

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. URIEL TABLIZO, ACCUSED-APPELLANT.

G.R. No. 88190. February 26, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Alicia P. Porbido, 15 years old and single filed a complaint with the Provincial Fiscal's Office of the province of Aurora, alleging therein that her first cousin, appellant Uriel Tablizo, 24 years old, and single raped her on May 13, 1986. On the basis of this sworn complaint, the Provincial Fiscal filed an information with the Regional Trial Court of Aurora which reads:

"That on or about the 13th day of May, 1986, at about 5:00 o'clock in the afternoon, in Barangay Nonong, Sr., Municipality of San Luis, Province of Aurora, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did then and there wilfully, unlawfully and feloniously pull and poke a pointed instrument at the back of said Alicia B. Porbido, and thereafter, have carnal knowledge of her against her will. (Rollo, p. 48)

Upon arraignment the accused pleaded NOT GUILTY to the charge.

The facts surrounding the alleged rape are found in the testimony of the offended party and were summarized by the trial court as follows:

"Alicia B. Porbido, who was 15 years & 11 months old on May 13, 1986, testified that about 5:00 p.m. of said date she was on her way home, having been to the house of Melba Tablizo at Barangay Nonong Sr., San Luis, Aurora. She went there to get the clothes which her cousin Demetria Tablizo borrowed, but she did not get it because it was still wet. When Alicia arrived at Melba's place only Melba and her small daughter were there; her husband Domingo Tablizo was not there. The distance between their houses is about one kilometer.

"When Alicia was about midway and walking along the banana plants, accused Uriel Tablizo blocked her way at a distance of about two feet. He rushed her and held her hands with his right hand and poked a 10-inch sharp pointed instrument (excluding handle) at her back, threatening to kill her if she made any outcry. She struggled to free herself and shouted for help but Uriel embraced and kissed her, and with the bladed weapon pointed at her back repeatedly threatened to kill her if she did not give in to his desires. Due to fear and because of his strength she gave in. She was not wounded during the struggle. Uriel pushed Alicia who fell down, then he raised her skirt and blouse or loose T-shirt. Her bra was removed because its clasp snapped when he raised her blouse. He threw the bra away, and pulled her panty which he also threw away. He pointed the bladed weapon at her private part and told her to part her legs which she obeyed. Then he placed himself on top of her and ravished her continuously (banat nang banat). Alicia felt pain in her sexual organ. After he was finished Uriel, pointing the weapon at Alicia, dragged her to the house of Lilia Sis some one kilometer from her parents' house at Barangay Nonong Sr. Although she fell down several times while being dragged she did not sustain any scratches.

"It was already dark when Uriel and Alicia reached the house of Lilia Sis who was the only one in the house.

Alicia asked Lilia to help her escape but Uriel told the latter to close the door and the windows, which Lilia did with his help. Uriel had his father Magno Tablizo and Eduardo Malamanig fetched, and when they arrived he told them that he had eloped with Alicia. Magno and Eduardo left and did not sleep there. She did not eat supper that night. She and Uriel slept at the kitchen while Lilia slept in another part of the house.

"In Lilia's house that night Uriel raped Alicia more than five times, the last time when it was already dawn but still dark. She resisted by grappling with him and shouting for help but Lilia did not do anything to help and his superior strength prevailed. During all the time Uriel raped Alicia he kept the bladed instrument pointed at her chest. After every intercourse she washed her private part to remove the filth because his penis completely penetrated her private part and ejaculated all the time. She was not able to sleep throughout the night, nor Uriel because he kept on ravishing her.

