

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SOLIAO, ACCUSED-APPELLANT.

G.R. No. 91131. February 19, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The accused-appellant, Romeo Soliao, has appealed the decision dated September 5, 1989 of the Regional Trial Court of Tagum, Davao, finding him guilty of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the victim P30,000 as moral damages.

The information against the appellant alleged:

“That on or about the 19th day of September, 1984 in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Loida Figueroa, against her will, much to the damage and prejudice of the herein offended party.” (p. 24, Rollo.)

Upon arraignment, Soliao pleaded not guilty.

At the trial it was established that the parents of the offended party, Loida Biñas Figueroa, a nineteen-year-old high school student, and the appellant Romeo Soliao and his wife, were neighbors in Asuncion, Davao. Soliao had a sari-sari store in Diwalwal, Monkayo, Davao, where he stayed most of the time. Needing a salesgirl to tend his store in Diwalwal, he persuaded the parents of Loida to allow her to work as his salesgirl in Diwalwal even temporarily only, i.e., from June 27 to September, 1984. Although Loida’s parents were at first reluctant to allow their daughter to leave home to work, they later acquiesced for their family could use the money that she would earn.

It turned out, however, that Soliao did not fully pay for Loida’s services. He owed her unpaid wages amounting to P200, so she left her job at Soliao’s store to work for her aunt who lived in Tagum.

In the afternoon of September 19, 1984, Loida saw Soliao passing by her aunt’s place. Taking advantage of the opportunity, she reminded him of her unpaid wages. Soliao answered that he did not bring money with him, but he invited her to go with him to the place where he was staying in Tagum, so he could give her the money. Loida at first hesitated, but overcame her misgivings and decided to go with him. They arrived at the J & G Lodging House in Quirante II Street at around 7 o’clock in the evening. Loida stayed downstairs but Soliao invited her to follow him upstairs, because “it was just near.” Albeit reluctantly, Loida followed Soliao believing that she could trust him because after all, he was their neighbor and her parents’ friend. Upon reaching the door of his room, Soliao drew a hunting knife tucked under his waist, and pulled Loida inside the room, warning her not to shout or she would be “salvaged.” Nobody was in the lodging house at the time. He pushed her down on the bed, and despite her vigorous resistance, he proved too strong for her. He was able to remove her panty, forced himself on top of her, and had sexual intercourse with her against her will. Bleeding and feeling betrayed, Loida cried in anguish. Despite her pleadings that he let her go, Soliao forbade her from leaving the room. He sat near the door

and kept close watch throughout the night.

At around 5 o'clock the next morning, Soliao accompanied her downstairs and let her go, but he warned her not to report to the authorities or to anybody for he would find her wherever she would hide. She immediately proceeded to her parents' home in Asuncion. Upon arriving there she looked for her father. Her older sister, Marina, told her that their father had already gone out to work on the farm. Loida told Marina that she was going to Baras, Tacurong, South Cotabato, to visit their grandmother and aunts. Marina accompanied her and observed during their whole stay in Baras, that Loida hardly ate and she often cried for no apparent reason. Loida later confided to them that she had been raped by their neighbor Soliao, but she could not tell their father about it for fear that, being a strict disciplinarian, he might take the law into his own hands to avenge the dishonor to their family. It was Marina who returned to Asuncion to report the matter to their father. Their father consulted the mayor and a nun. He fetched his daughter from Tacurong and, being poor, they sought the assistance of the Citizens Legal Assistance Office (CLAO) to help them file a complaint for rape against Soliao.

In his defense, Soliao alleged that Loida was his sweetheart and that she consented to have sexual intercourse with him. He said that she sent him a letter suggesting that they meet at the J & G Lodging House. He further alleged that they had stayed in different lodging houses and hotels in the past for their sexual interludes. He, however, failed to produce the alleged letter, nor a shred of evidence to prove that they had registered as a couple in any motel or lodging house before.

On the other hand, the teenager was steadfast in her declaration that she was abused and ravished by the accused on September 19, 1984 against her will and despite her resistance. The records show that there were moments during the trial when she sobbed upon recollection of her nightmarish experience.

During the trial, Loida did not live in her parents' home for fear that Soliao would make good his threat to search her out and "salvage" her. She hid in the house of a CLAO lawyer who was kind enough to extend to her the hospitality and protection of his home.

