

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR TAN Y JASMIN, DEFENDANT-APPELLANT.

G.R. No. 89316. July 12, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition is an appeal from the decision of the Regional Trial Court of Manila, Branch 8, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Court finds accused Nestor Tan Y Jasmin residing at 470 San Rafael St., San Miguel, Manila, GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized by Art. 335, par. 2, Rev. Penal Code, and hereby sentences him to suffer an imprisonment of RECLUSION PERPETUA with the accessory penalties of the law (or civil interdiction for life or during the period of the sentence as the case may be), and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon, in accordance with Art. 40 (should be Article 41) R.P.C.; to pay complainant Jesusita Oquendo the sum of P30,000.00 as civil indemnity plus the reasonable sum of P10,000.00 as attorney's fees and litigation expenses without subsidiary imprisonment in case of insolvency; finally, the costs of suit.

Considering the gravity of the penalty imposed, it is further ordered that accused be confined at the National Penitentiary in Muntinlupa, Rizal, upon finality of this decision." (At p. 66, Rollo)

In Criminal Case No. 83-22092, the complaint filed against the accused alleged:

"That on or about November 3, 1983, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously have sexual intercourse with the undersigned complainant, an unmarried girl, while she was under the influence of drug, deprived of reason, or otherwise unconscious, and against her will." (At p. 7, Rollo)

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is summarized in the People's Brief as follows:

"At about 4 o'clock in the afternoon of November 3, 1983, the offended party, a B.S. Nutrition graduate and employed as a baker at the San Beda College, had a snack of 'palabok', and sat alone on one of the tables of the school canteen (July 2, 1985, tsn., pp. 5, 10-15; November 4, 1985, tsn., pp. 8-10). After eating a few spoonfuls of 'palabok', she stood up and went inside the canteen to buy coke (July 2, 1985, tsn., p. 15). When she returned to her table, she saw appellant, a stockman of the canteen, sitting on the side of the table (Ibid., p. 16). Appellant was ignored by the offended party but continued to sit on her table while she ate (Ibid., pp.17-18). Without finishing the dish, she got up and left to meet a relative somewhere outside the campus (Ibid., p. 18).

"While she was walking towards the gate of the college, she became dizzy and felt as if she was 'floating' (Ibid.). She tried to ignore the dizziness and continued walking towards Mendiola Bridge (Ibid., p. 19). Suddenly, she felt appellant holding her upper right arm (Ibid., p. 19). Since appellant had been known to her

for more than one year, and since he was the immediate person seen by offended party, she trustingly requested him to bring her to her residence for she already felt very dizzy and sleepy (Ibid., pp. 19-23).

"The next thing she could remember was finding herself bleeding inside a small room with her skirt taken off (Ibid., pp. 24-25). Surprised why she was in that condition, she immediately stood up, but then, because of her dizziness, she fell down (Ibid., p. 26). Soon, the door opened and appellant came in (Ibid., p. 27). He helped her put on her skirt and assisted her out of the room (Ibid., pp. 27-28).

"Still feeling very weak, she was brought by appellant to the Tanduay Fire Station at Legarda St., but she could not recollect, however, by what means she was brought there (Ibid., pp. 28-29).

"At about eight o'clock in the evening Fireman Rodolfo Acosta of the Tanduay Fire Station was notified of the presence of two people under the mango tree near the fire station (March 25, 1986, tsn., pp. 27-28, 30). He approached both of them, who turned out to be appellant and the offended party (Ibid.,). He saw that the woman was bleeding and there was a pool of blood on the spot where she stood (Ibid., p.28). He noticed that the offended party was very weak and could neither walk nor talk (Ibid., p. 31). He ushered both the appellant and the offended party to his office, and since blood continued dripping from between her legs, two wives of his co-firemen brought the offended party to the toilet and helped her clean up (Ibid., pp. 32-33). While inside the toilet, one of the women assisting the offended party shouted that the latter should be rushed to the hospital (Ibid., pp. 34-35). Immediately, Firemen Acosta wrapped the offended party with a fireman's coat and brought her to the De Ocampo Hospital (Ibid., p. 35). As she could not walk, she was placed on a stretcher and brought to the emergency room (Ibid., p. 36). Appellant, who appeared very restless and apprehensive, accompanied the fireman and the offended party to the hospital (Ibid., pp. 36- 37).

"The offended party was attended to by Dr. Crisanto Reyes of the De Ocampo Hospital (July 28, 1986, tsn., p. 3). The Record of Operation was signed by Dr. Crisanto Reyes, who diagnosed that the laceration was caused after an intercourse and that the extent of the laceration required suturing in order to stop the bleeding (Exh. "F"; Ibid., p. 3-5).

