

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NAPOLEON SUBINGSUBING, ACCUSED-APPELLANT.

G.R. Nos. 104942-43. November 25, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

Accused-appellant Napoleon Subingsubing was charged with the crime of rape in three (3) separate informations reading thus:

CRIMINAL CASE NO. 772

"That on or about noontime of November 28, 1989 at Barangay Fiangtin, Barlig, Mountain Province and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation by poking his garand rifle and then boxing the belly of the complainant, MARY JANE S. ESPILAN, which rendered the latter unconscious, did then and there willfully, unlawfully and feloniously have carnal knowledge with the complainant, against her will and without her consent."

CRIMINAL CASE NO. 773

"That on or about the afternoon of November 30, 1989, at Barangay Fiangtin, Barlig, Mountain Province and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation by putting over the nose of the victim handkerchief soaked with chemical which rendered the latter unconscious did then and there willfully, unlawfully and feloniously have carnal knowledge with the complainant, against her will and without her consent."

CRIMINAL CASE NO. 774

"That on or about noontime of November 25, 1989, at Barangay Fiangtin, Barlig, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation by poking his garand rifle and then boxing the belly of the complainant, MARY JANE S. ESPILAN, which rendered the latter unconscious, did then and there willfully, unlawfully and feloniously have carnal knowledge with the complainant, against her will and without her consent."

Upon arraignment, the accused entered pleas of not guilty to the three (3) criminal informations which were then consolidated and tried jointly to expedite proceedings.

After trial on the merits, the trial court found the case meritorious for the prosecution in Criminal Case Nos. 772 and 774 in view mainly of the testimony of the complainant which was found credible. Accused-appellant was, therefore, convicted for rape in said cases. However, insofar as Criminal Case No. 773 was concerned, the trial court found the testimony of the complainant therein inadequate to sustain conviction and "surmised that perhaps out of her bitterness, the said complainant wanted to ensure that the accused be meted out the highest penalty possible." Accused was accordingly acquitted in said Criminal Case No. 773.

Hence, this appeal in Criminal Case Nos. 772 and 774, docketed in this Court as G.R. No. 104942 - 104943.

The case for the prosecution, anchored mainly on the testimony of complainant Mary Jane Espilan, was summarized by the trial court[1] the pertinent portion of which states:

"The complainant Mary Jane Espilan in all of these actions is sixteen years old, unmarried and resident of Philex Mines, Baguio. For the past three years immediately preceding 1990, she continuously lived with her grandmother at the latter's house at Bo. Fiangtin, Barlig, Mountain Province while her parents were residing in Baguio. At that time she was a high school student. The accused Napoleon Subingsubing is the complainant's uncle, the brother of her mother and the son of her grandmother. Said accused was then living with his mother and his niece in the same house as mentioned. On Nov. 25, 1989, at 1:00 P.M., Mary Jane and Napoleon were alone in the house, the grandmother having gone to the fields. When Mary Jane was about to go out to attend her afternoon classes in school, Napoleon forcibly pulled her to the bedroom of the grandmother, pointed his Garand rifle at her, then punched her in the stomach as a result of which the former lost consciousness. When the complainant regained her senses, she noticed that she was en dishabille and her vagina was bloody. She felt pain in her private parts and is quite certain she was raped or abused. The accused who was then standing outside the room warned the complainant not to tell anybody what happened or else he will kill her. Hence Mary Jane did not report the incident to her grandmother or to anyone for that matter. In the morning of November 28, 1989, at 10:30 o'clock A.M., Mary Jane arrived from school and Napoleon was alone in the house. The latter again leveled his Garand Rifle at the former and pushed her into her bedroom. The complainant tried to get out of the house but the accused held unto her. Inside the room, the said accused pulled down the skirt of Mary Jane, pushed her down on the floor, stripped off her panties and laid down on top of her with the zipper of his pants open. Forcing the complainant's legs apart, the accused abused or took advantage of the former the second time around. All the while, Napoleon was holding unto his rifle and Mary Jane was afraid to scream for he might squeeze the trigger. Immediately thereafter, the complainant gathered up all her clothes and went to their own family house at Bo. Pat-tog, Barlig which is less than a kilometer away from her grandmother's residence. She wanted to get away from her uncle, hence she stayed alone in the house until November 30, 1989 in the morning when the accused followed her. She was then cleaning the ceiling of their house when Napoleon sneaked up behind her, and when the former tried to scream, the accused placed a piece of cloth soaked with some sort of chemical over the nose of the complainant and the latter fainted. When she awoke, Mary Jane found herself lying on the floor stark naked. She felt that she had again been sexually molested. The accused who was outside the house menacingly ordered the complainant to pack her clothes and go back home with him. The afternoon of the same day, Mary Jane and Napoleon went back to the house of the former's grandmother. The complainant did not reveal to anybody the things that happened to her for fear that the accused might really kill her as the accused had threatened to do. Months later, when she was with her parents in Baguio, Mary Jane finally divulged everything to her mother Rosita Espilan. They went back to Barlig and reported the incidents to the police station where the statement of the complainant was taken (Exhs. "A," Crim. Case No. 772, pp. 4-5; Crim. Cases Nos. 773-774, pp. 2-3). Thereafter, she had herself physically examined at the Barlig hospital by a government physician and was found pregnant (Exh. "C"; p. 6, Crim. Case No. 772). On August 29, 1990 in Baguio, the complainant delivered a baby boy. The latter before all these things happened to her was a virgin with no prior sexual experience. She did not even have a boyfriend. In open court, Mary Jane Espilan singled out the accused Napoleon Subingsubing as the culprit in all of the incidents she earlier testified to.

