

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGUSTIN ABIERA ALIAS “AGOT,” DEFENDANT-APPELLANT.

G.R. No. 93947. May 21, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

This is how Alma Villacacan, a 15-year old barrio lass at that time, awoke to the end of innocence.

At about 6:00 o'clock in the evening of June 25, 1984, she went to retrieve a goat she had earlier tethered to a tree near the house of her uncle, Agustin Abiera, in Barangay Opsan, Tobias Fornier, Antique. She heard him call her softly, saying he had something to ask her. In obedience, Alma approached Abiera. Without warning, the latter gripped her shoulder and suddenly hit her twice on the abdomen, causing her to faint. When she regained consciousness, she found herself lying half-naked on the floor inside Abiera's house. Abiera was sitting beside her, wearing only his briefs and holding her skirt and underpants. She felt pain all over her body, especially her private part, which was wet and bleeding.[1]

Realizing what had happened, Alma started crying, at the same time hitting and kicking Abiera in helpless rage. She called him a traitor and threatened to tell her father. Abiera covered her mouth with his hand and threatened to kill her if she reported the incident. He then handed her her clothes and sent her home.[2]

It was only on July 3, 1984, that Alma summoned enough courage to tell her parents about the rape. Enraged, her father Manuel Villacacan, together with his two sons, Jerry and Louie Villacacan, sought Abiera to avenge Alma's honor. They found him and hacked him, inflicting wounds on his right shoulder, nape and at the back of his right palm.[3]

Abiera proceeded to the hospital for treatment after first seeking refuge at the house of his uncle Espiridion Tacda. Manuel Villacacan went to the municipal building to surrender.

Alma submitted to a medical examination on July 12, 1984, with the assistance of Amparo David, a neighbor and friend. The examining physician, Dr. Maria Gracita Lañada, reported that Alma suffered a hymenal laceration which, however, had already healed, probably due to the lapse of seventeen days from the time the alleged injury was sustained. No spermatozoa were found at the time of examination.[4]

In his defense, Abiera denied the rape and claimed that the charge was brought against him by Alma in retaliation for the frustrated murder charge he had earlier filed against Manuel, Jerry and Louie Villacacan for hacking him. On cross-examination, however, he could not give any reason why the Villacacans would want to kill him. He also admitted that they had never had any previous altercation.[5]

Espiridion Tacda testified that Manuel Villacacan asked him to intercede for him and implore Abiera not to file any charge against him and his sons. He said he relayed this request to Abiera, who rejected it, whereupon Alma's father threatened to file the rape case against him.[6]

The defense showed that the complaint for frustrated murder against Manuel, Jerry and Louie Villacacan was filed on July 11, 1984, whereas the criminal complaint for rape against Abiera was filed by Alma Villacacan only on August 29, 1984.

The trial court was not persuaded by the defense. After considering the evidence of the parties, Judge Bonifacio Sanz Maceda of the Regional Trial Court of Antique found Abiera guilty of the crime of rape against Alma Villacacan, under Article 335, paragraph 2, of the Revised Penal Code, and sentenced him to “reclusion perpetua or life imprisonment.”[7]

The appellant now faults the trial court for (a) giving weight and credence to the improbable and conflicting testimony of the private complainant, (b) convicting the accused-appellant of the crime of rape under Article 335, paragraph 2, of the Revised Penal Code and (c) not acquitting the accused-appellant on the ground of reasonable doubt.

Abiera argues that there was no evidence to show that he was caught in the act of having sexual intercourse with the complainant nor was there any clear or convincing testimony that he had carnal knowledge of her. He says it does not follow that he raped her simply because she found herself at his house, allegedly without her undergarments and with her vagina bleeding.

The appellant invokes Article 335 of the Revised Penal Code, providing as follows:

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

- 1) By using force and 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 shall be present.

x x x

His position is that the vital element of carnal knowledge has not been proven by the prosecutor. Furthermore, it was erroneous for the trial court to convict him of rape committed when the victim was deprived of reason or otherwise unconscious, in violation of Article 335, paragraph 2, when this particular mode was not charged in the information. The allegation therein was that he had carnal knowledge of Alma Villacacan by means of force, violence and intimidation under paragraph 1 of the said Article.

The appellant maintains that he cannot be convicted of rape committed under one mode when the information alleged another mode. He cites the case of *People v. Pailano*,[8] where this Court held that to convict the appellant on the finding that he had committed rape while the victim was unconscious or otherwise deprived of reason - and not through force and intimidation, which was the method alleged - would violate his constitutional right to be informed of the nature and cause of the accusation against him.

