

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRING CALIXTRO, CELSO FERRER AND LOUIE FERRER, ACCUSED, PEDRING CALIXTRO, ACCUSED-APPELLANT.

G.R. No. 92355. January 24, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 33, Guimba, Nueva Ecija, in Criminal Case No. 536-G1 entitled "People of the Philippines v. Pedring Calixtro, Celso Ferrer and Louie Ferrer", convicting the accused-appellant, Pedring Calixtro, of the crime of rape (Rollo, pp. 22-26).

The accused Pedring Calixtro, Celso Ferrer and Louie Ferrer were charged with the crime of Robbery with Rape under the following information:

"That on or about the 24th day of April, 1989 in Barangay Faigal, Municipality of Guimba, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then armed with sharp-pointed instrument (patalim), conspiring, confederating and helping one another, and with intent to gain and by means of force and violence and intimidation upon person, did then and there willfully, unlawfully and feloniously take, steal and carry away one (1) gold ring with three (3) stones of diamond and one (1) pair of earrings with one stone diamond with a total value of TEN THOUSAND PESOS (P10,000.00) Philippine Currency, more or less, belonging to EDELIZA ASTELERO to the damage and prejudice of the latter in the said amount; and that during or on the occasion of the robbery, the said three (3) accused conspiring, confederating and helping one another did then and there willfully, unlawfully and feloniously have sexual intercourse one after the other with said EDELIZA ASTELERO against her will.

"That the crime was committed with the aggravating circumstance of nighttime which was taken advantage of by the said accused; and as a consequence of which the complaining witness suffered actual, moral and consequential damages which could be estimated in the total sum of P100,000.00.

"CONTRARY TO LAW." (p. 7, Rollo)

The pertinent facts of the case as gathered from the records are as follows:

Edeliza Astelero, her husband Gonzalo Astelero, and an 11-year old son are residents of Barangay Faigal, Guimba, Nueva Ecija. Pedring Calixtro had been a resident of the same barangay for a year before the incident occurred.

At about 10:00 o'clock in the night of April 24, 1989, while the Astelero family were peacefully resting in their abode, Edeliza heard the barking of dogs; she peeped thru the hole of their window and she saw three male persons. She went to her husband on the bed and awakened him. Both peeped through the hole of the window where they saw three men calling from outside, "Manang, Manang, buksan mo ang pintuan." She went near the door of their hut. One of the three persons threatened her that if she would not open the door, they would blast the house with a hand grenade. She was about to open the door but they continued kicking the door to open the same

(p. 8, TSN, Oct. 10, 1989). Then they hacked the wall of their house and the same fell down. She was afraid that her family would be killed, so she decided to open the door. As she was opening the door, Celso Ferrer pulled her outside of the house and threatened her not to ask for help. Then they dragged her out to the middle of the fields (pp. 9-10, TSN, Ibid.).

In the middle of the field, Celso Ferrer and Louie Ferrer took hold of her arms and pointed a bladed weapon at her neck. At that very moment, accused Pedring Calixtro told her that if she would not give her womanhood she would be killed. She pleaded for mercy but accused Pedring Calixtro succeeded in removing her duster and short pants. She struggled but the accused started hurting her thighs (p. 11, TSN, Ibid.). Pedring Calixtro succeeded in having sexual intercourse with the victim, while Celso Ferrer took off her ring and earrings. Celso Ferrer and Louie Ferrer took turns in abusing her. After the heinous acts, the three accused debated whether to kill Edeliza Astelero or not. Edeliza took the opportunity to flee while the three were discussing. She ran as fast as she could until she saw a jeep, which she later found to be carrying her husband. Thereafter, she was brought to the hacienda of Bebang Adriano (pp. 12-14, TSN, Ibid.).