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At the trial, the accused Napoleon Subingsubing denied the charge of rape as narrated above and proffered a different story. Interposing consent on the part of the complainant as a defense, he testified[2] that at around 10:00 o'clock in the morning of 25 November 1989, he arrived at his mother's house at Bo. Fiangtin, Barlig, Mountain Province after fetching wood. Shortly thereafter, the complainant arrived from school, massaged the back of the accused and then prepared their lunch. After eating, the accused went to his room to rest but was followed by the

complainant who laid down beside him, placed her hand on the accused's stomach, and then the pair embraced. They both removed their clothes and then had sexual intercourse. At this time, the complainant was smiling, tightly embracing the accused. After the intercourse, the complainant put on her clothes, went to her room to change and then went back to school. That evening, the accused brought the complainant to attend a wake. The accused also professed that the incident on 25 November 1989 was the only occasion when he had sexual intercourse with the complainant.

On 28 November 1989, the complainant asked him to help clean their house located at Pat-tog, Barlig, Mountain Province, as witnessed by a neighbor's child. The accused denied that he had sexual intercourse with the complainant on 28 November 1989 and 30 November 1989.

To bolster the claim of the accused, his mother, Rufina Subingsubing, who is also the grandmother of the complainant, testified,[3] among others, that the three (3) of them were living in one house and that their relationship was happy, even after the month of November 1989; that the complainant left her house in March 1990 for a vacation and was fetched by her mother; that the only thing she observed about the complainant was that her breasts were becoming bigger; that the complainant and the accused got food for the pigs on Saturdays and that when the latter would receive his monthly salary, the complainant would ask him to take her to the movies.

Three (3) other witnesses for the defense were presented who corroborated the story of the accused and testified that indeed, the complainant and the accused were seen going out together and sharing happy moments months after November 1989 (when the alleged rapes were committed).

It is a fundamental rule in criminal procedure that the prosecution has the onus probandi in establishing the guilt of the accused, as a consequence of the tenet *ei incumbit probatio qui dicit, non qui negat*, that is, he who asserts, not he who denies, must prove. This is especially significant in rape cases for, generally, in the prosecution thereof, the only two (2) parties who can testify as to the occurrence are the complainant and the accused. Very often, their respective testimonies are diametrically contradictory as to what really happened.[4]

A careful perusal of the records of the present case reveals, even if we were to assume *arguendo* that the defense of consent on the part of the complainant was not sufficiently established, that the evidence for the prosecution cannot, on its own, stand and suffice to establish the guilt of the accused for the crime of rape beyond reasonable doubt.

Although the general rule is that this Court by and large respects the factual findings of the trial court because of its better position in assessing the credibility of witnesses through close scrutiny of their demeanor, mannerism and attitude, the present case falls short of convincing us that it falls under such general rule.