"The next morning, pointing his weapon at Alicia, Uriel forced her to go with him to the house of Barangay Captain Agapito Sollestre. She also wanted to go so that the truth would come out and she did not offer any resistance. At Sollestre's place said official asked why Alicia was with Uriel; she replied that Uriel abused her. Asked if it was to her own liking, she answered that she was forced by Uriel. At the barangay captain's house where she was no longer afraid, she thoroughly cleaned her private part to avoid getting pregnant. Alicia saw her mother that morning at Sollestre's house, and she told her that she was abused by Uriel. Since Sollestre wanted to settle the matter, Alicia and her mother left and went to the Aurora Memorial Hospital and had herself examined. When Dr. Chua examined Alicia she removed all her clothes, as directed, but he only examined her vagina; he did not examine any other part of her body. In her struggle with Uriel she sustained a dark bruise on her left waist which was painful for one week but it was not examined by Dr. Chua. He asked if she was still a virgin prior to May 13, 1986 and she answered in the negative. He also advised her to marry Uriel. Because of the great shame she felt with classmates and friends as a result of the rape perpetrated Uriel, Alicia was not able to continue her studies and had to stop in third year high school.

"Uriel raped Alicia the first time in 1984. One night in November 1984, about 7:00 o'clock, she was walking on her way home in the middle of a coconut grove. She was overtaken by the night because her house was in a far or remote place. Uriel blocked her way, held both her hands and pointed a bladed instrument at her back. She struggled and cried for help but nobody came because there were no houses nearby. He boxed her and she lost consciousness. When she regained consciousness about midnight Uriel was no longer around. She felt pain in her entire body, including her private part which was bleeding. She struggled to reach home and arrived at about 1:00 a.m. She cried and related to her mother what Uriel had done to her. Her mother had Uriel's mother fetched and their mothers talked about the matter. Uriel's mother begged Alicia's mother not to file a complaint so that her son would not be imprisoned, and she would send him away. Uriel who followed Alicia arrived almost as soon as she did and he sought forgiveness from her mother. He was forgiven on condition that he would not do it again. The first time Alicia saw Uriel after this incident was on May 13, 1986 when he barred her way." (Rollo, pp. 51-52)

The accused denied the rape charge. He claimed that he and Alicia were sweethearts and that on May 13, 1986 they eloped and had sexual intercourse by mutual consent. He presented his relatives as witnesses to prove the events that transpired on May 13 and 14, 1986, which the appellant summarizes in his Brief as follows:

"x x x [T]hat accused Uriel Tablizo was waiting for the complainant in the house of Domingo Tablizo in Brgy. Nonong, Sr., San Luis, Aurora on May 13, 1986 at around 10:00 o'clock AM in accordance with a tryst previously agreed upon. When Alicia Porbido entered the house where the accused was waiting at around 10:10 o'clock AM, the couple commenced kissing, embracing and exchanging words of love until they slept. During all this time, Domingo Tablizo and Eduardo Malamanig were scrapping rattan poles more or less one (1) meter away from where the couple were. After the couple had awakened and eaten lunch with Eduardo Malamanig, Domingo Tablizo and his wife, Melba, the couple continued to kiss, embrace and exchange promises of love. Upon awakening at around 5:00 o'clock PM, the couple agreed to go to the house of Lilia Sis, more or less seventy-five (75) meters from the house of Domingo Tablizo, where they arrived at around

5:15 o'clock PM. They found Lilia Sis at her house, together with her children, Rene, Rommel and Rosalea. When they were admitted into the house, the couple laid down on a mat which was placed on a 'papag' where they continued to kiss. After the accused and complainant ate supper, together with Lilia Sis, Mang Ata Sis, Rene Sis, Rommel Sis and Rosalea Sis at around 8:00 o'clock PM, Magno Tablizo (father of herein accused) and Eduardo Malamanig arrived and advised Alicia Porbido to stand firm on her decision to elope with the accused. The couple slept in the said house in the company of the Sis family and was awakened the next day, May 14, 1986 at around 4:00 o'clock AM by Lilia Sis. Accused and complainant proceeded to the house of Brgy. Capt. Agapito Sollestre and arrived there to give their statements to the effects that they eloped. However, their affidavits were not taken since Brgy. Capt. Sollestre had to go to his farm and had to notify Councilman Celso Olivar about a meeting. Brgy. Capt. Sollestre returned at around 8:00 AM and was immediately followed by the parents of Alicia Porbido. The accused was told by Brgy. Capt. Sollestre to fetch his parents but when they returned at around 11:00 o'clock AM, complainant and her parents were no longer there. (cf. pp. 2--8, inclusive, tsn., December 28, 1988)." (Rollo, p. 47; Brief, pp. 4-5)

The trial court gave credence to the prosecution's evidence and found the accused guilty as charged. The accused was sentenced to suffer the penalty of reclusion perpetua with its accessory penalties, to indemnify the victim Alicia B. Porbido the sum of thirty thousand pesos (P30,000.00) and to pay the costs.

