

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESTANISLAO GENERALAO, JR., ACCUSED-APPELLANT.

G.R. No. 93141. September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal from a decision of the Regional Trial Court of Dipolog City,[1] Branch 9 in Criminal Case No. 4197 finding the accused-appellant Estanislao Generalao, Jr. guilty beyond reasonable doubt, of the crime of ROBBERY with RAPE. The dispositive portion of the decision reads:

"WHEREFORE, finding the accused ESTANISLAO GENERALAO, JR. guilty beyond reasonable doubt of the crime of robbery with rape, with the use of a deadly weapon and with the aggravating circumstances of having committed it at nighttime and in the dwelling of his victim, this court pursuant to Article 294(2) of the Revised Penal Code, as amended, sentences him to the penalty of reclusion perpetua, with all the accessory penalties prescribed by law, to indemnify the offended party, Placido Maglangit, the sum of One Thousand Pesos (P1,000.00), representing the value of the stolen articles and to pay to his victim, Rexy Maglangit, by way of moral damages, the sum of Twenty Thousand Pesos (P20,000.00), and to pay costs.

The full period of his preventive imprisonment shall be credited in his favor if he agrees in writing to abide by the disciplinary rules imposed upon convicted prisoners; otherwise, he shall be credited with only four-fifths (4/5) thereof." [2]

On July 14, 1987, complainant Rexy Maglangit filed an information against Estanislao Generalao, Jr. and John Doe for the crime of ROBBERY WITH RAPE committed as follows:

"That, in the evening, on or about the 1st day of March, 1987, in the municipality of Piñan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, accused ESTANISLAO GENERALAO JR. conspiring, confederating together and mutually helping with one JOHN DOE, who is still at large both armed with firearms and with intent of gain by means of force and violence and intimidation against person did then and there willfully, unlawfully and feloniously enter the house of one PLACIDO MAGLANGIT, and once inside take, steal, and carry away the following articles, to wit:

1. One (1) black jacket (camouflage uniform);
2. One (1) pant (maong);
3. One (1) necklace; and
4. One (1) eye glass

all in the aggregate amount of ONE THOUSAND (P1,000.00) PESOS Philippine Currency, all belonging to the said PLACIDO MAGLANGIT to his damage and prejudice in the amount aforesaid; and that during the Robbery and in pursuance of their evil motives, the above-named accused conspiring, confederating together and mutually helping one another moved by lewd design and lustful desire and by means of force and intimidation against person did then and there willfully, unlawfully and feloniously take turns one after another

in having sexual intercourse with one REXY MAGLANGIT, single, a maiden of good reputation, against her will and without her consent.

CONTRARY TO LAW. (Viol. of Art. 294, par. 2, Revised Penal Code) and with the aggravating circumstances of nocturnity and dwelling."[3]

Upon arraignment, accused Estanislao Generalao, Jr. pleaded not guilty while his co-accused named only John Doe in the information was never identified by the prosecution nor arrested.

The facts as found by the trial court are as follows:

On March 1, 1987, Placido Maglangit together with his wife and one of his daughters left their house in Barangay Calican, Piñan, Zamboanga del Norte to attend to his two other daughters who were, confined at the Zamboanga del Norte Integrated Provincial Hospital in Dipolog City[4] and the only ones left in the house were complainant Remy Maglangit and her brothers and sisters namely: Sheryl, Dennis, Arnold, Sonny, Rene Roy and Nenette.[5]

Complainant together with her brothers and sisters slept in their bedroom at 6:30 P.M. of that same night with the complainant and her 10-year old sister Sheryl sleeping on the bed while the rest of complainant's brothers and sisters slept on the floor of said bedroom.[6]

At about 12:00 o'clock midnight, accused-appellant Estanislao Generalao and his companion John Doe (who remained at large and still unidentified), both armed with firearms, entered complainant's house through the bedroom window. Once inside, they took the trousers and jacket of complainant's father Placido Maglangit as well as the necklace and sunglasses of complainant's mother[7] with accused-appellant wearing the camouflage uniform of complainant's father. Thereafter, complainant and her sister Sheryl were awakened by the accused-appellant when the latter focused his flashlight on them.[8]

Accused-appellant told complainant that he and his companion were rebels. They also informed complainant that they were many and some were in the house of her grandparents. When they inquired if she has a brother who is a soldier, she answered in the negative and also told them that her parents were not coming home that evening. Accused-appellant threatened to take her to their commander and complainant pleaded to them not to do so. Thereafter, accused-appellant while pointing his gun at the complainant forced the latter to go with him in the kitchen which is located downstairs, leaving his companion to guard the other children.[9]

