

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANACLETO COLCOL, JR., ACCUSED-APPELLANT.

G.R. No. 94554. February 19, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The accused-appellant comes to this Court to protest his conviction, claiming that the evidence for the prosecution is implausible and should not have been given credence by the trial court. We agree. The evidence is less than substantial and far below the quantum required to overcome the constitutional presumption of innocence. We shall reverse.

The information against Anacleto Colcol, Jr. was for rape allegedly committed on Nora Escalona. It was filed with the Regional Trial Court of Urdaneta, Pangasinan, on November 11, 1987, on the basis of her original complaint dated December 19, 1986. After arraignment, trial was conducted successively by Judge Alfredo P. de Vera, Judge Benito A. Dacanay, and finally Judge Alicia G. Decano, who wrote the decision of the court.

Anacleto was at the time of the alleged incidents 24 years old and engaged in his family's business of duck farming. Nora was 14 and a second year high school student. They were neighbors in Barangay Sobol, Asingan, Pangasinan, living within a stone's throw of each other.

The complainant testified that sometime in the first week of March 1986, at about 6:30 in the morning, she was walking along the barangay road leading to her school when Anacleto confronted her. Without much ado, he dragged her into the bushes nearby and raped her.[1]

She said that the road was usually busy but there were no people at the time, and nobody saw their encounter. Anacleto was able to impose his will on her because he carried a balisong which he pointed at her neck. He kicked her when she tried to resist and he succeeded in deflowering her because he was much stronger than she was. The deed done, he threatened to kill her if she reported it to anyone.[2]

She said she bled during the first attack and her body was bruised and scratched. She did not proceed to her school but went back home instead because of her condition. Her parents were out and returned only in the evening. She told them nothing of her experience.[3]

One week later, she took the same road again on her way to school, and there was Anacleto again waiting for her. As before, no one else was on the road. Once again, he dragged her into the bushes, pointed his balisong at her, kicked her in the thigh, and then raped her. This was again followed by the expected death threat. Again she went back to her house and said nothing to her parents when they returned.[4]

Another week passed and Nora was again walking to school along the once more empty road, also at about 6:30 in the morning. And who should meet her again but her accustomed attacker, who was nothing if not consistent. Not surprisingly, Anacleto again pulled her into the bushes and then, applying his tried and tested technique, forced himself upon her. Then he again dismissed her with his now familiar threat.[5]

Nora said she became pregnant as a result of the rapes but she never told anyone about her condition, not even Anacleto. Incredibly, her parents did not notice her pregnancy until only on December 4, 1986, the very day she started laboring and delivered her baby. The boy died five weeks later and she named him in the death certificate as Joel Escalona Colcol, after Anacleto. She did this on her lawyer's advice.[6]

There was no medical evidence of her rapes because the doctor presented by the prosecution testified only to the fact of her delivery and estimated that it must have been conceived sometime in March 1986.[7] Nora's father, Saturnino Escalona, affirmed on the stand that he really learned of her pregnancy only on the day she delivered.[8]

Anacleto derided the charges against him and said he was in Lumayao, San Quintin, Pangasinan, at the time of the alleged rapes. He stayed there from February to April 30, 1986, attending to the pasturing of the ducks in their farm with his live-in partner, Bonifacia Caramat, whom he later married.[9] Juanito Antonio testified that the couple resided in his house and never left Lumayao during that period.[10] This was corroborated by Santos Badua, the caretaker of the compound near the alleged scene of the crime, who said he saw no one when the rapes were supposedly committed.[11]

The accused-appellant's father, Anacleto Colcol, Sr., supported his son's testimony that Saturnino Escalona offered to withdraw his daughter's complaint for P30,000.00. They said they rejected the offer because the charge was fabricated.[12] The defense also insinuated that Nora was a promiscuous girl and her child could have been sired by any of her several boy friends.[13]

The trial court, expressing the general suspicion of the alibi, dismissed this defense of the accused-appellant, noting that he had been positively identified by Nora, besides the fact that Lumayao was only 2 or 3 hours ride from Barangay Sobol. Judge Decano declared that Nora's "story was impeccable and rang throughout and bore the stamp of absolute truth and candor." She added that the complainant "was able to withstand the rigorous cross-examination and her answers were firm and steadfast." [14]

Her Honor was going by the record only because she did not conduct the trial when Nora testified on direct and cross-examination. Judge de Vera was the presiding judge then.[15] In fact, Judge Decano took over only during the concluding part of the trial, when Anacleto was under cross-examination before the defense rested.[16] She had no opportunity to observe the demeanor of the complainant - and all the other witnesses, for that matter - when she was on the stand.

