

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOBLE BACALZO, ACCUSED-APPELLANT.

G.R. No. 89811. March 22, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

Convicted by the court below of the crime of rape committed against one Loreto M. Apilado[1] and sentenced to suffer the penalty of reclusion perpetua,[2] accused-appellant is before us seeking his exoneration in this appeal.

Preliminarily, we repeat what we have heretofore stated that one of the peculiarities of rape is that it is an offense to which, oftentimes, only two people -- the accused and the complainant -- can testify. Inasmuch as it is the bounden duty of the court to convict only if the guilt of the accused has been proven beyond reasonable doubt, it behooves the court to exert the most painstaking effort to weigh and appraise the conflicting testimonies if only to satisfy judicial conscience that the accused committed the criminal act imputed upon him.[3] Considering the gravity of the offense, and in the light of the foregoing injunction, we have assiduously evaluated the evidence and the contending submissions in this case.

The People's brief virtually adopts the findings of the trial court and presents the prosecution's version of how the crime was committed in this wise:

At around 10:00 o'clock in the evening of January 4, 1985 at Santiago Norte, San Fernando, La Union, Loreto Apilado was at the house of her second child, Florida Apilado, where she was residing. (tsn, February 21, 1986, pp. 1-2). She asked, and was granted, permission by Florida to go to Carlatan where her eldest daughter, Aida Apilado, lived (id., p. 2, 8) Florida suggested for Loreto to sleep in Carlatan. (id., p. 2)

Loreto, then, rode on a tricycle and got off in front of the house of Captain Lumang which was approximately sixty (60) to seventy (70) meters away from Aida's house at Carlatan. (id., p. 3) From there, she proceeded to her daughter's house by way of an alley (iskinita). (id.) When she had gone around six (6) to seven (7) meters away from the entrance of the alley and just in front of Noble Bacalzo's house, Noble Bacalzo held her hands. (id., pp. 3-4) She tried to remove his hands on herself and asked him, "Why, Noble, what are you going to do?" (id., p.4) Noble did not answer; but instead, he boxed her on her right cheek. (id.) Again, Noble boxed her causing her to fall unconscious. (id.)

Later, when Loreto regained consciousness, she found herself lying down naked at the bank of the fishpond, her mouth tied, with Noble, who was likewise naked, lying on top of her and pointing a knife at the left of side of her waist. (id., pp. 5-6) She felt Noble's flaccid penis inside her vagina, Noble having used his finger in pushing his penis inside. (id., p. 14) Loreto struggled, shaking her body sideways. (id., tsn, January 13, 1987, p. 8) Nonetheless, Noble moved his buttocks up and down. (tsn, February 21, 1986, p. 14).

Noble Bacalzo removed his penis from Loreto's vagina, shook it, saying, "Why, why, it will not harden", referring to his still flaccid organ. (id., pp. 5-6) He, then, threatened her that if she will report the incident to her husband and children, he will kill them all. (id., p. 5)

From there, Bacalzo dragged her naked to the kitchen of his house. (id., pp. 6-7) Her mouth was still tied with a piece of cloth, for which reason, she was unable to shout for help. (id., p. 7)

At the kitchen, Loreto pleaded (for) mercy for Bacalzo to remove the cloth from her mouth and to give her her clothes because she was already shivering from the cold. (id.)

Bacalzo, then, went out, opened the door, took her pants and blouse, and threw them at her. (id.)

Loreto immediately dressed up, removed the cloth tied around her mouth (which cloth she left behind at the kitchen), and ran away to her daughter Aida's house. (id, pp. 7-8)

Upon her arrival thereat, at around 5:00 o'clock in the morning of January 5, 1985, Aida was then cleaning the house, remarked "Why mother, why are you very dirty". (id., p. 8; tsn, June 10, 1987, p. 3)

Aida bathed her mother who was very dirty and appeared to be weak. (tsn, February 21, 1986, p. 8; tsn, June 10, 1987, p. 3) Loreto told her daughter, "Aida, Noble made a fool of me" and that Noble brought her to the fishpond where he abused her. (tsn, February 21, 1986, pp. 8-9)