"The offended party was discharged from the hospital on November 6, 1983 and the next day, November 7 (should be November 10) she went to the NBI to report the incident of November 3, (November 4, 1985, tsn., pp. 34--35). She was likewise investigated by the police authorities (July 2, 1985, tsn., pp. 52-55; Exh. "D"). On November 10, she was examined by the NBI Medico-Legal Officer, Noel B. Minay (Ibid., p. 35).

"Dr. Minay conducted physical and internal examination on the offended party for any sign of laceration on her genitalia (January 16, 1984, tsn., pp. 9-19). The examination was reduced into writing (Living Case No. MG-83-733; Exh. "A"; Ibid., pp. 16?17). The conclusions in his final report read 'genital findings compatible with sexual intercourse with man on or about the alleged date of commission', meaning, 'that the hymenal lacerations are compatible with the insertion of a penis by man' (Exh. "B"; Ibid., pp. 36-37). The report further stated that 'there were three lacerations on the hymen of the subject which were deep-healing and located at 6:00, 9:00 and 11:00 o'clock (Ibid., p. 40). He found the portion of the vagina where the labia minora and labia mejora meet swollen on the posterior part of the vestibule, which is the orifice at the end of the opening, and the vestibule itself was also swollen and congested (Ibid., pp. 38-40). He likewise found that the rugosities were prominent, which means that the offended party may not have had any previous sexual intercourse or had not yet given birth (Ibid., 40). He concluded that the breakage of the hymen of the offended party in the three places indicated that she was forcibly violated (Ibid., pp. 48-49)." (At pp. 4-9, Appellee's brief)

The version of the defense summarized in the appellant's brief is as follows:

"Antonio Balantucas testified that the complainant and the accused were his co-employees at the San Beda College Canteen. The complainant was the baker while the accused was the stockman. The complainant started working at the canteen since 1981. The accused started working at the canteen since 1981. The accused started working ahead of him. At the start, the complainant and the accused were just friends. Later, the complainant

was introduced to him by the accused as his (accused) girlfriend. The complainant at the time just smiled. The complainant and the accused were sweet with each other as sometimes during their snack, they halve the cake. It was only the accused who told him that the complainant is his girlfriend even tapping the shoulder of the complainant who just smiled. On November 3, 1983, he was on leave. He was on leave even before November 3, 1983, (TSN., pp. 6-18, April 7, 1987)

"Accused Nestor Tan testified that he knows the complainant because she was his co-employee at the canteen. The complainant joined the canteen in the middle of 1981. They were sweethearts until that night when he brought her to the hospital on November 3, 1983. He courted the complainant in August 1982 until she accepted him. The acceptance was made inside the stockroom because they belong to the same room. On November 3, 1983, at about 4:00 o'clock p.m., the complainant came to his table and apologized because their date the previous day did not materialize. However, he told the complainant that they will proceed that day. He asked the complainant to wait for him because her off-duty was at 3:30 p.m. while his was at 4:00 p.m. After punching out his card, he proceeded to the corner of Mendiola Street and Legarda Street where the complainant was waiting. As they have no definite plan about their date, they ended up at Victoria Inn. It is located in Quiapo, Manila. At the said place, they had their first sexual intercourse on October 27, 1983. They arrived in Victoria Inn at around 4:30 p.m. They paid the teller the amount of P24.00 (for short time) and were handed the key for Rm. 307 at the 3rd floor.

"Inside the room, they embraced and kissed each other. While they were kissing, the complainant unbuttoned his shirt slowly and loosened his pants. He took off his pants and in turn he took off the complainant's blouse and skirt (uniform). They caressed each other and when they were already aroused, they had sexual intercourse. Thereafter, the complainant took a shower and he lighted a cigarette while waiting for the complainant to finish her shower. After 3 or 5 minutes and the complainant had not come out, he called her. The complainant replied, 'Sandali na lang'. He pushed the bathroom door and peeped inside. He saw blood coming from the complainant's waist going towards her feet. The complainant was naked and standing under the shower. The blood was coming out from her private part. He asked, 'Susette why are you bleeding', she replied, 'None, don't worry. This is just nervousness'. The complainant went out the bathroom and put on her panties. But the complainant was still bleeding.

