

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR TIMBANG Y AUGUES, DEFENDANT-APPELLANT.

G.R. No. 88403. August 30, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal interposed by the accused Edgar Timbang y Augues from the judgment* rendered in Criminal Case No. 32433 of the Regional Trial Court at Caloocan City, finding him guilty of the crime of Rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the victim the amount of P25,000.00 as damages, and to pay the costs.

The facts of the case, according to the Solicitor General, are as follows:

"Complainant Mary Jane Langga was residing with her brother Estelita Langga and the latter's wife and two children of two (2) years old and eight (8) months old, respectively, at No. 577 Baesa Road, Sta. Quiteria, Caloocan City, Metro Manila (pp. 20-21, April 10, 1989; pp. 3-4, April 11, 1989), Appellant Edgar Timbang, a first cousin of Estelito's wife, also resided with them as the spouses' houseboy (pp. 21 & 25, tsn, April 10, 1989; pp. 3-4, tsn, April 11, 1989).

"On January 16, 1989, while complainant's brother and sister-in-law were both out for work and while she was inside her brother's room taking care of her two nephews, appellant knocked at the door and requested permission to get inside the room on the pretext of getting something (pp. 4-5, 14, tsn, April 11, 1989). Once inside the room, appellant held complainant's arms and forced her to lie on the wooden bed (pp. 5, 14-15, tsn, *ibid.*).

"Despite appellant's poking a knife upon her complainant fought back to free herself; but appellant was stronger than she (pp. 5 & 7, 15, 18, 19, 26, tsn, *ibid.*). She could hardly breathe, for appellant was forcing himself on her and at the same time strangling her (p. 18, tsn, *ibid.*). He even boxed her on the stomach, placed himself on top of her and continued kissing her face, lips and neck (p. 5, tsn, *ibid.*).

"Then, he forcefully removed her skirt and panty and likewise removed his short pants (pp. 5-6, 17-18, tsn, *ibid.*). He laid on top of her and inserted his finger in her vagina followed by his penis (pp. 5-6, tsn, *ibid.*). When he made a push and pull movement, she felt extreme pain as if her hips were being torn apart (pp. 6-7, 24, tsn, *ibid.*).

"After a while, appellant stood up, wore back his short pants and left complainant lying (p. 6, tsn, *ibid.*). Because of the pain she was suffering on her private part, she could not stand up (p. 7, tsn, *ibid.*). Since she could do nothing, she just cried (p. 7, tsn, *ibid.*).

"After her brother and sister-in-law arrived in the early evening of that day, complainant did not tell them what happened to her, because she was afraid of appellant's threat that if she reveals what he had done to her, he would kill her, her brother, sister-in-law and two nephews (pp. 8 & 9, 22-23, 27, *ibid.*).

"From January 16, 1989 up to February 25, 1989, except on Sundays, appellant did the same thing on

complainant (p. 20, tsn, *ibid.*). When she could no longer bear his sexual assaults, she decided to go to his other brother Fidel Langga who was residing at Sapang Palay, San Jose, Bulacan, in the afternoon of February 25, 1989 (pp. 8-9, 23, tsn, *ibid.*). Upon arrival thereat, she narrated to her sister-in-law, Zenaida Langga, the wife of his brother Fidel, her horrible experience in the hands of appellant (pp. 11-12, tsn, April 10, 1989; pp. 8-9, tsn, April 11, 1989).

"On February 26, 1989, complainant, accompanied by her brothers Estelito and Fidel and sister-in-law Zenaida, filed a complaint, of Rape against appellant at the Caloocan Police Headquarters (pp. 4-5, tsn, April 10, 1989; pp. 9-10, tsn, April 11, 1989)."[1]

The accused, Edgar Timbang, admitted having sexual intercourse with the complainant on 16 January 1989 and on several occasions thereafter. But he denied using force or intimidation. He claimed that he and the complainant were lovers and that the act complained of was done voluntarily or with the consent of the complainant. His version of the incident is as follows:

