

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINADOR SARELLANA, ACCUSED-APPELLANT.

G.R. Nos. 102056-57. June 08, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the Decision, dated June 6, 1991, of the RTC, 11th Judicial Region, Branch 16, Davao City,[1] convicting accused-appellant of two counts of Rape committed against complainant Joy S. Ombing.[2]

The Criminal Complaint, dated October 19, 1987, in Crim. Case No. 15588-87 reads as follows:

"The undersigned JOY S. OMBING accuses the above-named (referring to accused-appellant) of the crime of Rape, under Art. 335, Par. 1 of the Revised Penal Code, committed as follows:

"That sometime on August 9, 1987, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, a virgin who is 14 years of age, against her will.

"Contrary to law."[3]

On the other hand, the Criminal Complaint in Crim. Case No. 15589-87 states, viz.:

"The undersigned JOY S. OMBING accuses the above-named (referring to accused-appellant) of the crime of Rape, under Art. 335; Par. 1 of the Revised Penal Code, committed as follows:

"That sometime on September 11, 1987, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, a virgin who is 14 years of age, against her will.

"Contrary to law."[4]

Accused-appellant remained at large despite the warrant of arrest issued in both cases.[5] He was finally arrested on January 31, 1990.[6] He pleaded "not guilty" to the charges against him. The rape cases were tried jointly.

The testimony of the prosecution witnesses[7] reveals that complainant JOY OMBING is the eldest of six children.[8] She was born on June 14, 1973.[9] Accused-appellant was known to both complainant and her mother, EULALIA OMBING, for they were barriomates.[10]

In August, 1987, the Ombing family evacuated from their home in Indangan, Buhangin District, San Miguel, Davao City, to the barangay proper of San Miguel, about one kilometer away.[11] They stayed there for three (3) months before returning to their home.[12] During that three-month period, the Ombings often saw accused-appellant, then an Alsa Masa member, patrolling San Miguel armed with a garand and a paltik revolver.[13] He would also visit the Ombings at the house where they evacuated, located across the street from

the Alsa Masa outpost/camp.[14] Accused-appellant was at times armed during those visits.[15]

At around noon, on August 9, 1987, complainant was on her way to their home in Indangan to feed the pigs they had left behind.[16] She rode her bike and passed through an isolated, unasphalted road. It was there that she was waylaid by accused-appellant.[17] When accused-appellant told complainant to stop, she vainly tried to flee.[18] He, however, caught up with her.[19]

Accused-appellant grabbed complainant and poked a handgun at her neck.[20] He dragged her towards a banana grove[21] located about ten (10) meters from the unasphalted road,[22] and shoved her bicycle towards a nearby cogonal area.[23] She shouted for help, but he threatened her with death if she continued screaming. She asked him, "Why are you doing this to me?". In response, he told her not to talk.[24]

When they were already in the banana grove, accused-appellant held complainant's feet and pushed her to the ground.[25] Still holding the handgun aimed at complainant, accused-appellant forcefully removed her pants and underwear, ripping the right side of her panty in the process.[26] Accused-appellant removed his pants and brief,[27] mounted complainant, and inserted his penis into her vagina. Her defloration took about a minute. She felt great pain because of the penetration. Her private part bled.[28] Accused-appellant warned complainant, "Alright, reveal this to your mother, and I will kill you." He left.[29]

Complainant got up and retrieved her bicycle. She proceeded to their house in Indangan, fed their pigs and pastured their carabao.[30] She then returned to barangay San Miguel proper. Fearing accused-appellant's threat against her life, she did not report her assault to her mother.[31]

On September 11, 1987, complainant was again tasked by her mother to feed their pigs in Indangan. At around noon that day, complainant rode her bicycle down the same unasphalted road where she was first accosted by accused-appellant. There, she was again met by him.

Accused-appellant ran after complainant, who tried to escape on her bicycle.[32] He looped his arm around her neck, and covered her mouth to muffle her screams. However, she managed to shout for help several times. Accused-appellant then warned her, "All right, continue shouting and I will kill you now." The other hand of accused-appellant held a revolver which he poked at complainant.[33]

Accused-appellant dragged complainant to a banana grove about ten (10) meters from the unasphalted road. She tried to free herself, but failed.[34] Accused-appellant forcibly removed complainant's pants and underwear. He again succeeded in making a copulation with her. It caused her severe pain. It also resulted in the bleeding of her private part.[35] Accused-appellant kept his sex organ inside complainant's private part for about a minute.[36] After that, he told her, "All right, you tell your mother what happened to you, and I will kill you first before I will kill all the members of your family." [37] Accused-appellant left complainant behind in the banana grove.

