

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN TABARANGAO Y DAZA A.K.A. BEN TABARANGAO, ACCUSED-APPELLANT.

G.R. Nos. 116535-36. February 25, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Iriga City (Branch 36) finding accused-appellant Benjamin Tabarangao guilty of Rape and Attempted Rape and sentencing him accordingly.

The prosecution presented as evidence the testimony of private complainant, Analyn Abaño, tending to show the following. On July 26, 1991, at around 8:00 in the morning, complainant Analyn Abaño (Analyn), then 15 years old, was washing clothes by the water pump located in front of accused-appellant's house in Sto. Nino, Iriga City. The latter is the second cousin of Analyn's mother and is called by complainant "uncle." [2]

Suddenly, a man grabbed Analyn from behind, covering her mouth with his left hand and poking a knife at the right side of her neck with his right hand. Startled, she tried to break loose, but he proved too strong for her. He dragged her towards accused-appellant's house, about 15 meters away from the water pump. Analyn tried to remove the hand from her mouth so she could shout, but the man only pressed the knife harder against her neck. In the course of the struggle, she saw who her assailant was. The man turned out to be accused-appellant. Once inside the house, accused-appellant brought her to a room, locked the door and, in order to subdue Analyn who was resisting, he boxed her in the stomach thus rendering her unconscious. [3]

When Analyn regained consciousness, she found herself lying on the floor, undressed. She felt pain all over her body, especially in her genitalia. She saw accused-appellant standing in front of her, laughing, as he toyed with her underpants. He warned her not to get up or he would stab her. Afterwards, accused-appellant gave Analyn her underpants and told her to get dressed and go home but warned that she would be killed if she told anybody what had happened. As Analyn stepped out of accused-appellant's house, she was again told not to tell her parents what had happened. [4]

Analyn went home crying. Nobody was in their house at that time, her mother and younger sister having earlier gone to sitio Magpaalang, while her father had gone to Polangui, Albay. She washed her private parts and noticed that there was blood. [5]

Analyn kept quiet and did not tell anyone what had befallen her for fear that accused-appellant would make good his threats. [6] She went to school and nobody noticed anything unusual in her behavior, although everytime she saw accused-appellant she was seized with fright. [7]

Accused-appellant stayed clear of Analyn until the evening of October 9, 1992. On that night, at around 9:00, while Analyn was sleeping in a room in their house, she was awakened as someone suddenly placed his hand on her mouth, poked a knife at her neck even as he started kissing her. She looked up and recognized

accused-appellant. She tried to free herself from his hold by kicking him[8] and striking him with her fists, but this only made him push her harder against her pillow.[9] Accused-appellant then put down the knife as he inserted a finger in private complainant's vagina.[10] Next, he removed her underpants and pulled down his pants.[11] Analyn's mother, who was in the next room, heard the commotion. She immediately got up and switched on the light which illuminated Analyn's room. Mrs. Abaño saw accused-appellant who jumped out of the window.[12]

Analyn then told her parents what had happened to her on July 26, 1991. She was taken to the Bicol Regional Hospital on November 9, 1992 for a medical examination. The examining physician, Dr. Humilde Janaban, issued a medical certificate[13] stating the following findings:

P.E.

Vagina admits one finger with ease, old hymenal lacerations at 8:00 & 3:00 o'clock positions.

Based on these findings, Dr. Janaban testified that private complainant is no longer a virgin and that the lacerations in her genitalia were probably caused by forcible sexual intercourse.[14]

The prosecution likewise presented Mrs. Abaño, who corroborated her daughter's testimony with regard to events which happened on the night of October 9, 1992.

For its part, the defense put up denial and alibi. With regard to the charge of rape, accused-appellant claimed that on July 26, 1991, from 8:00 to 11:00 in the morning and from 1:00 to 4:30 in the afternoon, he was in his ricefield distributing palay seedlings to his 15 workers, who transplanted them to the rice paddies. Accused-appellant said his farm is about 35 meters from his house.[15]

As for the charge of attempted rape, accused-appellant alleged during direct examination that on October 9, 1992, he and his wife and their 12-year-old son were at the kiln removing coconut meat from the shells. He allegedly stayed there from 7:00 in the evening to 12:00 midnight. He stated that the coconut kiln is located about 100 meters from the Abaño household.[16]

On April 21, 1994, the trial court rendered its decision, the dispositive portion of which provides:[17]

WHEREFORE, premises considered, the Court finds the accused BENJAMIN TABARANGAO y DAZA, also known as BEN TABARANGAO -