"x x x that he (appellant) became a houseboy of the Langga family sometime September 1988; that it was on (sic) that house at No. 577 Baesa Road, Sta. Quiteria, Kalookan City where he came to know the complainant, the sister of his employer Estelito Langga and who is likewise residing in that house; that September 1988 (he) started courting the complainant and on October 1988 they became sweethearts when his love proposal was accepted by her by telling him 'oo, sinasagot na kita'; at around 9:00 o'clock in the morning of January 16, 1989 while she was taking care of the younger child of Estelito in one of the rooms of that house, she (he) saw complainant Mary Jane entered (sic) the room bringing with her folded clean clothes; the latter then sat at the edge of the wooden bed and while sitting thereat, he asked permission from her that he will kiss her and because the former did not reply (he) kissed Mary Jane on the lips thereafter both of them removed their respective clothes; he kissed her on her neck and downward and after about two hours of making love with each other they both wore back their respective clothes and resumed doing their unfinished household chores; after that incident, they made love everyday 'Inaaraw-araw ko siya': that their relationship became so intimate in fact, he was even giving the complainant additional allowance whenever the latter goes to school; that he did not force Mary Jane into making love with him; that all the sexual congress they have done was with her consent until finally on February 25, 1989 when complainant asked permission from him to go to Bulacan as it was the birthday of her sister-in-law when he even advised her to take care of herself; for that reason he got surprised on the morning of February 26, 1989 when complainant's brother arrived in the house where he was residing and confronted him if he was Edgar Timbang; after admitting that he was Edgar Timbang, the former boxed him on his face and on his body, he asked for a peace talk but instead he was kicked by Fidel and because of the force he was thrown in one of the rooms of the house; he could not stand as he lost his balance so he has (sic) to kneel down; while he was on (sic) that position, Estelito, Fidel and Zenaida Langga took their breakfast and after eating he was brought by them at the Sangandaan Police Sub-station; thereat they were told to proceed instead at (sic) the Sangandaan Police Headquarters in Kalookan City; while on their way to the upper portion of the headquarters he was again kicked by the brother of Mary Jane; at the Sangandaan Police Headquarters, he was detained without the benefit of an investigation; that a picture of Mary Jane was voluntarily given to him by the former however it bears no dedication as she, despite his request, did not put a dedication on the said picture; however, he could no longer produce said picture as his wallet and other personal belongings were lost as an after result of his being detained at the City Jail." [2](Decision, *ibid.*, on pages 4-5)

We have examined the record of the case with great care and find nothing therein that would justify a change in the findings of the trial court. The complainant, Mary Jane Langga, an 18-year old college student, categorically denied that she and the appellant were sweethearts.[3] and declared that appellant had threatened her with a knife and then forcibly had sexual intercourse with her. Her testimony reads:

"Q Will you please tell this court what was that unusual incident that happened?

A On January 16, 1989, while I was inside the room of our house, taking care of my two nephews, Edgar Timbang went inside the room telling me that he will get something inside the room, sir

Q And whose room is that?

A The room of my brother, sir.

Q Was the accused able to enter the room?

A Yes, sir.

Q While he was already inside the room of your brother, what happened?

A He was knocking, sir, and in the pretext that he will get something inside that room, I opened the door.

Q After opening the door, what happened?

A He suddenly held my arms and he was forcing me to lie down in our wooden beb, 'papag', sir.

Q And what did you do?

A I was struggling, sir, and I wanted to fight but he was very strong, sir, and then he poked a knife at me, sir.

Q Now, you said that he forced you to lie down on the 'papag', were you able to lie down on the wooden beb?

A When I became weak, sir, and lost my energy because he boxed me on my stomach, 'sinikmuraan'.

Q How many times did he box you in your stomach?

A Only once, sir.

Q Now, after you felt that you were already weak, you were already being laid down on the wooden bed, what happened?

A He was struggling me, sir, placed his body on top of me and kissed me several times, sir, and he held my arms.

Q Now, what were you wearing at that time?

A T-shirt and skirt, sir.

Q What about the accused?

A T-shirt and short pants, sir.

Q After kissing you, as you said, what happened next?

A He forcefully removed my skirt, sir, and then my panty and at first he inserted his finger on my private part.

Q You said of that (sic) he was kissing you, in what part of your body was he kissing you?

A On my face, my lips and neck, sir.

A Now, after you said that your panty was already removed by him, and your skirt, what happened, next?

A He first inserted his finger on me, sir, and then he inserted his private part on my private organ.

Q You said that the accused was wearing t-shirt and short (pants), what happened to his clothing?

A He first removed his short (pants), followed by his brief before he inserted his private part to my private organ, sir.

Q Do you mean to say, after your panty and your skirt were removed and (he) fingered you, he removed his short pants or which is ahead?

A He removed his short pants, sir.

Q And then after he laid on top of you?

A No, sir, he first inserted his finger and then he laid on top of me.

Q You said that he inserted his private organ in to your private part, in what position at that instance?

A He was on top of me, sir.

Q Face to face with each other?

A Yes, sir.

Q What did you feel when, as you said, he inserted his private organ into your private organ?

A It was very painful, sir, as a matter of fact, my hips as if it was (sic) torn apart, sir.

Q And what did you do?

A I was struggling, sir, and even pleading to him not to do that after (sic) me but he contineoulsy (sic) did that to my person.

Q After inserting his penis to your private organ, what happened?

A He stood up, wore back his short, he left me lying down because I cannot (eic) stand up, sir, I still feel (sic) the pain, sir.

Q How many seconds or minutes was he on top of you?

A Close to 30 minutes, sir.

Q And what happened after 30 minutes?

A After raping me, sir, he stood up and left, sir.

Q Court:

In those 30 minutes, what was the accused doing?

A He was raping me, sir.

Fiscal:

Q You mean to say these 30 minutes, you are referring to, at the time he kissed you, he removed your parity, he removed your skirt and then lie on top of you and inserted his penis?

A Yes, sir.

Q You said you felt pain, what else did you feel aside from feeling pain?

A I have difficulty in walking because o£ the pain that I have experienced and I saw blood stain, sir.

