

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER DANGUILAN Y LASAM, ACCUSED-APPELLANT.

G.R. No. 88821. January 29, 1993

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

For resolution of this Court is the appeal interposed by the accused, Elmer Danguilan y Lasam, after he was convicted for the crime of "RAPE" by the Honorable Ricardo A. Baculi, Presiding Judge, Regional Trial Court, Branch 02, Tuguegarao, Cagayan, in a decision dated March 10, 1989, based on the Criminal Complaint and Information that read as follows:

"CRIMINAL COMPLAINT

"That on or about May 19, 1979, in the municipality of Peñablanca, province of Cagayan, and within the preliminary jurisdiction of this Honorable Office, the said respondent, Elmer Danguilan, with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with the undersigned against my (sic) will and consent."

"I N F O R M A T I O N"

"That on or about May 19, 1979, in the municipality of Peñablanca, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Elmer Danguilan y Lasam armed with a small pointed bolo, with lewd design and by the use of force, violence and intimidation, did then and there wilfully, unlawfully and felonious-ly have sexual intercourse with the offended party, Marilou P. Carag, against her will." (Rollo, p. 39)

The complainant, Marilou P. Carag, 19 years old, single, helper at the St. Louis College canteen and a resident of Bagumbayan, Tuguegarao, Cagayan, alleged together with her witnesses, that at about 6:00 o'clock in the evening on May 19, 1979, Elmer Danguilan and his sister, Vin Danguilan, went to their house to invite her, her sister, Jannete and her cousin, Miriam Pelagio, to a dance at Centro, Peñablanca, Cagayan. Elmer is married to one Cora Pelagio, a first cousin of Marilou's mother. (Ibid., p. 41)

After the father of Marilou gave his permission, the ladies and the accused took tricycles bound for Peñablanca. Along the way, some girls were also invited and the group proceeded to Peñablanca, arriving at Centro at 8:30 o'clock in the evening. They stopped at a waiting shed at the junction going to Callao. Shortly thereafter, Cora Pelagio, the wife of Elmer, arrived with Jun Biete and in a short while, Cora and Vin left to drink at Cora's house.

Momentarily, Jun Biete, an army trainee and Marilou's alleged suitor, arrived and talked with the accused at a distance of about seven (7) meters from Marilou, Jannete and Miriam. Suddenly, Elmer stabbed Biete with a knife and then turned to Marilou, held her hands and with a knife pointed to her breast and pulled her away. Jannete and Miriam cried for help to no avail. Marilou struggled to free herself and asked Elmer to release her, but the accused told her to stop resisting or else he will kill her. The accused pulled Marilou to a wooded area and proceeded to a deserted 'bahay kubo', where accused boxed her stomach three times, thus she fell down and laid flat gasping for

breath.

The accused removed his long pants and brief, lifted Marilou's dress, removed her panty and succeeded in sexually abusing her. Although she struggled and cried, she was not able to do anything because the accused threatened to kill her. She could not leave the hut as the door was closed.

The following morning, May 20, 1979, the accused spoke to Marilou and said, "do not leave now, I will marry you. I will separate your auntie and if you like we can join the NPA." When Marilou had the chance, she ran away and reached the road where she waited for a ride, boarded a jeep and went home. That same day, Marilou's parents, her sister Jannete and cousin Miriam, went to the PC authorities and complained but they were told to go back. On May 29, 1979, the criminal complaint was filed after she was examined at the Cagayan Provincial Hospital by a certain Dra. Teresita Reyes. (Ibid., pp. 41-43)

Miriam Pelagio and Jannete Carag, corroborated each other's testimony and that of Marilou except the portion pertaining to the sexual assault on Marilou by the accused. They added that Jun Biete is the suitor of Marilou. (Ibid., pp. 46-47)

The other prosecution witnesses corroborated the allegations of Marilou. The treatment of Jun Biete for stab wounds was the subject of the testimony of Dr. Francisco Cepeda, Senior Resident Physician of the Cagayan Provincial Hospital, Bienvenido Asejo, Cashier II of the same hospital, while Eddie Clores testified that he was the one who introduced Jun Biete to Marilou and that Biete subsequently courted her. (Ibid., pp. 50-51)

