

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. RENE PACIENTE, DEFENDANT.

G.R. No. 94309. June 18, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

For Norma Dulfo, the events that unfolded on that fateful night of April 23, 1985 were indelibly etched in her memory. So painful were these psychologically and physically, that she vowed to pursue her aggressor and seek justice before our courts of law.

This is her story as established by the lower court:

At the instance and invitation of her two cousins Hayde Abelarde and Lydia Ditomas and after securing the permission of her parents, Norma Dulfo, 18 years old and a resident of Anoring, Sara, Iloilo, attended a fiesta at the neighboring town of Talisay, arriving there on April 23, 1984, at 9:30 o'clock in the morning. Upon arrival, the cousins went to the house of Lydia and then proceeded to the house of Nilda Aquilisca whose daughter Angustia was a close friend of Norma. Shortly thereafter, both Hayde and Lydia returned to their respective homes leaving behind Norma, at the house of Nilda where she took her lunch.

At around 4:30 o'clock, accused Rene Paciente visited Norma and invited her to his father's house where he and his wife, Juditha Ditomas, resided. By reason of their relationship by affinity, Juditha being a second cousin of Norma, and due to accused's insistence, Norma accepted the invitation.[1] Thereafter, accused and complainant went to the house of Rene Paciente's father, the barangay captain of Talisay, Sara, Iloilo. She was entertained by the Paciente family and ate her supper with them. On her way back to Nilda Aquilisca's house, she was accompanied by Juditha Ditomas.

At Nilda's house, she waited for Hayde Abelarde and Lydia Ditomas until 9:00 p.m. when Angustia arrived and invited her to accompany her group to the dance hall. Not long after, a commotion ensued involving the throwing of empty bottles which prompted her to return immediately to the house of Nilda. Since there were lots of people milling around Nilda's house,[2] she dropped by the house of Magelina "Mali" Paciente, sister of the accused, where she rested for forty-five minutes.

Proceeding to Nilda's house, Norma learned that her host was still at the dance hall. While she was about to go upstairs, the accused arrived. Rene informed Norma that his wife asked him to search for her as the former was concerned about her safety. To support his statement and to inspire belief in him, Rene offered to bring her home aboard his motorcycle. Actually, it was Norma's original plan to sleep overnight at Nilda's house but since Nilda's place was just 50 to 80 meters away from the dance hall where the commotion happened, she decided to return home to Anoring, Sara.[3] Though it was already past 11:30, Norma decided to accept Rene's invitation by riding at the back of his motorcycle. Being the husband of her second cousin, she reposed trust and confidence in him and even called him "Toto." [4] Norma wanted to inform Nilda, her host, of her departure but she was not there.

While on the way, Rene suddenly turned his bike away from the direction of Sara and told Norma that they were going to get something from the house of a certain person named Pedro, before proceeding to Anoring. On their way, Norma observed that they were taking the hilly road to Baclayan. Desolate and uninhabited, the terrain leading to Lemery had cogon grasses growing by the roadside. Upon reaching the junction where the old and the new road converged, Rene turned towards the unused old road. Astonished, Norma asked where the house of Pedro was, to which Rene replied that it was just located opposite the bridge. Upon their arrival, accused immediately took hold of both hands of the complainant. She struggled to free herself but accused caught her. Rene then told her, "before others could seduce or deflower her, it should be he to do it first." (sic)[5] Holding both her hands, Norma was forcibly pulled and dragged towards the hill. Her shouts were of no avail. In her defense, she scratched the face of the accused. In the process, he reacted violently by forcibly removing her coloured pants and tearing complainant's blouse and panty. When Norma continued to struggle, accused boxed her, hitting her stomach and rendering her unconscious. After regaining consciousness, she discovered herself naked. She felt an unusual intense pain in her genital organ and found accused on top of her undulating. She tried to push away her aggressor but realized that she was too physically weak to defend herself.