On December 22, 1984, her former co-employee, Nelia Rey, visited her. Through deception practiced by Nelia upon her, and as the CLAO lawyer with whom she was staying was not at home, she was persuaded by Nelia to go with her to the residence of Fiscal Lumangtad to meet Soliao's counsel. At Fiscal Lumangtad's house, she was informed that her mother had slapped Soliao's wife, that her mother was facing a criminal charge for it, and was in jail in Asuncion. Soliao convinced her to sign a prepared Affidavit of Desistance in exchange for an Affidavit of Desistance which Soliao's wife would execute to release her mother from prison. She asked the fiscal for advice but he only told her she had better "clarify" her decision the following day. However, Soliao's wife prevailed on her to sign the Affidavit of Desistance immediately, which she did in hopes of getting her mother released from jail right away.

Loida discovered later that she had been deceived by the Soliaos. She went to Fiscal Lumangtad to retrieve her Affidavit of Desistance but she was told that Soliao had taken all copies of it. Loida and her father consulted Congressman Rolando Marcial. He advised them to write the provincial fiscal to withdraw her Affidavit of Desistance. She wrote the fiscal a letter in the Visayan dialect on December 27, 1984, appealing to him to disregard her affidavit and to proceed with the rape case. She explained that she was not fully aware of the consequences of signing the affidavit for she did so in fear of what might happen to her mother.

Further efforts to settle the case with the help of some politicians proved unavailing. On September 5, 1989, the trial court rendered the assailed judgment finding Soliao guilty of rape as charged.

In his brief on appeal, the accused assails the trial court's judgment which relied mainly on the testimony of the

complainant and found him guilty as charged.

The trouble is, while the appellant argues that Loida's testimony is "absolutely incredible and unworthy of belief" and quotes extensively therefrom, he failed to point out which part or parts of her long testimony is unbelievable and why it is so.

Due to the intrinsic nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony. If her uncorroborated testimony is credible and positive, and satisfies the court beyond reasonable doubt, it is sufficient to justify a conviction (*People vs. Rosario*, 159 SCRA 192). In rape, the manner, form and tenacity of resistance of the victim are dependent on a number of factors, among which are: the age and size of the victim as well as of the aggressor, the degree of actual force and intimidation employed, and, of utmost importance, the relationship between the rapist and his prey (*People vs. Bruca*, 179 SCRA 64). It is not necessary that the force employed against the woman be so great or of such a character that it could not be resisted; it is enough that the force employed be sufficient to consummate the culprit's purpose of copulating with the offended woman. The fact that the accused did not deny that he was carrying a knife affirms the complainant's statement that he used force and intimidation to have carnal knowledge of her (*People vs. Villanueva*, 162 SCRA 257).

Significantly, on May 4, 1990, the complainant submitted to this Court an Affidavit of Desistance sworn before the Assistant Provincial Prosecutor of Tagum, Davao, which reads:

"I. LOIDA BINAS FIGUEROA?LAMPARERO, of legal age, filipino, and with postal and residential address at Apokon, Tagum, Davao del Norte, after having been duly sworn to in accordance with law, do hereby depose and say:

"1. That I am the Complainant in that Criminal Case No. G.R. 91131, now under appeal with the Honorable Supreme Court of the Republic of the Philippines;

"2. That while I was working with the accused at his store at Mt. Diwata, Monkayo, Davao del Norte, the crime charged was committed and partly I am to be blamed;

"3. That now, after the incident, I have no difficulty, as I am now giving my pardon to the said accused;

"4. That as a consequence thereto, I am no longer interested to prosecute, or in the prosecution of this said case, but importantly now is to pray that due justice be given to accused Romeo Soliao by dismissing the case against him;

"5. That I am executing this affidavit for the purpose of praying the Honorable Court of the Republic of the Philippines to dismiss the case against said Romeo Soliao as measure of simple justice." (p. 44, Rollo.)

The language of the above Affidavit of Desistance is exactly like the first one that she signed in the presence of Nelia Rey and the Soliaos on December 22, 1984 (Exh. "2"). The Court is not impressed by the document which the family of the accused was able to obtain from the poor and ignorant victim. After completion of the trial and rendition of judgment convicting the accused, an affidavit of desistance of the complaining witness has no probative value and is ineffectual to nullify the judgment in the case. The real aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged. Once filed, tried, and decided, control of the prosecution for the crime of rape is removed from the victim's hands. To warrant the dismissal of the complaint, the victim's retraction or pardon should be made prior to the institution of the criminal action (*People vs. Galicia*, 123 SCRA 550; *People vs. Entes*, 103 SCRA 162).

WHEREFORE, finding no reversible error in the appealed decision, the same is AFFIRMED in toto.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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