"He was asked by the complainant to get toilet paper which she placed on her vagina to stop the bleeding. Because the panty of the complainant was already wet with blood, he was asked to buy a panty outside. After buying the panty, he went back to their room. He then reminded the complainant that there was only 30 minutes remaining on their time. They went out of their room and they walked along Paterno and Evangelista Streets going towards Plaza Miranda. They passed through the underpass and he suggested to her that they take a ride but the complainant opted to walk up to her cousin's place at P. Casal Street, Tanduay near the Avanceña High School. They were not able to reach the place because there was blood flowing down to her legs.

"When they reach the fire station in front of the National Teachers College building, the complainant asked if he could bring her to his house. He replied he cannot because his live-in was there. The complainant asked, 'where will I clean myself.' He told the complainant they will seek help from the fireman. The fireman agreed to help them provided there will be an investigation first. Hence, the officer-in-charge, Cpl. Rodolfo Pablo Acosta was called. They were asked about their relationship. The complainant replied, 'This is nothing, there is no problem here because we are husband and wife.' They were permitted to go to the bathroom to clean the blood on the legs of the complainant. While the complainant was inside the bathroom, he was called by the officer-in-charge who asked him why his wife was bleeding. He told the officer-in-charge that they came 'from the hotel and he did not know why'. Then he was called by the complainant asking him to get a panty and a skirt. He went to his house and saw Jaime Sandoval. He asked the latter, 'Abing, if you have extra skirt, because in our house, the skirt of my wife is counted. He was given a skirt of the sister of Sandoval and he got a panty of his wife. He returned to the fire station with Abing (Sandoval) and gave the panty and skirt to the wife of the fireman who assisted the complainant. Because the complainant was continuously bleeding, it was

suggested that she be brought to the hospital.

They boarded the service jeep of the station and brought the complainant to the hospital. At the hospital, the complainant signed the document 'Consent of Operation' of Jesusa Tan. She also gave the name Jesusa Tan. Also, she furnished the name 'Mrs. Jesusita Oquendo Tan appearing in the Patient's Admittance Record as well as the name 'Nestor Tan' after the words 'Responsible or Nearest Relatives.'

"On the same night, at about 10:00 p.m., while the complainant was still in the operating room, he went home and talked to his wife. His wife was so mad and wanted to stab him when told about what happened to the complainant. After his wife had calmed down, his wife and Abing Sandoval went to the house of the complainant. Upon arrival thereat, he requested his wife and Abing Sandoval to stay at the gate. Inside the house was Muning. The latter asked what happened and he told the latter that the complainant was bleeding, and, in fact, was in the hospital. He then told his wife and Abing then waiting at the gate to go home because he will accompany Muning and her companions to the hospital. At the hospital, they were told that the complainant was already in the room. As the complainant was already conscious, she and Muning conversed. He smoked outside the room, and, after a while, Muning called and told him, 'Nestor pakasalan mo ang pinsan ko'. Because its already getting late, he replied, 'If Susette has fully recovered, we will take this matter'. He did not talk with the complainant when he was told by Muning about the marriage. He went home after leaving the hospital.

"The next day, November 4, he got a cash advance in the amount of P900.00 from San Beda Canteen. In going to the hospital he brought along Ramon dela Torre and paid P600.00 as deposit. He proceeded to the room of the complainant. He approached her, held and embraced her saying, 'Susette, how are you'. He was answered, 'I am a little bit fine'. Then, the complainant told him, 'Nestor, I want you to marry me'. He reminded the complainant that it cannot be because he and his wife (Linda) will be included in the mass wedding that will be held at San Beda.

"The complainant pleaded for pity because her honor is at stake. The complainant was crying and he caressed her. After office hours, at about 4:00 p.m., he went to the hospital with his wife (Linda). His wife and the complainant were able to talk. He was told by his wife that Susette was asking that he choose between the two of them. He did not answer the complainant and she told the latter that she can leave the hospital the next day.

"On November 6, 1983, together with Ramon dela Torre, he went to the hospital and paid the hospital bills. He went to the room of the complainant and told the latter that the hospital bills were settled. He did not get any answer from the complainant. After paying the hospital bills, he never returned to the hospital, hence, he does not know when the complainant left the hospital.

