

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH RABANES ALIAS BADO, DEFENDANT-APPELLANT.

G.R. No. 93709. May 08, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Upon a sworn complaint filed by the offended party Angelina M. Naallatan, accused-appellant, Joseph Rabanes alias "Bado" was charged with the crime of rape in an information dated October 26, 1989. The information alleged:

"That on or about 11:00 o'clock in the morning, more or less of September 15, 1989, at sitio Cabiao, Barangay Luyong Bonbon, Municipality of OpoI, Province of Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, violence, threat and intimidation, did then and there, willfully, unlawfully and feloniously succeeded in having carnal knowledge upon the offended party against her will and consent.

"CONTRARY TO and in violation of Article 335 of the Revised Penal Code." (p. 5, Rollo)

Assisted by his counsel upon arraignment, the accused pleaded not guilty to the charge. (p. 23 Records). Trial ensued where both parties presented their respective evidence.

The version of the prosecution as related in the decision of the trial court was as follows:

"Angelina Naallatan is a typical barrio housewife, comely, slim, of average height and only 26 years old. She has two children, namely; Manilyn and Karen Jane. September 15 is the birthday of Karen Jane. Of meager means, Angelina planned a simple celebration. She will cook for her a chicken which she will secure from Segundino Naallatan, her brother-in-law. What would have been a joyous family affair turned into the most painful and horrific episode of her life. On her way home from the house of Segundino Naallatan at about 11:00 o'clock in the morning, while passing by a trail she saw a man whom she identified later as the accused Joseph Rabanes, walking very fast towards her. Catching up with her the accused said, 'Day, mouna ko nimo kay magdali ko', which in English means, 'I will go ahead because I am in a hurry.' Without warning, the accused slapped her. Angelina shouted for help and she attempted to run but after making three steps, the accused caught up with her and he squeezed her neck making her fall on (sic) the ground. Then the accused threatened her saying that if she will shout again he will strike her head with a piece of stone which he was holding at the time.

"Angelina cried and pleaded for mercy. She again struggled to free herself but the accused slapped her again which weakened her and she lost consciousness. Regaining consciousness, she noticed the accused raping her. Then the accused warned her not to reveal to anybody what he did otherwise he will kill her. Angelina presented her blouse, maong skirt and dirty-white panty. Her panty was torn. The blouse and maong skirt were soiled (Exhs. 'B', 'C', 'D' and 'E').

"After the accused left, Angelina proceeded to the house of her sister-in-law Belen Paclar about one kilometer away from the place of the incident. The house of Segundino Naallatan was only 200 meters away but

Angelina did not report the incident to her brother-in-law because the accused went towards that direction. Reaching the house of her sister-in-law, she narrated the assault against her. Belen Paclar asked her to describe the man who violated her and after the description, Belen Paclar said, 'There is only one I know here who is the rapist.' (TSN, Dec. 18, 1989). Mrs. Paclar brought Angelina to the house of the barangay kagawad Roman Ibajay and together with some policemen, they looked for the person responsible. Later, Angelina was brought to the police station of Opol, Misamis Oriental to identify the accused. Right there, she pointed to the accused as the man who ravished her. The accused was identified by Angelina in the courtroom.

"Upon advice of the policemen, she submitted herself to a physical examination. Two doctors examined her, namely; Dr. Aziel Diel and Dr. Mario Lao.

"Angelina executed an affidavit dated September 18, 1989 (Exh. 'F'). She also identified her signature appearing in the complaint (Exh. 'G', 'G-1').

"Because of the incident, she spent P1,000.00 as litigation expenses and P80.00 for medicines.

"Mrs. Paclar, younger sister of the husband of Angelina, noticed that Angelina was crying and she looked pale when she arrived at her house at about 11:00 o'clock in the morning of September 15, 1989. She had bruises in her arm and her hair was in disarray. When asked what happened to her, Angelina reported that she was raped by a man whom she described as short, of fair complexion, stocky and right away it came into her mind that there is no other man who fits the description except Jose Rabanes. She explained that the accused was already charged for raping Florita Sajol and her sister Editha Sajol-Pabayok on April 15, 1983 who were residents also of Luyong, Bonbon. These two victims were neighbors of Belen Paclar. She immediately reported to barangay kagawad Roman Ibajay who instructed her to bring Angelina to his residence. Kagawad Roman-Ibajay summoned policemen to his house in order to apprehend Joseph Rabanes. The accused was arrested and brought to the municipal hall of Opol, Misamis Oriental. Mrs. Paclar also accompanied her sister to the Northern Mindanao Regional Training Hospital (NMRTH) where she was examined by doctors.