A perusal of the records and the testimony of the complainant discloses contradictions and inconsistencies on vital details which lead one to seriously doubt the veracity of her story.

On 05 March 1991, during her direct examination, complainant described the incidents when the accused allegedly raped her, as follows:[5]

"Q: Will you tell this Honorable Court what was that incident?

A: When I was about to leave for school (this was on 25 November 1989) and was almost to go out, my uncle pulled me and when I resisted trying to go out, he poked his gun at me and boxed me on my stomach and I was unconscious. When I woke up, I was conscious already.

xxx xxx xxx (Underscoring supplied).

Q: When you regain (sic) consciousness miss witness, what was your position?

A: I was naked, sir.

Q: When you say you were naked, you mean to say that your panty was removed?

A: Yes.

Q: Your shirt, underwear, and even your panty were removed?

A: Yes, sir.

Q: But before the accused boxed you, do you remember if you were wearing all your clothings?

A: I was wearing my school uniform.

Q: And when you regained consciousness, you noticed that your clothings were removed?

A: Yes.

Q: Do you know who removed your clothings?

A: Yes.

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COURT:

Q: You said that when the accused was on top of (you) you don't (sic) have any underwear?

A: When he was on top of me I was forcing myself to get out.

Q: But you don't (sic) have your panty?

A: He removed my panty.

Q: About him how did he look?

A: Only the zipper of his pant was down.

Q: And then he went on top of you?

A: Yes and I forced to get out but he was strong.

Q: When he was on top of you, you forced yourself to get out, that was all?

A: Yes, sir.

Q: What else happened?

A: He did again what he did to me.

Q: And what is that that he did to you?

A: He abused me again, sir.

Q: And what do you mean by abuse?

A: He took advantage again of me for the second time.

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Q: Did you not shout for help?

A: I tried, sir but his gun was poked to (sic) me.

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Q: Did he tell you anything?

A: Yes, he said that if I will scream, he will kill me.

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Q: And when you went to your house at Barangay Pat-tog, what happened there, if any?

A: When I went to our house at Pat-tog I did not know that he still followed me there, that was on the 30th of November, 1989.

Q: He followed you at Barangay Pat-tog on November 30, 1989?

A: Yes.

Q: And when he followed you there, what happened?

A: While I was cleaning the ceiling of our house, I did not know that he entered the second floor of our house.

Q: And after that what happened?

A: When I was about to shout, he immediately came to me and put a piece of cloth with chemical on my nose then I felt unconscious already.

Q: And were you able to regain consciousness?

A: I regained consciousness after all the thing happened to me.

Q: And when you regained consciousness, what did you notice?

A: I was lying on the floor naked, sir.

Q: And what do you think happened to you.

ATTY. DOMALSIN:

The witness will be incompetent to answer what happened to her because she was made unconscious.

COURT:

Being the person herself she is competent to feel what happened to her.

Q: After you regained consciousness, you stated that you were lying on the floor?

A: Yes, sir.

Q: What did you feel at that time?

A: I felt uneasy.

Q: That was all?

A. Yes.

Q: You did not feel what happened to any part of your body.

A: I felt. He did again what he has done to me for the third time.

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Q: Do you remember miss witness if during those times when you said that the accused boxed you and you felt unconscious....

A: I did not feel anything when I felt unconscious.

Q: When he threatened you telling you that he will kill you if you tell anybody what happened, what did you say?

A: I just kept quiet.

Q: Do you have neighbors?

A: We have neighbors but they were out that time.

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Q: On March (November) 28, 1989, do you remember where were you?

A: I was in the same house of my grandmother.

Q: And what were you doing at that time?

A: I have just arrived from school, sir.

Q: And when you arrived from school, what happened?

A: When I was in the house, he poked his gun at me and stripped my shirt.

Q: Who poked the garand rifle at you?

A: My uncle, sir.

Q: Will you please tell this Honorable Court what happened?

A: At about 11:30 P.M., I entered the house and my uncle poked his gun at me. I don't know why he poked his gun at me then he did again what he did to me.

Q: When he poked his gun at you, what did you do?

A: I forced my way out.