After September 11, 1987, complainant had occasion to see accused-appellant around San Miguel. Each time, he would warn her against telling anyone about the two assaults, on pain of her entire family's death.[38]

It was only in October, 1987 that complainant gathered the courage to tell her mother about the violence committed by accused-appellant against her virginity. Her parents decided to file a case against him. They brought her to a doctor for examination. They reported the sexual assaults to the police.[39]

DR. JOSE G. LADRIDO, JR. conducted the medical examination on complainant on the afternoon of October 13, 1987. His examination notes (Exh. "A") reveal the following findings:

"Physical Condition: normal

"Mental State: apprehensive

"Breasts: fully developed, conical in shape, supple

"Areolae: dark brown 3.5 in diam.

"Nipples: dark brown 6 in dia., 5 cm. elevation

"Height: 5'

"Weight: 42 kls.

"Last menstruation: September 13, 1987

"Extra Genital Injuries: none

"GENITALIA

Pubic hairs: black-fully developed slightly curly course 6-5 cm.

Labia Majora: highly pigmented; slightly opened

Labia Minora: prominent highly pigmented pendulus corrugated

Fourchette: soft V formation obliteration

Vestibule: _____

Hymen: old laceration at 3 o'clock, 9 o'clock

Orifice: slightly open

Rugosities: flattened

Vaginal Canal: Admits 2 fingers with slight difficulty

Walls: soft

Uterus: normal

Cervix: closed

Discharge: mucopurulent

Smears: close

"CONCLUSIONS:

May have had sexual contact on alleged date."[40]

On the back side of Exh. "A", are found the following data:

"Case No. 30

"Name: JOY UMBING (sic)

"Age: 14

"Sex: F

"Status: Single

"Address: Indangan, Davao City

"Occupation: student

"Alleged case: Rape

"Time, date and places of Commission: 12:00 noon - August 9, 1987, banana grove (sic) in Indangan

"Time and date of first intercourse: 12 noon - August 9, 1987

"Time and date of last intercourse: 12 noon - September 11, 1987

"Number of Intercourses: 4 times

"Date of last menstruation: September 13, 1987

"Date and place of birth: June 14, 1973 ? Davao City

"Academic attainment: 1st year high school

"Alleged Accused: Dominador Sarellana

"Time, date and places of examination: 3:10 p.m. - October 13, 1987 - CHO"

The doctor testified that he found two old lacerations on complainant's hymen, at the three o'clock (3:00) and nine o'clock (9:00) positions, respectively.[41] He also found that her vaginal canal admitted two fingers with slight difficulty.[42] He concluded from his findings that complainant may have had sexual contact on August 9, 1987 and September 11, 1987.[43]

Accused-appellant, for his part, testified that he and complainant were sweethearts at the time the charged rapes occurred. He said that he and complainant began their relationship in April, 1986. She was then 13 years old and he was 29. He stated that complainant gave him her picture in the early part of 1987 as proof of their relationship. He, however, was unable to submit the picture as evidence. It was allegedly destroyed when his mother washed his pants with said photograph still inside its pocket. Accused-appellant categorically denied he had sexual intercourse with complainant.[44] He also denied that he had a handgun or revolver.

The defense also presented as witness SEVERO ABEAR, a 46-year-old farmer from Indangan, San Miguel, Buhangin district, Davao City. Like accused-appellant, the witness was a member of the Alsa Masa movement at the time the charged rapes occurred.[45]

Abear testified he saw complainant and accused-appellant meet at a house near the Alsa Masa camp several times. He narrated the exact number of times he saw the two together inside the said house, as follows: in April, 1987, the two were together everyday, from 12 noon to 7:00 p.m.;[46] in May, 1987, the daily trysts continued, but these lasted for only three (3) or four (4) hours each;[47] in June, 1987, the two did not meet;[48] in July, 1987, they got together three (3) times;[49] and August, 1987 marked the last two meetings between complainant and accused-appellant.[50]

On cross-examination, Abear admitted that he considered accused-appellant as his own child. He volunteered to testify before the trial court in behalf of accused-appellant.[51]

The trial court found accused-appellant guilty of rape in both Crim. Case No. 15,588-87 and Crim. Case No. 15,589-87. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape punishable under Article 335, paragraph 1 of the Revised Penal Code in Criminal Cases No. 15,588 and 15,589 the said accused is hereby sentenced to undergo an imprisonment of Reclusion Perpetua in each of the said criminal cases, to indemnify the offended party in the amount of P50,000.00 in each of said criminal cases and to pay the cost.

"SO ORDERED."[52]

In this appeal before us, accused-appellant posits the view that "the court a quo erred in convicting (him) despite failure of the prosecution to prove (his) guilt beyond reasonable doubt." He calls attention to facts and circumstances which he claims cast doubt and suspicion on the prosecution's evidence. He demands we reject the testimony of complainant Joy Ombing.

