

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO DACQUEL, DEFENDANT-APPELLANT.

G.R. No. 97917. June 22, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is an appeal from the decision dated November 23, 1990 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 28, which convicted the appellant, Pablo Dacquel, of the crime of rape and sentenced him to suffer the penalty of reclusion perpetua, to pay the victim the sum of P30,000 as moral damages and the costs.

As found by the trial court the facts of the case are as follows:

"On the night of October 6, 1988 at about 7:00 p.m. while she was in the Centro of Solano, Nueva Vizcaya, the accused approached the victim, Ofelia Caser, and by pointing a knife to her throat was able to force her to board a jeep. The jeep which was bound for Bayombong, Nueva Vizcaya had a load of five passengers. She did not ask any aid from any of the passengers because she was afraid. Upon reaching a waiting shed, they alighted and the accused forced her to lie on the bench by continuing to point the knife at her throat. The accused then raised her skirt, pulled down her panty, brought out his penis and inserted it into her vagina. She felt pain. No other person was around at that time. She wanted to shout but the knife was still pointed at her throat. The accused had sexual intercourse with her only once. Afterwards, she noticed blood on her dress, but as her sister Lolita Caser, might see it, she washed it. From the waiting shed, they returned to Solano where the accused left her at the Poblacion. On that night, she slept with her neighbor. The following morning she told her sister about the incident. Thereafter they went to the police. She was brought to and examined in the hospital. According to Dr. Jocelyn A. Toria, Ofelia Caser was examined on October 8, 1988 and was found to have lacerations in her hymen at 5, 8 and 9 o'clock, at about 3 mm. each and one laceration, perinium, about 1 cm., which was a break just below the vagina. No seminal fluid was found in the vagina as Ofelia was menstruating when examined. According to the said physician, the wounds were 2 to 3 days old as they were still fresh during the examination." (pp. 12-13, Rollo.)

The information against Dacquel reads:

"That on or about the 6th day of October 1988 in the Municipality of Bayombong, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, with lewd design, did then and there, wilfully, unlawfully, and feloniously, have carnal knowledge with Ofelia Caser thru force, coercion, and intimidation and against her will to her damage and prejudice including her heirs and assigns." (p. 17, Record.)

Upon arraignment, appellant pleaded not guilty. After trial, the court rendered judgment finding him guilty as charged.

Hence, this appeal in which the appellant alleges that the trial court erred:

1. in finding that he had carnal knowledge of Ofelia Caser through force and intimidation; and

2. in convicting him based on the weakness of his defense and not on the strength of the evidence of the prosecution.

The accused met Ofelia Caser four (4) years earlier (when she was only eleven years old) in the house of a certain Mr. Barrero in Solano where she worked as a housemaid and he had been hired to do some carpentry work.

Appellant admitted that he had sexual intercourse with the 15-year-old complainant, but it was allegedly voluntary or by mutual consent. He denied that he forced her to board the jeep with five (5) other passengers and that he poked an eight-inch knife at her throat throughout their trip to Bayombong. He capitalized the trial court's observation that part of the complainant's testimony "leaves something to be desired and unconvincing" (p. 14, Rollo). The court believed, nevertheless, that stratagem, rather than force, was employed by the accused to convince the teenage housegirl to go with him "to Manila." The court believed that he convinced her "that he had a job waiting for her in the city, for in answer to a question asked by the private prosecutor, the accused stated, 'She said she has no money and insisted on me I will bring her to Manila and upon reaching Manila I will be the one to look for a job for her even as a helper. (TSN, Session of August 2, 1990, pp. 18-19.)'" (p. 14, Rollo.)

"The rule is settled that courts may believe one part of the testimony of a witness and disbelieve another part, and courts are not required to accept or reject the whole of the testimony of a particular witness." (People vs. De Dios, 187 SCRA 228, 230.)

The trial court, however, believed that force and/or intimidation was employed by the appellant to ravish the complainant for her testimony on this aspect of the case was "straightforward and unequivocal" (p. 14, Rollo). The pertinent portion of her testimony is quoted below:

"ATTY. BAHIA:

"Q: On the night of October 6, 1988, where did you meet Pablo Dacquel if you met him?

"ATTY. EUROPA:

"xxx xxx xxx

"A: I saw him in the place where there was a fiesta in Solano.

"Q: When you saw him that night in the fiesta, what happened if there was something that happened?

"A: He took me and then he loaded me in a ride.

"xxx xxx xxx

"Q: Did he also go with you?