What the Court gleans from its own examination of the same record is that Nora was confused, to say the least, if not actually lying when she narrated the supposed outrage to her honor. Her account of the three successive rapes is difficult to believe because of its many convenient coincidences and improbabilities.

Nora herself said that the barangay road where she and Anacleto met was usually busy but it was not so, providentially enough, during the three times he dragged her into the bushes. On none of the three occasions when this happened did anyone see their violent encounter on the inexplicably empty street.

It is said that once burned, twice careful, but Nora, if she is to be believed, having been raped the first time, willingly exposed herself to the same risk a second time, and then, not having learned her lesson yet, risked the same danger a third time. And so she was raped three times in as many weeks. For his part, Anacleto having succeeded once, decided to push his luck a second time and, grown more reckless with his success, even tried a third time. Thus he thrice impaled the hapless maiden with his manhood with weekly regularity.

It is noteworthy that all his attacks on Nora took place at 6:30 in the morning. Anacleto pulled her from the unusually deserted street and raped her, not in the hush and dusk of night but in the bright light of the sun.

The fact that Nora was only 14 years at the time does not mean that she was stupid or even only naive. A second year student would not have acted the way she did unless - assuming her account to be true - she really looked forward to Anacleto's attentions and willed the rapes to happen. The argument that there was no other way to the school does not convince the Court. It seems to suggest that she had to use the road by all means even if it meant that she had to pay costly toll with her own body.

And there was the school also - or the schools - that she said she was attending. First she said she was enrolled in the Barangay Sobol High School, where her uniform was a white blouse and a green skirt,[17] and then she said she was also enrolled in the Rizal Academy, where she had a white shirt and a blue skirt for her uniform.[18] She even named her teachers in both schools and the subjects they were teaching.[19] The prosecution explained that although she was enrolled in both schools, she was not really attending her classes but only pretending to do so because she was afraid of her father. To the Court, this duplicity of enrollment and the show of attending classes only reflect on the duplicity of Nora's character.

Nora said she did not denounce Anacleto because she was afraid of him but she remained silent even after learning that he had left Barangay Sobol and the impact of his threat had been removed or at least lessened. She also said she stopped attending her classes when her pregnancy began to show, yet her own father - and presumably also her mother - with whom she lived in the same house, did not notice her condition during the entire course of her pregnancy until the day she delivered.

The trial court said that Anacleto did not deny the rapes and noted that "he only made fun of the answer which was in answer to a funny question propounded by the defense." In fact, the Court also sees something comic, and also unbelievable in the following exchange between Nora and the defense counsel:

ATTY. RASILES

Q

Now, let us go back to that first intercourse. How did the accused remove your panty?

WITNESS

A

He kicked me, sir.

ATTY. RASILES

Q

When he kicked you, your panty was removed?

A

Yes, sir.

Q

How about during the second intercourse, did he kick you again?

A

Yes, sir.

Q

And when he kicked you, your panty was removed?

A

Yes sir.

Q

On the third intercourse, he again kicked you and your panty was removed?

A

Yes, sir.

Q

Now, what kind of panty were you using at that time of the first intercourse?

A

Red, sir.

Q

What part of your body was hit when he kicked your panty?

A

My thigh, sir.

Q

What thigh?

A

Left thigh, sir.

Q

You mean to say that when the accused kicked you, your panty was removed?

A

He intentionally kicked my panty off, sir.

The trial judge was also less than accurate when she said Anacleto did not deny the rapes. In fact, the transcript of stenographic notes dated April 16, 1990, plainly shows that he repeatedly denied the three rapes imputed to him. A little more care in the study of the record could have avoided this erroneous conclusion.