We affirm the judgment of conviction.

Accused-appellant argues that the court a quo overlooked the evidence showing the existence of an "intimate relationship"[53] between him and complainant. The claimed "intimacy" is more imagined than real as it was categorically contradicted by accused-appellant's own testimony during cross-examination, to wit:

"Q You said that on September 11 and August 9, you did not rape Joy Ombing, is that right?

"A No, sir.

"Q You mean to say you had no sexual intercourse with Joy Ombing on August 9 and September 11, 1987?

"A No, sir.

"Q You mean to say for even once during your alleged (time) as sweethearts, you did not touch the womanhood of Joy Ombing?

"A None, sir. We only used to converse with each other.

"Q So that until now, she is still a virgin?

"A I did not make foolishness to her."

(TSN of July 16, 1990, p. 86)

But even granting arguendo the claimed intimacy, this court has held on several occasions that not even a past sexual relationship between the parties to a rape case constitutes a defense to the crime if "it is established that the particular instance of coitus, which is the subject of the information, took place against the woman's will."[54]

Accused-appellant denounces as unnatural and unreasonable, two actions of complainant after the charged rapes: first that on both times she was ravaged by accused-appellant, she still went to their abandoned house in Indangan to do her chores before returning to their house in San Miguel; and second, that complainant failed to report immediately the rapes and her assailant to her parents and the police authorities.

We are not persuaded.

Complainant's acts of doing her assigned tasks at their abandoned house even after she was assaulted by accused-appellant is easily explained by her fear that he would liquidate her family. Complainant's immediate return to San Miguel would have stirred the suspicion of her mother. Complainant would then have found it difficult to avoid reporting the offenses committed against her. Furthermore, contrary to the assertion of accused-appellant,[55] complainant suffered pain and discomfort while traveling on her bike after the assault. On this point, she testified on cross-examination, viz.:

"Q After you pastured your carabao, you said you proceeded home and rode on the bicycle. (Did) you meet any person there along the road?

"A None, sir.

"Q How far is that old residence of yours to the house where you evacuated?

"A It is one kilometer away.

"Q And what is the condition of the road, is it asphalted or cemented?

"A It is only soil.

"Q No sand and gravel?

"A None, sir.

"Q And you used the bicycle in going to your home without any pain on yourself?

"A I felt pain.

"COURT:

"Q Where is that part of your body where you felt pain?

"A On my private part and my neck.

"xxx xxx xxx"

(TSN of July 9, 1990, p. 57)

(Emphasis supplied.)

On the other hand, this court has repeatedly held that delay in reporting a rape incident due to death threats should not be taken against the victim.[56] This doctrine applies with greater force to the case at bench, where complainant was only fourteen (14) years of age at the time of the assaults, while accused-appellant was sixteen (16) years her senior and an armed member of the dreaded Alsa Masa movement. The threat to her life and her family was real; her fear was reasonable.

This court is also not convinced by accused appellant's argument that the rape charges are "baseless and unfounded"[57] due to "loopholes"[58] in complainant's testimony regarding the firearm he was carrying on August 9, 1987 and September 11, 1987. Firstly, accused-appellant's assertion he did not have a handgun is futile. It cannot prevail over the clear and positive testimony of complainant -- on both direct and cross-examination -- that during the two assaults, he was armed with a revolver which he poked at her neck. It is also of little comfort for accused-appellant to pound on complainant's alleged failure to remember where he put his revolver while he was consummating their sexual intercourse. It should not be considered unusual for a person under great stress, as complainant was at the moment the unlawful coitus took place, to forget certain details of the crime. Complainant's preoccupation at that time was to avoid the assault against her, and not to photograph in her mind the lurid details of the crime.

Accused-appellant also contends that there are differences between complainant's testimony before the trial court and the contents of her Affidavit, dated October 14, 1987, certified by Lieutenant Daniel D. Corral of the INP.[59] Again, the discrepancies will not necessarily crumple the credibility of complainant. For, as we have held before:

"The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally incomplete. Affidavits are generally subordinated in importance to open Court declarations because they are oftentimes executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to them."[60]

Accused-appellant finally anchors his appeal on two other circumstances, namely: the lack of corroboration of complainant's claim that she was tasked by her mother to go back to their abandoned house to feed their pigs on August 9 and September 11, 1987; and Dr. Ladrado, Jr.'s claim that complainant told him that she has had sexual intercourse four (4) times.

The defense once again fails to persuade.

In the case at bench, the court a quo saw no reason to disbelieve complainant's uncorroborated statement that she was sent by her mother to Indangan on August 9 and September 11, 1987. There is no reason to disturb the finding, for we generally accord great respect to the factual conclusions of trial courts. This is particularly true with respect to the credibility of witnesses since the trial judge had the opportunity to form a first-hand judgment as to whether they were telling the truth or not.[61] Moreover, the truthfulness of a testimony is not determined by the force of number. As long as the testimony is credible, tested by reason and experience, it ought to be given credence even if uncorroborated.