After gathering her tattered clothes, she dressed herself. She told the accused that since he had already accomplished his prurient desires, all she wanted now was to return home. Accused agreed on the condition that upon passing Talisay where they came from, she would not shout or inform the police. Accused also threatened to kill her and her family if she told anybody about the incident. This threat instilled fear in her because accused was a bodyguard of the incumbent Municipal Mayor. Upon reaching the high school of Anoring, she was told to disembark. From there, she walked home. It was her sickly mother who opened the door for her. Confused and mindful of the threats of the accused, she slept in their living room instead of proceeding to her own bedroom.[6]

Early morning of the 24th, Norma, fearful for her life and that of her family, boarded a Garnet Express Bus for Iloilo City bringing inside her bag the torn clothing she had used the night before.[7] Aboard the bus, Bienvenido Tupas, a PC soldier noticed her crying and inquired as to what happened. She confided her story to him. Not knowing where she would go in the city, Tupas brought her to his aunt's house where she was fetched by her father that same night.[8]

At about 2:30 the next morning, Norma, accompanied by her father and sisters had herself physically examined at the Sara District Hospital.[9] Dr. Raul Baniyas, Medico-legal officer of said hospital, made the following findings:

-Abrasions right upper arm lateral aspect 2 cm in diameter;

I.E.

Nulliparous introitus

Vagina admits one (1) finger with ease

Patient is menstruating with menstrual blood noted on examining finger

Negative adnexal masses

Normal uterine size

No laceration, vaginal mucosal tear noted.

(Exhibit A, Records, p. 8).

On the 26th of April, Norma had herself investigated by PC Sgt. Dollete of the Intelligence and Investigation Unit, 321st PC Co.[10] depositing her torn clothing with him.[11] She also executed a statement before said

officer which contained the events of her alleged defloration.[12] The following day, on April 27, 1984, before Judge Rendon of the Municipal Circuit Court of Sara, Sgt. Dollete filed a criminal, complaint charging Rene Paciente of the crime of rape.[13] Thereafter, the Municipal Circuit Judge issued an arrest warrant. Accused was then detained at the PC Headquarters at Sara. After a week, through the intercession of Mayor Salcedo of Sara, accused was transferred to the INP police station at the poblacion of Sara.[14] On August 16, 1984, an information charging Rene Paciente for the crime of rape was filed by the First Assistant Provincial Fiscal of Iloilo before the Regional Trial Court of Iloilo.[15] Upon arraignment on October 24, 1984, accused pleaded not guilty.[16]

Meanwhile for fear of reprisal, the family moved and transferred to Arevalo, Iloilo City.

After trial, the Regional Trial Court found for the prosecution and ruled as follows:

"Wherefore, this court finds the accused RENE PACIENTE guilty beyond reasonable doubt for the crime charged herein, and hereby sentences him to suffer the penalty of reclusion perpetua; to indemnify the offended party NORMA DULFO the sum of P25,000 and to pay the costs." (Records, p. 302; penned by Judge Julian Y. Ereño)

Hence, this appeal, the issue being whether or not the trial court erred in convicting the accused on the basis of the evidence of the prosecution.[17]

Appellant, in attempting to destroy the veracity of complainant's testimony, attacks her statements made before the PC investigator and the Municipal Circuit Trial Judge who conducted the preliminary investigation which were presented to the trial court. Appellant points out the discrepancy in her statements where she declared before the trial court that the rape occurred shortly after 11:30 p.m. of April 23, 1984, but told the PC Investigator and the Municipal Circuit Trial Judge that the crime was committed at almost 2:00 a.m. of April 24, 1984.

We find no inconsistency between the two aforementioned statements. Such statements are in fact complementary for the evidence before us is clear that complainant left Nilda Aquilisca's abode in Barangay Talisay at around 11:30 p.m. of April 23, 1984 upon the promise of appellant to take her home to the poblacion of Sara. Instead of heading for Sara, appellant diverted his motorcycle towards Lemery. All these incidents happened after 11:30 in the evening of April 23, 1984. To recall, complainant recounted that she returned about 15 minutes before 4:00 a.m. of April 24, 1991. So the actual crime of rape happened between the hours of 11:30 p.m. of April 23 and 4:00 a.m. the following day.

