

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REY FRANCIS YAP TONGSON @ REY, ACCUSED-APPELLANT.

G.R. No. 91261. February 19, 1991

Ponente: GRINO-AQUINO. J.

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GRINO-AQUINO. J.

Appeal from the decision of the Regional Trial Court of Maasin. Southern Leyte, Branch 25 in Criminal Case No. 1178 finding the accused, Rey Francis Yap Tongson, alias Rey, guilty of the crime of rape committed against 13-year-old Glenda Laplana:

As found by the trial court, the facts of the case are as follows:

" . . . In the evening of May 21, 1987, while the offended party was on her way home from the house of Emerenciana Aberasturi at Malitbog, Southern Leyte, she was held by the accused and forcibly dragged towards the sea. She shouted for help but to no avail.

"Upon reaching the seashore, the accused held her hair and immersed her in the sea. The place of immersion was knee-deep. Her whole body wet, she was dragged ashore by him. He then pushed her and she fell down. While she was lying down, he gagged her with his T-shirt and then boxed her thrice on her abdomen.

"Thereafter, the accused removed her panty, inserted his fingers into her vagina, and after pulling them out, had sexual intercourse with her. She tenaciously resisted the lustful designs of the accused by moving her body, pushing him and even boxing him while he was sexually abusing her. Her efforts at resistance, however, proved futile as he was much: stronger than she." (p. 19, Rollo.)

What happened afterwards are as follows:

"x x x After he had performed the act, he warned her not to divulge it or else he would kill her. The accused then brought her towards the house of Tiu Tiam Su where he was then working.

"When they reached near the house of Tiu Tiam Su alias Onjo, the accused told her to wait because he would get a pump boat. She did not, however, wait for him. As soon as he was at a distance from the house of Tiu Tiam Su, she ran towards the house of her aunt, Estela.

"Upon arriving at Estela's house she called for the people upstairs. Estela responded to her call. They met at the stairway. Estela asked her why she was wet and crying. She told Estela she (victim) was raped by the laborer of Tiu Tiam Su. She then went up the house after telling Estela about the incident.

"Later that evening she was brought to the office of the Chief of Police, Guerillito Lura. There were policemen and civilians (among them; being the accused) in that office. When the Chief of Police asked her who among those men raped her, she pointed to the accused. After; identifying the accused she went : to the hospital for examination.

"Corroborating certain parts of the victim's testimony, Estela Aberasturi declared that at about 9:00 o'clock in the evening of May 21. 1987; Arleta Espera (a maid of Emerenciana Aberasturi, Estela's mother-in-law) went

to her house in the poblacion of Malitbog. Arleta asked her where Glenda Lap1ana was. She told Arleta that Glenda was at Emerenciana's house. Arleta said Glenda, went ahead of her as she (Glenda) felt sleepy.

"When she (Estela) went downstairs, she felt surprised to see Glenda crying and her whole body wet. She had no more slippers. She asked her why she was crying. Glenda answered she was raped by the laborer of Tiu Tiam Su. She further noticed that Glenda's hair was sandy and she had bruises on her arms and feet. After questioning Glenda, she told her parents-in-law and also her brother-in-law about the incident. And, they called for a policeman.

Guerillito Lura, the Station Commander of the Malitbog Police, testified that in the evening of May, 21, 1987 the guard of the Police Station sent for him, informing him there was a rape incident. He immediately went to the police station. He found many people there. He asked the guard what transpired. The guard told him that Pat. Claro Faelnar and Pfc. Macario Lagatierra were in pursuit of the perpetrator, a laborer of Tiu Tiam Su.

"He followed the policemen to Tiu Tiam Su's residence. When he arrived there he asked Lando (a son of Tiu Tiam Su) where Pat. Faelnar and Pfc. Lagatierra were. He was told that they were looking for Rey. The policemen were then in the bodega of Tiu Tiam Su searching for Rey. They could not find Rey at that, instant. Pat. Lagatierra followed Rey as he evaded the police and managed to jump out of the bodega.

"He summoned other policemen and some people around to help apprehend the culprit. Among them were Fernando Aberasturi, his "brother (Rico), and a younger brother. Fernando apprehended Rey at the wharf about 50 meters away from the bodega of Tiu Tiam Su. .Rey was brought to him immediately.

"When the victim (whom he had summoned) arrived, he asked her to pinpoint the person who raped her. She immediately pointed to the accused, Rey Tongson, from among some twenty persons present. The accused just bowed his head when the victim identified him. Before the victim (Glenda Lap1ana) arrived at his office, he asked the accused if it was true that he raped her. He admitted without hesitation.

"Dr. Leonardo S. Gimeno told the court he examined the victim, Glenda Lap1ana, at about 11:00 o'clock in the evening of May 21, 1987. He issued a medico-legal certificate containing his findings (Exh. A). He found all those multiple contusions and abrasions indicated in Item No. 1 of Exh. 'A'. These injuries could have been caused by fistic blows or by some pressure on the victim after she fell down.

"With reference to Item No. 2, he told the victim to undress because he wanted to examine her vagina. Upon taking off her panty, he saw blood on the front portion of her panty. There was blood also on the vaginal orifice. The blood came from the first-degree laceration. One cause of this laceration is the forced entry into the vagina of a man's penis.