As they reached the kitchen, accused-appellant while still pointing his gun at the complainant, ordered the latter to remove her panty, wash her vagina with the water from the "galon" which was placed near the bench and pull up her dress. Forthwith, accused-appellant kissed the complainant, sucked her nipples and made her lie down on the bench in said kitchen. Threatened and intimidated, complainant wordlessly submitted against her will to accused-appellant's lustful desire.[10]

After satisfying his lust, accused-appellant ordered complainant to remain lying down on the bench and called his companion who took his turn in sexually abusing the complainant while the accused-appellant went upstairs to guard the other children in the bedroom. Thereafter, accused-appellant as well as his companion left complainant's house and warned complainant not to report said incident to the police otherwise they will come back to bring her into their movement.[11]

Meanwhile, complainant changed her panty after washing her private part and went to sleep in the bushes with her sister Sheryl for fear that the accused-appellant and his companion would return as they promised to do so.[12]

The following morning or on March 2, 1987, complainant proceeded to her grandparents' house to verify whether some armed men, as mentioned by the accused-appellant, were really in said house. However, when the

complainant learned that nobody went to her grandparents' house the previous night, she immediately narrated to her grandparents how accused-appellant and his companion raped her and took certain belongings of her parents. Consequently, complainant with her cousin Juanita Teves went to the Piñan Police Station where she executed an affidavit (Exhibit "B") narrating said incident. Subsequently, she was brought to the Piñan District Hospital for a physical examination.[13]

Dr. Bernardo Manligo, the then District Officer of Piñan District Hospital who examined the complainant issued a medical certificate (Exhibit "C") wherein he stated his findings, to wit:

"HEAD - No contusion; CHEST - No contusion or marks on the breast and nipples; Extremities - Negative for hematoma, I.E.: Slight pubic hair were noted; Introitus - Blood clots & fresh blood were noted, Admits 2 fingers without difficulty, hymen single opening, semilunar with rounded, non-coaptable border and retraction of edges, erythematous vaginal canal. Ruptured Hymen - with 5, 7, 9 o'clock healed laceration. Cotton swab for semen determination-negative." [14]

On June 16, 1987, the peace officers of Piñan presented to her Estanislao Generalao, Jr. whom she positively identified as one of the two persons who ransacked their house and raped her having seen his face being illuminated by the light of the flashlight he was holding and having seen him previously in the "tabuan" (barrio market) of Calican, Piñan and danced with him in one of the benefit dances held there.[15]

On the other hand, accused-appellant set up the defense of denial and alibi by denying having been in the house of the complainant on the night said complainant was robbed and raped. Accused-appellant alleged that for the entire month of February to March of 1987, he was staying in the house of his friend Noel Realiza in Barra, Dipolog City because he was working as a helper in a fishing outfit in Dipolog City known as "Limbas".[16] This was corroborated by Annabel Jumawan, wife of Noel Realiza, who testified that accused-appellant stayed with them from February to March, 1987.[17] Accused-appellant also alleged that he left his friend's house at around 4:00 P.M. of March 1, 1987 to go fishing in the sea at the Southern Island Oil Mill at Roxas, Zamboanga del Norte and was only able to return to Dipolog City the following day or on March 2, 1987. In fact, he gave 2 pails of fishes to his mother when the latter visited him in the morning of March 2, 1987 in his friend's house.[18] On April 3, 1987, accused-appellant left Dipolog City for Dansullan to help his elder brother to cut grasses in their farm since the sea was already rough.[19]

The appeal is bereft of merit.

Accused-appellant contends that the trial court erred in convicting him of the crime of robbery with rape on the basis of the complainant's testimony since there was a discrepancy between the date of commission as stated in the information from that declared by the complainant and her father during the trial. Moreover, there is no evidence of a struggle to indicate that complainant resisted the sexual assault of accused-appellant as her dress had not been torn and the attending physician who examined her testified that he did not find any spermatozoa or semen in her vagina nor any evidence of physical injury on the body of complainant to indicate a struggle, leading one to conclude that the sexual acts, if true, were done with the consent of the complainant.

We are not convinced.

The discrepancy between the date of the commission of the crime as stated in the information which is March 1, 1987 from that declared by the complainant and her father during their respective testimonies which is March 1, 1986 is obviously an honest mistake brought about not by the complainant and her father but by the prosecuting fiscal, Roy Dalman, when the latter conducted his direct examination of said witnesses. However, the mistake was rectified when the trial court realizing this, clarified the matter:

"COURT:

Excuse me, let's be clear.

Q You said it was March 1, 1986 when you were in the hospital to attend to your sick children or March 1, 1987?

A March 1, 1987.

Q So, it is not March 1, 1986?

