAPE is AFFIRMED except for the civil indemnity awarded to Belinda Diaz which is hereby increased to P30,000.00 in line with recent jurisprudence. Costs against accused-appellant.

SO ORDERED.

Padilla and Griño-Aquino, JJ., concur.

Cruz, J., (Chairman), see separate opinion.

[1] Crim. Case No. SC-3393, Regional Trial Court, Sta. Cruz, Laguna, Br. 28.

[2] Crim. Case No. SC-3392, Ibid.

[3] Tsn, 22 July 1987, pp. 22-27.

[4] Tsn, 22 July 1987, pp. 27, 29.

[5] Tsn, 22 July 1987, pp. 29-31.

[6] Tsn, 22 July 1987, p. 32.

[7] Ibid.

[8] Exhs. "C" and "C-1", Records, pp. 11-12.

[9] Exhs. "G" and "F", Records, pp. 13-17.

[10] People v. Natan, G.R. No. 86640, 25 January 1991, 193 SCRA 355; People v. Silfavan, G. R. No. 71510, 30 June 1987, 151 SCRA 617.

[11] People v. Pena, Jr., G. R. No. 72354, 30 June 1987, 151 SCRA 638, 651; see also People v. Hortillano, G. R. No. 71116, 19 September 1989, 177 SCRA 729.

[12] People v. Cabradilla, No. L-33788; 29 November 1984, 133 SCRA 413, 418-419; People v. Fernandez, G. R. No. 80228, 12 September 1988, 165 SCRA 302, 311; People v. Ramos, G.R. Nos. 92626-29, 27 May 1991, 197 SCRA 523; People v. Cayago, No. L-47398, 14 March 1988, 158 SCRA 586; People v. Arengo, G. R. No. 85251, 22 January 1990, 181 SCRA 344.

[13] Tsn, 30 May 1988, pp. 57-59.

[14] Tsn, 7 November 1988, pp. 67-68.

[15] People v. Osias, G.R. No. 88872, 25 July 1991, 199 SCRA 574; see also People v. Hortillano, G.R. No. 71116, 19 September 1989, 177 SCRA 729.

[16] Tsn, 22 July 1987, pp. 29-30.

[17] People v. Ramos, G.R. Nos. 92626-29, 27 May 1991, 197 SCRA 523, 536, penned by Justice Edgardo L. Paras, concurred in by Justices Melencio-Herrera (Chairman), Padilla, Sarniento and Regalado. Incidentally, the accused here was charged with rape on four (4) counts, although was convicted only on three (3) and was acquitted on the fourth for insufficiency of evidence.

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separate opinion

CRUZ, J.:

While I do not profess to be an expert on libido and much less rape, I must express my misgivings about the findings of the trial court, as apparently accepted by the ponencia, regarding the number and manner of the alleged rapes. There were supposedly four rapes committed on two women by the accused-appellant within the brief period of one hour. First, he raped Belinda as Erlinda looked on or looked away. She was seated on the bed while the two were copulating on the floor. Then the three of them lay in the bed, with our hero in the middle philosophizing about fate. After a few minutes, he turned his attention on Erlinda, and now it was her turn to be deflowered, also on the floor but this time in an adjoining room. After that second rape, he left or, as the women thought, escaped. But after fifteen minutes, he was back, as lecherous as ever and ready for a repeat performance. He demanded that the women undress. Then he raped them again, "one after the other," presumably no less vigorously than before. It was only then, after four ejaculations in one hour, that he finally departed for good. The

decision does not say if he was fully exhausted.

The man must be, as described by a colleague, a "superstud." His sexual prowess is amazing, especially as he displayed it under tension and even open observation. The other circumstances of the rapes are also incredible, especially the part where he lay between the two women discoursing on karma as they recited verses from the Bible. I cannot accept all this because it smacks too much of a surreal scenario.

I will concur only because the accused-appellant is being convicted of only one rape and not the four allegedly committed. One or two may be believable but certainly not four rapes in just one hour and in the manner here described.

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