After Loreto had changed her clothes, she and Aida went and related the incident to Barangay Captain Ernesto Lumang (id., p. 9; tsn, August 5, 1987, pp. 19-20) Captain Lumang, then, told Aida to bring her mother to the Provincial Hospital for medical examination. (tsn, February 21, 1986, p. 9; tsn, August 5, 1987, p. 20)

Her daughters, Florida and Aida, then, brought her to the hospital where Dra. Sy examined her. (tsn, February 21, 1986, pp. 9-10) After that, they informed Captain Lumang that Loreto had already been medically examined and then they went home. (id., pp. 10-11)

Two days after the incident, on January 6, 1985, Loreto went to the Lingsat Police Sub-Station, where the police investigated her, and, then, to the municipal hall where she took an oath over her statement before Fiscal Cabading. (tsn, pp. 11-12; Exhibit A, Records, p. 2)[4]

The results of the examination conducted by Dr. Maria Teresa Sy in the morning of January 5, 1985 apparently yield significant corroboration to complainant's testimony, thus:

P.E.: EENT: Contusion-hematoma, right jaw and upper lip region; Abrasion, left cheek & neck.

TRUNK & EXTREMITIES:

Multiple abrasions over back & shoulder and buttocks.

I.E. GENITALIA:

Vagina admits two fingers with ease.

SPECIMEN FOR - Gram staining (-) Vaginal smear for presence of sperm cells - negative

- Florence Test (-) negative

SPECULUM EXAMINATION: - Cervix clean

- No cervical nor vaginal lacerations noted.[5]

The defense presented as witnesses Necia Miranda, younger sister of appellant, and appellant himself. Expectedly, a different account is narrated in appellant's brief, his testimony being the mainstay of his defense and was summarized therein as hereinunder reproduced:

NOBLE BACALZO, 53 years old, married, electrical helper and a resident of Lingsat, San Fernando, La Union testified that he was married to one Marcelina Alcansaren at Bangued, Abra on April 10, 1968. They

have a child by the name of Agnes. His wife is in Bangued, Abra because that's a good place where she sells fish. On January 4, 1985, at around 6:00 p.m., he was at home in Carlatan with her (sic) younger sister and the latter's children. His brother-in-law was on duty at that time. They finished eating their supper at past 6:00 o'clock. After eating supper, he went out to feed the dogs. After feeding the dogs, he went to bed and read komiks which is his habbit (sic). He read komiks for 30 minutes, after which he slept. The following day, he woke up at around past 7:00 o'clock or maybe past 8:00 a.m. He was awaken (sic) when he heard someone shouting his name. He then went out and there he saw complainant's daughter Aida Apilado telling him "You fooled my mother." This prompted him to go where Aida Apilado, was. Once there, complainant's sister, Rose Marzan, told complainant "All right, you tell if Noble Bacalzo fooled you!" but complainant remained silent. He too asked complainant "All right speak out if I really fooled you!" but complainant did not say anything. So, her sister slapped complainant saying, "You are just making some sort of trouble for your children!" Thereafter, complainant's sister said to him, "Please pardon us because we are just like brothers and sisters." He then went home. Complainant was drunk that time because her body is (sic) swaying while standing. As soon as he was at home, he dressed up to attend a wedding in Caba for which he was requested to cook. He returned home the following morning, January 6, 1985. When he arrived home, Brgy. Tanod came and told him that Brgy. Captain Lumang wants to talk to him. He then proceeded to the Office of the Brgy. Captain. The Brgy. Captain asked him if it is really true that he raped complainant but he answered that he does not know anything about the incident. Despite thereof, he was brought to the Police Sub-Station at Lingsat. Afterwards, he was brought to the police station at San Fernando, La Union.

