

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEO PEREZ, AND LUIS MELENDRES, ACCUSED-APPELLANTS.

G.R. No. 95893. July 06, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The woman was raped five times in one night, and by two sets of rapists. After the first two men had raped her, she sought the help of three other men who had appeared on the scene. They also raped her.

This was the finding in general of the trial court on the basis of the evidence of the prosecution against the herein appellants. (Their co-accused, Leo Amolong, has not been tried and remains at large.)

The Information against them reads as follows:

That in the evening of May 27, 1987, in the municipality of Nabunturan, Province of Davao, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring and confederating together and helping one another, by means of force and intimidation, using a handgun and a hunting knife, did then and there willfully, unlawfully and feloniously take turns, one after the other, in having carnal knowledge of Marlene Jaictin.

Marlene Jaictin was 20 years old when the incident happened.

She testified that on May 27, 1987, at about seven o'clock in the evening, she and her boyfriend, Nestor Sarpamones, were on their way to her house when they were confronted by three men near the Nabunturan Central Elementary School. One of them took Nestor away while the other two stayed with her. They took her to the grandstand, then to the garden, where they boxed and kicked her and then threw her to the ground. Then they took turns in raping her. One of the men wanted to kill her, but the other dissuaded him.[1]

It was at this point that the three other men came, and she cried out to them to save her. The men who had raped her fled. Two of the three men chased them but they escaped. The third man who stayed behind was Luis Melendres. He pointed a knife at Marlene and then dragged her to the oval ground, where he made her lie down. His two companions came back then and, seeing what was afoot, immediately concurred in his plan.[2]

The first of the three to rape her was Melendres, who forced himself on her while Perez held her legs. Perez followed suit, with Melendres assisting this time. Amolong stood guard and watched the outrage to the helpless woman. Then he himself pulled her to the back of the grandstand and raped her there.[3]

Their lust satisfied, the three men took Marlene to the house of Perez, where she stayed the night. The following morning, they took her to the house of her employer, threatening her with death if she spoke about the incident. Two days later, the three men again saw her and told her that her sweetheart Nestor was already dead. They repeated their threat and warned her to keep quiet.[4]

She said she knew Leo Amolong by face and name.[5] She knew the other two because she frequently saw them

at the store where she was working and came to know later that their names were Leo Perez and Luis Melendres.[6] She said she was able to recognize them on the night in question because there was an electric light in the building nearby and the moon was bright.[7]

Despite the threat, she decided to report the incident to the police three days later and submitted to a medical examination. She was found with inter alia "contusions and abrasions x x x on the upper and lower extremities, buttocks and anterior cervical region (neck)" and "laceration of the vulvar mucous membrane." [8]

Both Perez and Melendres denied the charge. They claimed that as members of a rover patrol, they went out that night in search of certain suspected robbers and chanced upon Marlene and the two men who had apparently just raped her. They ran after the men but failed to catch them. Thereafter, they took the girl to Perez's house, where she spent the night with his sister. The following morning they took her to her employer's house.[9] Nelly Perez testified to corroborate her brother.[10]

After a lengthy discussion of the evidence, Judge Eugenio R. Valles of the Regional Trial Court of Davao disposed as follows:

PREMISED ON ALL THE FOREGOING CONSIDERATIONS, and finding both accused Luis Melendres and Leo Perez GUILTY beyond reasonable doubt of the crime of RAPE, the Court hereby imposes on each one of them, TWO (2) RECLUSION PERPETUA and to suffer all the accessory penalties provided for by law.

Further, both accused are hereby condemned to pay the complainant, Marlene Jaictin, jointly and severally the amount of Seventy-Five Thousand (P75,000.00) Pesos as moral damages and another Twenty-Five Thousand (P25,000.00) Pesos as exemplary damages.

Let alias warrant of arrest issue for the apprehension of the remaining accused, Leo Amolong. Meanwhile, pending his arrest, send the records of this case to the archives.

In their separate briefs, the appellants ask for reversal of their conviction on the ground that their guilt has not been proved beyond reasonable doubt. Melendres faults the trial court for disregarding his defense and giving credence to Marlene's testimony, especially as it is flawed by Exhibit 1. Perez also focuses on Exhibit 1 and his sister's testimony and claims no conspiracy had been proved between him and the other defendants.

