

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MASALIM CASIM, DEFENDANT-APPELLANT.

G.R. No. 93634. September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

Accused-appellant Masalim Casim together with John Doe, Peter Doe and Alfred Doe were charged with the crime of FORCIBLE ABDUCTION WITH RAPE in an Information which reads:

"That on or about March 7, 1987, at around 11:30 p.m., in the Municipality of Tagig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, and mutually helping and aiding one another, by means of intimidation and threats, did then and there willfully, unlawfully and feloniously, and with lewd designs abduct, take and carry away Aida Pandita y Dinia against her will from her own dwelling, and once the above-named accused were in possession and control of said Aida Pandita y Dinia, accused Masalim Casim, by means of force, intimidation, threats and at the point of a knife did then and there, willfully, unlawfully and feloniously had carnal knowledge of her against her will."[1]

Only Masalim Casim was arraigned and, with the assistance of his counsel, pleaded "NOT GUILTY" to the charge. After trial, a judgment of conviction was rendered against him on March 2, 1990 by the Regional Trial Court of Pasig, Branch 152 in Criminal Case No. 71660, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused MASALIM CASIM guilty beyond reasonable doubt of the complex crime of forcible abduction with rape defined and punished under Articles 342 and 335 in relation to Art. 48 of the Revised Penal Code without any mitigating nor aggravating circumstance attendant thereto and sentences him to suffer the penalty of reclusion perpetua and to indemnify the complainant the sum of P20,000.00 by way of moral damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

"SO ORDERED."[2]

The facts as narrated by the prosecution are as follows:

At around 11:30 p.m. of March 7, 1987, accused Casim went to the house of the complainant Aida Pandita and had a drinking session with complainant's husband Ismael "Mike" Pandita while complainant was playing with her seven (7) month old daughter in the "sala".

After finishing four (4) bottles of "Tanduay" which was brought by the accused Casim, complainant's husband fell asleep and accused Casim, while carrying complainant's daughter, poked a gun toward the side of the baby and threaten to kill the latter if she refused to go with him, leaving complainant no other recourse but to go along with the accused. However, before leaving the house with the accused, complainant was able to scribble on a piece of yellow paper the following message to her husband, to wit: "Dear Dad, love you dad, kaya lang kung hindi ako sasama papatayin kami dito. Love, Dina."[3]

Thereafter, accused and his two male companions, who were in the tricycle parked near complainant's house, brought complainant and her daughter to a hotel where accused Casim succeeded in forcing complainant to have carnal knowledge with him.

At around 3:00 a.m. of March 8, 1987, someone picked them up from their hotel room and brought complainant and her daughter to an old house in Taytay, Rizal and kept them for nine (9) days in a dilapidated room of said house. While complainant and her daughter were held in captivity at said place, accused Casim repeatedly had sexual intercourse with the complainant and whenever the accused left said place, a man and a "tomboy" would guard and keep them company.

On the 10th day of their captivity or on March 17, 1987, accused Casim went out to buy milk for complainant's daughter and left the door of the house open which enabled complainant to escape although she had to leave her daughter behind since the "tomboy" was holding the baby at the time of her escape. Thereafter, she immediately took a taxi home and reported her harrowing experience to her husband who requested his relatives to accompany complainant and rescue their daughter.[4]

On the following morning or on March 18, 1987, complainant went to the police station and executed a statement regarding said incident.[5] After which, she was brought to Camp Crame for her medical examination wherein the medico-legal examiner concluded that "there are no external signs of recent application of any form of trauma. Subject is in a non-virgin state physically." [6]

Accused-appellant, however, disputes the foregoing facts and alleged that:

"On March 7, 1987 he and the complainant eloped from the latter's house where she was living with Ismael "Mike" Pandita. With them were the complainant's young daughter and a maid. They went to Quiapo and slept at the Echaque Hotel where they had sexual relation for four (4) times that night. From the hotel they went to Antipolo, Rizal where they stayed for more than three (3) weeks in a rented room. During that period he continued to work as a driver of Commissioner Musib Buat of the National Labor Relations Commission and would return home only after work, sometimes during weekends." [7]

Accused-appellant further maintained that he never courted complainant. On the contrary, it was complainant herself who requested him to take her away because of her miserable life with her husband who was maltreating her. In fact, he had received more than ten (10) love notes from the complainant and had already brought complainant's personal belongings to a neighbor's house named George before they eloped. However, when he told complainant to return to her husband, complainant refused, presenting him with a problem, so much so that he had to seek the advice of his employer, Musib Buat, who told him to bring complainant to the Office of Muslim Affairs.

Thereafter, Musib Buat brought complainant to her husband, Mike Pandita, who requested Buat to fetch their daughter and maid from Taytay. Thereafter, complainant and her husband reconciled and Mike Pandita agreed to refer the matter to the eldest Muslim at the Maharlika Village. Accused-appellant's version of the incident was corroborated by Musib Buat, a former Commissioner for Muslim Affairs.[8]

Hence, this appeal raising the issue of whether the guilt of the accused-appellant was established by the prosecution beyond reasonable doubt.