The appellant now assigns the following errors:

- THE LOWER COURT ERRED IN HOLDING THAT THE CONTRADICTIONS AND DISCREPANCIES IN THE TESTIMONY OF COMPLAINANT ALICIA PORBIDO DID NOT IMPAIR HER CREDIBILITY.

- THE LOWER COURT ERRED IN HOLDING THAT THE UNEXPLAINED FLIGHT OF THE ACCUSED SIGNIFIES AN AWARENESS OF GUILT AND A CONSCIOUSNESS THAT HE HAS NO TENABLE DEFENSE TO THE CHARGE.

- THE LOWER COURT ERRED IN HOLDING THAT THE CLAIM OF THE ACCUSED, THAT HE AND THE COMPLAINANT ARE SWEETHEARTS, DOES NOT DESERVE CREDENCE SINCE IT WAS NOT CORROBORATED BY A SINGLE CLOSE ACQUAINTANCE.

- THE LOWER COURT ERRED IN HOLDING THAT THERE WAS NO SHOWING WHATSOEVER THAT THE COMPLAINANT IS A SHAMELESS WOMAN.

- FINALLY, THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE THRU INFERENCE, CIRCUMSTANTIAL EVIDENCE AND CONCLUSIONS THAT THE TESTIMONIES OF THE ACCUSED AND HIS WITNESSES ARE UNTRUTHFUL. (Appellant's Brief, p. 1)

Under the first assignment of error, the appellant points out contradictions and discrepancies in the testimony of Alicia which allegedly impair her credibility. Thus, the appellant contends that when Alicia first testified, she stated that she sustained a bruise on her left side, the level of her waist which was the sole injury that she suffered (p. 11, tsn., August 12, 1987) and yet when she was recalled on rebuttal, Alicia, in answer to the clarificatory questions of the trial court, stated that she had in her chest a contusion about the size of a fist (p. 13, tsn., October 11, 1988). Another inconsistency raised by the appellant refers to Alicia's testimony that before the incident she was staying at Brgy. 3, San Luis, Aurora with her brother and that whenever she visited her parents who were residing at Brgy. Nonong, San Luis, Aurora, she was "apprehensive to go because there was an incident that happened in November, 1984, where I was raped by the shameless and devil Uriel Tablizo." (p. 11, tsn., October

11, 1988). The appellant contends that such testimony is inconsistent with Alicia's other testimony that she went to the house of Domingo and Melba Tablizo on the flimsy excuse of taking back her clothes which were borrowed by her cousin, Demetria Tablizo.

An examination of the record shows that there are really no contradictions and discrepancies in Alicia's testimony on the matters referred to by the appellant.

As regards the injury sustained by Alicia during the commission of the crime, this was clarified as a result of the Court's query, to wit:

"COURT:

Q

During your recross examination by the defense counsel during August 12, 1987, you stated that aside from your bruise on the left waist you suffered, no other bruises but you only stated that there was contusion on your chest, the size of a fist, which is true now, your testimony of August 12, 1987 or what you have said earlier this morning?

A

They are both correct, because (sic) after thinking over what happened to me, sir." (p. 15, tsn., October 11, 1988)

In other words, the complainant corrected herself by saying she did not suffer only one bruise but actually had two injuries.

Anent the second inconsistency raised by the appellant, the record shows that upon query, Alicia answered that she visits her parents "in a year, about 5 times only. And when I went to my parent's house, oftentimes I have companion. Usually my brother Edilberto Porbido, ma'am, as I was already apprehensive to go alone." (p. 3, tsn., October 11, 1988)

Hence, contrary to the appellant's implication of Alicia's testimony, Alicia was not always accompanied by a brother whenever she visits her parents.

