

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSUE DELA TORRE, ACCUSED-APPELLANT.

G.R. No. 98431. January 15, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Appeal from the Decision[1] dated January 28, 1991 of the Regional Trial Court (Branch 79), Morong, Rizal, in Criminal Case No. 0656, finding Josue B. Dela Torre guilty of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, and to pay the costs.

The Information[2] against accused Josue Dela Torre reads:

“That on or about the 5[th] day of November, 1989 in the Municipality of Teresa, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of violence and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the complainant MARITA CORDOVA against her will.

“Contrary to law with the aggravating circumstance of the crime having been committed in the house of said offended party who did not give any provocation for the offense.”

Upon being arraigned, the accused pleaded “not guilty.”[3] Thereafter, trial ensued. In support of its case, the prosecution presented three witnesses: Marita Cordova, the victim; Melanie Cordova, the victim’s 10 year-old daughter; and Anthony Inocencio, a barriomate of the victim.

The records show that sometime in September, 1989, Marita Cordova, 35 years old and married to Paulino Cordova, was employed as a cook at the La Fiesta Farm owned by Mr. Arturo Alindada, located in Pantay, a barrio in the Municipality of Teresa, Rizal.[4] Her husband and accused Josue dela Torre were also workers of the same farm.

Anthony Inocencio[5] testified that around 7:00 to 8:00 P.M. of November 5, 1989, Paulino Cordova went to see him at his farm, also located in Barrio Pantay, Teresa, Rizal, near the La Fiesta Farm. Paulino asked for his assistance because the accused, then armed with a knife and bolo, was causing trouble and commotion at the La Fiesta Farm of Mr. Alindada. Anthony responded to Paulino's call for help. Upon arriving at the La Fiesta Farm, he learned that the accused forcibly took the shoes and money of Mr. Alindada’s workers. Marita and her children asked Anthony whether they could stay in his farm. He obliged and they all proceeded there. Upon reaching the farm, Marita told Anthony that she was raped by the accused that night. Thereupon, he immediately fetched policemen from Teresa, Rizal and accompanied them to the La Fiesta Farm where the accused was accosted.[6]

As to how the rape was committed, Marita, the principal witness for the prosecution, recounted her harrowing experience at the hands of the accused. She testified that around 8:00 o’clock in the evening of November 5, 1989, she was cooking at the kitchen of the La Fiesta Farm. She was with her five (5) children then, namely: Merly, 13 years old; Melanie, 10; Lyndon, 7; Fullimer, 4; and Johnny Boy, 1.[7] Suddenly, the accused, holding a

knife and a bolo, appeared in the kitchen[8] and dragged her outside and brought her towards a house under construction about 200 meters away.[9] Marita's children tried to follow but they desisted when the accused threatened (tinakot) them.[10] So they just stayed at the kitchen.[11] While going to the said house, Marita and the accused met Joel Villasis and Johnny Dizon, also workers in the farm. They saw the accused poking a knife and a bolo at her.[12] Marita asked for their help but they did nothing because they were afraid of the accused.[13]

Once inside the house, the accused pushed Marita to the floor, stoop down in front of her, poked the knife at her throat and pinned her arms at her back.[14] He then raised her dress above her breast.[15] Thereupon, he pulled down his pants, took off her panty and placed himself on top of her.[16] Still holding the knife, he pointed it at Marita's throat and placed the bolo on the ground.[17] Afterwards, he spread her legs, kissed her lips down to her neck and sucked her breast.[18] He then inserted his penis into her vagina and made push and pull movements for about eight (8) minutes[19] and continued kissing her on the lips.[20] While he was raping her, she was unable to resist because the knife was pointed at her throat and her arms pinned at her back.[21] Thereafter, he stood and threatened her not to tell anybody about the incident as he would slash her neck.[22]

That very night Marita found courage to inform Anthony Inocencio, and later her employer, Mr. Alindada, and her husband of the sexual assault against her by the accused.[23]

Melanie Cordova corroborated the testimony of her mother. She and her siblings were in the kitchen of the La Fiesta Farm that night when the accused dragged their mother towards the house under construction (sa bahay na ginagawa). At a distance of two to three meters, she saw the accused pointing a knife at her mother's throat and a bolo at her back. They tried to follow them but the accused got angry. Thus, they remained at the kitchen where they all cried because of fear.[24]