The testimony of complainant witness is corroborated by Rogelio de la Cruz, a barangay tanod and neighbor of the Asteleros. He testified that in the evening of April 24, 1989 at around 10:00 o'clock, more or less, the accused Pedring Calixtro, Celso Ferrer and Louie Ferrer arrived in his house, and asked him for chicken, which they told him to cook and prepare as "pulutan" but he refused. The three consumed a bottle of wine in his house. When the three left, he followed them secretly towards the house of complainant. He saw them kicking the house and ordering the occupants to open the door. Moments later, he saw them dragging the complainant away from her house towards the field. He reported the incident to the Barangay Captain (pp. 3-8, TSN, Nov. 14, 1989).

Police Corporal Juanito Villaba testified that in the evening of April 24, 1989, while in the office of the Integrated National Police, Guimba, Nueva Ecija, Barangay Captain Marina Quitallas and companions arrived and reported that a certain Edeliza Astelero had forcibly been taken from her house by three male persons. Officer-in-charge, Lt. Soriano, dispatched Sgt. Mendoza and other policemen to respond to the call (pp. 5-6, TSN, Nov. 21, 1989).

Dr. Diosdado Barawid testified that the victim was brought to him for examination sometime on April 25, 1989 and he made the following observations: "light blackish discoloration right hip lower portion, inner aspect; several abrasion upper portion and inner aspect, and laboratory examination of vaginal smear-positive (+) for sperm cell, 3 counted." He further testified that the abrasions or injuries sustained by Edeliza Astelero were caused by a blow and there were signs of struggle (pp. 3-7, TSN, Nov. 27, 1989).

Pedro Calixtro testified on his behalf that at 5:00 p.m. on April 24, 1989 he was tendering water in his ricefield. And about 5:30 of the same afternoon he was invited by Celso Ferrer and Louie Ferrer to the house of Rogelio de la Cruz to buy chicken. He proceeded back to the ranch after 30 minutes and attended to the water pump. That during the hours of 10:00 and 11:00 p.m. of the same night he heard shouts. He proceeded to the direction of the shouts and saw a naked woman being forced and brought away by Celso Ferrer and Louie Ferrer. Then he heard from Celso Ferrer the words "papatayin kita", being addressed to Edeliza. Witness gave to Edeliza the dress which he noticed behind her. A fist fight ensued between him and Celso. After the fight, he noticed that Edeliza ran away, whereas, he went to the watering pump.

At about 6:00 o'clock the following morning, he was apprehended by Sgt. Soriano (pp. 3-11, TSN, November 28, 1989; pp. 7-9, Brief for the Accused-Appellant; Rollo, pp. 43-45).

Of the three accused, only Pedring Calixtro was apprehended. Pedring Calixtro pleaded "not guilty" to the crime charged, thereafter, trial on the merits ensued. After trial, the court a quo rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Pedring Calixtro guilty beyond reasonable doubt of the crime of Rape as described under Art. 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of reclusion perpetua; and to indemnify the complainant in the amount of P30,000.00, without subsidiary imprisonment in case of insolvency.

"SO ORDERED." (pp. 26, Rollo)

issatisfied, Pedring Calixtro appealed and assigned the following errors, to wit:

"I

THE LOWER COURT ERRED IN CATEGORICALLY PRONOUNCING THAT THE TESTIMONIES OF THE COMPLAINANT EDELIZA ASTELERO DURING THE TRIAL OF THE CASE CLEARLY ESTABLISHED THE GUILT OF ACCUSED-APPELLANT BEYOND REASONABLE DOUBT, AS NARRATED BY SAID COURT IN THE THIRD AND LONGEST PARAGRAPH OF PAGE 2 OF THE DECISION IN QUESTION.

"II

THE LOWER COURT ERRED IN: STATING THAT THE ACCUSED-APPELLANT'S DEFENSE CONSISTED OF MERE DENIALS OF THE CRIME CHARGED AND ALIBI; AND IN RE-STATING THE TESTIMONIES OF SAID ACCUSED-APPELLANT IN SHORT FIRST PARAGRAPH OF PAGE 4 OF SAID DECISION.

"III

THE LOWER COURT ERRED IN FINDING THAT THE COMPLAINANT HAD POSITIVELY IDENTIFIED ACCUSED-APPELLANT AS ONE OF THE PERSONS WHO SEXUALLY MOLESTED HER.