At any rate, Alicia stated that she was accompanied by her brother Edilberto when she visited her parents in the morning of May 13, 1986; that at the time, she already had in mind going to the house of Melba Tablizo to get back a dress borrowed by her because she would use the dress the following day; and that she asked her brother Edilberto to accompany her but then Edilberto had to attend to some important things at Baler and left at about 3:00 o'clock in the afternoon. (pp. 13-14, tsn., October 11, 1988)

Thus, Alicia satisfactorily explained the reason why she had to go alone to the house of Melba Tablizo despite her apprehension of going alone to Brgy. Nonong Sr., for fear of the appellant. This alleged discrepancy must be taken together with the evidence that sometime in November, 1984 the appellant raped Alicia but no complaint was filed against him because his mother (half-sister of Alicia's mother) promised to send him to a far place after the appellant asked for forgiveness and promised not to do it again. It is to be reasonably expected that her brother would not be able to accompany her in going to or around the area at all times. It was just unfortunate that on one such occasion, Alicia encountered the appellant.

Under the second assignment of error, the appellant questions the following findings of the trial court:

"The record shows that on May 21, 1986 Alicia Porbido filed her complaint (Exhibit B) against the accused in the Office of the Provincial Fiscal which was docketed as I.S. No. 86-41. On the same date Provincial Fiscal Fernando Y. Amat issued a subpoena directed to the respondent (accused) at his residence in Barangay Nonong Sr., San Luis, Aurora, requiring him to appear or submit counter-affidavits within ten (10) days from receipt thereof, but the subpoena was not served on him because the accused could not be contacted as his whereabouts could not be ascertained. On November 8, 1986, after the information in this case had been filed, the Court issued a warrant for the arrest of the accused. The accused remained at large until he was arrested on May 14, 1987 or thereabouts. The unexplained flight of the accused signifies an awareness of guilt and a consciousness that he has no tenable defense to the charge." (p. 61, Rollo)

The appellant contends that the conclusion of the trial court is violative of the constitutional presumption of innocence because there is no evidence to prove that the appellant has taken flight; and that the decision itself states that the subpoena was not served on the accused "because the accused could not be contacted as his whereabouts could not be ascertained."

The arguments are not well-taken.

It is significant to note that the subpoena was not served on the appellant not because he was unknown at the address stated in the subpoena but because "his whereabouts are unknown." According to Tablizo, he is a rattan gatherer and as such goes to the mountains and stays there for weeks and then delivers his goods to the buyer. Thereafter, he immediately returns to the mountains after a few days rest. (P. 11, Appellant's Brief) Since the appellant does not deny that the subpoena was not served at a wrong address it has to be assumed that the appellant went home to his address after some weeks of staying in the mountains and that his family apprised him of the rape charge. Due to the rape charge filed against him by Alicia whom he claims to be his sweetheart who willingly eloped with him on May 13, 1986, his initial reaction would have been one of outrage. He would have wanted his name cleared at the earliest possible time. Instead, the appellant disappeared starting on May 21, 1986 when the subpoena was served on him at his residence. He only resurfaced more than a year later, more specifically on May 14, 1987 not on his own volition but because he was arrested. His silence coupled with his convenient disappearance from his residence strongly indicate that the appellant was guilty of flight.

The third, fourth and fifth assigned errors refer to credibility of witnesses and may be discussed jointly.

The appellant insists that through his witnesses he was able to prove that Alicia was his sweetheart. This is not supported by the evidence on record.

His witness Lilia Sis did not categorically state that the appellant and Alicia were sweethearts. Her testimony on the matter is as follows:

"Q.

So, when they were going to elope did you believe on (sic) them?

A.

Yes, Ma'am I have that they will elope because they were long sweethearts Ma'am I think". (p. 9 Tsn, May 13, 1987)

Lilia Sis was making a conclusion without any basis for its truth or accuracy. She was not even sure about her own conclusion.