- in Criminal Case No. IR-3279, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended, and there being no mitigating or aggravating circumstances, hereby sentences the said accused to suffer, in prison, the penalty of RECLUSION PERPETUA, to indemnify the victim, Analyn Abaño, of the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages, to pay the parents of Analyn Abaño, Dominador and Niña Abaño, the sum of FIFTEEN THOUSAND (P15,000.00) PESOS as and for attorney's fee, and the costs;

- In Criminal Case No. IR-3280, guilty beyond reasonable doubt of the crime of attempted rape as charged in the information, and there being no mitigating or aggravating circumstances and pursuant to Article 51, in relation to Article 335 of the Revised Penal Code, as amended, hereby sentences the said accused to suffer, in prison, an indeterminate penalty ranging from two (2) years, four (4) months and one (1) day of prision correccional as minimum, to eight (8) years and one (1) day of prision mayor as maximum, to indemnify the victim, Analyn Abaño of the sum of FIFTEEN THOUSAND (P15,000.00) PESOS, as moral damages, to pay the parents of Analyn Abaño, Dominador and Niña Abaño, the sum of FIVE THOUSAND (P5,000.00) PESOS as attorney's fee and the costs.

The said accused shall serve the foregoing sentences one after the other.

SO ORDERED.

Hence, this appeal. Accused-appellant's lone assignment of error reads:[18]

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE AND ATTEMPTED RAPE DESPITE INSUFFICIENCY OF EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

First. With regard to his conviction for rape, accused-appellant contends that he cannot be convicted on mere circumstantial evidence. He contends that under Art. 335[19] of the Revised Penal Code, the prosecution must prove carnal knowledge, that is, the penetration of the female sex organ by the male sex organ, by direct evidence.[20] In this case, accused-appellant contends that by her own account, private complainant was unable to testify as to the actual sexual intercourse because she was unconscious. Accordingly, accused-appellant says he cannot be convicted of rape but only of acts of lasciviousness.[21]

The contention is without merit. Rule 133, §5 of the Revised Rules on Evidence provides:

Sec. 5. Circumstantial evidence, when sufficient. ¾ Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

Indeed, there have already been cases in which conviction for rape was upheld on purely circumstantial evidence. The Solicitor General cites at least two such cases. In *People v. Abiera*,[22] which is on all fours with the case at bar, the Court affirmed a conviction for rape, overruling the defense's contention that the prosecution failed to present evidence of the actual intercourse. In that case, the complainant, a 15-year old girl, went to get a goat which she had earlier tethered near the house of the accused. The latter, also an uncle, called her over to his house. As she came, accused suddenly held her by the shoulders and hit her twice on the abdomen causing her to faint. When she came to, she found herself lying half-naked on the floor inside the house of the accused. Accused was sitting beside her, wearing only his briefs and holding her skirt and underpants. She felt pain all over her body, especially in her private part which was wet and bleeding.

Rejecting the claim of the accused that the circumstantial evidence was not sufficient to prove rape, the Court ruled that the totality of the circumstances ¾ the victim's disheveled hair, the bleeding of her vagina and the accused beside her naked ¾ warranted a finding that the accused had raped private complainant while she was unconscious.

In *People v. Ulili*,[23] it was shown that the accused entered the bathroom of his store, ostensibly to take a bath. There, he found the complainant's clothes for which reason he asked her to get them. When the complainant entered the bathroom, the accused grabbed her, closed the door, and then boxed her in the stomach causing her to pass out. When she came to, she found herself lying on the floor of the bathroom, her legs spread, and her thighs stained with blood. Her private part was painful and was bleeding. The accused was found guilty of rape.

Another relevant case is *People v. Santiago*. [24] In that case, the accused was convicted of rape notwithstanding the fact that the prosecution did not actually present direct evidence as to the act of penetration. The accused succeeded in taking complainant to a hotel. Once inside their room, accused slapped her and then boxed her in the stomach rendering her unconscious. She later found herself on the bed, with the accused embracing and kissing her. She was totally naked, her vagina bleeding and her thighs painful.

In the case at bar, the circumstantial evidence against accused-appellant fully justifies finding him guilty beyond reasonable doubt of having raped Analyn Abaño. Such evidence has been summarized by the trial court in its decision, thus:[25]

1)

the accused was the one who covered the mouth of Analyn with his left hand and poked a knife at her neck;

2)

he was the one who dragged her towards his house and brought her inside a room which he locked;

3)

the accused was the person who boxed her at her stomach and she became unconscious;

4)

when she came to, she was already undressed and she felt pain all over her body;

5)

the accused was standing in front of her laughing and toying with her panty;

6)

before letting her go, the accused warned her not to tell anybody of what happened to her, particularly her parents, otherwise he would kill her and her parents;

7)

when Analyn washed her private parts, she found blood in her vagina and;

8)

the medical examination conducted a year after the incident revealed "old hymenal laceration at 8:00 and 3:00 o'clock" of the vagina of Analyn Abaño.

