

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN LIM Y ORTIZ, ACCUSED-APPELLANT.

G.R. No. 95753. February 12, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Special Criminal Court, Regional Trial Court of Quezon City, Branch 88 in Criminal Case No. Q-56248 entitled “People of the Philippines v. Ruben Lim y Ortiz” finding the accused guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to pay moral damages amounting to P50,000.00 and to pay the costs of the suit.

The accused, Ruben Lim y Ortiz, was charged with the crime of rape in an information as follows:

“That on or about the 5th day of December, 1986 in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there, wilfully, unlawfully and feloniously, by means of force and intimidation through the use of a gun, had carnal knowledge with DELAILAH LIM Y GARCIA, without her consent and against her will, to her damage and prejudice in such amount as may be awarded to her under the provision of the Civil Code.” (Rollo, p. 6)

On the basis of said information, a warrant of arrest was issued on February 29, 1988. The accused, however, remained at large until April 22, 1988 when he surrendered for arraignment. He entered a plea of not guilty.

The prosecution’s version, as narrated in complainant’s Memorandum below and as adopted by the lower court in its decision is as follows:

“On December 4, 1986 at about 6:00 o’clock in the evening, accused Ruben Lim went to the house of the complainant at Barrio Palanas, Barangay Vavra, North Karen Saguban, (sic) the sister of the complainant to allow the latter to go and stay temporarily in his house so that the accused may go to Lucena City as his brother-in-law, Efren Mansion, was shot to death and no one would take care of the house as all the household members proceeded to Lucena City to attend the wake of their dead relative. Karen allowed her sister Delailah to go and stay in the house of the accused for the purpose of taking care of the house.

At about 8:00 o’clock p.m., Delailah left for the house of the accused. When the complainant arrived there at, (sic) the accused told her he would be leaving for Lucena City the following day. He told Delailah to sleep upstairs as he would sleep downstairs. When Delailah learned that the accused would not be leaving for the night, she asked permission to go home but she was told by the accused not to leave as he would be leaving early morning.

At around 9:00 p.m., December 4, 1986, Delailah went to sleep upstairs believing that the accused would leave the following morning, but at about dawn of December 5, 1986, she felt somebody touching her. When she woke she saw Ruben doing the acts. Ruben Lim immediately covered her mouth with his left hand, and pulled her hair with his right hand, and tried to push down Delailah but as the latter was trying to resist and fight him, the accused told her not shout (sic) otherwise he would kill her and her family specially the father who is suffering from a heart ailment. Accused drew his firearm from his right waist and poked it at the neck of the

victim. The firearm was a .38 revolver. There was light coming from the electric post at the time of the incident. While the .38 caliber revolver was poked at her neck, the accused continued threatening her. The complainant believed the threats since when the accused was still single, he was charged with frustrated murder in the province, and in Manila, the accused has a string of cases and capable of carrying out his threats (sic). When Delailah tried to resist, accused hit her stomach and the accused removed (hinablot) the panty of Delailah. Accused pressed the thigh of Delailah. Accused placed his finger on the private part of the complainant, trying to loosen it. Accused succeeded in having a sexual intercourse with the complainant despite the strong resistance and her plea not to do so, since they were cousins. Accused even said 'Anong pinsan-pinsan, walang pinsan-pinsan sa akin, kaysa iba pa ang mauna, ako na lang ang uuna.' After the sexual intercourse, accused again threatened Delailah not to report to anybody or else he would kill her and that of her family (sic) and the complainant believed such threat.

Before Delailah left the house of the accused, the latter showed an armalite and continued to threaten her. In the morning of December 5, 1986 complainant was allowed to leave but she did not reveal to anybody what happened to her for fear of being killed. For several months after the commission of rape, the accused frequently visited private complainant to repeat his threats. (TSN, 14 July 1988, p. 22) During those visits, accused released (sic) that Delailah Lim was pregnant with his baby. Accused begun insisting that Delailah Lim have an abortion. Private complainant refused and put a stop (sic) to Ruben Lim's harassment, she informed his wife and was told to obey the wishes of the accused for he is capable of carrying out his threats. (TSN, 14 July 1988, p. 24) Despite complainant's continued refusal, accused, with the aid of his sister, Virginia Lim, succeeded in bringing Delailah to an abortionist - known to complainant as Aling Maring. On June 21, 1987, Delailah Lim had the abortion. Even as this happened, complainant could not bring herself to report the case as she remained afraid of the accused. She only revealed that she was raped by the accused when she learned that the accused was detained (but was subsequently released) for illegal possession of firearms which was on October 7, 1987. On the following day, private complainant was accompanied by her sister to the police station to file her complaint for rape against the accused who was there held in custody. Delailah executed a written complaint (Exhibit A) and submitted herself to medical examination by Doctor Moraleda of the Philippine Constabulary Crime Laboratory.