As regards witnesses Rene Sis and Domingo Tablizo, nowhere in their testimonies can we find a declaration that the appellant and Alicia were sweethearts. The two witnesses merely testified on the alleged amorous actions of

the appellant and Alicia when they were together on May 13, 1986. These two witnesses together with another witness, Eduardo Malamanig allegedly saw the appellant and Alicia kissing and embracing each other while they were together.

These testimonies were rightly rejected by the trial court. Alicia vehemently denied that the appellant was her sweetheart and that she agreed to elope with him on May 13, 1986. Alicia's denial is given credence by her actions as shown in the testimony of barangay captain Agapito Glorioso Sollestre. Sollestre stated that when he first saw Alicia in the company of the appellant at about 6:30 in the morning of May 14, 1986, she appeared sad and pale; that the appellant told her that he and Alicia were sweethearts and wanted to get married; that Alicia refused to marry the appellant and cried; that he asked the appellant to fetch Alicia's parents; that Alicia's parents were willing to have the two get married but Alicia refused; and that he took the statement of Alicia and referred her complaint to the San Luis Police or the mayor. (pp. 7-9, tsn, July 22, 1987)

Verily, Alicia's condition and reaction to the appellant's marriage proposal do not jibe with the appellant's story that he and Alicia eloped with the intention to marry. The fact that Alicia lost no time and immediately reported the crime enhances her credibility. (People v. Magdaraog, 160 SCRA 153 [1988]) Moreover, the well-established principle is that "conclusions as to credibility in rape cases lie heavily on the trial court." (People v. Partulan, 156 SCRA 489 [1987]; People v. Malate, 116 SCRA 487 [1982]; and People v. Sarda, G.R. No. 74479, April 24, 1989) There were many persons urging her to marry Tablizo. Among them were the examining physician and the relatives and friends of Tablizo who did nothing when the victim was brought to the places where she was raped. The complainant was steadfast and consistent in her narration of the crime.

On the other hand, we agree with the trial court that the defense witnesses who are all relatives of the appellant more than anything else, tried to depict Alicia as a "shameless girl." (p. 63, Rollo) This is evident from the testimonies of Rene Sis a niece of the appellant who testified that when the appellant and Alicia arrived in their house, "they kissed each other" (p. 4, tsn, September 14, 1987) and Domingo Tablizo, the appellant's cousin who testified that as soon as the complainant arrived and entered Domingo's one room house where the appellant was reading comics and waiting for her, the two commenced kissing, embracing and exchanging words of love; that the complainant did not bother to shut the door or ask the appellant to do so despite the fact that Domingo and his companion Eduardo Malamanig could see and hear them as they were near the door and only about one meter away from them.

Finally, the appellant capitalizes on the alleged lack of visible signs of violence. The physician's testimony on the alleged absence of physical injuries on the body of Alicia did not negate the commission of the crime of rape. In the case of People v., Pasco, et al., G.R. No. 68520, January 22, 1990, we ruled:

"It need not be over-emphasized that force or violence required in rape cases is relative. When applied, it need not be too overpowering or irresistible. What is essential is that the force used is sufficient to consummate the purpose for which the offender had in mind or to bring about the desired result. In fact, even the absence of external signs of physical injuries does not negate the commission of the crime of rape."

In the instant case, Alicia had already developed a certain kind of fear of the appellant due to the first rape incident perpetrated against her by the appellant in November 1984. Moreover, the appellant used a knife in subduing Alicia. Under the circumstances, the appellant could have easily overpowered her without much use of force. "The alleged absence of bruises, contusions and abrasions in the body of complainant may seem unnatural but the workings of a human mind when placed under emotional stress, are unpredictable and people react differently. In the given situation, some may shout, some may faint and some may be shocked into insensibility while some may openly welcome the intrusion." (People. v. Pasco, supra)

Moreover, we are not inclined to give too unquestioning a faith in the doctor's testimony. For one thing, we see no reason why an examining physician should tell a complainant in a rape case who is only 15 years old to marry her rapist and first cousin. The incident happened on May 14, 1986 but he testified only on July 22, 1987. The evidence of rape is too strong to be overcome by a doctor's insistence that he saw no bruises or contusions when he examined a patient over a year ago.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** in toto.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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