Accused-appellant contends that the lacerations on private complainant's genitalia could have possibly been caused by incidents such as "riding a bicycle, a horse, intrusion of any hard object on the vagina and others." [26] This hypothesis has been refuted by Dr. Janaban, who ruled out any of the foregoing as possible causes of the lacerations on Analyn's vagina. [27] In any event, genital laceration is not even necessary to sustain a conviction for rape. [28] If the medical certificate mentions this fact at all, it is only to show loss of physical virginity as corroborative, not direct, evidence of the sexual congress. [29]

With regard to accused-appellant's contention that he should only be held guilty of acts of lasciviousness under Art. 336 of the Revised Penal Code, suffice it to state that, in view of our findings above, this defense is no longer tenable. The crime of consummated rape necessarily absorbs acts of lasciviousness, the essence of which is the commission of acts of lewdness without any intention to lie with the woman. [30]

Finally, the defense argues that private complainant did not put up a strong resistance to repel the advances of accused-appellant, thus casting doubt on her claim that she was raped. [31] This contention is contrary to the evidence which shows that Analyn fought off her attacker, but the latter was just too strong for her.

Second. With regard to his conviction for attempted rape, accused-appellant claims that from 7:00 in the evening to 12:00 midnight on October 9, 1992, he was with his wife and son at their coconut kiln making copra. The lower

court rejected this claim, and we find no reason to set aside its findings. Indeed, for alibi to prosper, the accused must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[32] Here, accused-appellant himself said that the coconut kiln was only 100 meters away from the Abaño house. It was not, therefore, impossible for him to be at his coconut kiln on the night in question and then negotiate the short distance to the house of the Abaños. It is noteworthy that accused-appellant did not present his wife or son to corroborate his claim.

Moreover, accused-appellant was positively identified during the trial by both Analyn and her mother, Mrs. Niña Abaño, as the person who tried to molest Analyn on the night of October 9, 1992 and who jumped out of the window when the light was put on. It has been repeatedly held that alibi cannot prevail over the positive identification of the accused.[33]

Third. Lacking credible witnesses to support his defense, accused-appellant clutches at straws. He claims that the charges in this case have been trumped up to humiliate him because he had caught Analyn stealing P1,000.00 from the closet in his house on June 23, 1991.[34] He cites the fact that on October 17, 1992, the parents of the girl filed with the barangay authorities a complaint for disturbing their (the Abaños) household for more than one year without mentioning any rape committed against their daughter.[35]

Firstly, accused-appellant's version of the alleged theft is incoherent and incomprehensible. He said:[36]

ATTY. SIMANDO:

Q:

Now, you claimed that when you arrived in your house on July 23, 1991 at around 10:00 o'clock in the morning, you saw Analyn Abaño going out your house using the back door. Is it not?

...

A: Yes, sir.

...

Q: And you claimed that you noticed that your aparador was already opened and you lost P1,000.00?

A: Yes, sir.

...

Q: You said that Niña Abaño [Analyn's mother] paid you on October 1, 1992?

A: I collected from her on October 1 and she paid me on October 6.

Q: How much did Niña Abaño paid you on October 6?

A: I lost P1,180.00 but she paid me P200.00 that is why I gave her P20.00.

The trial court was puzzled how an alleged obligation to return P1,000.00 supposedly stolen by Analyn could increase to P1,180.00 and how the payment of P200.00 by her mother could entitle the latter to a change of P20.00.[37]

Indeed, as the Solicitor General has observed:

It is unbelievable that because complainant's mother would like to get back at appellant, since he caught the complainant stealing money from his aparador, the mother of Analyn was willing to: a) sully the innocence of her fifteen-year old daughter by brutalizing the fact of sex in her young mind; b) corrupt her integrity by making her testify falsely that she had been raped; c) inflict on her the stigma of such a disclosure and prejudice her chance of a happy marriage because of the blot upon her chastity; and d) subject her to the humiliation of a medical examination of her genitals and embarrass her in the eyes of her classmates and friends.[38]

As for the fact that specific charges of rape and attempted rape were not made in the complaint before the barangay authorities, Mrs. Abaño explained that this was because they were waiting for her elder brother, Camilo Tabarangao, to arrive from Manila. They wanted his help in deciding what to do about Analyn's situation.[39] The explanation is believable. Disturbing the family (the Abaños) was a euphemism for sexual molestation. It is noteworthy that accused-appellant had been a threat to the complainant for over a year, hence, it is easy to see why in their complaint the parents of the girl stated that accused-appellant had been disturbing the peace of the family for more than a year already. Indeed, as soon as the elder brother arrived in November 1992, Analyn filed, on November 11, 1992, the complaint for rape and attempted rape.