"He was summoned at the Office of the Father Rector. He denied the allegations of the complainant that he drugged her. After which, the Father Rector indorsed the matter to Atty. Flores for investigation. On November 9, 1983, he was told that he will be suspended from work indefinitely. He was given his termination paper before he was apprehended on November 15, 1983. (TSN., pp. 3-20, May 18, 1987; TSN., pp. 3-19, October 27, 1987; TSN., pp 3-27, November 24, 1987; TSN, pp. 2-47, December 14, 1987; TSN., pp. 4-21, January 26, 1988; TSN, pp. 2-71, February 16, 1988; TSN., pp. 3-25, March 15, 1988; TSN., pp. 6-24, April 4, 1988)" (At pp. 8-13, Appellant's brief)

The accused raises the following assignment of errors in his appeal, to wit:

I

"THE TRIAL COURT ERRED IN CONCLUDING THAT THE PRIVATE COMPLAINANT WAS RAPED WHILE UNDER THE INFLUENCE OF DRUG DESPITE ABSENCE OF EVIDENCE TO SUPPORT SUCH CONCLUSION."

II

"THE TRIAL COURT ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED WAS PROVEN BEYOND REASONABLE DOUBT." (At p.1, Appellant's brief)

Article 335 of the Revised Penal Code defines the crime of rape and provides for its penalty. The elements of rape pertinent to this case are: (1) that the offender had carnal knowledge of a woman and (2) that the woman is deprived of reason or otherwise unconscious.

The appellant admits to having carnal knowledge of the complainant but alleges that the complainant agreed to it as they were sweethearts.

The two assigned errors center on the credibility of the witnesses.

The appellant impugns the testimony of the complainant. He states that as against his testimony, that of the complainant's is contrary to human experience. He questions the following circumstances: (1) the complainant had a sharp memory recalling the time she was having a snack to the time she was walking Mendiola Bridge, the time she found herself inside the motel room with the accused and the name of the fireman who helped her but she could not remember how she found herself inside the motel room (2) if it were true that the complainant was drugged, then the appellant could have easily abandoned the complainant instead of accompanying her (3) the failure of the complainant to resist, fight, or shout for help when she came to her senses (4) the failure of the complainant to denounce the appellant during her stay at the hospital (5) the medical record did not show in certain terms that the complainant was drugged.

These contentions are devoid of merit.

The time of the loss of the complainant's memory is consistent with the time when the drugs took effect on her. It is understandable that the complainant could not recall how she got to the motel room as she started to feel dizzy and drowsy while walking towards the Mendiola Bridge. The last thing that she could remember prior to finding herself bleeding in a small room was her requesting the appellant whom she saw following her to bring her home. (TSN, July 2, 1985, pp. 23-25).

The complainant's failure to resist, fight, or shout for help can be explained by the fact that she was still feeling very weak from the after effects of the drug and from the profuse flow of blood due to the lacerations. Her testimony is substantiated by Rodolfo Acosta, the fireman who is a third party to both the appellant and the complainant, who observed that the complainant looked very weak and could not even walk nor talk. (TSN, March 25, 1986, p. 31)

Knowing that the complainant was very weak, the appellant opted to remove the complainant from the motel since there might have been someone who could have linked them together. If the appellant was really sincere in helping the complainant, he would have at once rushed the complainant to the hospital since he saw that the complainant was continuously bleeding.

Although the medical record did not show that the complainant was drugged as she was not checked for such, during the investigation by Pablito Marasigan, a police investigator of the Western Police District, he discovered that the complainant was admitted to the hospital for sexual abuse. (TSN, November 12, 1984, pp. 18-19) The complainant was even asked by the doctor who treated her how many persons perpetrated the act. (TSN, July 2, 1985, p. 41) At the time that the complainant was asked, she was still confused as to what exactly happened to her. (TSN, July 2, 1985, p. 42)

The testimony of the complainant is also corroborated by the National Bureau of Investigation (NBI)

medico-legal officer who is likewise a third party to both the complainant and the appellant.

The NBI medico-legal officer confirmed that the complainant was a virgin. (TSN, January 16, 1984, p. 42) and that there was, indeed, forcible violation. (TSN, August 7, 1984, p. 51)

The appellant on the other hand, maintains that the bleeding brought about by the lacerations in the vagina could have been possible even if there was mutual consent. He cites the testimony of Dr. de Ocampo, to wit:

"COURT:

Doctor, could that extent of laceration on the victim's vagina come about even after coitus or sexual intercourse had been undertaken by mutual consent between the participating parties and assuming that the woman had already experience of intercourse previously?

A Yes, sometimes it may occur again.

Q And under what circumstances may bleeding ensue?

A Sometimes, let us say there is a contraction on the woman and any contraction will find hardness in inception of the penis or any object, Your Honor.

Q And assuming that the woman had undergone coitus for the first time, will this injury come about, meaning to say that she never had prior coitus with any man, could this kind of relationship come about?