Furthermore, it must be remembered that in order to convict a man for the rape of a woman over twelve years of age, it is sufficient that it be indubitably shown that he had carnal knowledge of her either through force or intimidation, or when she was deprived of reason or otherwise unconscious.[62] Thus, the question of whether or not complainant was, indeed, on her way to Indangan when she was waylaid and assaulted by accused-appellant, as well as her sexual experience outside the two assaults subject of this case, are minor details which are not essential to the prosecution's case.

Independently of the issues brought out in the appeal, we find that accused-appellant was correctly convicted of both counts of rape for which he was charged. Forced carnal knowledge on both occasions was shown beyond a reasonable doubt, and complainant positively identified accused-appellant as the author thereof. We find it additionally convincing of accused-appellant's guilt that he was at large from late 1987 until he was finally arrested on January 31, 1990. We have repeatedly considered flight of an accused as an awareness of guilt and a consciousness that he had no tenable defense to the rape charge.[63]

IN VIEW WHEREOF, the Decision, dated June 6, 1991, of the court a quo, convicting accused-appellant DOMINADOR SARELLANA of two counts of Rape in Criminal Cases No. 15,587-89 and 15,588-89 is hereby AFFIRMED IN TOTO. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Presided by Judge Romeo D. Marasigan.

[2] The two rape cases were docketed as Crim. Case No. 15,588-87 and Crim. Case No. 15,589-87, which were consolidated and tried together before the trial court.

[3] Rollo, p. 4.

[4] Ibid., at p. 2

[5] Id., at pp. 10-11.

[6] Id., at pp. 12-13.

[7] Namely: complainant, JOY S. OMBING; her mother, EULALIA OMBING; DR. JOSE G. LADRIDO, JR.,

and PFC. ANTONIO YSULAT.

[8] TSN of July 2, 1990, p. 16.

[9] Ibid.; TSN of July 9, 1990, p. 38.

[10] Id..

[11] Id., at p. 24.

[12] Id., at p. 25.

[13] TSN of July 2, 1990, p. 25.

[14] TSN of July 2, 1990, p. 26.

[15] Ibid., at p. 32.

[16] TSN of July 9, 1990, p. 39.

[17] Ibid., at pp. 39-40.

[18] Id., at p. 40.

[19] Id..

[20] Id., at p. 41.

[21] Id..

[22] Id., at p. 43.

[23] Id..

[24] Id., at p. 41.

[25] Id., at p. 44.

[26] Id., at pp. 41, 59.

[27] Id., at p. 60.

[28] Id., at pp. 41-42.

[29] Id., at pp. 43-44.

[30] Id., at pp. 44-45, 56.

[31] Id., at pp. 44-45.

[32] Id., at p. 45.

[33] Id..

[34] Id., at p. 47.

[35] Id., at pp. 46-47.

[36] Id., at p. 47.

[37] Id., at p. 48.

[38] Id..

[39] Id., at pp. 49-50; See TSN of July 2, 1990, pp. 54-58.

[40] RTC Records, p. 27.

[41] TSN of July 2, 1990, p. 7.

[42] Ibid., at p. 8.

[43] Id., at p. 9.

[44] TSN of July 16, 1990, pp. 85-86.

[45] Ibid., at pp. 88-89.

[46] Id., at pp. 94-95.

[47] Id., at pp. 95-96.

[48] Id., at p. 96.

[49] Id., at pp. 97-98.

[50] Id., at p. 98.

[51] Id., at p. 101.

[52] Rollo, p. 22.

[53] Appellant's Brief, p. 15.

[54] People vs. Naguita, 208 SCRA 206, 212 (1992); See People vs. Pocolan, 167 SCRA 176, 198 (1988); People vs. Taduyo, 154 SCRA 349 (1987); People vs. Blance, 45 Phil. 113, 116 (1923).

[55] See Appellant's Brief, p. 12.

[56] See People vs. Lucas, 181 SCRA 316 (1990); People vs. Oydoc, 123 SCRA 250 (1983);

[57] Ibid., at p. 13.

[58] Id..

[59] RTC Records, p. 4.

[60] People vs. Ponferada, 220 SCRA 46, 53-54 (1993), citing People vs. Dumpe, 183 SCRA 547, 553 (1990). See People vs. Gonzales, 99 SCRA 697 (1980).

[61] See People vs. Naguita, 208 SCRA 206, 211 (1992).

[62] See Art. 335, Revised Penal Code.

[63] People vs. Averro, 165 SCRA 130 (1988).

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