

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APELLEE, VS. SANTIAGO FEROLINO @ “TAGOY”; ACCUSED-APPELLANT.

G.R. No. 98442. May 04, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Santiago Ferolino has appealed to this Court the decision of the Regional Trial Court, Branch XIX at Catarman, Samar, in Criminal Case No. C-1430 entitled, "People of the Philippines vs. Santiago Ferolino" convicting him of the crime of rape under the following information which was filed by the provincial prosecutor, based on the complaint lodged by Emma Siervo with the police of Mondragon, Northern Samar, which states:

"That on or about the 17th day of May, 1990 at about 1:00 in the morning more or less and inside the offended party's house situated at Sitio Pag-usoyon, Barangay Nenita, Mondragon, Northern Samar, Philippines, and within the preliminary jurisdiction of this Honorable Court, the above-named accused person with lewd designs did then and there wilfully, unlawfully, feloniously and forcibly intimidated and made (sic) sexual intercourse with herein offended party against her will." (p. 10, Rollo.)

Upon arraignment, the accused entered a plea of not guilty.

The evidence for the prosecution, consisting of the testimonies of the offended party, Emma Siervo, Dr. Edmundo Molon and Germie Siervo, Emma's eleven-year--old daughter, shows that on May 17, 1990, one hour after midnight, Germie Siervo who lived with her mother, brother and sisters in a one-room shanty, was awakened when the accused entered their house by forcibly opening the frail door shutter. By the light of the vigil lamp ("lampara"), she saw that the accused was armed with a 17-inch bolo and he was completely nude except for his shirt which he held in his left hand in order to cover his private part. Germie gave out a shout of alarm but the accused pushed her down and threatened to kill her if she did not keep quiet. Fearful that the accused might kill them all, Germie lay quietly on the floor as she watched Ferolino blow out the lamp. He approached Emma who was fast asleep after a hard day's work in the fields and placed his bolo on her chest, whereupon she awoke. She shouted in panic but he stuffed her mouth with the shirt which he carried in his hand and threatened to kill her if she did not keep still. By the light of the moon, Emma recognized the accused. He roughly bent her right leg to the level of her shoulder and lay on her. Terrified and grimacing with pain from her arm which had become swollen from pulling weeds in the fields, and still weak from her recent childbirth (her fifth), Emma was no match for the accused who did not take long to consummate his lewd design. Done with her, he removed his shirt from her mouth and stepped out of the shack, but not without warning her that he would kill them all if she told anyone about what he had done.

Nevertheless, early the next morning, Emma filed a complaint for rape with the barangay captain. On his advice, she proceeded to the town of Mondragon to submit herself to a medical examination at the Northern Samar General Hospital and to report the sexual assault to the police authorities. She also wrote about the incident to her husband who had left Pag-usoyon in April to work as a construction laborer in Manila.

Only the accused and his drinking buddy, Leonardo Caranog, testified in his defense. Caranog was a fellow worker in the DENR nursery in Pag-usoyon where the accused was the Nursery-in-Charge. The nursery was located across the street from Emma's hut.

The accused admitted having sexual intercourse with the offended party on the night of May 17, 1990 but he alleged that they had pre-existing amorous relations. He implied that this came about because Emma was always strapped for cash and often sent her daughter Germie to him to borrow either rice or money for her family's subsistence. He alleged that twice in April, after Emma's husband, Jose Siervo, had left for Manila, he and Emma had sexual intercourse. The incident on May 17, 1990 was their third. On that date he allegedly arrived at around 11:00 o'clock in the evening from Rawis (Lao?ang), where his family lives. Emma called him across the street at around midnight. Wearing only his shorts, he went over in answer to her summons. When he reached Emma's house, she was lying near the door so he sat beside her. Emma borrowed P17.00 from him to buy milk for her baby but he gave her P100.00 instead, and asked her how she would repay him. He held her hand and they had intercourse while her children slept inside the shanty. He lay beside Emma for three hours before he returned to his quarters in the nursery building. He alleged that Emma demanded P30,000.00 from him in exchange for the dismissal of this case.

Leonardo Caranog merely corroborated the accused.

In rebuttal, Emma Siervo denied that she had any relationship, sexual or otherwise, with the accused, or that she called him to her hut on the night she was ravished by him. She denied having borrowed money from him at anytime because she had her own means of livelihood by farming. Moreover, if she ever needed money, she has an older sister who lives only a hundred yards away, to whom she could run for help. On the other hand, Ferolino or his daughter often borrowed salt from her house.

