

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CERVANDO PATONG Y VILLANUEVA, ALIAS NANDO, ACCUSED-APPELLANT.

G.R. No. 96370. July 14, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The complaining witness was at the time of the alleged rape a 25-year old mother of three children and five months pregnant. The accused-appellant is her uncle by affinity.

According to Alda Malima Patong, the incident happened at her own house in Jimenez, Misamis Occidental, at about 8 o'clock in the evening of March 22, 1990.

Cervando Patong had earlier that afternoon arrived from Siquijor and visited her husband Joseph Patong, who is his nephew. With three other friends, they drank a gallon of tuba until 5 p.m., when Cervando and the other guests left. Thereafter, following his daily routine, her husband went out to fish.

She said that later that night, Cervando returned to their house and asked if he could spend the night there. As he was a relative, she said he could and invited him in.

She and the children were sleeping in the sala, so she spread a mat with a pillow and blanket for Cervando in the dining room. Only a curtain served as a divider between the two rooms.

Returning to the sala, she saw Cervando blow out the kerosene lamp in the dining room and supposed he would be going to sleep. She was surprised and incensed, however, when he crossed over to the sala and asked her to lie with him.

She angrily rejected his suggestion, but he pointed a knife at her stomach and snuffed out the other lamp. The suggestion was now a demand. He dragged her to the dining room. Then he forcibly laid her on the mat and pulled off her panty, all the while threatening her with the knife.

His lust insisted even harder as he kissed and sucked her mouth. Alda struggled and pleaded with him, but to no avail. Soon the ugly deed was done. He ejaculated into her. Apparently not yet sated, he continued feeling her body even as she still resisted and cried.

Finally releasing her, he insolently told her he would call her if he needed her again. Then he went to sleep.

At about 10 o'clock, when she heard Cervando snoring, Alda sneaked out of the house with her youngest child and went to the house of her neighbors, Victor and Nenet Sagang, about ten meters away. She told them she had been raped by Cervando.

The spouses were immediately helpful. They notified Oscar Paye and Peter Junio, barangay councilors, and Francisco Patong, Alda's father-in-law. Junio reported the matter to the police and Patrolmen Lou de la Vega, Romero Bomediano, Pablito Paredes and Amado Camposano came to investigate.

Alda and her neighbors surrounded her house in case their quarry should attempt to escape. When the policemen arrived, they went in and saw Cervando still asleep with the knife near his head. They got the knife and then roused him. He did not resist when they handcuffed him. Asked if he was the person who had attacked Alda, he said nothing. Alda positively identified him as her assailant but he remained silent.

The following morning, Alda submitted to medical examination, resulting in the finding that the vaginal smear was "positive of sperm cells."^[1] She thereafter filed a criminal complaint for rape that became the basis of the information against Cervando.

The other witnesses for the prosecution were Victor Sagang, Oscar Paye, Romero Bomediano, Peter Junio, and Lou de la Vega, who all corroborated Alda.

In his defense, Cervando submitted an improbable tale. He averred that what happened that night was not a rape but a robbery. He was the victim. Peter Junio was one of the robbers and Alda herself was involved.

To begin with, he protested, it was not he who asked to stay in Alda's house but Alda herself who invited him to sleep there. He was on his way to his sister-in-law's house when Alda pulled him by the arm and practically forced him into her house.

He testified that while he was sleeping, he was awakened by a group of three men who were looking for a gun he was supposed to be carrying. Finding none, they took away the contents of his bag, including his clothes, a watch, and a pair of sunglasses.

According to him, Alda promised him that she and her husband would recover the stolen articles or make good their value. It was their responsibility because he had been robbed in their house. Thus assured, he went to sleep. But at about 11 o'clock, he was awakened and hit in the head with the barrel of a rifle by one of the patrolmen who arrested him. He was surprised when he was later charged by Alda with raping her.

Nobody corroborated him. He alleged that he was prevented from presenting his own witness but was unable to substantiate this complaint.

We have gone over the record of this case and must agree with the trial court that the defense offered by Cervando deserves little credence indeed. It is shot through and through with holes. It is plainly a fabrication and an inept one at that.

Implicating Alda in the robbery was an especially unbelievable concoction. Alda flatly denied it. Significantly, Cervando never mentioned the robbery at the time of his arrest or even when he was already in the police station. He also did not explain why, if he had really been robbed, the robbers did not get the bag itself and all its contents. Of the five pairs of trousers allegedly in the bag, four were not touched at all.

By contrast, Alda's testimony was consistent and credible. Her narration of the rape was forthright if understandably strained because of the embarrassing details she had to recount. Her reaction to the offense was instant and natural: she fled her house as soon as she heard Cervando snoring and sought the help of her neighbors. She unhesitatingly told them what had happened. She reported the outrage to her husband immediately upon his return from the sea.

The presence of sperm cells in her violated organ affirmed her charge more than words or anger alone could prove. Even if it did not, the other evidence against Cervando was enough to prove that he had indeed repaid her hospitality by ravishing her in her own house.

We find that Judge Celso L. Conol of the Regional Trial Court of Oroquieta City did not err in finding Cervando Patong guilty beyond reasonable doubt of raping Alda Malima Patong. We agree that in view of the aggravating

circumstance of night-time, dwelling and abuse of confidence, he should suffer the sentence of RECLUSION PERPETUA with all the accessory penalties in accordance with the Revised Penal Code. We shall however, increase the civil indemnity to P30,000.00, conformably to existing doctrine.

Cervando Patong should have been grateful to Alda for allowing him the shelter of her home when he requested it. Instead, he sullied it by violating her. By thus degrading himself with his unspeakable lechery, he has earned his own condemnation to a life behind bars.

WHEREFORE, the appeal is DISMISSED and the appealed judgment is AFFIRMED as above modified, with costs against the accused-appellant.

SO ORDERED.

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

[1] Exhibit "C."

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