Fourth. The penalty imposed on accused-appellant in Criminal Case No. IR-3280 (for attempted rape) should be modified as the aggravating circumstance of dwelling was not considered by the trial court. This aggravating circumstance was present in this case. As earlier noted, the attempted rape was committed in the dwelling of the offended party and she did not give any provocation.[40] Hence, the penalty should be imposed in its maximum period.

On the other hand, in Criminal Case No. IR-3279 (for rape) the trial court ordered accused-appellant to pay the complainant moral damages only, in the amount of P50,000.00. In addition to such amount, the offended party is entitled to civil indemnity arising from the offense in the amount of P50,000.00. The award of such indemnity is mandatory upon the finding of the fact of rape.[41]

WHEREFORE, the decision of the Regional Trial Court of Iriga City (Branch 36) is modified to read as follows:

- In Criminal Case No. IR-3279, accused-appellant is found guilty beyond reasonable doubt of the crime of rape and sentenced to reclusion perpetua and to pay Analyn T. Abaño P50,000.00 by way of indemnity, P50,000.00 as moral damages, and P15,000.00 as attorney's fees, and the costs;

- In Criminal Case No. IR-3280, accused-appellant is found guilty beyond reasonable doubt of attempted rape with the aggravating circumstance of dwelling and sentenced to an indeterminate penalty of six (6) years of prision correccional, as minimum, and twelve (12) years of prision mayor, as maximum, and to pay Analyn T. Abaño P15,000.00 as moral damages and P5,000.00 as attorney's fees, and the costs.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Per Judge Orlando Espinas.

[2] TSN, pp. 5-6, May 25, 1993.

[3] Id., pp. 7-8.

[4] TSN, pp. 8-9, May 25, 1993.

[5] Id., pp. 9-10.

[6] Id., p. 10.

[7] TSN, p. 15, June 1, 1993.

[8] TSN, pp. 11-12, May 25, 1993.

[9] TSN, p. 18, June 1, 1993.

[10] TSN, p. 12, May 25, 1993.

[11] TSN, p. 18, June 1, 1993.

[12] TSN, p. 12, May 25, 1993.

[13] Exh. B; Records, p. 12.

[14] TSN, pp. 6-7, June 15, 1993.

[15] TSN, pp. 3-4, Jan. 13, 1994.

[16] TSN, pp. 5-9, Jan. 13, 1994.

[17] Decision, p. 14; Rollo, p. 26.

[18] Appellant's Brief, p. 1; Rollo, p. 47.

[19] Now Art. 266-A, as amended by R.A. No. 8353.

[20] Appellant's Brief, pp. 10-12; Rollo, pp. 56-58.

[21] Appellant's Brief, p.13; Rollo, p. 59.

[22] 222 SCRA 378 (1993).

[23] 225 SCRA 594 (1993).

[24] 197 SCRA 556 (1991).

[25] Decision, p. 7; Rollo, p. 19.

[26] Appellant's Brief, pp. 11-12; Rollo, pp. 57-58.

[27] TSN, p. 10, June 15, 1993.

[28] *People v. Bacalzo*, 195 SCRA 557 (1991).

[29] *People v. Ulili*, 225 SCRA 594 (1993).

[30] *People v. Mayoral*, 203 SCRA 528 (1991).

[31] Appellant's Brief, p. 12; Rollo, p. 58.

[32] *People v. Silong*, 232 SCRA 487 (1994).

[33] *People v. Silong*, 232 SCRA 487 (1994); *People v. Magalles*, 218 SCRA 109 (1993).

[34] TSN, p.11, Jan. 13, 1994; Appellant's Brief, p. 7; Rollo, p. 53.

[35] Appellant's Brief, p. 9; Rollo, p. 55.

[36] TSN, p. 16, Jan. 13, 1994.

[37] Decision, p. 12; Rollo, p. 24.

[38] Appellee's Brief, p. 19; Rollo, p. 104.

[39] TSN, p. 5, Feb. 22, 1994; TSN, pp. 8-9, June 2, 1993.

[40] *People v. Prades*, G.R. No. 127569, July 30, 1998.

[41] *Ibid.*

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