Disbelieving the accused's version of the incident, the trial court made the following observations:

"x x x. The sexual union is not denied for the accused admitted though claiming that the same was upon a mutual desire. The accused's version of their illicit liaisons which he said were already three times provokes, however, such question why in the wee hours in the morning on May 17, which was supposedly the third sexual relation, was only then that he suggested such a repayment for all the palay, rice and money that he gave her. Before lying together after the accused gave Emma Siervo P100.00 in response to her request to borrow P17.00 with which to buy milk for the baby, he was implicit in his suggestion that the repayment he desired was to be her body to satisfy his lust. The colloquy he represented to repeat in court, in the vernacular, to the effect as to what he can get in return for the rice, palay and cash and Emma Siervo's reply that she can well repay, the caressing he made of her private part right then and there is obvious and suggests no other than his desire to have sexual intercourse with her. It is, therefore, amazing why he suggested such kind of favor or repayment when they were already used to indulge in the act, including the tryst at the camote plantation.

"The first such intercourse which the accused said took place at the nursery building was committed within the one-room affair, measuring only 5 x 6 meters, where Emma Siervo and Jose Siervo's four children and the brother of the latter also lay. By its very nature consenting adults commit act in utmost privacy that Emma's assent to commit infidelity in the narrow confines of the room is a brute departure from the natural sense of decency of man and the traditional modesty of Filipino women. For even prostitutes endeavor to maintain a decorous front and Emma Siervo has not been pictured to be that notoriously unchaste and shameless. Indeed, she lost no time in denouncing the outrage to the authorities for at daybreak she sent her daughter Germie to her (Emma) sister's house in order to accompany her to the barangay captain where she first proffered her complaint. During the same morning, she proceeded to the town and before the municipal authorities who did not act on her complaint, but

advised her to undergo a medical examination and submit a medical certification. This fact, added, negates consent to the sexual advances. x x x With Emma Siervo's weakened condition and intimidated by an armed rapist, it is reasonable to accept her lack of vigorous resistance. The same effect can also be expected as so influencing and overpowering for the very young and inexperienced like Germie Siervo that all she could do was to turn over and lay prostrate crying and trying to tug her mother's left foot. Except Leonardo Caranog, who never did impress the court with his fractured account, who said he went to sleep at midnight (the incident took place at 1:00 a.m.) after the three of them in that drinking spree with the accused dispersed when he was summoned by the offended party and who is the accused's hireling every now and then to plant saplings for the government for a fee, no other testified to corroborate the accused's claim of consented coitus." (pp. 57-59, Rollo.)

On November 26, 1990, the Regional Trial Court rendered the appealed decision, the dispositive portion of which provides:

"WHEREFORE, the Court hereby finds Santiago Ferolino, also known as Tagoy, GUILTY beyond reasonable doubt of the crime of rape and, with no mitigating or aggravating circumstance to consider, hereby sentences him to suffer reclusion perpetua and to pay the costs." (p. 59, Rollo.)

In this appeal, appellant argues that his guilt was not proven beyond reasonable doubt and insists that the sexual intercourse on May 17, 1990 was the culmination of his and the offended woman's mutual lust for each other.

We find no merit in that theory of the defense.

Rape being a crime not normally committed in the presence of witnesses, courts rely on the credibility of the complainant's testimony as weighed against that of the accused. Fortunately in this case, the prosecution was considerably strengthened by a second witness, the complainant's 11-year old daughter who witnessed the violation of her mother by the accused.

It is an entrenched rule in criminal jurisprudence that when the issue is one of credibility of witnesses, "appellate courts will generally not disturb the finding of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case" (People vs. Edwin Pascual, 208 SCRA 393). "Unlike appellate magistrates, the trial judge can weigh such testimony in the light of the declarant's demeanor, conduct, and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false" (People vs. Rolando Castillo, 208 SCRA 62).

A cautious analysis of the testimonies of the prosecution witnesses reveals their sincerity and spontaneity in contrast to the defense witnesses' contrived narration. No improper motive can be ascribed to Emma and her daughter, Germie, in filing their criminal charge against the accused, other than their desire to speak the truth and seek redress for the wrong done to Emma.

It is unnecessary to delve into Emma's supposedly speckled past, as the defense endeavored to do, for virginity is not an essential element in rape. (People vs. Hortillano, 177 SCRA 729; People vs. Samillano, G.R. No. 62088, March 6, 1992). Even a prostitute can be a victim of rape.

WHEREFORE, the appealed decision is AFFIRMED, but with modification of the penalty imposed on the accused, Santiago Ferolino, to include an award for moral damages in the amount of P50,000.00 in favor of the complainant, Emma Siervo.

SO ORDERED.

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

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