Preliminary investigation was conducted by the Assistant City Fiscal and accused submitted his counter-affidavit and rejoinder affidavit. On November 23, 1987, complainant filed another case against the accused this time on intentional abortion with one 'Aling Maring', the abortionist as co-accused. On February 5, 1988, the information was file (sic) in the sala of Judge Velasco with no bail recommended. Acting on this information, a warrant of arrest was issued with no bail recommended. The warrant of arrest returned unserved as the accused remained at large. During the period when the accused eluded arrest, accused threatened his uncle - Atty. Eldorado Lim, who was suspected of aiding the complainant. Ruben Lim warned Atty. Lim that he would spray the lawyer's house with armalite (sic) if he could not convince Delailah to withdraw the cases filed against him. Atty. Lim yielded and called Delailah and her sister, Karen, to execute an affidavit of desistance. With great reservation Delailah executed on March 1, 1988, an affidavit of desistance on the rape case and on March 8, 1988, a separate affidavit of desistance for the case of intentional abortion. As result of the affidavit filed, the case of intentional abortion was dismissed, and upon arraignment of the accused for the rape charge, bail was granted. On the same date of arraignment, a motion for reconsideration of order granting bail was filed by Delailah. This petition, however, was held in abeyance until the prosecution has presented evidence. On April 28, 1988, complainant executed a 'Sinumpaang Salaysay' (Exh. F) explaining that the affidavit of desistance was involuntary and executed under duress and meant to hasten the capture of the accused who would have believed that the case against him would be dropped. (Memorandum submitted by complainant. pp. 1-5)" (Rollo, pp. 28-31)

The defense, on the other hand, claims that at the time of the alleged rape on December 5, 1986, the accused was in Lucena City attending the wake of his brother-in-law, Efren Mansion. He claims, further, that he stayed in Lucena City from November 29, the start of the week-long vigil for his brother-in-law, until interment on

December 6. The only time he left Lucena City was in the morning of December 5, 1986 to attend a preliminary investigation before Fiscal Silverio in Quezon City set at 2:00 o'clock that afternoon for a theft case he filed against A. Paran and W. Paran. He was, allegedly, even with his wife and children when he left for Quezon City since his wife had to buy a few things to be used at the wake. His wife returned to Lucena City that same afternoon while he left Quezon City early in the morning of December 6, 1986 with Jose Bacay, his second degree cousin and Atty. Eldorado Lim, his uncle.

The lower court gave full faith and credit to the prosecution's version and rendered the herein questioned decision. Hence, the present appeal with the accused-appellant raising the following assignment of errors:

"I. THAT THE TRIAL COURT OVERLOOKED FACTS OF SUBSTANCE AND VALUE WHICH, IF CONSIDERED, MAY AFFECT THE RESULT OF THE CASE THAT INSTEAD OF CONVICTION THERE SHOULD HAVE BEEN AN ACQUITTAL OF THE ALLEGED CRIME OF RAPE.

II. THAT THE TRIAL COURT COMMITTED A SERIOUS ERROR IN NOT CONSIDERING THE DEFENSE OF ALIBI, WHERE IT HAS BEEN ESTABLISHED THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO BE AT THE SCENE OF THE ALLEGED CRIME AT THE TIME OF ITS COMMISSION.

III. THAT THE TRIAL COURT COMMITTED A SERIOUS ERROR IN FINDING THAT THE ACCUSED, RUBEN LIM Y ORTIZ, IS GUILTY OF THE CRIME CHARGED BEYOND REASONABLE DOUBT."

(Brief for the accused-appellant, p. 87)

In *People v. Yambao*, (193 SCRA 571 (1991), this Court had occasion to state once more the three settled principles to guide an appellate court in reviewing the evidence in rape cases, to wit: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

After a very careful examination of the records with the foregoing principles in mind, this Court has arrived at no other conclusion but that the present appeal must fail.