"IV

THE LOWER COURT ERRED IN DISCREDITING THE TESTIMONIES OF THE ACCUSED-APPELLANT AS THE SAME WERE NOT CORROBORATED BY OTHER EVIDENCE.

"V

THE LOWER COURT ERRED IN NOT FINDING COGENT REASON WHY THE COMPLAINANT SHOULD FALSELY CHARGE THE ACCUSED-APPELLANT OF THE SERIOUS CRIME OF ROBBERY WITH RAPE.

"VI

THE LOWER COURT ERRED IN NOT DISCREDITING THE TESTIMONIES OF ROGELIO DE LA CRUZ.

"VII

THE LOWER COURT ERRED IN ALLOWING THE COMPLAINANT TO TESTIFY IN STORY-TELLING MANNER OVER THE OBJECTION OF THE UNDERSIGNED COUNSEL; and

"VIII

THE LOWER COURT ERRED IN NOT TAKING INTO CONSIDERATION IN MAKING ITS DECISION, THE ACCUSED-APPELLANT'S MEMORANDUM FILED ON JANUARY 2, 1990, PURSUANT TO THE VERBAL ORDER DATED DECEMBER 11, 1989 AND IN NOT INCLUDING SAID MEMORANDUM AND THE NOTICE OF APPEAL IN THE RECORDS OF THE CASE REMANDED TO THIS

HONORABLE SUPREME COURT." (pp. 37-38, Rollo)

Under Article 335 of the Revised Penal Code, rape is committed if the accused had carnal knowledge of a woman and such act is accomplished under the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs is present.

There are three settled principles to guide an appellate court in reviewing the evidence in rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent, to disprove it (*People v. Aldana*, G.R. No. 81817, July 27, 1989); (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense (*People v. Villapana*, 161 SCRA 72). What is decisive in the rape charged is complainant's positive identification of the accused?appellant as the malefactor (*People v. Mustacisa*, 159 SCRA 227; *People v. Ramilo*, 146 SCRA 258).

In the case at bar, the defense depended heavily on supposed inconsistencies pervading complainant's testimony at the trial court below. Appellant pointed out alleged inconsistencies and improbabilities in the testimony of the rape victim Edeliza Astelero which allegedly cast reasonable doubt on his guilt. The most notable of these were: (a) although she testified on direct that she was alone when she peeped through the hole of their window and saw three (3) male persons, on cross, she claimed that it was she and her husband who peeped through the hole of their window; (b) while, on direct, she testified that she heard the barking of the dogs at around 10:00 p.m., on cross, she stated that she heard the barking of the dogs at around 7:00 p.m.; (c) on direct, she did not state that her assailants wore masks and that she herself was blindfolded which she mentioned only on cross; (d) she could not have recognized her assailants because they wore masks and she was blindfolded.

We find the alleged inconsistencies as too trivial, insignificant and inconsequential to merit the reversal of the trial court's decision. The inconsistencies pointed out by appellant can hardly affect the complainant's credibility. They refer to minor details or to the precise sequence of events that do not detract from the central fact of rape, on which complainant had consistently and candidly testified. A witness who is in a state of fright cannot be expected to recall with accuracy or uniformity matters connected with the main overt act (*People v. Ramilo*, supra). The testimonial discrepancies could have also been caused by the natural fickleness of memory, which tend to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony (*People v. Cayago*; 158 SCRA 586). These discrepancies on minor details serve to add credence and veracity to her categorical, straightforward, and spontaneous testimony (*People v. Ramilo*, supra).

Minor discrepancies indicate that the witness was not previously rehearsed, and consequently strengthen her credibility. It would, perhaps, have been more suspicious if complainant had been able to pinpoint with clarity or described with precision the exact sequence of events (*People v. Cayago*, supra; *People v. Alfonso*, 153 SCRA 487). The rape victim should not be expected to keep an accurate account of the traumatic and horrifying experience she went through.