He did not see complainant in the afternoon of January 4, 1985. The house of complainant's daughter, Aida Apilado is about 8 to 9 meters away from their house, if one will follow the short cut. It is about 25 meters if one will take the longer route. There are five houses within their vicinity, namely, the house of Caridad Peralta which is around 2 meters away from their house; the house of Eduardo Lacsamana which is about 5 meters and the house of Aida Apilado. He have (sic) known Aida Apilado and her aunt Rose Marzan for more than 2 years. Before January 4, 1985, his relationship with Rose Marzan and Aida Apilada is good. He have (sic) also known complainant for the same period. In fact, he is the godfather of one of her (complainant's) grandson. When he saw complainant in the public market, complainant was walking drunk and dirty. Sometimes, he would see her in the waiting shed of Carlatan lying down and sometimes in the Marcos building begging money to buy her drink. He had given money to buy her drink. He had given money to complainant twice since they treat each other as brother and sister. It is not true that he raped the complainant on January 4, 1985. Complainant only fabricated the story. He can not stomach her appearance. After the case was filed and he was already detained at the municipal building, complainant came to see him and was asking for P5,000.00 in exchange for the dropping of the rape case. (TSN, June 1, 1988, pp. 2-18).[6]

Appellant faults the court below for having allegedly erred (1) in convicting him for offering a weak defense and (2) in convicting him of the crime of rape despite the failure of the prosecution to establish his guilt beyond reasonable doubt.[7]

Appellant theorizes that the decision of the trial court capitalized on the weakness of the evidence for the defense in coming up with the judgment of conviction. It is not denied, however, that appellant raised and anchored his defense on denial and alibi. There is, of course, no dispute that, as a rule, alibi is one of the weakest defenses. However, although the defense of alibi may stand searching scrutiny, nevertheless it acquires commensurate strength where no positive and proper identification has been made of the offender, as the prosecution still has the onus probandi in establishing the guilt of the accused, and the weakness of the defense does not relieve it of this responsibility.[8]

In this particular case, as earlier narrated, there was a clear and positive identification of appellant by complainant right after the incident when she informed her daughters and the barangay captain of her ordeal at the hands of appellant. She categorically repeated this identification in her complaint affidavit, as follows:

Q: Do you know Noble Bacalzo?

A: Yes sir.

Q: Why do you know him?

A: Because he raped me.[9]

and which was amplified, without any successful controversion, in her testimony in court as synthesized in the aforequoted portion of the People's brief.

Appellant's defense of denial and alibi pales in comparison with the victim's positive, unequivocal and straightforward declaration. As between the versions of complainant and appellant, complainant's version is definitely more credible, because when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape was committed, provided her testimony is clear and free from contradiction.[10] We are satisfied that complainant's declarations do not suffer from any flaw which would adversely reflect on her credibility.

Furthermore, appellant has not shown any improper motive on the part of the victim for her to testify as she did.[11] True, as observed by the Solicitor General, appellant claims that complainant cried rape to extort money from him. The improbability of such an uncorroborated imputation was however, debunked by the trial court itself[12] which called attention to complainant's testimony on the stand that when queried as to the amount of damages she would ask for, she replied that she is only interested in vindicating her honor and pride.[13] Hence, albeit erroneously, no civil liability was decreed by the court a quo.

Appellant claims that the medical certificate issued by Dr. Sy (Exhibit "G") is inconsistent with the allegation that the victim was raped. Hence, he asserts, there was "no cervical nor vaginal lacerations noted" and "moreover, the physical examination of the complainant's vagina did not reveal that it was inflamed nor was there any showing of any kind of injury in complainant's genital organ." Furthermore, appellant alleges that the medical finding also negates the presence of sperm cells in complainant's vagina.[14]

This is specious reasoning. It is a settled decisional rule long accepted in this jurisdiction that mere penetration of the penis by the entry thereof into the outer lips or labia majora of the female organ, even without rupture or laceration of the hymen, suffices to warrant a conviction for rape.[15]

We repeat for emphasis that, from the precis of complainant's testimony, quoted in appellee's brief with appropriate documentation, appellant had indeed penetrated the victim's genitalia. She testified without contradiction that, upon regaining consciousness she felt the flaccid penis of appellant inside her vagina and that, thereafter, he removed his sexual organ.[16] Moreover, the absence of spermatozoa in the vagina of complainant could be due to the lack of ejaculation on the part of appellant. Nonetheless, in rape, the slightest penetration is enough. Proof of emission is not necessary.[17]

While indeed the medico-legal report shows no signs of external injuries, it by no means follows that complainant had consented to the sexual act. Complainant is a married woman and such manifestations generally seen around the private parts after the rape has been committed, such as abrasions and rupture of the hymen, may no longer be expected. Besides, in rape cases, force need not always produce physical injuries. Force need not be irresistible; all that is necessary is that the force used by the accused is sufficient to consummate his evil purpose.[18]

The conduct and actuations of complainant upon regaining consciousness reveal, according to appellant, that she did not offer any resistance to the assault, thus creating doubt on her testimony. This is a flimsy and futile attempt of appellant to discredit the charge of rape by elaborating on his earlier claim that there was no coitus prior to the

time when complainant regained consciousness.