Nora's father explained that she filed her complaint against Anacleto only on December 19, 1986, because she was still recuperating from her delivery on December 4. But in our view, the delay should not have been counted from that latter date but earlier. The delay should have been counted from March 1986, when the rapes were allegedly committed, or at the latest, from the time Anacleto left Barangay Sobol and so removed or lessened the menace of his threat to kill her.

We cannot believe that Nora's parents did not notice her pregnancy although they were living together in the same house, and saw and talked to each other day after day during the entire term of her pregnancy. Nora herself said she stopped attending her classes because her pregnancy was beginning to show. She was afraid her classmates

would notice, yet her own father did not.

It would seem to us that after discovering Nora's pregnancy when she was no longer able to conceal it - and that was before she delivered - her parents would have asked her who had caused her condition, and having learned the culprit's identity, confronted and accused him. The parents did this ultimately, true, but only after the delivery and presumably only as an afterthought. It is also strange that Nora did not see fit to tell Anacleto about her pregnancy, a secret that one would naturally share with the person who had caused it.

The Court has said often enough that minor inconsistencies in the testimony of a witness may be disregarded if they do not impair the essential veracity of his testimony. In the case at bar, however, the flaws in the testimony of the complainant and her father strike at the very core of their credibility and strongly suggest that they were lying under their oaths.

Quite simply, the Court cannot accept Nora's testimony that she was raped three times in weekly succession under the unseemly circumstances she narrates, including the curious happenstance that the road where Anacleto met her, although usually busy, was exceptionally deserted each of the three times he dragged her into the bushes and ravished her; the almost magical way her red panty dropped when he kicked her in the thigh to denude her; the time of the alleged rapes, which were supposedly committed not under cover of darkness or solitude but in broad daylight in the early morning when people were already up and about; and the incredible blindness of Nora's parents, who were living with her in the same house but did not notice her pregnancy until the very day she delivered. These improbabilities, together with the minor oddities, like her being enrolled in two schools and not attending her classes in either, have injected the reasonable doubt that Anacleto raped her and caused her to be pregnant.

It cannot be said often enough that the accused is entitled to the constitutional presumption of innocence which may be overcome only with proof beyond reasonable doubt that he is guilty. His conviction must be based on the strength of the prosecution and not the weakness of the defense. Stated otherwise, it is for the prosecution to prove that he is guilty, not for the accused to prove that he is innocent. It is part of the rule that if the prosecution fails, it fails utterly with the inevitable consequence that the accused must be set free.

So it must be in the case at bar. As the Court sees it, the evidence for the prosecution is not credible enough to sustain the accused-appellant's conviction and must therefore be rejected. Even if it be assumed that his alibi is indeed weak, he must just the same be absolved and released at once. The reason is that the evidence of the prosecution, as the record plainly shows, is even weaker.

WHEREFORE, the challenged decision is reversed and the accuse-appellant Anacleto Colcol, Jr. ACQUITTED. It is so ordered.

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

[1] TSN, March 3, 1988, pp. 4-8.

[2] Ibid., pp. 6-8.

[3] Id., pp. 5, 7, 10.

[4] id., March 3, 1988, pp. 22-23, 30-31; May 9, 1988, p. 3; July 11, 1988, p. 5.

[5] id., March 3, 1988, pp. 22-23, 30-31; July 11, 1988, p. 5.

[6] id., March 3, 1988, pp. 10, 26.

- [7] *id.*, February 1, 1988, pp. 3-4.
- [8] *id.*, August, 10, 1988, p. 3.
- [9] *id.*, April 16, 1990, pp. 9-10.
- [10] *id.*, January 18, 1989, pp. 3-5.
- [11] *id.*, p. 8.
- [12] *id.*, January 19, 1989, p. 6, April 16, 1990, p. 15.
- [13] *id.*, January 19, 1989, p. 7.
- [14] Decision, p. 6; Rollo, p. 29.
- [15] Appellant's Brief, p. 2; TSN, March 3, 1988, p. 1.
- [16] Appellant's Brief, p. 2; TSN, June 19, 1990, p. 1.
- [17] TSN, March 3, 1988, pp. 9-10.
- [18] *Ibid.*, July 11, 1988, p. 2.
- [19] *id.*, March 3, 1988, pp. 15-17; July 11, 1988, p. 3.

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