"Kagawad Roman Ibajay corroborated the testimony of Angelina and Mrs. Paclar. He noticed Angelina who appeared to be weak and crying. He accompanied the policemen for the arrest of the accused. When they arrived at the house of the accused, they were informed by his common-law-wife that the accused was not there so they went to the house of the sister of the accused where he was apprehended.

"Kagawad Ibajay was present when Angelina identified the accused as her rapist. He executed an affidavit dated September 18, 1989 (Exh. 'I', 'I-1').

"Felicito Cabasan, a 13-year old boy and a resident of Sitio Cabiao, Luyong Bonbon, Opol was with Arsenio Monson on September 15, 1989. From the seashore on their way home, passing by a trail they saw a woman from a distance of 45 meters, more or less, walking fast followed by a man. Then they heard a cry from the woman saying 'Help!' (Tabang). Both Cabasan and Monson did not mind because they thought that it was as a quarrel between husband and wife because they know that Joseph Rabanes has a common-law wife. Cabasan identified the man as the accused but he did not know the woman at the time. He later knew that the name of that woman is Angelina Naallatan. Cabasan and Monson proceeded to their house but along the pathway, they noticed a chicken which was tied and placed inside a plastic bag. Monson told Cabasan to pick up the chicken.

"During cross examination, it was revealed that Felicito Cabasan saw the accused squeezing the neck of the offended party but they did not intervene because they were afraid. Monson told Cabasan, 'Dong, you get your fish. Let us part ways. We might be implicated' (TSN, p. 25, December 19, 1989). Cabasan was aware that the accused is a bad character having been charged for rape before.

"Dr. Aziel Diel, Sr. Resident Physician in the NMRTH, Department of Pathology, was the attending physician of Angelina on September 15, 1989 at 8:45 in the evening. He made the following findings:

‘GENERAL PHYSICAL EXAMINATION:

Examined conscious, coherent, cooperative, ambulatory.

Breast fully developed, soft & pendulous

‘GENITAL EXAMINATION:

Mons pubis - fully grown pubic hair.

Introitus parous

Labia majora & minora - gaping

Hymen - old healed lacerations all around.

‘CONCLUSION:

Hymen is converted to caruncula myrtiliformis.

Vaginal smear - negative for spermatozoa. Extragenital injury referred to Dept. of Surgery’

"When asked, Angelina complained that she was raped. On the physical injuries, Dr. Diel referred her to the Department of Surgery.

"Dr. Mario Lao, Resident Physician of the NMARTH assigned with the Department of Pathology, was the attending physician of complainant Angelina on September 15, 1989. He submitted a medical certificate showing the following injuries:

‘-Confluent abrasion ant. neck right.

-Multiple linear abrasion forearm left M/3rd' (Exh. W'J')

"Injury No. 1 in the neck could have been caused if somebody would squeeze Angelina and the second Injury could have been caused when the skin is rubbed by a rough object. Dr. Lao prescribed medicines to Angelina (Exh. 'H', 'H-1'). (pp. 13-20, Rollo).

The accused-appellant testified in his behalf. His version of the incident subject of the charge against him was as follows:

"Testifying as lone witness in his behalf, accused Joseph Rabanes admitted that he had sexual intercourse with Angelina but the same was pursuant to an agreement between them in the amount of P100.00. He narrated that at about 9:00 o'clock in the morning of September 15, 1989 he was invited by his cousin Rene Actub who requested that he be accompanied to the barangay captain. Before proceeding to the barangay captain, they drank one bottle of beer grande in the store of a certain Pabalolot at Luyong Bonbon, Opol. Rene Actub and the accused proceeded to the house of the barangay captain but when they found out that he was not there, the accused went home. At 10:30 he felt restless and he went back to the poblacion and drank another bottle of beer grande. While they were drinking, Alma Mahusay, common-law wife of the accused, passed by and informed the accused that she was going to the center. He stood up and followed Alma Mahusay and offered to go with her she refused saying, 'Don't go with me because you are drunk' (TSN, p. 9, Feb. 8, 1990). When Joseph Rabanes insisted that he will accompany his wife, she did not anymore proceed to the center but instead she went home. The accused maintained that he was not drunk at the time. He had just taken substantial amount of beer. Feeling restless and lonely in their house because Alma Mahusay went to the house of his elder sister, the accused left their house and on his way to the poblacion he saw a woman walking ahead. Thinking that he knew the woman, he walked faster in order to catch up with her and tease her. Catching up with the woman, the accused held her but she shouted and when he looked at her, she was not the person he thought he knew. So he let her go but the woman shouted again asking for help. Then the accused asked her where she came from and she answered that she is from this place and she stopped shouting but she was still