The records of this case show beyond cavil that the crime of rape had already been consummated even before complainant could resist the assault on her honor. If for this reason alone, the lack of resistance is inconsequential. As we ruled in *People vs. Dayo*,^[19] the crime of rape had already been consummated, and the offended party's final consent, after she realized the outrage perpetrated against her, even supposing there was such consent, is not of the character to exclude the concept of the crime of rape but a mere resignation to the fact of an outrage already perpetrated, as was shown by the offended party's conduct afterwards in telling her husband of it as soon as he was home.

Appellant further alleges that the records disclose that complainant is a habitual drunkard. This is of no relevance to appellant's guilt. The rule is that the victim's character in rape is immaterial. Even the fact that the offended party may have been of unchaste character constitutes no defense to the charge of rape, provided that it is proved that the illicit relations described in the complaint was committed with force and violence.^[20] In the case at bar, it is even probable that alcoholism on the part of complainant rendered her more vulnerable to assaults on her person while she was in a state of inebriation.

It is fundamental that in a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. It is likewise rudimentary, however, that proof beyond reasonable doubt does not mean such degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.^[21] The decision of the lower court is amply supported by evidence proving to a moral certainty the guilt of appellant.

In fine, after a thorough examination of the entire records of the case, we find no substantial reason to depart from the established rule that the Court regards with respect and will generally not disturb the findings of the trial court on the credibility of witnesses, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case. We do not perceive here any such exceptive circumstance to the rule.

Having sustained the findings of the trial court on the credibility of complainant, the denials and the defense of alibi put up by appellant, must necessarily fail. As the Court has consistently held, the alibi of an accused that he was not at the rape scene cannot stand against the positive identification made by the complainant.^[22]

WHEREFORE, the judgment appealed from is **AFFIRMED**, with the modification that accused-appellant is hereby **ORDERED** to pay complainant an indemnity of P30,000.00 concordant with the current jurisprudential rule.

SO ORDERED.

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

[1] Original Record, 1.

[2] Decision penned by Judge Benito A. Dacanay of the Regional Trial Court, Branch XVIII, San Fernando, La Union.

[3] *People vs. Antonio*, 161 SCRA 72 (1988).

[4] Rollo, 76-80.

[5] Exhibit G, Original Record, 3.

[6] Rollo, 48-50.

[7] Ibid., 40.

[8] People vs. Salas, 66 SCRA 126 (1975); People vs. Teaño, 128 SCRA 149 (1984); People vs. Ola, 152 SCRA 1 (1987).

[9] Original Record, 9.

[10] People vs. Alfonso, 153 SCRA 487 (1987).

[11] People vs. Equillo, 171 SCRA 571 (1989).

[12] Rollo, 22-23.

[13] TSN, February 21, 1986, 16.

[14] Rollo, 52.

[15] People vs. Hernandez, 49 Phil. 980 (1925); People vs. Eriñia, 50 Phil. 998 (1929); People vs. Aragona, 138 SCRA 569 (1985); People vs. Abonada, 169 SCRA 530 (1989).

[16] Rollo, 77-78.

[17] People vs. Jose, 37 SCRA 450 (1971); People vs. Carandang, et al., 52 SCRA 259 (1973); People vs. Somera, 170 SCRA 428 (1989).

[18] People vs. Savellano, 57 SCRA 320 (1974); People vs. Arengo, 181 SCRA 344 (1990).

[19] 51 Phil. 102 (1927).

[20] People vs. Blance, 45 Phil. 113 (1923); People vs. Lomibao, 55 Phil. 616 (1931).

[21] Sec. 2, Rule 133, Rules of Court.

[22] People vs. Villamala, 78 SCRA 145 (1977); People vs. Coronado, et al., 145 SCRA 250 (1986); People vs. Dinola, 183 SCRA 493 (1990).

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