"A: We were together.

"Q: From Solano, where did you go with Pablo Dacquel?

"A: Bayombong, sir.

"Q: In what definite place in Bayombong, Nueva Vizcaya?

"xxx xxx xxx

"Q: Could you describe the place where he brought you that night?

"A: To a waiting shed in Bayombong.

"xxx xxx xxx

"Q: When you arrived there, will you relate to the Court what actually happened?

"A: He pointed a knife here (witness pointing to the base of her throat).

"xxx xxx xxx

"Q: When he placed the knife at the base of your neck, what did he do?

"A: He removed the zipper of his pants, raised my skirt, pulled down my panty and brought out his penis and inserted it into my vagina.

"Q: Did he do that while you were standing?

"A: I was lying down.

"Q: Where?

"A: On a seat, sir.

"Q: When he brought out or removed your panty did you consent?

"ATTY. EUROPA:

Objection, leading. You did not prove

"PROSECUTOR GUILLERMO:

We already proved that she is unlettered and she knows what she is talking about.

"COURT:

You please reform the question.

"A: I was shouting but the knife was placed on my neck.

"Q: When you were in the act, that is when Pablo Dacquel inserted his penis into your vagina?

"A: Yes, sir.

"Q: What did you feel?

"A: I cried, sir. It was painful.

"Q: Why did you not shout?

"A: How could I shout when the knife was placed on my neck." (pp. 6-9, TSN, May 11, 1990.)

The trial court was "convinced that such force and intimidation was (sic) present" (p. 51, Rollo). The court noted that:

"According to Ofelia, a big knife was pointed at her throat when coitus took place. It must be pointed out that the court observed the victim to be of low intelligence, and despite this when the question pertains to that moment of truth, that moment of sexual contact with the accused, she was firm and unyielding in her allegation that she was abused." (p. 51, Rollo.)

The force required in rape cases need not be too overpowering or irresistible. What is essential is that the force used is sufficient to consummate the purpose which the offender had in mind (*People vs. Barcelona*, 191 SCRA 100, 101).

Appellant, a married man, whom his own wife described as a womanizer, alleged that he and Ofelia had intimate

relations since 1986 and that on the day in question, he and the complainant actually planned to elope to Manila. It did not, however, materialize, because they did not have enough money for the fare to Manila, so they ended up only in a waiting shed in Bayombong where they consummated their relationship. He alleged that the act was not the first for the complainant for they had sexual intercourse twice before.

Appellant further alleged that in 1986, the complainant offered to him her body in payment for a debt of P150 which she owed him, but in response, he merely kissed her; and that subsequently, they had sexual activity twice before the incident in question.

This story was disbelieved by the trial court which found it "unconvincing" (p. 14, Rollo), "highly incredible" (p. 15, Rollo) and "inherently unworthy of belief" (p. 16, Rollo). The trial court pointed out that Ofelia did not have to peddle her virtue because she was earning a salary as a househelper of the Barreros.

Appellant's allegation that he and the complainant had twice engaged in sexual activity, was denied by the latter and refuted by the examining physician, Dra. Torio, who did not find any old traces of lacerations on the complainant's hymen. Thus:

"ATTY. BAHIA:

"Q: More or less, could you tell the Court with your findings when was this act committed?

"A: Since the wound is just recent more or less, within 2 to 3 days, the wound is still fresh.

"Q: When you examined Ofelia Caser, the wound is still fresh?

"A: Yes, sir.

"Q: With that findings, could you determine if there was a prior intercourse?

"A: It is still fresh.

"COURT:

Suppose a prior intercourse was made the laceration could be repeated?

"A: It is probable, sir. (p. 7, TSN, July 10, 1990.)

Appellant's allegation that he and the complainant had planned to elope on the day of the rape is pure invention for they had made absolutely no preparations for that purpose. They brought no clothes and the accused admittedly did not even have enough money for the fare to Manila.

"Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible itself" (People vs. Lim, 190 SCRA 706).

The trial court did not err in finding the accused guilty beyond reasonable doubt of rape. "Credibility is the sole province of the trial court" (People vs. Januario de la Cruz y Hurado, 190 SCRA 328). The court's evaluation of the credibility of the witnesses who appeared before it deserves our utmost respect for it had the advantage of having directly observed their demeanor in court (People vs. Romenaldo Murallon, 189 SCRA 488).

WHEREFORE, finding no reversible error in the appealed decision, we AFFIRM it in toto.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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