A Yes, Your Honor."[20]

It cannot, therefore, be said that accused-appellant was not properly informed of the charge against him since there is no showing that he was misled or prejudiced by said mistake.

The fact that complainant's dress was not torn or that her body showed no bruises or contusions to suggest a struggle does not necessarily mean consent to a sexual intercourse with the accused-appellant. For the crime of rape to be committed, it is not indispensable that there be marks of physical violence on the victim's body[21] nor that there be evidence of a struggle or that physical force be actually employed upon the complainant since "rape is likewise committed when intimidation is used on the victim and the latter submits herself against her will because of fear for her life and personal safety." [22]

Spread throughout the records of this case is the evidence of intimidation in all its gory details. It showed how accused-appellant sexually assaulted a young girl by pointing a gun against her and threatening to shoot if she did not submit to his carnal desire to the point of paralyzing her with fear, unable to struggle much less to resist his lustful advances.

Accused-appellant's reliance in *People vs. Barbo*[23], that "the absence of any torn apparel of the girl allegedly raped; the lack of evidence to sustain claim of back injury; the girl's failure to escape when she had every opportunity to do so; and the presence of three of the alleged victim's dresses in the residence of the accused who claims that the former had agreed to live with him as his wife," which are indicative of the absence of intimidation or force in the carnal relation between complainant and the accused, is misplaced. The facts of said case relied upon by accused-appellant and that of the case at bar are miles apart.

Nor would the absence of spermatozoa in complainant's vagina be of help to accused-appellant. It does not negate rape.[24] As correctly observed by the trial court:

"x x x The fact that the medico-legal certificate showed no findings of abrasions around the vaginal cleft, or spermatozoa inside the vagina does not disprove the commission of rape in the case at bar. The important factor is not the emission of the semen, but penetration. Well-settled is the rule in this jurisdiction that any penetration, however slight, and whether reaching the hymen or not is sufficient to constitute a crime of rape. (*People vs. Coderes*, O.G. Vol. 83, No. 13, March 30, 1987)." [25]

As to the accused-appellant's claim of error by the trial court in disregarding his defense of alibi, settled is the rule that the defense of denial and alibi cannot stand against accused-appellant's positive identification by the victim,[26] since alibi is an inherently weak defense.[27] For alibi to prosper, the defense must prove that it was impossible for the accused-appellant to have been at the scene of the crime at the time of its commission which is not present in the case at bar. Besides, it is hard to believe that an 18-year old and unmarried woman would tell a story of being deflowered, allow the examination of the private parts of her body and permit herself to be the subject of a public trial if she was not motivated by an honest desire to bring to justice the persons who had wronged her.

At any rate, this is a case where the acceptance of the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies, finds application. Where there is an irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from, Our attention has not been called to any recorded fact or circumstance of sufficient importance to justify our reversing the questioned decision.[28]

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby AFFIRMED with modification that the moral damages awarded by the trial court be increased to P50,000.00 in accordance with the recent decision[29] of the Court on this matter. Costs against appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.
Melo, J., no part.

[1] Penned by Acting Presiding Judge Pelagio R. Lachica.

[2] RTC's Decision, Rollo, pp. 26-27.

[3] Rollo, pp. 4-5.

[4] T.S.N., September 18, 1987, p. 2.

[5] T.S.N., September 15, 1987, p. 9.

[6] Id., at pp. 9-10.

[7] T.S.N., September 18, 1989, p. 3.

[8] T.S.N., September 15, 1989, p. 11.

[9] Id., at pp. 13-14.

[10] Id., at pp. 14-15.

[11] Id., at pp. 18-20.

[12] Id., at pp. 20-21.

[13] Id., at pp. 21-23.

[14] RTC's Decision, p. 19, Rollo.

[15] Exhibit "A".

[16] T.S.N., September 9, 1988, pp. 2-3.

[17] T.S.N., June 24, 1988, pp. 2-3.

[18] T.S.N., September 9, 1988, p. 4.

[19] Id., at p. 7.

[20] T.S.N., September 18, 1987, p. 3; Record, p. 133.

[21] People vs. Lutañez, 192 SCRA 588 (1990).

[22] People vs. Arengo, 181 SCRA 344 (1990).

[23] 56 SCRA 459.

[24] People vs. Eclarinal, 182 SCRA 106 (1990).

[25] RTC's Decision, p. 9; Rollo, p. 23.

[26] People vs. Manago, 191 SCRA 552 (1990).

[27] People vs. Bocatcat, Sr., 188 SCRA 175.

[28] People vs. Ordonio, 68 SCRA 397.

[29] People vs. Telio, G.R. Nos. 72786-88, June 22, 1992.

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