The following day, November 6, 1989, Dr. Emmanuel Aranas, a Medico-Legal Officer at Camp Crame, Quezon City, conducted a physical examination on Marita. Dr. Aranas' Medico-Legal Report[25] discloses the following findings:

"GENERAL AND EXTRAGENITAL

Fairly developed, fairly nourished and coherent female subject. Breast are pendulous with dark brown areola and nipples from which no secretion can be pressed out. Abdomen is flat and lax with striae of pregnancy. The following injuries are noted at the upper and lower extremities:

- (1) Abrasion, proximal phalange of the right index finger, measuring 0.3 x 0.2 cm.;
- (2) Abrasion, distal phalange of the right index finger, measuring 0.5 x 0.1 cm.;
- (3) Abrasion, middle 3rd of the right leg, measuring 7 x 4 cm., along its anterior midline.

CONCLUSION

Subject is in non-virgin state physically.

Barring unforeseen complications, it is estimated that the above injuries will resolve in 5 to 6 days.

REMARKS

Vaginal and peri-urethral smears are negative for gram-negative diplococci but positive for spermatozoa."

Upon the other hand, the evidence for the defense is based solely on the testimony of accused Josue Dela Torre. He never denied having sexual contact with Marita that night of November 5, 1989. He claimed, however, that

she was his mistress and that the carnal incident between them was consensual. Their relationship started on June 15, 1987 in Bacolod City, Negros Occidental when he and Paulino (Marita's husband) had a drinking spree in the house of a certain Cordova. At around 7:30 in the evening, Paulino got drunk and fell asleep. Thereupon, he courted Marita, who then told him that she would be willing to be his mistress if he would give her permanent support. At 3:00 in the morning of the following day, they engaged in sexual activity.[26] Since then, their sexual affair became frequent until September, 1989 when Marita was recruited to work at La Fiesta Farm in Teresa, Rizal owned by Mr. Arturo Alindada. It was only in October, 1989 when he again met her at the La Fiesta Farm upon his employment there.[27]

Accused further narrated that at about 1:00 in the afternoon of November 5, 1989, he and Marita talked at the kitchen of La Fiesta Farm. They agreed to meet about 8:00 in the evening in the nearby house under construction. He arrived first at the place and, shortly thereafter, she followed. There, they had sexual intercourse on the ground using "sawali" as mat.[28]

On January 28, 1991, the trial court rendered a Decision,[29] the dispositive portion of which reads:

"WHEREFORE, this Court finds the accused JOSUE DELA TORRE GUILTY of the crime of RAPE under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of reclusion perpetua and to pay the costs.

"SO ORDERED."

In the instant appeal, appellant ascribes to the trial court this lone assignment of error:

"THE REGIONAL TRIAL COURT IN MORONG, RIZAL (BRANCH 79) ERRED IN FINDING ACCUSED-APPELLANT JOSUE DELA TORRE GUILTY OF THE CRIME OF RAPE BEYOND REASONABLE DOUBT." [30]

Appellant's defense is that what transpired between him and Marita Cordova on November 5, 1989 was consensual, she being his mistress at the time.

After a thorough and careful review of the evidence adduced by the parties, this Court finds the appeal bereft of merit.

The incident immediately prior to the rape was described by the trial court in its appealed decision as a "reign of terror ... that pervaded in the La Fiesta Farm" in Barrio Pantay caused by the appellant who was running wild wielding a knife and bolo.[31] This created an atmosphere of great fear among those who witnessed the incident. The records do not disclose why the appellant acted that way. Understandably, every one seemed helpless. The assistance of the police authorities at that very moment could not readily be secured apparently because the police station is far, being located in the Municipality of Teresa. The incident happened so fast that it enabled the appellant to perpetrate the unfortunate crime against Marita.

In a candid, straightforward and categorical manner, Marita disclosed the horrifying ordeal she endured from appellant's bestiality, completely belying the existence of consent on her part, thus:

"X X X

Q

On or about 8:00 o'clock in the evening of November 5, 1989, Mrs. witness, do you remember having met or seen the accused Josue dela Torre?

A

Yes, sir.

Q

Could you please tell the Honorable Court what incident that happened, Mrs. Witness?

A

It happened at the kitchen. He pushed me to the house under construction (owned) by our boss (amo).

Q

Who was this person who pushed you, Mrs. Witness?

A

Josue dela Torre, sir.

Q

And after Josue dela Torre pushed you, what happened next?