Indeed, in testifying before the court, complainant lost her sense of time. Such minor lapses are to be expected when a person is recounting details of a harrowing experience. We must bear in mind that the offended party was testifying in open court, in the presence of strangers on an extremely intimate matter. The situation she found herself in may understandably have affected her narration of events.[18]

Analyzing the crime of rape, we note that the element of force was present in the crime committed herein. No better proof of such force could be offered than the torn clothes of the accused presented by Sgt. Dollete before the trial court which consisted of the following:

Exh. "B" Soiled pants with mud colored somewhat dark orange torn front portion;

Exh. "C" Blouse (lavender) torn with no more buttons and soiled with mud;

Exh. "D" Panty, colored white torn and smeared with blood and

Exh. "E" Brassiere colored flesh; strap torn with no more hooks but with eyelets remaining. (T.S.N. August 2, 1985, p. 7; Decision, p. 4).

Such force, employed by the accused as manifested by the torn clothes presented in court, was vehemently repelled by the complainant. In defending her honor and chastity, she scratched the face of her attacker.[19] This fact is supported by the testimony of complainant's sister, Nelvyn Dulfo, who on April 26, 1984 noticed three (3) downward linear abrasions on the right cheek and the neck of the accused when the latter was brought by PC Sgts. De la Cruz and del Castillo to the Sara PC headquarters.[20]

Thus, the circumstances of force and intimidation are manifested clearly, not only by complainant's testimony, but also by the physical evidence presented during the trial and the medico-legal report.[21]

To further destroy complainant's credibility, appellant questions her whereabouts on April 25, 1985. According to the complainant, after the commission of the alleged rape, she left for Sara, Iloilo in the early morning of April 24, 1984 aboard a Garnet Bus bound for Iloilo city where she met Sgt. Bienvenido Tupaz who brought her to his aunt's house. There she stayed the whole day of April 24, 1984 until the evening of the same day when she was fetched by her father.[22] However, according to Nelvyn Dulfo, complainant's sister, after arriving from Manila on April 25, 1984, she unexpectedly saw her father and sister Norma at the Garnet Bus Station and together arrived at Sara on the same day.[23]

The whereabouts of the offended party on the 25th does not disturb our earlier findings that rape was indeed committed. We are convinced that it was committed between 11:30 p.m. of April 23 and 4:00 a.m. of April 24, 1985. Whether the offended party returned to Sara on the night of the 24th with her father or arrived at Sara around 3:00 p.m. on the 25th with her father and newly-arrived sister from Manila is immaterial for these are subsequent circumstances not touching on the act of rape. Besides, the whereabouts of the offended party on the questioned dates cannot prevail over such evidences as the force which attended the commission of the crime as shown by the torn clothes, the positive identification of the offender by the offended party and the spontaneous narration of her story by the latter.

To strengthen his defense, appellant cites the absence of a semen test conducted by Dr. Bantias as being a point which should be taken in his favor.[24] However, such omission by the examining physician does not weaken the prosecution, for a sperm test is not a sine qua non for the successful prosecution of a rape case. The lack of spermatozoa does not even negative the crime of rape.[25] The important consideration in rape is penetration of the pudenda and not emission of seminal fluid.[26] In the case at bar, the penetration was adequately proven when she testified that her vagina was penetrated by her aggressor's genitalia. As a consequence, she felt pain in her genital organs.[27]

The fact that she appeared relaxed or normal during the medical examination is of no moment. Psychologically speaking, persons differ in their emotional reactions to a given situation. Not all women react similarly when subjected to the same force or intimidation. There is no standard form of behavior when one is confronted by a shocking incident, as the workings of the mind under stress are unpredictable.[28]

We agree with the Solicitor General's observation that a medico-legal examination hardly provides an opportunity for complainant to show her anger and indignation unlike in a court proceeding where an offended party is able to manifest her true feelings when face to face with her aggressor. In this connection, the court noted that whenever the name of the appellant was mentioned, she would break into tears and her voice would rise.[29]

It must be borne in mind, too, that when she was examined, twenty-four hours had elapsed since the time she was raped. By then, her emotions had already stabilized as she had already confided her humiliating experience to her father and sisters who lost no time in accompanying her to Dr. Bantias at 2:30 in the morning of April 25, 1984, notwithstanding earlier threats on their lives.