It must be noted that the issues raised in this appeal are factual and the appellant has not presented any compelling reason that would warrant the reversal of the findings of facts of the lower court. It is a settled principle that factual findings of trial courts are accorded utmost respect, in the absence of arbitrariness, since they had the opportunity to observe the demeanor and deportment of witnesses. (*People v. Raptus*, G. R. Nos. 92169-70, June 19, 1991; *People v. Tongson*, 194 SCRA 257 [1991]; *People v. Calixtro*, 193 SCRA 303 [1991]; *People v. Rafanan*, 182 SCRA 811 [1990])

The appellant's primary defense is alibi with his wife and sister corroborating his testimony. It has long been recognized that alibi is an inherently weak defense which cannot prevail over the positive identification of the accused. (*People v. Godines*, 196 SCRA 765 [1991]; *People v. Dinola*, 183 SCRA 493 [1990]; *People v. Robante*, 178 SCRA 852 [1989]) Also, an alibi corroborated by the wife or other relatives of the accused is extremely weak. (*People v. Rio*, G. R. No. 90294, September 24, 1991; *People v. Serenio*, 179 SCRA 379 [1989]; *People v. Esquillo*, 171 SCRA 571 [1989]) Moreover, whether or not the proffered alibi is to be believed depends on the credibility of the appellant's version vis-a-vis that of the prosecution. The lower court found the prosecution's version credible. This Court finds nothing in the records that would lead to a different conclusion.

The appellant impugns the credibility of the prosecution's theory by pointing out that ten months and three days

had lapsed since the alleged rape before charges were filed against him. He asserts that if ever the alleged incident occurred, the delay in filing the case would lead to the conclusion that there was tacit consent to the act. The prosecution, however, successfully explained the delay. The victim, Delailah Lim, testified that the appellant threatened to kill her and her family if she goes to the police. It was established that after the alleged rape, the appellant made periodic visits to the victim's house, averaging twice a week, to repeat the threats. (p. 7, TSN, May 9, 1989) The entire records of the case show that the appellant is a violence prone ex-soldier and it is understandable why the victim should be afraid of him. The affidavit of desistance itself is a product of fear.

The delay in filing the case is justified where such is due to death threats against the victim and/or her family. (People v. Aquino, 186 SCRA 208 [1990]; People v. Nunag, 173 SCRA 274 [1989])

There appears to be no question that the threats were sufficiently effective to deter the victim from reporting such an outrage perpetrated upon her person.

Delailah Lim's testimony established that she has a well-founded belief that the appellant is capable of carrying out his threats. She knows that the appellant owns a .38 caliber gun and an armalite - the former he used at the time he raped her, and the latter, he showed her before he left the appellant's house the following morning. (p. 20, TSN, July 14, 1988) Delailah Lim also testified that she knows of a frustrated murder case filed a few years back against the appellant in the province. (p. 14, TSN, *ibid*)

The appellant tries to play down the alleged fears of Delailah by establishing during the cross-examination of the latter that she was aware that the appellant did not face trial for the imputed crime nor was he ever convicted for the same. (TSN, August 22, 1988, pp. 8-9)

It is the considered opinion of this Court that the fact of whether the appellant was actually charged with frustrated murder or whether he was convicted for the same is not material in resolving the particular question at hand. What is important is that Delailah Lim truly believed that the appellant was capable of carrying out his threats although the factual bases for such belief may turn out to be different from what she conceived them to be.

The appellant next contends that Delailah filed the present case due to the instigations of her family since he confronted them regarding his share in the profits from the properties of their deceased grandmother. However, in the counter-affidavit which the appellant submitted during preliminary investigation, he stated a totally different motive of Delailah Lim and we quote:

"That the only reason I can think of why Delailah G. Lim had instituted this baseless and preposterous complaint is that she is being manipulated by her sister's deceased boyfriend, who is the brother of my sister's deceased husband, to force the latter to share the proceeds of the death benefits which my sister received from the government after my brother-in-law died. x x x" (Exhibit O)

In imputing ulterior motives to the complainant, the appellant hopes to convince this Court that the charges against him are fabricated. But the manner by which the appellant presented his contention convinces this Court that it is the imputed motives which have been fabricated. The lower court also correctly pointed out that "...Even conceding that the grandmother's estate has been contested by her heirs, William Lim, father of Delailah Lim, Atty. Eldorado Lim and Antonio Lim (deceased), father of the accused, it is unlikely that the partition has not yet been settled considering that Paula Tumlawen died in 1968 or almost two decades before this suit was instituted. (TSN June 26, 1989, p. 3)" (Rollo, p. 32)

The appellant further impugns the credibility of the prosecution's theory by alleging that Delailah's behavior after the alleged rape did not exhibit the fear and exhaustion which such a startling and frightful experience should have instilled in her. She still accompanied her sister to Lucena City at about 1:00 o'clock of December 5

considering that she knew that the accused would also be there. According to the testimonies of Ruth Lim, the appellant's wife and Rosalinda Mansion, the appellant's sister, Delailah even played card games and would even jump with joy whenever she wins. (TSN, May 9, 1989, p. 5 and TSN, May 13, 1989, p. 5, respectively)

In *People v. Raptus*, supra, citing *People v. Ronquillo* (184 SCRA 236 [1990]), it has been held that "...different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response when one is confronted with a strange or startling frightful experience."