Needless to say, when the issue is one of credibility of witnesses, the findings of the trial court are generally accorded a high degree of respect, the court having observed the demeanor and deportment of witness. We find no compelling reason to deviate from this settled rule.

Appellant alleged that it was improbable for Edeliza to have recognized him when she herself was blindfolded and her assailants wore masks. Such contention is devoid of merit.

Although Edeliza was blindfolded and her assailants wore masks, she was positive in her testimony that she recognized the appellant as one of her attackers through the latter's voice. Edeliza could recognize appellant through his voice inasmuch as they are barriomates. In fact, appellant even admitted that they were friends, thus:

Q.

Mr. Witness, how long have you been in Faigal, Guimba, Nueva Ecija, in the ranch of Mrs. Bebang Adriano prior to April 24, 1989?

A.

About one (1) year, sir, that I had been staying there.

Q.

And during that length of time you came to know Edeliza Astelero and her husband who are also from Faigal, Guimba, Nueva Ecija, is it not?

A.

Yes, sir.

Q.

And they used to go to that ranch, In fact considering the length of time that you have known Edeliza Astelero and her husband you alleged that you are their friend and the same way that they also were your friends?

A.

Yes, sir. (p. 16, TSN, Nov. 18, 1989)

In *People v. Inot*, 150 SCRA 322 (1987), We ruled:

"xxx complainant's identification of the appellant was not based solely on the latter's physical defect, but by his voice as well, when he warned complainant, 'Flor, keep quiet.' Although complainant did not see appellant's face during the sexual act because the house was dark, nevertheless, no error could have been committed by the complainant in identifying the voice of the accused, inasmuch as complainant and appellant were neighbors. x x x"

This is corroborated by the testimony of Rogelio de la Cruz who saw Pedring Calixtro, Celso Ferrer and Louie Ferrer dragged Edeliza Astelero out of her house.

Appellant put up the defense of alibi that he was looking after his irrigation task when he heard shouts, and went back after having a fist fight with Celso Ferrer.

Defense of alibi is inherently weak and cannot prevail over the positive identification of the accused (*People v. Cayago*, 158 SCRA 586). For the defense of alibi to succeed, the accused must establish physical impossibility and improper motive of the prosecution witnesses, which matters the accused failed to prove (*People v. Alfonso*,

153 SCRA 487).

Edeliza Astelero had positively identified the accused Pedring Calixtro as one of the persons who had raped her in the middle of the fields. His alibi, that he was at the ranch during the hours of 10:00 and 11:00 p.m. of April 24, 1989 and while he was looking after his farm he heard shouts, and he was the one who saved and rescued Edeliza Astelero, can only be taken with a grain of salt. Such a statement could easily be fabricated, more so when it is not corroborated by testimonies of other impartial witnesses. The accused was the lone witness for his defense. The accused could have had his testimony corroborated by presenting other persons who could well testify on what he had been doing in the evening of April 24, 1989. Mere denial of the commission of a crime cannot prevail over the positive identification made by the complaining witness.

Appellant stresses the prosecution's failure to present the husband and son of Edeliza. The expected testimony of husband and son had already been dealt upon by Edeliza Astelero and Rogelio de la Cruz. There is no cogent reason for them to corroborate what had been testified on. Besides it is the prerogative of the prosecution to choose its witnesses (People v. Quebral, 134 SCRA 425; People v. Martinez, 127 SCRA 260).

In rape, the prosecution need not present testimonies of people other than the offended party herself if the same is accurate and credible (People v. Robles, G.R. No. 53569, February 23, 1989).

Appellant questions the credibility of Rogelio de la Cruz as a witness. The former argues that being a barangay tanod, de la Cruz should have apprehended the malefactors and should have prevented the heinous crime. De la Cruz reasoned out that he was afraid that they might kill him; the malefactors were, then, armed with deadly bladed weapons. His only weapon was a stick, which was not a match against bladed weapons. He feared for his life, such is not contrary to human nature. Thus, de la Cruz should not foolhardily attempt to stop the malefactors in his state of physical disadvantage and stake his life in the process.