Q: And were you able to go out?

A: No, sir because he was strong.

Q: What did he tell you, if any?

A: The same threat as the first time.

Q: After he poked his gun at you, what did you do next?

A: He took advantage of me again, sir.

Q: Will you be more specific, miss witness. When you said he took advantage of you, what do you mean?

A: He did the same thing that he did to me.

Q: What is that thing that he did to you?

A: He again abused my dignity as a woman.

Q: When he poked his gun at you, were you wearing clothes?

A: Yes, sir.

Q: And after that what did you do?

A: He removed my panty.

Q: And after removing your panty, what did he do next?

A: He did it again.

Q: When he removed your panty, what was your position?

A: I was standing and I was forcing to leave when he forced me to remove my panty while his gun was poked at me.

Q: And after he removed your panty, you said you were standing?

A: Yes.

Q: Then what did he do next?

A: He pushed me down on the floor.

Q: And after that what did he do next?

A: He did the same thing to me.

Q: When he pushed you down to the floor, what else happened?

A: He was on top of me.

Q: When he was on top of you, was he wearing clothes at that time.

A: Yes, sir.

Q: He did not remove any of his clothes?

A: He removed his pants.

Q: What else did he do?

A: He put down the zipper of his pant.

Q: And after he put down the zipper of his pant, what happened next?

A: I tried to get out but he was strong.

Q: And after he removed the zipper of his pant, what did he do?

A: He abused the dignity of my woman (sic).

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Q: Miss witness you said a while back that the accused poked his gun to (sic) you then removed your panty and then after that he pushed you down the floor?

A: Yes, sir.

Q: Aside from that he also removed the zipper of his pant then went on top of you?

A: I was unconscious.

xxx xxx xxx (Underscoring supplied).

Q: Aside from going on top of you, what else did he do?

A: He poked his gun at me.

Q: Then what else?

A: He did the same thing.

Q: The specific thing?

A: He raped me again, sir.

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In short, the complainant on 05 March 1991 testified that on 25 November 1989 and 28 November 1989, the accused employed force and threats which rendered her unconscious and unable to feel anything when ravished by the accused. However, when recalled to the witness stand on 02 April 1991, the same complainant Mary Jane Espilan testified:[6]

"Q: Miss Witness, you declared during the prior examination that the accused, Napoleon Subingsubing raped, abused your dignity or 'pinagsamantalahan ka' and that was on March (November) 28, my question is what do you mean when you said he abused your dignity on March (November) 28, 1991?

A: He pointed his gun to (at) me, then pushed me to my Iola's room, let me down trying to separate my legs and then placed his penis into my vagina.

COURT:

Q. When you said that the accused pointed a gun at you, what kind of gun?

A. Rifle, M-14, sir.

Q. When he pushed you down, was he still holding his gun?

A. Yes, sir.

Q. When he was doing the act, was he still holding his gun?

A. Yes.

Q. You did not resist.

A. I resisted but he was stronger than me.

Q: The second time he did the same, was he still holding the gun?

A: Yes, sir.

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The complainant's theory of force and intimidation manifested in her sworn statement and her testimony on 05 March 1991, and which rendered her "unconscious," is belied by her own testimony on 02 April 1991.

Complainant speaks of resistance, intimidation, and loss of consciousness attributed to accused's violence and threats. However, and this must be carefully noted, the complainant's testimony on 02 April 1991 gave a detailed description of what transpired during those incidents.

The Court also cannot help but question the conduct of the complainant after the alleged incidents of rape. The complainant did not reveal the incidents to her grandmother allegedly because the accused told her not to and that he would kill the complainant and her grandmother if she told anyone. Neither did she tell her mother upon the latter's arrival at Barlig on 28 April 1990 or soon after the complainant was brought by her mother to Philex Mines in Baguio City. The mother was told of the alleged incidents only on 15 May 1990. It is quite unnatural for a girl not to reveal such assaults on her virtue (if indeed they occurred) immediately after they happened or when the alleged threat on her life and her grandmother's had ceased, as in this case, when complainant had gone to Baguio. The complainant likewise admitted that after the alleged incidents in November 1989, she still went out with the accused to watch betamax movies or get food for the pigs in the ricefields. Such behaviour directly contradicts the normal or expected behaviour of a rape victim. There is no way she could possibly forgive, to say the least; and yet, complainant interacted immediately with her assailant. Viewed in its entirety, such behaviour of the complainant appears to be inconsistent with her charge of rape.