It is the main theory of the defense that the accused never left the dance hall premises on the night of the 23rd of April 1984 and alleged that, together with Sgt. Belonio and Noel Villaruel, they continued drinking until 5:00 in the morning of the following day when they decided to return to their respective homes.[30] Such a theory is hardly credible, for Mauricio Panes, testifying for the defense, said in his cross examination that accused was going in and out of the dance hall. Such observation is credible for it was Mauricio Panes who secured the place that fateful night.[31]

Moreover, it seems unusual that for a detained person who is anxious to regain his liberty, accused did not even bother to ask his drinking mates to testify to the effect that they were drinking with him at the dance hall on the night of April 24, 1985.[32]

Appellant's assertion that he did not leave the dance hall is obviously an alibi which this Court has invariably declared to be unconvincing and unsatisfactory. This cannot prevail over the positive identification of the complainant.[33] The test of physical impossibility to have been at the scene of the crime at the time of its commission has not been satisfied since appellant knows how to drive a motorcycle.

In addition, the pretensions of the accused that he used to have an amorous relationship with the complainant who was his former girlfriend,[34] does not sound credible because he did not even bother to substantiate it with love letters, tokens or gifts; nor was such relationship corroborated by his close acquaintances.[35]

The callous violation of the trust and confidence reposed by complainant in appellant as a relative by affinity, justifies a civil indemnity of P50,000.[36]

WHEREFORE, the decision of the trial court dated January 17, 1990 finding accused guilty beyond reasonable doubt and thereby sentencing him to suffer the penalty of reclusion perpetua is hereby **AFFIRMED**. Accused is also hereby ordered to **INDEMNIFY** the offended party Norma Dulfo the sum of P50,000.00 in light of recent jurisprudence.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] T.S.N., April 23, 1985, p. 15.

[2] Ibid., p. 23.

[3] Ibid, p. 25.

[4] T.S.N., March 12, 1985, p. 12.

[5] RTC, Decision, p.3.

[6] T.S.N., May 17, 1985, p. 16.

[7] Ibid, p. 17.

[8] Ibid, p. 18.

[9] Ibid, p. 19.

[10] T.S.N., May 5, 1985, p. 25; T.S.N., August 2, 1985, p. 3.

[11] T.S.N., August 2, 1985, p. 7.

- [12] Records, pp. 6-7.
- [13] Ibid, p. 5.
- [14] T.S.N., August 2, 1985, pp. 5-6.
- [15] Records, p. 1.
- [16] Ibid, p. 42.
- [17] Rollo, p. 49.
- [18] *People v. Mancilla*, G.R. No. 47628, May 15, 1989, 173 SCRA 373; *People v. Magaluna*, G.R. No. 66755, January 23, 1992.
- [19] T.S.N., May 17, 1985, p. 11.
- [20] T.S.N., October 11, 1985, p. 9.
- [21] *People v. Murallon*, G.R. No. 85734, September 13, 1990, 189 SCRA 488.
- [22] T.S.N., March 12, 1985, pp. 21-22.
- [23] T.S.N., October 11, 1985, pp. 4 and 6; T.S.N., October 11, 1985, pp. 15-17.
- [24] T.S.N., December 4, 1984, p. 10.
- [25] *People v. Baraca*, G.R. No. L-48360, June 24, 1985, 137 SCRA 148.
- [26] *People v. Sonico*, No. 70308, December 14, 1987, 156 SCRA 419; *People v. Managbanag*, No. 66550, November 27, 1987, 155 SCRA 669; *People v. Manaay*, No. L-47489, June 18, 1987, 151 SCRA 31;
- [27] T.S.N., May 17, 1985, p. 10; *People v. Bacalso*, G.R. No. 89811, March 22, 1991, 195 SCRA 557, 564-565; and *People v. Yambao*, G.R. No. 77778, February 6, 1991, 193 SCRA 571.
- [28] *People v. Soronio*, G.R. No. 94362, December 10, 1991.
- [29] Decision, p. 11.
- [30] T.S.N., January 8, 1988, p. 15; T.S.N., September 25, 1986, p. 10.
- [31] T.S.N., May 27, 1986, p. 27.
- [32] T.S.N., May 5, 1988, p. 2.
- [33] *People v. Tachado*, G.R. No. 34807, February 27, 1989, 170 SCRA 611.
- [34] T.S.N., January 8, 1988, p. 19.
- [35] *People v. Calubag*, L-38692, February 19, 1986, 141 SCRA 371.
- [36] *People v. Magaluna*, G.R. No. 66755, January 23, 1992.

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