A Precisely, because you know when there is any contraction or in the uterus there will be very dry especially when there is no lubrication, if there is no contraction, inception will be fairly easy and when there is contraction, there is no fluid in there and that will cause laceration.

Q In this instant or in the case of the woman who had never had prior sexual intercourse, with that of a coitus with a woman who had previous experiences and under mutual consent and the relationship of the latter circumstance as against the former to the extent of that relation as found by Dr. Reyes?

A Because, Your Honor, even if the woman is virgin and one is not she can experience it sometimes, if the woman is virgin there will be no bleeding provided the inception is done with the secretion fluid.

Q But in this particular case, we are faced with a victim who had a big laceration or injury as found, is it not true, Doctor, as an expert that this laceration came about because the victim had never had any prior coitus experience?

A It is very hard to tell, Your Honor, because whether she had previous experience or not if there was contraction during that time and it was done in a hurried way, then precisely it will cause laceration also." (TSN, pp. 8-9, July 28, 1986) (At pp. 20-21, Appellant's brief)

It is very clear from Dr. de Ocampo's testimony that for the appellant's theory to survive there must be contraction and the coitus must be done in a hurried way.

This is contradicted by the appellant's own testimony. According to the appellant, they (the appellant and the complainant) leisurely caressed, embraced and kissed each other. The appellant even asked permission from the complainant if he could insert his penis. (TSN, November 24, 1987, pp. 7-9) This shows that the coitus was not done in a hurried way. Also, there would have been enough lubrication as not to cause such deep lacerations which even required two to three stitches in order to stop the bleeding.

The appellant's main defense is that he and the complainant were sweethearts ever since August 1982. (TSN, May 18, 1987, p. 18) Thus, there was mutual consent. In fact, he alleges that he and the complainant had their first copulation on October 27, 1983 (TSN, October 27, 1987, p. 18) but this allegation was rendered false by the

medico-legal officer's statement that the complainant was a virgin. Furthermore, the appellant could not show any token or evidence in writing to prove that such relationship existed. For over a year of going steady, the appellant could not show any love letters, pictures, or token gifts from the complainant.

In the testimony of Antonio Balantucas, the complainant never admitted that she and the appellant were sweethearts. His conclusion is based on the alleged introduction by the appellant of the complainant as such. (TSN, April 7, 1987, pp. 15-17)

Only Ramon dela Torre's testimony supports the stand of the appellant that he and the complainant were sweethearts. However, there is a need for a little more care in the appraisal of dela Torre's testimony as he is a good friend of the appellant. (TSN, July 11, 1988, p. 40) Aside from the appellant's self-serving testimony there is nothing to support dela Torre's testimony. Moreover, Dela Torre's testimony about Jesusita's protestations of love for the appellant, her asking him to be their "bridge", and her desire that Tan give her a baby for her happiness does not impress this Court as natural and credible.

We, therefore, affirm the trial court's finding that the appellant and the complainant are not sweethearts and that the sexual intercourse was unwelcome and forcible.

The argument of the appellant that Jesusita Oquendo filed a complaint against him because of his refusal to marry her must fail.

The complainant was not outraged by the fact that the appellant refused to marry her. She was outraged because of the heinous act that was done to her. As aptly observed by the trial court:

"Her face (Vide: picture marked Exh. C taken at the NBI, page 22, record) constantly confronted the Court with that appearance of candor and candidness matched by her honest answers, and sincerely given, to questions hurled at her about what was done to her by accused Nestor Tan. The simplicity and quiet ways typical of a Filipina molded in the Christian-upbringing values and culture, remained with her even when in tears exclaiming 'Wala Bang Katarungan!' in remembering the shocking event - that of having been ravished while devoid of will which brought so much torment, shame and degradation to herself and perhaps her parents and other relatives. Nonetheless, in so remembering, it did not deter her in glare of public trial to tell all bare herself in her search for justice. This Court, therefore, is convinced of her sincerity and credibility, as well as the veracity of her narrations." (At pp. 59-60, Rollo)

It is a well settled rule that appellate courts will not generally disturb the factual findings of the trial courts which are in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying unless it is found that the trial courts have plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. (People v. de Guia, G.R. No. L-49825, May 14, 1990; People v. Alburo, G.R. No. 85822, April 26, 1990) No such overlooking has been shown here.

The records sustain the factual findings of the trial court and its assessment of the credibility of witnesses.

WHEREFORE, the guilt of the accused having been proved beyond reasonable doubt, the appealed decision is hereby AFFIRMED.

SO ORDERED.

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

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