crying. The accused said, 'Why is it that I have not seen you before?' and the woman answered that her husband is from Opol. When the name of her husband was mentioned, the accused told her that he knows her husband because they had been fishing together before. Further questions elicited the information that the woman came from the house of her brother-in-law in order to get a chicken. The woman said, 'Why did you do this to me when I have a problem?' And when the accused asked her what her problem was about, the woman answered, 'It is the birthday of my daughter.' 'If you will go with me, your problem will be solved', the accused said. The woman answered, 'Now that you have done this to me I might as well go with you'. At this point the accused offered Angelina P100.00 if she will have sexual intercourse with him. She agreed and they went together into the bushes about 500 meters from the trail. Angelina voluntarily took off her skirt which she placed on the ground. Then she removed her panty while the accused took off his pants and brief and they made love. At about 12:00 o'clock noon after making love Angelina told the accused to get the chicken which was left at the trail because she was afraid that it might be seen by somebody. The chicken was nowhere to be found at the place where it was left. She went back to where Angelina was waiting and seeing that she was still undressed, he made love with her again. After the second sexual intercourse, both of them stood and dressed and Angelina asked for her fee of P100.00. The accused took his wallet and gave her only P30.00 because that was the only amount he had but Angelina said, 'It is good enough for my fare in going home.' Then, they parted ways." (pp. 20-23, Rollo)

After trial, judgment was promulgated on May 9, 1990, finding the accused guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the decision reads:

"WHEREFORE, the court finds accused JOSEPH RABANES guilty beyond reasonable doubt of the crime of Rape under Article 335 of the Revised Penal Code and hereby sentences said accused to suffer the penalty of Reclusion Perpetua.

"The accused is ordered to pay the complainant, Angelina Naallatan the following sums:

- 1) P50,000.00 representing moral damages;
- 2) P20,000.00 representing exemplary damages; and
- 3) P1,080.00 for litigation expenses.

"SO ORDERED." (p. 24, Rollo)

From the judgment of conviction, accused-appellant, through counsel, filed a notice on appeal dated May 16, 1990 (P. 103, Records).

In this appeal, the accused raised the following assignment of errors:

I. IN FINDING THAT THE ACCUSED USED FORCE AND INTIMIDATION ON THE PERSON OF THE VICTIM, CONTRARY TO THE EVIDENCE PRESENTED;

II. IN GIVING TOTAL CREDENCE TO THE TESTIMONY OF THE VICTIM, DESPITE INCONSISTENCIES IN MATERIAL MATTERS;

III. IN CONSIDERING THE ACCUSED'S PREVIOUS CRIMINAL CASE WHEN THERE WAS VEHEMENT OBJECTION TO ITS CONSIDERATION, THE SAME NOT HAVING BEEN TESTIFIED TO BY THE ACCUSED IN HIS TESTIMONY DURING THE EXAMINATION-IN-CHIEF AND IS VIOLATIVE OF HIS RIGHTS.

IV. IN FAILING TO APPRECIATE THE STATE OF INTOXICATION OF THE ACCUSED AS A MITIGATING CIRCUMSTANCE, GRANTING ARGUENDO THAT HE IS GUILTY OF THE ACT COMPLAINED OF, IN DETERMINING THE IMPOSABLE PENALTY.

According to the accused-appellant, the trial court erred in finding that he used force and intimidation on the person of the victim. The evidence solely relied upon by the trial court which was the medical certificate (Exhibit J) issued by Dr. Lao of the Department of Surgery of the Northern Mindanao Regional Training Hospital and which bore the following findings: confluent abrasion ant. neck, right multiple abrasion forearm left M/3rd, does not support in any way the assertions of the victim that various forms of force and intimidation were committed on her person by the accused-appellant. The victim also claimed that she was slapped several times by the accused-appellant. If her claim was true, there would have been marks or injuries on her face.

The trial court found and We affirm that violence was used in the commission of the offense. This fact is bolstered not only by the injuries found on the neck and forearm of the victim but also by the presentation in evidence of her torn panty, soiled blouse and skirt and the testimonies of the prosecution witnesses (TSN, December 19, 1989, pp. 22-24).