For the defense, a different version was presented. Elmer Danguilan alleged that Marilou joined him when he hid in the nipa hut of Silverio Paras after stabbing Jun Biete because Marilou was Elmer's "mistress". Having an intimate relationship with Marilou, the accused claimed that they had several sexual encounters prior to May 19, 1979. The accused admitted having stabbed Jun Biete for trying to molest Vin Danguilan, his sister. The testimonies of other defense witnesses are noted to have inconsistencies, but what is particularly noticeable was the absence of Cora Pelagio, wife of the accused and aunt of the victim. (Ibid., pp. 51-55)

The accused admitted that he had sexual intercourse with Marilou that evening of May 19, 1979 in the nipa hut of Paras. He alleged that the following morning his wife Cora together with his father, Domingo Danguilan, arrived and that Marilou and his wife had an altercation with the latter calling the former "puta", and a "worthless niece." (Ibid., pp. 53-54, 235)

Vin Danguilan, testified that two (2) days before the rape incident, she had known that Elmer and Marilou had "some kind of relationship for she had seen a kissmark or love bite on the neck of Marilou while in the house of Cora Pelagio which Marilou covered with a handkerchief which Vin snatched from Marilou's neck. She used to catch them in the neighborhood kissing each other." (TSN, January 5, 1982, pp. 33-34)

Likewise, Vin alleged on cross-examination that "she loved her sister-in-law Cora that she was scandalized when Elmer and Marilou were kissing and told Cora to observe them." (Rollo, p. 56)

Elmer's father testified that it was Marilou who followed the accused after she got a dress from Vin, his daughter, shouting to Elmer, "wait for me", and then both the accused and Marilou ran to the woods to hide. He added that the following day, May 20, 1979, his daughter-in-law, Cora Pelagio, went to their house at about 6:00 o'clock in the morning, looking for her husband Elmer. Domingo informed Cora that Elmer went to the nipa hut of Paras, so Cora asked him to accompany her there. Upon reaching the place, Cora went upstairs and subsequently he heard an altercation. After some time, he asked Elmer, Cora and Marilou to go home and they all went home. Likewise, Domingo testified that Marilou has gone twice to their house before the May 19, 1979 incident. (TSN, Dec. 17, 1981, pp. 173, 175-179)

Accused, Elmer Danguilan, 27 years old, married to Cora Pelagio, aunt of Marilou Carag, testified that at about 8:30 o'clock in the evening of May 19, 1979, he was at his father's home. Then he heard his sister, Vin shout "Elmer please rescue me Jun Biete wanted to insult (sic) me." Rushing, he saw Biete holding the shoulders of his sister with both hands. He pushed back Biete and told him that Vin is his sister, but Biete fought back and boxed him, however, Elmer was able to avoid the blow, and because Biete was drunk, he fell with face downward, but stood up and picked up a stone. At this point, accused saw a broken bottle and hit Biete on the left side of his chest and neck. (TSN, May 9, 1985, pp. 225-226)

After hitting Biete twice with the broken bottle, the accused declared that he ran northwards in the direction of the house of Silverio Paras but before reaching the said place, somebody who turned out to be Marilou Carag called him and so they went together and slept in the house of Paras. The accused claimed that Marilou Carag joined him because her relatives left her and besides, she had been his mistress since May 9, 1979, after meeting her on the 9th day novena of Marilou's deceased relative. (Ibid., pp. 226-227, 231)

The accused likewise claimed that he slept with Marilou three times since he came to know her at a dance on May 5, 1979. They had sexual intercourse on May 12 and May 16, 1979 and the last one was on May 19, 1979. (Ibid., pp. 233-234)

From the facts and circumstances stated above, while the version given by the prosecution with respect to the place where the stabbing took place and the dragging of Marilou to the forested area varied with the version of the accused and his witnesses, the certainty of the sex act is not denied. As a matter of fact, the accused admitted having carnal knowledge of the victim only once that night of May 19, 1979 since she allegedly had her period. (TSN, May 9, 1985, pp. 233-235) Although the admissions by the accused were flavored with his assertion that Marilou was his mistress and that they already had several sexual encounters prior to the May 19, 1979 incident, (Ibid., pp. 233-234) the trial court found the version of the prosecution more believable. There is nothing in the records that leads us to a different conclusion. The prosecution evidence is convincing that Marilou was forcibly taken as hostage after Jun Biete was stabbed by the accused, and at the house of Silverio Paras, she was forced to have intercourse with the accused by means of threat and intimidation. Thus, the crime of rape was undeniably consummated, because at that point in time, Marilou did not submit to the accused of her own free will. The stabbing of Marilou's suitor, Jun Biete, was for all intents and purposes, the result of an intense desire by the accused to have sexual access to Marilou.