Delailah Lim, moreover, has already explained her actions immediately after the rape during her cross-examination. She decided to accompany her sister to Lucena City since her brother-in-law requested her so. Also, she could not think of any excuse to refuse the request without her sister and brother-in-law becoming suspicious of her behavior. (p. 39, TSN, July 27, 1988)

At any rate, the testimonies of the appellant's wife and sister regarding Delailah's behavior in Lucena City are quite dubious for their narrations coincide in every respect and detail. (*People v. Talla*, 181 SCRA 133 [1990]; *People v. Madriago IV*, 171 SCRA 103 [1989]; *People v. Rosario*, 159 SCRA 192 [1988])

The appellant next contends that the Affidavit of Desistance (Exhibit 1) executed by Delailah Lim stating that the rape case arose out of a mere misunderstanding should be considered in his favor. It must be noted that the Affidavit was executed on March 1, 1988 at a time when the accused was still at large. On April 22, 1988, the appellant surrendered for arraignment and immediately thereafter, that is, on the 28th of the same month, the complainant executed a 'Sinumpaang Salaysay' explaining that the Affidavit of Desistance was involuntary and executed under duress. It was also meant to hasten the capture of the accused who would have believed that the case against him would be dropped. The foregoing series of events lends credence to Delailah's claims as to why she executed the Affidavit. The trial court correctly observed the following:

"x x x Its (referring to the Affidavit of Desistance) performance coincided with the time Ruben remained at large after the warrant of arrest was issued with no bail grant. This Court takes note that the tender of voluntary surrender by the accused was on April 22, 1988 for several days after the affidavits of desistance on rape and intentional abortion were executed. From the facts adduced, inference may be drawn that Ruben Lim had occasion to force the filing of the affidavits as alleged by Delailah Lim and came out of hiding when the case against him would not prosper due to the retraction.

"The duress angle of the affidavits of desistance is supported by the motions to withdraw filed on March 4, 1988 by Atty. Eldorado Lim, counsel of the accused in the following cases: *People v. Ruben Lim* (carnapping case) presented as evidence by the prosecution marked Exhibits I, J and K. To quote:

'That last Saturday and Sunday, the accused threatened the undersigned counsel with death due to suspicion that said undersigned counsel extended his help to his niece Delailah Lim in a rape case by that letter (sic) against Ruben Lim which is assigned to this Honorable Court.'" (Rollo, p. 37)

The appellant belatedly impugns the credibility of Atty. Lim whom he alleges to have conspired with Delailah for their grandmother's inheritance. It is quite improbable that the appellant would have retained the services of Atty. Lim in the other cases filed by and against him, a relationship which requires utmost confidence, if they maintained adverse interests.

In any case, to warrant the dismissal of the complaint, the victim's retraction or pardon should be made prior to the institution of the criminal action (*People v. Soliao*, 194 SCRA 250 [1991]). The present case was filed on February 24, 1988 while the Affidavit was executed only on March 1, 1988.

All the foregoing discussions clearly show the strength of the prosecution's case. This Court finds it unnecessary,

then, to delve lengthily into the other trivial points raised by the appellant in his brief (such as Delailah Lim being at the age of highest sexual desire; the development of intimacy between the complainant and appellant due to Delailah's frequent visits to the appellant's house; Delailah having purposely worn a dress which is straight out and open from the neckline down on the date of the alleged rape) to show that the act was consensual inasmuch as the same are mere conjectures, not having been established during the trial.

As to the matter of the complainant submitting voluntarily to an abortion, such fact is impertinent to the case at hand. Even assuming, *arguendo*, that complainant submitted to an abortion, such does not detract from the fact that the appellant perpetrated the offense charged herein.

WHEREFORE, ALL THE FOREGOING PREMISES CONSIDERED, the APPEAL is hereby DISMISSED. The decision appealed from is AFFIRMED.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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