Article 342 of the Revised Penal Code defines and penalizes the crime of forcible abduction. The elements of forcible abduction are the following: that the person abducted is any woman, regardless of her age, civil status, or reputation; that the abduction is against her will; and that the abduction is with lewd designs.

On the other hand, Article 335 of the same Code also defines and penalizes the crime of rape. The elements of

rape pertinent to the instant case are the following: that the offender had carnal knowledge of a woman and that such act is accomplished by using force or intimidation.

The crime of forcible abduction with rape is both difficult to prove or to disprove considering the very nature of the offense. The resolution of the case would hinge on whose version is more credible and trustworthy considering the circumstances surrounding its commission, that of the complainant or that of the accused-appellant, calling for a careful examination and synthesis of the evidence on record.

The thrust of the defense is that complainant was not abducted nor raped. It was an elopement, wherein complainant willingly went with accused-appellant.

This Court notes that the prosecution relied heavily on the testimony of the complaining witness which is inherently weak, fraught with material inconsistencies and replete with highly improbable circumstances to sustain the conviction of the accused-appellant beyond reasonable doubt.

In the instant case, complainant stated in her sworn complaint before the fiscal that she was abducted and raped by the accused-appellant with the use of a knife.[9] However, at the witness stand complainant contradicted her own statement when she testified that accused-appellant poked a gun at her seven months old daughter to compel her to go with him.[10] These unexplained conflicting accounts, involving as they do a very essential element of the offense of forcible abduction with rape, which is the employment of force and coercion, necessarily impair the credibility of the complaining witness and the same cannot simply be dismissed as a minor discrepancy. The circumstances under which accused-appellant allegedly poked his weapon at the side of complainant's daughter, indicate that complainant could clearly see the kind of weapon used by the accused-appellant as the latter had taken the child in his arms and was facing the complainant at the time. Thus, it is highly improbable that complainant would not be able to distinguish whether appellant had used a gun or a knife in forcing her to go with him. Indeed, complainant could not have been mistaken as to the type of weapon used since the latter allegedly continued to threaten her with said weapon inside the tricycle while trying to get away from their place.

Complainant also stated in her complaint that there were three (3) other unidentified men with the accused-appellant when the latter abducted her but during the trial, complainant testified that aside from the appellant, there were only two other persons who abducted her.[11] Again, no explanation was given by complainant for the discrepancy.

It is also stated in her Sworn Statement that her escape was made possible when the accused-appellant happened to leave the door of the house where she was detained open, thereby giving her the opportunity to call her cousin who thereafter fetched complainant and her daughter from said place. However, in court complainant gave a different version, that she was able to escape when she requested the accused-appellant to buy milk for her daughter.[12]

Complainant further stated in her Sworn Statement that she was detained more or less for seven (7) days, but when she testified in court she stated that she was detained by the accused-appellant from March 7, 1987 up to March 17, 1987 or for a period of ten (10) days.[13]

Finally, complainant's allegation that she was raped by the accused-appellant deserve scant consideration in the absence of external injuries around the genital area or other parts of her body.[14]

Jurisprudence teaches Us that where the sworn statement given during the preliminary examination conflicts with that given during the trial, and the variance in the answers of the witness is greatly disturbing and irreconcilable, the testimony of said witness should not be given in evidence as the discrepancy in the witness' statements show that he was either lying when he executed it or he had simply forgotten what he truly witnessed.[15] Simply

stated, serious inexplicable discrepancies between a previously executed sworn statement of a witness and her testimonial declarations as to the appellant's participation in the commission of a crime raise a grave doubt on the veracity of her account.[16]

While conclusions of trial courts on the credibility of witnesses are not to be disturbed on appeal, this doctrine bows to the immutable rule that the guilt of the accused must be proved beyond reasonable doubt.[17] The appellate court is thus not bound by the trial court's factual findings where its assessment of the evidence discloses a failure on the part of the prosecution to satisfy the burden of proof in criminal cases.

Moreover, in crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity. When the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. For rape is an accusation easy to make, hard to prove, but harder to be defended by the party accused, though innocent.[18]

WHEREFORE, the appealed judgment is REVERSED and the accused-appellant is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. Cost de officio.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Melo, J., no part.

[1] Rollo, p. 4.

[2] Id., at p. 49.

[3] Records, p. 75.

[4] T.S.N. September 2, 1988, pp. 21-24.

[5] Records, pp. 76-77.

[6] Id., at p. 78.

[7] Rollo, at p. 44.

[8] Records, at pp. 104-105.

[9] Id., at p. 1.

[10] T.S.N., November 4, 1988, p. 14.

[11] Id., at p. 11.

[12] T.S.N., September 2, 1988, p. 21.

[13] T.S.N., November 4, 1988, p. 9.

[14] People vs. Bardaje, G.R. No. L-29771, Aug. 29, 1980.

[15] People vs. Magallanes, G.R. No. L-63936, January 7, 1987, 147 SCRA 92.

[16] People vs. Tulagan, G.R. No. L-68620, July 22, 1986, 143 SCRA 107.

[17] No. L-47500, People vs. Maribung, 149 SCRA 292, (1987).

[18] People vs. Cui, Jr., 162 SCRA 220 (1988).

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