Even granting for the sake of argument that Jun Biete was stabbed for attempting to molest Vin, the sister of the accused, he (Elmer) did not have any reason for running off with Marilou, dragging and taking her with him against her will.

As regards the defense of the appellant that Marilou was his mistress, this was correctly treated by the trial court as a shallow alibi of a desperate person who later came to his senses and after realizing the seriousness of the offense he committed, concocted his jigsaw version. This brings to mind the case of *People v. Taduyo* (154 SCRA 349 [1987]), where-in this Court rejected the defense of the accused that the complainant was his common-law wife, as follows:

"There is another reason why we are compelled to reject the accused's defense that he and Margarita were common law husband and wife. One may assume, *arguendo* merely, that Rogaciano and Margarita did live together as pretended husband and wife. But that by itself does not prove that Rogaciano could not have raped Margarita, that Margarita would never have denied Rogaciano sexual access. Certainly, no presumption arises that a common law wife will, or is willing to, submit to the common law husband's embraces always and under all circumstances. Proof of a prior history of a common law marital relationship will not prevail over clear and positive evidence of copulation by the use of force or intimidation." (Underlined words were italicized in the

reference cited.)

In the present case, there is no credible evidence whatsoever that Marilou was a mistress of her aunt's husband.

Another pronouncement in the Tadyo case that can be adopted in this case with respect to the voluntary company provided the accused by the complainant when she allegedly joined him at the nipa hut of Paras and the altercation that ensued the following day between his wife, Cora and the latter's niece, Marilou is:

"The testimony of Rogaciano and his witnesses failed to convince the trial court, (sic) this Court has neither reason nor inclination to overthrow the findings of the trial court. x x x The defense could have easily presented the accused's own cousin, Anastacia Obong, who was supposed to have been present at the incident to testify on it on behalf of the accused; but the defense did not do so. In any case, that story of Rogaciano is not only uncorroborated but also to our mind, improbable and inadequate to explain the supposed murderous attack by Margarita upon Rogaciano. x x x We note that Rogaciano's claim that he and Margarita had been living together as common-law husband and wife, a relationship not easily kept secret in a small rural community like Carayman, could have been easily established by unrelated, competent and credible witnesses, e.g., by barrio people living in the immediate vicinity of Margarita's house or the accused's own relatives. The defense, however, failed to present any such supporting testimony. x x x " (Ibid., p. 350)

Furthermore, we have held that failure of the accused to adduce evidence supporting his allegations that he and the complainant were in fact sweethearts, did not give this Court cogent reason to alter the findings of the trial court. This Court held in *People v. Partulan* (156 SCRA 490 [1987]) that:

"Far from the assertion of the accused-appellant, it is his testimony which We find incredible. His allegation that he and Nonita were in fact sweethearts for more than a year is not supported by any letter, notes or other tokens. His theory that Nonita (sic) wounds could have been brought about by his biting her during their lovemaking is preposterous. x x x "

Likewise, the minor inconsistencies in the testimony of the complainant and her witnesses and the delay of about a week when the physical examination was conducted on the complainant, does not diminish their credibility. It is appropriate that the ruling of this Court in a similar case, is reiterated hereunder:

"A careful analysis of the alleged inconsistencies in Nonita's testimony mentioned by the accused-appellant does not diminish the firm conviction of this Court that she was indeed a victim of accused-appellant's uncontrollable lust for her body which led to the commission of this horrible crime. Said inconsistent statements are too minor to affect her credibility. Moreover, her allegations are substantiated by the medical findings and by the testimony of Helen Enoviso who is related to accused-appellant, the latter being the nephew of her husband." (Ibid., p. 490)