The accused, on the other hand, while admitting that indeed he had sexual intercourse with the complainant on 25 November 1989, set up the defense that the latter consented to such act. The two (2) succeeding incidents were however denied by the accused. While we find such defenses weak, we nevertheless stress once more the time-honored principle that the prosecution must rely on the strength of its evidence rather than on the weakness of the defense.

Appellant's exculpation from the offense of rape does not mean, however, that his responsibility is merely moral and not penal in character. If that were so, considering the facts of this case, it may be cause for right-thinking men and women to discern a gap or fissure in the legal order, one that cries moreover to be bridged.[7]

As things stand, for failing to meet the exacting test of moral certainty, it is incumbent upon us to set aside the trial court's judgments of conviction for rape. However, the Court must state that it finds conclusive evidence (no less than the accused-appellant's admission) that on 25 November 1989, the accused Napoleon Subingsubing had sexual intercourse with Mary Jane Espilan when she was only 16 years of age. The complainant and the accused were living in the same house. The accused is the uncle of the complainant, brother of her own mother.

Qualified seduction is the act of having carnal knowledge of a virgin over 12 years to 18 years of age and committed by any of the persons enumerated in Art. 337 of the Revised Penal Code, to wit: any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced. Abuse of confidence is the qualifying circumstance in the offense. Notably, among the persons who can commit qualified seduction is a "domestic". And a "domestic," for purposes of said legal provision, has been interpreted judicially as -

"x x x Upon the word domestic being employed in said legal provision segregating it from that of a servant, the term is applied to persons usually living under the same roof, pertaining to the same house, and constituting, in this sense, a part thereof, distinguishing it from the term servant whereby a person serving another on a salary is designated; in this manner, it has been properly used." [8]

Under the circumstances of the case at bench, we hold that a conviction for qualified seduction is proper in Criminal Case No. 774. The verified complaint for rape contains allegations, sans averment on the use of force, which impute the crime of qualified seduction. Any deficiency in the complaint is supplied by the supporting affidavit,[9] where complainant averred that the accused Napoleon Subingsubing, her uncle,[10] who was living

in the same house as the complainant,[11] had sexual intercourse with her. The accused took advantage of his moral ascendancy if not dominance over the complainant. She was presumably a virgin. As already stated, the accused was a domestic in relation to the complainant within the meaning of Art. 337 of the Revised Penal Code.

WHEREFORE, in G.R. No. 104943, the judgment of the trial court in Criminal Case No. 774 is hereby MODIFIED by convicting the accused of the crime of QUALIFIED SEDUCTION instead of RAPE. The accused is hereby sentenced to an indeterminate penalty of six (6) months of ARRESTO MAYOR, as minimum to two (2) years, eleven (11) months and ten (10) days of PRISION CORRECTIONAL as maximum. Accused is likewise ordered to indemnify the complainant in the amount of P30,000.00 and to support the child of the complainant. Costs against accused-appellant.

The accused-appellant is ACQUITTED in G.R. No. 104942 (Criminal Case No. 772) based on reasonable doubt.

Upon the finality of this decision, let the records of this case be remanded to the court of origin for the sole purpose of determining the amount of support to which the child in Criminal Case No. 774 is entitled.[12]

SO ORDERED.

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

[1] Rollo, pp. 138-140

[2] TSN, pp. 86-93

[3] TSN, pp. 46-48

[4] People vs. Godofredo Sagot, G.R. Nos. 102773-77, June 8, 1993

[5] TSN, pp. 5-20

[6] Id., pp. 39-42

[7] People vs. Alvarez, 55 SCRA 81, 91

[8] People vs. Alvarez, G.R. No. 34644, January 17, 1974, 55 SCRA p. 92

[9] People vs. Samillano, 56 SCRA 573, 580

[10] Rollo, p. 12

[11] Ibid., p. 11

[12] People vs. Noly Sia, G.R. No. L-28884, 25 July 1969, 28 SCRA 789

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