It is true that the medical certificate on the extra-genital examination conducted on the victim, issued by Dr. Mario Lao of the Northern Mindanao Regional Training Center, showed that the only injuries found on the victim was:

DIAGNOSIS/FINDINGS:

- Confluent abrasion ant. neck right
- multiple linear abrasion forearm left M/3rd.

This does not mean, however that no force or violence was used on the victim by the accused-appellant to consummate the crime. The finding of confluent abrasion on the anterior right neck confirmed the testimony of the victim that the accused-appellant suddenly squeezed her neck from behind her. The only other injury, multiple linear abrasion, left forearm, which as testified to by Dr. Lao may have been caused by a pointed or sharp object, was also consistent with her testimony that she grappled with the accused-appellant in the bushes and the cogon grasses.

While the victim testified that she was slapped many times by the accused-appellant, which caused her to become unconscious, the doctor found no trace or injury on her face. The absence of any injury or hematoma on the face of the victim does not negate her claim that she was slapped. Dr. Lao also testified that if the force was not strong enough or if the patient's skin is normal, as compared to other patients where even a slight rubbing of their skin would cause a blood mark, no hematoma will result (TSN, Dec. 19, 1989, p. 10). But, even granting that there were no extra-genital injuries on the victim, it had been held that the absence of external signs or physical injuries does not negate the commission of the crime of rape (*People v. Abonada*, G.R. 50041, Jan. 27, 1989). The same rule applies even though no medical certificate is presented in evidence. Proof of injuries is not necessary because this is not an essential element of the crime.

The settled rule is that appellate courts will not disturb the trial court's findings as to the credibility of the witness, the latter court having had the opportunity to observe carefully her deportment and manner of testifying. It is likewise settled that when a woman says that she had been raped, she says in effect all that is necessary to show that she had been raped, and if her testimony meets the test of credibility, the accused may be convicted on the basis of the victim's testimony. The reason given is that a rape victim would not publicly disclose that she had been raped and undergo the troubles and humiliation of a public trial if her motive was not to bring to justice the person who abused her (*People v. Saldivia*, G.R. No. 55346, November 14, 1991). Not only was the victim's testimony credible, it was supported by the testimony of other prosecution witnesses: 1) Felicito Cabasan testified that he saw the accused-appellant squeeze the neck of the victim while the latter struggled and shouted for help; 2) Belen Paclar; sister-in-law of the victim, testified that at about 11:00 o'clock in the morning of the same day, the

victim came to her house; that she looked pale, had bruises in her arm and her hair was in disarray and that she reported that a man, whom she described as short, of fair complexion and stocky, raped her. She then proceeded to the house of Barangay Kagawad Roman Ibajay to report the matter (TSN, Dec. 18, 1989, pp. 92-94); and 3) Barangay Kagawad Ibajay testified that Belen Paclar was frantic when she arrived in his house to report the rape of her sister-in-law. (TSN, December 18, 1989, p. 107); that they fetched the victim from the house of Paclar and then proceeded to the police headquarters (Id., p. 110) and that he noticed the mud in the clothes of the victim when they were in the police station (Id. p. 115).

In contrast, the testimony of the accused-appellant was incredible. There being no evidence that the victim was a woman of ill repute, it is hard to believe that she, a married barrio woman would intimate to a stranger to have sex with him for a fee of P100.00 in the same barrio where her relatives and in-laws reside. It is likewise hard to believe that she would abandon the chicken she purposely sought for her daughter's birthday and have sex with the stranger two (2) times when she knew that it was already 12:00 o'clock noon and her daughters were waiting for her. Moreover, if it were true that she had sex willingly with the accused for a fee, she would not have immediately reported to her sister-in-law that she was raped. It is noteworthy that she spared not a minute after the accused-appellant left and reported the matter to the sister of her husband. In fact, she was still trembling in fear, her face was pale and her hair was in disarray when she arrived that noon at her sister-in-law's house. Her appearance in that state tells of a woman who had just had a very disturbing experience.

The appellant also complained that the testimony of the victim was replete with inconsistencies. First, he pointed out that the victim claimed in her testimony that when the accused caught up with her in the pathway, he squeezed her neck, slapped her and she fell to the ground. Thereafter, he threatened to hit her head with a stone. On cross-examination however, she said that the accused dragged her away from the bushes some 45 meters from the pathway where the rape was committed. Secondly, he pointed to the fact that the victim claimed in her affidavit that Belen Paclar accompanied her to the house of Barangay Kagawad Ibajay. However, in her direct testimony, she said Paclar went alone to the house of Ibajay but later she fetched the victim. Thirdly, he also argued that in her affidavit, the victim claimed that at that time she was shouting and screaming, two persons witnessed the incident but in her testimony she claimed that there were no persons in the vicinity.