"As he examined the victim further, he found traces of sand and grass in the vaginal canal. The injuries sustained by the victim indicate signs of struggle by her during the incident. His examination, however, proved negative for spermatozoas." (pp. 16-18, Rollo.)

The records do not reveal when the victim filed a complaint, but the information based on the complaint was filed with the Regional Trial Court on June 30, 1987. After the trial, the lower court found Tongson guilty beyond reasonable doubt of the crime of rape. It sentenced him to suffer the penalty of reclusion perpetua and ordered him to indemnify the offended party in the amount of thirty thousand pesos (P30,000.00). Petitioner-appellant was given credit for his preventive imprisonment.

In this appeal, the accused-appellant alleges that the trial court erred: (1) in giving much weight and credit to the evidence of the prosecution without considering that of the defense, and (2) in finding him guilty beyond reasonable doubt of the crime of rape.

Contrary to appellant Tongson's claim that the offended party voluntarily submitted, to his sexual advances, the

trial court found that the victim Laplana resisted vigorously so that he had to drag her towards the seashore. She testified that she shouted for help many times but nobody was on the road at the time, so no one came to help her. She described how she struggled against the appellant, causing him to box her three (3) times in the abdomen, and her futile efforts to attract the attention of the persons attending a public dance some 120 to 130 meters from the seashore where she was sexually assaulted.

The alleged "public setting" of the rape is not an indication of consent. For, as pointed out by the Solicitor General, rape may be committed at a place where people congregate such as parks (*People vs. Vidal*, 127 SCRA 171), by the roadside (*People vs. Aragona*, 138 SCRA 569), or on a passageway at noontime (*People vs. Lopez*, 141 SCRA 385). In the case of *People vs. Barcelona*, G.R. No. 82589, October 31, 1990, we took judicial notice of the fact that a man overcome by perversity and beastly passion chooses neither time, place, occasion, nor victim.

That no spermatozoa was present in the specimen that was taken from the vagina of the victim did not disprove the rape. Presence or absence of spermatozoa is immaterial since it is penetration, however slight, and not ejaculation that constitutes rape (*People vs. Paringit*, G.R. No. 83947, September 13, 1990; *People vs. Barro, Jr.*, G.R. No. 86385, August 2, 1990).

Appellant's contention that he did not have sexual intercourse with the complainant but merely inserted his right middle finger into her vagina was correctly found by the trial court to be incredible:

"The claim of the accused that he merely inserted his middle right finger into the victim's vagina does not appear credible. He admitted though that he did it without her permission. His demonstration of how it was done defies our imagination. Here is the reactment (sic) of the fantastic scene;

"Sitting side by side with her, he placed his right thigh over the victim's left thigh, holding her right hand with his left, and at the same time inserting his middle right finger into her vagina, while the victim was holding his right lap with her left hand. The situation described by him appears awkward and improbable.

"Moreover, it does not jibe with his pre-demonstration testimony that he was embracing the victim with his left hand, face to face with her, when he inserted his right middle finger into her vagina. Furthermore, by demonstrating that the victim held his right lap with her left hand while he was inserting his finger, he wanted to imply that she voluntarily consented to such insertion. And yet according to him, she got mad. Is this not absurd?" (p. 45, Rollo.)

That the complainant was raped was established by the medical findings, to wit: "blood in the vaginal orifice, first degree laceration of one inch or more at 6:00 o'clock position of the vaginal orifice" (p. 61, Rollo). Dr. Leonardo Gimeno, the physician who examined the victim after the incident, declared that the injury to her vaginal orifice was "caused by the forced entry into the vagina of a man's penis" (p. 62, Rollo). The doctor's other findings support complainant's testimony that she was raped on the seashore. Sand and grass were found in her vagina. The multiple abrasions and contusions on the victim's lips, right face, lower back including both buttocks, left elbow, left thigh, both knees, legs and feet, are mute testimonies giving credence to her claim that the appellant dragged her on the shore and forcibly had sexual intercourse with her.

When a woman testifies that she was raped, she says all that is necessary to show its commission, for no young and decent Filipina - in this case only thirteen (13) years old - would publicly admit having been ravished unless it is the truth, for her natural instinct is to protect her honor (*People vs. Manago*, G.R. No. 90669, November 21, 1990; *People vs. Barcelona*, G.R. No. 82589, October 31, 1990). The testimony of a rape victim is credible where no motive to testify against the accused is shown except the desire to vindicate her honor (*People vs. Lutanez*, G.R. No. 78854, December 21, 1990; *People vs. Fabro*, G.R. No. 79673, November 15, 1990).

In any case, whether or not carnal knowledge is voluntary and free is a question of credibility (People vs. Mercado. G.R. No. 72726, October 15, 1990). Since the witnesses to rape are often only the victim and the offender, the trial judge's evaluation of the witnesses' credibility deserves utmost respect in the absence of arbitrariness, considering the trial judge's advantage of observing the witnesses' demeanor in court (People vs. Felipe, G.R. No. 90390, October 31, 1990). We find no reason to reverse the trial court's conviction of Tongson for rape.

WHEREFORE, the appealed decision of the Regional Trial Court in Criminal Case No. 1178 is affirmed in all respects except the award of damages to the victim Glenda Laplana which is increased from P30,0000 to P40,000 in accordance with the latest policy of the Court.

SO ORDERED.

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

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