We have said often enough that when it comes to the evaluation of the credibility of witnesses, much weight must be given to the conclusions of the trial court. The reason is its direct opportunity to observe the demeanor of the witnesses on the stand and to detect those tell-tale signs in their testimonies that attest the truth or expose the lie.

In the case at bar, the trial court saw fit to believe Marlene rather than the defendants, observing that she would not have undergone such "tribulations" if she were not really telling the truth. We accept its assessment that the "complainant's version is more consistent with the truth. Her testimony is clear and free from serious contradiction; her sincerity and candor likewise free from contradiction."

It is true that she made no mention of having been raped by the defendants in the affidavit she executed on June 1, 1987, and presented by Perez as his Exhibit 1. Nevertheless, we hold that as between that affidavit and her testimony in court on the same subject, it is the testimony that should prevail. The rationale of this ruling is explained in *People v. Andaya*:[11] thus:

The contradictions, if any, may be explained by the fact that an affidavit will not always disclose the whole facts, and will oftentimes and without design, incorrectly describe, without the deponent detecting it, some of the occurrences narrated, and being taken ex parte is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the corrected collateral circumstances necessary for the correction

of the first suggestions of his memory and for his accurate recollection of all that belongs to the subject.

The minor inconsistencies in Marlene's narration do not detract from its essential veracity. We have said often enough that total recall of an incident is not expected of a witness, or even possible, especially if it is the victim himself who is testifying. The traumatic effect of the successive rapes on Marlene evidently caused not a little confusion in her mind and prevented her from recollecting every single detail of her harrowing experience.

Her delay in reporting the incident - for only 3 days - is easily explained. She was under threat of death. And it was not unnatural that she did not tell Nelly Perez that her brother had raped her, as she was in the rapist's own house and surrounded by his family.

Marlene's supposed motive in accusing the defendants, viz, that she was prodded by Nestor's parents on pain of being charged with his death, is also not acceptable. If she had not really been abused by the defendants, she would not have exposed herself to the stigma of a raped maiden and implicated persons she hardly knew in a charge that could forfeit their liberty for life.

In light of the evidence for the prosecution, the defense must fail for lack of credibility. The bare denials of the appellants are not convincing. Neither is the testimony of Nelly Perez, who was obviously manifesting her loyalty to her brother rather than the truth.

The Court is convinced that when the three men came upon the naked Marlene, who apparently had just been violated, their own lusts were aroused. Given the defenselessness of the girl and the secluded place, they saw an opportunity to ravish her also, thinking cynically that another slice or two would not much matter to the cut loaf. Thus persuaded, they carried out their wicked plan, one after another and each assisting the others, in the defilement of the girl.

The circumstances of the successive rapes by the defendants prove that there was a conspiracy among them. A common plan, concerted action, and cooperation among the three attended the ravishment of the helpless victim. As one raped the woman, the others restrained her legs or stood guard and watched. The act of one was the act of the others, who were therefore equally guilty with him.

However, the third accused not having been tried and found guilty, the conspiracy must apply only to Perez and Melendres with respect to the rapes they each committed.

Rape is an inherently detestable crime, but it became even viler in the case at bar because of the defendants' callousness to the helpless woman's plaintive cry for assistance. They did not help her; they attacked her instead. Even as she was already agonizing over the first two rapes, they heartlessly ignored her despair and instead deepened it further by imposing their own animal lusts upon her. This was not mere libido. It was a shameless act of lechery that degraded them to the level of the beast.

WHEREFORE, the appeals are DISMISSED and the challenged decision of the trial court is AFFIRMED, with the modification that the award for moral damages is changed to P50,000.00 for each of the two rapes, and the award for exemplary damages is disallowed. Costs against the appellants.

SO ORDERED.

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

[1] TSN, September 11, 1989, pp. 21-25.

[2] TSN, September 11, 1989, pp. 27-31.

[3] TSN, September 11, 1989, pp. 30-36.

[4] TSN, September 11, 1989, p. 43.

[5] TSN, September 11, 1989, p. 28.

[6] TSN, September 12, 1989, p. 25.

[7] TSN, September 11, 1989, p. 28.

[8] Exhibit A, Records, p. 20.

[9] TSN, July 2, 1990, pp. 7-10.

[10] TSN, July 3, 1990, pp. 7-10.

[11] 152 SCRA 570.

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