The allegation that Pedring Calixtro was implicated because the real perpetrators were not arrested defies human reason.

It is hard to believe that a woman, a simple housewife and mother, would fabricate a rape charge and subject herself and family to shame, humiliation and embarrassment of a public trial. We have oftentimes ruled that a woman would not undergo the expense, trouble and inconvenience of a public trial, not to mention the scandal, embarrassment and humiliation such action inevitably invites, as well as allow an examination of her private parts, if her motive is not to bring to justice the persons who had abused her (People v. Munoz, 163 SCRA 730; People v. Cayago, 158 SCRA 586; People v. Viray 164 SCRA 135; People v. Magdaraog, 160 SCRA 153; People v. Bulosan, 160 SCRA 492; People v. Hachang, 164 SCRA 441).

Appellant further contends that the trial court erred in allowing the complainant-witness to testify in narrative form.

This contention is likewise devoid of merit.

Usually in criminal cases, the material facts within the knowledge of a witness are elicited by questions put to him by the counsel calling him. By this means, the evidence is readily limited and confined within the issue for the reason that the relevancy of the answer can in most cases be ascertained from the character of the question (Underhill's Criminal Evidence, Sec. 387, p. 742). While this is the general rule, it still rests within the sound discretion of the trial judge to determine whether a witness will be required to testify by question and answer, or will be permitted to testify in a narrative form (98 C.J.S., Sec. 325, p. 26). There is no legal principle which prevents a witness from giving his testimony in a narrative form if he is requested to do so by counsel. A witness may be allowed to testify by narration if it would be the best way of getting at what he knew or could state

concerning the matter at issue. It would expedite the trial and would perhaps furnish the court a clearer understanding of the matters related as they occurred. Moreover, narrative testimony may be allowed if material parts of his evidence cannot be easily obtained through piecemeal testimonies. But if, in giving such testimony, the witness states matters irrelevant or immaterial or incompetent, it is the right and duty of counsel objecting to such testimony to interpose and arrest the narration by calling the attention of the court particularly to the objectionable matter and, by a motion to strike it out, obtain a ruling of the court excluding such testimony from the case (98 C.J.S., Ibid.). While a witness may be permitted in the discretion of the court to narrate his knowledge of material facts bearing upon the case without specifically being interrogated in detail, it is also within the discretion of the court to prohibit a witness from volunteering unsought information in connection with the case (5 Jones on Evidence, Sec. 2312).

Appellant takes notice of the fact that the trial court did not consider his memorandum. We find that the contents of the memorandum were passed upon in the judgment of the trial court. The arguments therein were discussed by it. The arguments presented did not raise new issues; hence, the memorandum deserves scant consideration.

We find, as the trial court found, that appellant successively raped the offended party while the other two accused held down the victim, showing that conspiracy existed. Said other two also took turns in raping. In a conspiracy, the act of one is the act of all. There are three (3) crimes of rape, appellant, having conspired with the two others, should be convicted on three counts of rape. Thus, Pedring Calixtro is also responsible for the acts of Celso Ferrer and Louie Ferrer. The case of *People v. Cayago*, (158 SCRA 586) is applicable in the case at bar:

"The trial court found as a fact that appellant and others, having conspired with each other; successively raped the offended party while the other held down the victim. This is adequate basis for convicting appellant Cayago of three (3) crimes of rape. The judgment of the trial court does not purport to convict Macaraeg and Capitle and would not, of course, bind them should they ever be arrested and brought to trial; they may plead any defense to which they might feel entitled, such as insanity or mistaken identity, etc."

We find the accused's guilt to have been proved beyond reasonable doubt.

ACCORDINGLY, the judgment of conviction is hereby AFFIRMED, INCREASING the penalty imposed on the appellant to three (3) penalties of RECLUSION PERPETUA, and for him to indemnify the offended party in the sum of P30,000.00 in each case for a total of P90,000.00 and to pay the costs.

SO ORDERED.

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

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