A

He pointed a knife at my throat and a bolo pointed (nakatutok) at my back.

x x x

Q

Now, Mrs. Witness, what happened next after the accused pointed a knife at your throat and a bolo at your back?

A

He pushed me inside the house on the ground.

Q

What happened next after he pushed you on the ground.

A

With the knife on my throat and my two (2) hands at the back with the bolo, he undressed me.

Q

What kind of dress are you wearing, Mrs. Witness, at that time?

A

I was wearing a dress (bestida).

Q

When you said that the accused undressed you, what exactly do you mean?

A

He lifted my dress up to a little bit above my breast.

Q

Mrs. Witness, other than your bestida, what was you wearing at that time?

A

I had only a panty.

Q

What about bra?

A

None, sir.

Q

What happened to your panty if any at the time the accused lifted your dress?

A

He took off my panty.

Q

Did the accused succeed removing your panty at the time, Mrs. Witness?

A

Yes, sir.

Q

Now, Mrs. Witness, after the accused raised your dress above your dress and after successfully removing your panty, what happened next?

A

He sucked my breast, he inserted his penis inside my private part (puke).

Q

Now, Mrs. Witness, could you please tell us what position you assumed in time the accused inserted his penis in your private part?

A

I was lying on the ground with my back face up.

Q

And what about the accused?

A

He was on top of me.

Q

And how long was the penis of the accused inserted at your private part?

A

About ten (10) minutes.

Q

Did the accused make any movement?

A

He was kissing me and his body was moving up and down.

Q

Did you actually feel the penis in your private part?

A

Yes, sir.

Q

And you said that Josue dela Torre was on top of you and his penis, after ten minutes, what happened next?

A

After he took advantage, he threatened to cut my neck for me not to tell authorities what happened to me.”[32]

Melanie, the victim’s 10-year old daughter, witnessed how appellant dragged her mother to the nearby house where the crime was consummated. She testified as follows:

“FISCAL TOBIA

Q

Melanie, do you know the accused Josue dela Torre?

A

Yes, sir.

Q

Melanie, your mother previously testified that on November 5, 1989 you saw her being dragged by the accused Josue dela Torre at the premises of the La Fiesta Farm, what can you say to this?

A

Yes, sir.

Q

How did it come about that you saw her being dragged by Josue dela Torre on said date, Melanie?

A

I was in the kitchen.

Q

And do you mean to say that it was from the kitchen that the accused dela Torre dragged your mother?

A

Yes, sir.

Q

And could you please tell the Honorable Court how Josue dela Torre dragged your mother away from the kitchen?

A

I saw Josue pointing a knife at my mother’s throat and a bolo at my mother’s back.

x x x

Q

Did you actually see your mother being brought to that house under construction by Josue dela Torre?

A

Yes, sir.

Q

And on the time Josue dela Torre was still pointing a knife at the throat of your mother and a bolo at her back?

A

Yes, sir.

Q

When you saw your mother being dragged by Josue dela Torre pointing a knife and a bolo at her, what did you do?

A

I cried.

Q

Why did you cry?

A

We have nothing to do but to cry, I was afraid.”[33]

All the while when appellant was sexually gratifying himself, that same knife was still poked at Marita’s throat. This was clearly pointed out by Marita herself:

“x x x

Q

While he was stooping in front of you, pulling down his pants, Josue dela Torre is no longer holding knife or bolo?

A

He was still holding the knife while the bolo was in the ground near him.

x x x

Q

And while your legs were widely open and while you are being kissed by Josue dela Torre that was the time he inserted his penis inside your genital organ?

A

Yes, sir. Inside my private part.

Q

And at that very moment you were no longer aware whether Josue dela Torre was holding a knife or not?

A

I still knew he was still holding a knife.

Q

How did you know that he was still holding a knife at that very moment wherein your legs were widely open and his penis was inside your genital organ?

A

He was pointing his knife at my throat.”[34]

Evidently, Marita was cowed to submit to appellant’s sexual assault through force and intimidation. Appellant was brandishing a knife and a bolo when he dragged her to a nearby house being constructed. Even while appellant was raping her, he was holding the knife pointed at her throat. After the sexual aggression, he further threatened to cut off Marita’s neck if she would tell the authorities what happened. The act of holding a knife/bolo, a deadly weapon,[35] by itself strongly suggests force, or intimidation, and when the same is used to threaten a woman to ensure carnal knowledge of her, rape is certainly committed.[36]

Appellant’s “sweetheart theory” is totally unavailing. Marita is a married woman with five children in her care. To embroil her into such kind of amorous relationship, strong and convincing evidence is necessary to prove the same. This Court, in several rape cases,[37] has not hesitated to sustain the defense of consensual sex. However, in those cases, evidence like love notes, mementos and witnesses attesting to a consensual relationship were presented. Here, other than his bare allegation, appellant failed to present any evidence to substantiate the existence of such illicit affair. Indeed, appellant’s tale of romance is a desperate attempt to justify his claim that Marita consented to his sexual desire on November 5, 1989.