Q Blood from what?

A From my private organ, sir.

Q That was your first experience having relation with a man?

A Yes, sir.

Q Court:

"After inserting his private organ on (sic) yours, what else did you feel, if any?

A There was, your honor.

Court:

Q What was it?

A He was inserting his organ to my private organ, sir, several times, 'pinapasok-pasok'

Q Fiscal:

What do you mean by 'pinapasok-pasok'?

A What I mean by that, sir, is this, that his buttocks was moving up and down, air.

Q Now, while he was doing this to you, did you not shout or make sounds?

A I was trying to shout, sir, but I cannot (sic) because he was struggling me, sir, and he was threatening me.

Q Now, after 30 minutes, you said that he went up and put on his short (sic) and then left, what did you do after he left?

A I cried, sir.

Q Now, while he was still doing this to you, while he was kissing you and trying to remove your skirt, (sic) your panty and your short, were you already crying?

A No, sir.

Q Now, after he left the room what happened?

A I cried and cried, air."[4]

The trial court found that the complainant, while testifying on the witness stand, sounded sincere, appeared candid and honest and was direct to the point and her answers and her testimony were logical, straight-forward and probable. Her credibility was not shaken despite the vigorous, exhausting and humiliating cross-examination. The appellant has not shown compelling grounds to overturn said findings. Well settled is the rule that factual findings of the trial court, which had all the opportunity to observe the behavior and demeanor of the witnesses and weigh all the evidence presented, are accorded great respect, in the absence of a clear showing of arbitrariness and misapprehension of the facts.[5]

Besides, it would appear that the complainant had no malicious motive to falsely charge the appellant with the commission of so grave an offense. If the complainant and the appellant were sweethearts and the complainant had consented to have sex with the appellant voluntarily, as the appellant claims, the complainant's most natural reaction would be to accept the offer of marriage of the appellant since she had become pregnant as a result of their liaison.[6] She would not have denounced the appellant for having raped her if such were not the fact, considering the dishonor, the shame and the social humiliation that accompany the accusation and the adverse effect upon her future and that of her unborn child.

The filing of the complaint for rape belies consent. At any rate, the appellant's claim that he and the complainant were sweethearts is not supported by substantial evidence. And even if they were sweethearts, that fact would not

exempt the man from criminal liability if the sexual intercourse with the woman was against the latter's will.[7]

The appellant claims that the complainant was influenced by her relatives, particularly, her sister-in-law Zenaida Langga, in filing the case against him. The complainant declared, however, that the filing of this case against the appellant was of her own free will. Her testimony reads:

"Court:

Q Is it true that you filed this case of rape against the accused because your brothers, Fidel and Estelito ordered you to do the same?

A No, your honor.

Fiscal:

Q So that in filing this case before the police it was in (sic) your own voluntary will?

A Yes, sir.

Q Nobody forced you to file the same?

A Yes. sir."[8]

The appellant further contends that the failure of the complainant to report the incident immediately after its commission and their continued sexual relationship after the commission of the act complained of, for more than a month after its commission, militate against the complainant's claim that she was raped.

But this has also been satisfactorily explained by the complainant. She declared that the appellant was threatening to kill her, her two nephews, and her brother if she should report the incident, and she was afraid.[9]

As for having sexual relationship with the appellant after the commission of the act complained of, the complainant explained that she also struggled and resisted the advances of the appellant. She would hide from the appellant, but the appellant would follow her wherever she went. She even tried to lock herself inside the room, but to no avail since she had to go out of the room sometime.[10]

Besides, it would appear from the appellant's testimony that the subsequent sexual congresses with the complainant were the unilateral acts of the appellant. His testimony is as follows:

"Q After that incident, did any other incident occur between you and Mary Jane?

A Yes, sir.

Q What?

A I make (sic) love with her everyday, 'Inaaraw-araw ko na siya'.[11]

If the complainant had voluntarily consented to the subsequent sexual acts, the appellant would have said that they, and not I, made love everyday, since lovemaking is, by its nature, a consensual act.

The trial court did not commit any reversible error in finding the appellant guilty of the crime for which he was charged. The indemnity to be paid to the victim, however, should be reduced to P20,000.00, in line with recent decisions of the Court.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with the modification that the indemnity to be paid to the victim is reduced to P20,000.00. With costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Antonio J. Fineza

[1] Appellee's Brief, pp. 2-5

[2] Appellant's Brief, pp. 3-5

[3] tsn of April 26, 1989, p. 6

[4] tsn of April 11, 1989, pp. 4-7

[5] People vs. Demecillo, G.R. No. 83186, June 4, 1990

[6] Exhibit F. However, the complainant had a miscarriage a few days after she filed the complaint in this case. (Please see tsn of April 11, 1989, p. 22)

[7] See People vs. De Dios, G.R. No. 58174, July 6, 1990

[8] tsn of April 26, 1989, p. 8

[9] tsn of April 11, 1989, pp. 8-9

[10] Id., pp. 20-21

[11] tsn of April 24, 1989. p. 7

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