That case works against the appellant. In *Pailano*, this Court impliedly recognized that an accused charged with rape through one mode of commission may still be convicted of the crime if the evidence shows another mode of commission provided that the accused did not object to such evidence. The Court said:

It may be argued that although initially deficient, the criminal complaint was deemed corrected when the prosecution introduced evidence on the complainant's mental condition and the defense did not object, thereby waiving the procedural defect. Even so, the charge has not been adequately established.

The prosecution presented evidence to show that Abiera had carnal knowledge of the complainant when by means of force, violence and intimidation, he boxed her in the stomach, causing her to lose consciousness, after which he violated her. When Alma regained consciousness, the outrage had already been committed. Her deshabelle, her bleeding vagina, the near-naked man beside her - all these reasonably indicated that Abiera had deflowered Alma while she was unconscious. The defense did not object to the presentation of evidence to establish all these circumstances.

The Pailano case is different from the case at bar because it has been proven that Abiera had carnal knowledge of Alma after rendering her unconscious. Pailano was acquitted because it was not established that he used force and intimidation upon the complainant or that the girl was mentally deficient.

The appellant assails the finding of the trial court that the hymenal laceration was due to the rape and submits that it could have been caused by severe physical exertion like biking, horseback-riding, or mere passage of blood clots during menstruation, in view especially of the lack of spermatozoa in Alma's genital organ.

We have held in a number of cases that the presence or absence of spermatozoa is immaterial since it is not ejaculation but penetration, however slight, which constitutes the crime of rape.[9]

Furthermore, it is unlikely that spermatozoa would still remain in the victim's genital organ after the lapse of 17 days from the commission of the rape.

Alma's delay in reporting the rape was due to the threat of death made upon her by the appellant, who lived only 55 meters away from her house. Moreover, it is not uncommon for young girls to conceal for some time the assault on their virtue because of the stigma that unfairly attaches to any maiden whose chastity has been stained, even against her will.

In *People v. Santiago*, [10] we held that the lapse of the period of 35 days before the victim finally reported the sexual abuse committed against her by the accused could not render her testimony doubtful. In the case at bar, Alma reported her rape to her father on July 3, 1984, or only 8 days after its commission.

Alma also explained that it took her several days after the rape before she submitted to medical examination because nobody had suggested that she go to a doctor. She decided to be examined only when her friend, Amparo David, advised her to do so and offered to accompany her.

Her parents were of no help to her because her father was then already in prison for the hacking of the appellant, while her mother was attending to her young sister. The same reasons explain the lapse of about two months before she could file the criminal complaint for rape against Abiera.

The Villacans attacked Abiera on July 3, 1984, the very day Alma informed her father of the crime perpetrated against her by the appellant. They wanted to avenge the dishonor he had brought upon their family. Abiera himself could not give any reason why the Villacans would make an attempt on his life, considering that they had had no previous dispute and that they were neighbors and even related to each other.

The inconsistencies between Alma's testimony and the statement she gave during the preliminary examination are minor discrepancies that do not detract from the substance of her narration. True, a rape victim cannot push out of her mind the violent attack upon her chastity but she is nevertheless not expected to remember all the sordid details of that traumatic experience.

It is difficult to believe that an unmarried woman would complain about her debauched honor, allow the examination of her private parts and permit herself to be the subject of a public trial, unless she was motivated by an honest desire to seek justice.[11] Alma was a naive 15-year old maiden when her innocence was defiled. The

story of her violation was not concocted out of thin air by a worldly-wise woman but was a painful account of how, a virgin when she fainted, she awoke to find her maidenhood outraged.

We hold that the trial court did not err in finding the appellant guilty beyond reasonable doubt of the crime of rape against Alma Villacacan, punishable under Article 335, paragraph 2 of the Revised Penal Code. It erred, however, in sentencing him to the penalty of “reclusion perpetua or life imprisonment” as the two penalties are not synonymous. Life imprisonment does not carry the accessory penalties attached to reclusion perpetua. The proper penalty is reclusion perpetua, to which the Court will add a civil indemnity of P30,000.00 to be paid to the ravished victim.

ACCORDINGLY, the appealed decision is AFFIRMED as above modified, with costs against the accused-appellant.

SO ORDERED.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] TSN, September 23, 1985, pp. 15-24, 32.

[2] Ibid., pp. 24-26.

[3] Id., p. 55; January 20, 1987, pp. 4-5.

[4] TSN, September 23, 1985, pp. 6-7.

[5] TSN, January 20, 1987, pp. 9, 22, 25.

[6] TSN, May 26, 1987, pp. 5-6.

[7] Records, pp. 333-339.

[8] 169 SCRA 649.

[9] People v. Banayo, 195 SCRA 543; People v. Tongson 194 SCRA 257; People v. Yambao, 193 SCRA 571.

[10] 197 SCRA 556.

[11] People v. Patilan, 197 SCRA 354; People v. Yambao, *supra*.

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