Even assuming that an illicit affair existed between them, the categorical and spontaneous manner by which Marita and Melanie narrated appellant’s dastardly act is more than enough reason to belie his claim of consensual sex on that fateful night of November 5, 1989. In fact, this is substantially corroborated by the Medico-Legal Report of Dr. Aranas showing that Marita sustained abrasions from her leg and finger, which injuries could take five to six days to heal.

Of utmost significance, too, is the absence of ill-motive on the part of any prosecution witness, much less on the

part of the victim herself, to prevaricate, nay concoct, such a shocking story of defloration. It is the settled rule that where there is nothing to indicate that a witness was actuated by improper motives, his/her positive and categorical declarations on the witness stand, made under solemn oath, should be given full faith and credence.[38] Between the positive and categorical statements of prosecution witnesses, on one hand, and the bare denial of appellant, on the other, the former must prevail.[39] Affirmative testimony, when it proceeds from the mouth of a credible witness, as in this case, is far stronger[40] and more trustworthy[41] than a negative testimony.[42]

At any rate, it is highly inconceivable that Marita, a mother of five (5) children, would falsely charge appellant with such a serious crime as rape if it were not the plain truth. It is worthy to note that after the sexual assault, she wasted no time relating her gruesome experience to her husband who, unfortunately, was afraid of the appellant and left prior thereto to seek assistance from Anthony Inocencio.[43] Without vacillation, she submitted herself for medical and genital examination the following day. Faced with possible public humiliation, scandal and ridicule, she mustered the courage to expose her own and her family's honor to the rigors of court trial. These indignities and ignominies which Marita withstood overwhelmingly show her sincerity in vindicating the outrage to her honor and chastity.

This Court is thus convinced that appellant's guilt has been established by the prosecution beyond inditia of doubt. His conviction must be sustained.

The Information alleges the presence of the aggravating circumstance of dwelling in the commission of the offense. This should have been appreciated by the court a quo. It appears from the records that the kitchen at the La Fiesta Farm where Marita was dragged by appellant is her "dwelling," albeit the same does not belong to her. In *People v. Parazo*,[44] this Court stressed that the "dwelling" contemplated in Article 14(3) of the Revised Penal Code does not necessarily mean that the victim owns the place where he lives or dwells. Be he a lessee, a boarder, or a bedspacer, the place is his home, the sanctity of which the law seeks to protect. The fact that the crime was consummated in the nearby house is also immaterial. Marita was forcibly taken by appellant from her dwelling house (kitchen) and then raped her. Dwelling is aggravating if the victim was taken from his house although the offense was not completed therein.[45]

Nonetheless, the trial court's imposition of the penalty of reclusion perpetua is in accordance with law and jurisprudence. At that time, the penalty for rape under Article 335 of the Revised Penal Code,[46] when committed with the use of a deadly weapon, such as the knife,[47] is reclusion perpetua to death, a penalty composed of two indivisible penalties. Article 63, supra, provides, inter alia:

"x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rule shall be observed:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x" (Emphasis supplied)

The presence of the generic aggravating circumstance of dwelling, with no mitigating circumstance to offset the same, would have warranted the imposition of the death penalty were it not for the fact that such penalty was then constitutionally suspended.[48] Thus, the penalty of reclusion perpetua imposed by the trial court is proper.

Now to the civil aspect of the crime. The court a quo erred in not holding appellant civilly liable. In line with the current jurisprudence,[49] a civil indemnity in the amount of P50,000.00 should be awarded to the victim. Also,

she is entitled to moral damages, now fixed at P50,000.00.[50] Furthermore, because of the use of a deadly weapon in the commission of the crime, as well as the presence of the aggravating circumstance of dwelling, both of which indicate the criminal perversity of the appellant, the amount of P25,000.00 by way of exemplary damages is justified. It is now well-settled that in criminal cases, the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the victim to an award of exemplary damages insofar as the civil aspect of the crime is concerned.[51]

WHEREFORE, the appealed decision convicting JOSUE DELA TORRE of the crime of RAPE and sentencing him to suffer the penalty of RECLUSION PERPETUA is AFFIRMED. Insofar as the civil aspect of the crime is concerned, the appealed decision is MODIFIED. Appellant is thus ordered to pay the victim, Marita Cordova, P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P25,000.00 as exemplary damages. Costs against the appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Carpio, JJ., concur.