The principle that conclusions as to the credibility in rape cases are primarily the function of the trial court, can be reiterated in this case. Notwithstanding the conclusions of Vin, the sister of the accused, that she saw a "kissmark" or "lovebite" on the neck of Marilou because Vin allegedly saw them kissing in the house of a neighbor of Elmer and Cora, the defense failed to introduce Cora Pelagio, or any other credible witness who could have easily corroborated the scenario regarding the altercation at the Paras nipa hut and the allegation of Vin concerning the reported intimacy between Elmer and Marilou right in the vicinity where the residence of Elmer's in-law is located. (TSN, Jan. 5, 1979, p. 35)

The testimonies of the accused and his sister Vin allude an accusation that Marilou could be a woman of low morals, easy-to-get and flirtatious. However, this inference has no positive effect on this Court. Of similar import is the case of *People vs. Pena, Jr.* (151 SCRA 638, [1987]) wherein we ruled, that:

"x x x There is no evidence to show that she is a woman of ill-repute or of a flirtatious and wanton nature as to

invite or provoke appellant, x x x to have sexual intercourse with her. Young, innocent and decent as she is, she was cowed by fear and shock because of the outrageous act of appellant on her person and honor. Consent obtained by fear of personal violence is no consent at all. Though a man puts no hand on a woman, yet if, by the use of mental and moral coercion, the accused so overpowers her mind out of fear that as a result she dare not resist the dastardly act inflicted on her person, accused is guilty of the crime imputed on him."

Several contradictions in the versions of the witnesses for the defense portrayed a not too well rehearsed drama and have all the more strained the credulity of this Court. Some of them are as follows:

1. Assertion by Vin Danguilan that Elmer asked permission from his wife, Cora, that he was going to hide at the house of Silverio Paras on the night of the incident. (TSN, Jan. 5, 1982, p. 25) If this is true, why did the elder Danguilan testify that Elmer's wife went to his house looking for his son the following day and accordingly, accompanied her to the Paras' nipa hut early morning of May 20, 1979; that the two women, Marilou and Cora, had an altercation and later all the four of them went home together? (TSN, pp. 171, 175-179, supra)

Besides, if in fact, Elmer asked permission from his wife to go to the nipa hut of Paras and Marilou followed him shouting, "Wait for me.", in the presence of Cora, but Cora did not protest nor make a scene about this outrageous event, especially after Vin warned her to "observe" Marilou and Elmer, this is highly incredulous, unbelievable and arrogates on human nature and reason.

2. On cross-examination, Vin said that Cora went to their house about noontime, looking for Elmer but she denied that her father, Domingo Danguilan accompanied Cora to the nipa hut of Paras, because her father had already left for the market to attend to his business of selling pigs. (TSN, Jan. 5, 1982, p. 16)

3. Even the alleged "kissmark" or "lovebite" on the neck of Marilou mentioned earlier, is unbelievable, when Vin concluded that it was caused by her brother, Elmer, whom she saw kissing Marilou, in the neighborhood two days before the rape incident. And yet when she was pressed whether the kissing took place on May 17, 1979, she claimed she forgot. Further, while the defense may have been emboldened to concoct the tale for fear of the stiff penalty for rape, this assertion borders on stupidity to say the least, especially Cora is Marilou's auntie and Elmer is living with his in-laws. Thus, to violate the sanctity of his marriage right in the sanctuary of his wife's family is an aberration by itself, how much more doing the unlikely within the view of their neighbors.

Likewise, the fact that the complainant formally lodged her complaint a few days from the incident, is of no moment. (Rollo, p. 6) As held in the Pena, Jr. case above, "delay for three days in formally complaining to the authorities due to fear of embarrassment, is excusable." (supra, p. 639) More important is the fact that from August 8, 1979 when a warrant of arrest was issued up to November 21, 1979 when the accused was apprehended, he remained at large in hiding.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the Honorable Ricardo A. Baculi, Presiding Judge, Regional Trial Court, Branch 02, Tuguegarao, Cagayan, dated March 10, 1989, is AFFIRMED. The indemnity to be paid by the appellant, Elmer Danguilan, to the private complainant in the amount of THIRTY THOUSAND PESOS (P30,000.00, is, however, increased from P30,000.00 to FORTY THOUSAND PESOS (P40,000.00). The appellant is ordered to pay the costs of the suit.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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