These matters which the accused-appellant pointed out as inconsistencies in the testimony and affidavit of the victim were more apparent than real. The accused-appellant chose to take and consider her statements independently from each other instead of taking and considering them together to complete a picture. The failure of the victim to relate in detail the things done to her did not lessen her credibility. Instead it indicated her sincerity, candor and lack of outside suggestion.

Admittedly, her testimony on direct examination was incomplete and couched in general terms. She only testified that the accused-appellant squeezed her neck from behind and slapped her; then she fell to the ground and the accused succeeded in having sex with her against her will. Her failure to disclose that she was not actually raped in the pathway but was dragged some 45 meters away into the bushes and cogon grasses was not intentional. Sometimes, witnesses had to be aided in order to elicit from them a detailed account of the incident. However, if her testimonies would be taken together, as the trial court did, it was clear that the victim was walking along the trail or pathway when the appellant caught up with her, squeezed her neck, slapped her and dragged her some 45 meters away from the trail and into the bushes and raped her there.

Anent the matter of whether the victim and Belen Paclar went together to the house of the Barangay Kagawad or that Belen went first and then fetched the victim later, this was clarified by both witnesses and the kagawad himself. It was only Belen who first went to the house of Ibajay and the victim was fetched later and the three of them, including the kagawad, proceeded to the police headquarters.

The victim knew that there were no persons in the vicinity who saw the incident. She did not know that actually, two (2) persons saw her and the accused at the commencement of the incident and heard her cry for help. She told the truth in her direct examination that nobody witnessed the incident. The seeming inconsistency in her affidavit in which she answered that two (2) persons witnessed the incident, namely, Felicito Cabasan and Arsenio Monson was clarified and explained by the prosecution to mean that after the incident, she came to know that Cabasan and Monson heard her cry for help and saw her at the start of the incident but she herself did not see these persons.

It was error on the part of the trial court to consider the previous criminal charge for the same crime against the accused-appellant. The prosecution, through witnesses Belen Paclar and Romeo Ibajay tried to show that the accused-appellant had previously been charged of rape but that the same was dismissed for failure to prosecute. In criminal cases, the prosecution cannot at the outset prove the bad moral character of the accused. If the accused, however, in his defense attempts to prove his good moral character, then the prosecution can introduce evidence of his bad moral character at the rebuttal stage. This is intended to avoid unfair prejudice to the accused who might otherwise be convicted not because he is guilty but because he is a person of bad character (F.D. Regalado, Remedial Law Compendium, vol, 2, 1st ed., p, 844). Moreover, in the instant case, there was no conviction in the former charge, as the same was dismissed by the trial court. In the absence of conviction, the accused should be presumed innocent. It is clear, however, that the guilt of the accused was proven beyond reasonable doubt independently of the prosecution's showing that the accused was also charged with a similar crime sometime in the past.

Finally, the accused-appellant faulted the trial court for failing to appreciate intoxication as a mitigating circumstance. We do not agree with the appellant. For intoxication to be considered a mitigating circumstance, it should be of such a degree as to affect his mental faculties (People v. Liera, L-32147, March 17, 1978). Thus, if the amount of liquor the accused had taken was not of sufficient quantity as to affect his mental faculties, he was not in a state of intoxication (People v. Noble, 77 Phil. 93). In this case, the accused-appellant admitted that he drunk only three (3) glasses of beer (TSN, Feb 8, 1990, p. 11) and when asked if he was drunk at the time of the commission of the crime, he said, "I was not drunk but I drank a little" and again, "I just consumed liquor but I was not drunk." The accused himself admitted that he was not drunk and drinking three (3) small glasses of beer was not sufficient to affect his mental faculties.

The trial court ordered accused to pay complainant P20,000.00 representing exemplary damages. This is an error. Exemplary damages in criminal cases may be imposed when the crime was committed with one or more aggravating circumstances (Art. 2230, New Civil Code). Since none was proved in this case, the award thereof is not proper.

ACCORDINGLY, the decision appealed from is AFFIRMED except the award of exemplary damages which is hereby deleted.

SO ORDERED.

Narvasa, C.J., Cruz, Grino-Aquino, and Bellosillo, JJ., concur.

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