[1] Penned by Judge Nestorio R. De Leon.

[2] Rollo, p. 3.

[3] RTC Records, p. 17.

[4] Transcript of Stenographic Notes (TSN), September 11, 1990, p. 2.

[5] Alternatively referred to in the records as “Bobby Inocencio” or “Bobby Acencio.”

[6] TSN, October 9, 1990, pp. 3-6.

[7] TSN, October 8, 1990, pp. 3-4.

[8] Ibid., p. 4.

[9] Ibid., p. 5.

[10] Ibid..

[11] Ibid..

[12] Ibid..

[13] Ibid. pp. 5-6.

[14] Ibid.; September 11, 1990, p. 3.

[15] Ibid., p. 4.

[16] Ibid., October 8, 1990, p.7.

[17] Ibid., September 11, 1990, p. 3.

[18] Ibid., October 8, 1990, pp. 8-9; September 11, 1990, p. 4.

[19] Ibid., October 8, 1990, p. 9.

[20] Ibid., p. 10.

- [21] Ibid., p. 11; September 11, 1990, p.5.
- [22] Ibid., September 11, 1990, p. 4.
- [23] Ibid., p. 5.
- [24] Ibid., October 11, 1990, pp. 3-5.
- [25] Exhibit "A", RTC Records, p. 83.
- [26] TSN, November 5, 1990, pp. 8-10.
- [27] Ibid., pp. 12-13.
- [28] TSN, November 5, 1996, pp. 5-7.
- [29] RTC Records, pp.74-78.
- [30] Appellant's Brief, p. 1; Rollo, p. 83.
- [31] Rollo, p. 15.
- [32] TSN, September 11, 1990, pp.3-4.
- [33] TSN, October 11, 1990, pp.3-5.
- [34] TSN, October 8, 1990, pp. 7-9.
- [35] *People v. Alquzalas*, 305 SCRA 367 (1999).
- [36] *People v. Vedra*, 342 SCRA 317 (2000).
- [37] *People v. De Guzman*, 343 SCRA 267 (2000), citing *People v. Bayron*, 313 SCRA 727 (1999); *People v. Salem*, 280 SCRA 841 (1997); *People v. Godoy*, 250 SCRA 676 (1995); *People v. Gabilan*, 115 SCRA 1 (1982); and *People v. Castro*, 58 SCRA 473 (1974).
- [38] *People v. Suplito*, 314 SCRA 493 (1999).
- [39] *People v. Hernandez*, 304 SCRA 186 (1999).
- [40] *People v. Sagun*, 303 SCRA 382 (1999).
- [41] *People v. Vaynaco*, 305 SCRA 93 (1999).
- [42] *People v. Quiñanola*, 306 SCRA 710 (1999); *People v. Antonio*, 303 SCRA 414 (1999).
- [43] TSN, September 11, 1990, p.5.

[44] 272 SCRA 512 (1997).

- [45] *People v. Jardiniano*, 103 SCRA 530 (1981).
- [46] Article 335 of the Revised Penal Code has been repealed by Republic Act No. 8353 (Anti- Rape Law of 1997) effective October 22, 1997. New provisions on Rape are now found in Articles 266-A to 266-D under Crimes Against Persons, *supra*.
- [47] *People v. Alquizalas*, *supra*.
- [48] See *People v. Muñoz*, 170 SCRA 107 (1989); *People v. De Mesa*, 188 SCRA 48 (1990).

[49] People v. Makilang, G.R. No. 139329, October 23, 2001, citing People v. Poñado, 311 SCRA 529 (1999).

[50] People v. Makilang, *supra*; People v. Alba, 305 SCRA 811 (1999), People v. Prades, 293 SCRA 411 (1998).

[51] See People v. Catubig G.R. No. 137842, August 23, 2001, cited in People v. Dionisio, G.R. No. 137676, September 27, 2001, People v. Makilang, *supra*.

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