

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALFREDO CATUBIG JR., NIÑO P. REPIA, JOHN DOE, PETER DOE AND WILLIAM DOE, ACCUSED,

G.R. Nos. 134143-47. October 05, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Rape is not a respecter of time or place. The crime may be committed even inside a room in a crowded squatters' colony and even during a wake.

The Case

Alfredo Catubig Jr. y Quebedo[1] appeals the February 19, 1998 Decision[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109, in Criminal Case Nos. 96-8764-68, which convicted him of five counts of rape and sentenced him to five terms of reclusion perpetua.

Acting on the sworn Complaint of Cherry Genotiva, Assistant Pasay City Prosecutor Leopoldo C. Lluz filed five similarly worded Informations, all dated April 12, 1996, charging appellant and four other unidentified persons[3] with five counts of rape. The accusatory portion of each Information reads as follows:[4]

"That on or about the 22nd day of September 1995, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, by means of force and intimidation employed upon the person of Cherry Genotiva y Bulasa, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the said complainant Cherry Genotiva y Bulasa against her will and consent."

After the five cases were consolidated,[5] appellant, with the assistance of Counsel de Oficio Reynaldo Casas, pleaded not guilty.[6] After trial, the lower court rendered its Decision, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the court finds that the prosecution has proven the guilt of the accused Alfredo Catubig, Jr. Y Quevedo for five (5) counts of Rape in Criminal Cases Nos. 96-8764 to 96-8768 and hereby sentences him as follows:

- In Criminal Case No. 96-8764 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00;
- In Criminal Case No. 96-8765 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00;
- In Criminal Case No. 96-8766 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00;
- In Criminal Case No. 96-8767 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00
- In Criminal Case No. 96-8768 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00.

"SO ORDERED."

Hence, this appeal.[7]

The Facts

Version of the Prosecution

The prosecution's version of the facts is summarized by the Office of the Solicitor General in its Brief as follows: [8]

"On September 10, 1995, Cherry Genotiva y Bulasa, a fifteen (15) year old high school dropout, left her parent's house after being scolded by the latter. From then on until she was gang raped on September 23, 1995, she stayed with friends in their respective houses.

"During that period, Cherry met an acquaintance named Ricky. At about 6:00 AM on September 22, 1995, Ricky brought along Cherry to F. Victor St. in Pasay where a vigil was then in place for appellant's deceased brother. (Tsn. October 2, 1996, p. 16). F. Victor Street is a thickly populated area (October 10, 1996, p. 5). The two stayed in the wake until 10:00 AM and then they proceeded to see Ricky's friend, Larry, who lived just several houses away. (ibid, p. 7). When evening came, Ricky introduced her to one Niño whose family name she came to know later as Repia. Ricky told her to go with Niño Repia (October 10, 1996, p. 6). When Cherry consented, Niño brought her to the house of appellant Alfredo Catubig, Jr. which is also located at a street alley near F. Victor St., Pasay City. (ibid. p. 8). Along the alley, she saw appellant, along with five (5) other men, engaged in a drinking session. When she became apprehensive, she expressed to Niño her desire to go home but the latter would not let her go. Thereafter, Niño engaged appellant in a muted conversation. Cherry reiterated her desire to go home but the two refused to let her go. At this point, appellant pointed a knife at Cherry's neck. He dragged her inside the house while his companions followed. Cherry shouted for help but appellant hit her and slapped her on both cheeks. Then, appellant ordered Cherry to undress. When she refused, the former pulled her arms and blouse and hit her. As appellant pointed his knife at Cherry and threatened to kill her, he ordered his other co-accused to undress her. While appellant and his co-accused held Cherry by her hands and feet, one of the accused, a stout man went on top of her. The rest of the accused watched laughing while the stout man raped her. Cherry shouted 'have pity on me' but the same was drowned by laughter. After the stout man another followed and abused her. The third man kissed and touched the delicate parts of her body. Then another man followed and also abused her. At this point, appellant told his friends to hurry and finish up. As a final salvo, appellant, with knife pointed at Cherry, thrust his organ inside Cherry's vagina.

"Thru the help of another person, Cherry was able to escape from appellant's house. She returned home and revealed her ordeal to her mother. On October 12, 1995, Cherry reported the incident to the police and was medically examined by Dr. Maximo Reyes of the NBI Medico-Legal Office. While no physical injuries on the external portion of the victim's body were observed at the time of the examination, the genital examination revealed the presence of contusion located on the vestibular mucosa at the 7:00 o'clock position showing that some form of injurious substance penetrated the same and may have been caused by the entry of a fully [erect] male organ. The doctor likewise found the victim's hymen x x x ostensible and elastic. Finally, he opined that the contusions which he found on the vestibular mucosa at 7:00 o'clock position were compatible with the alleged date of the offense (TSN, Oct. 1, 1996, pp. 2-15; Oct. 2, 1996, pp. 2-24)."

Version of the Defense

Alleging that he paid complainant to have sexual intercourse with her, appellant in his Brief presents the following version of the facts:[9]

"JOVY NACE REYES testified that Ms. Cherry Genotiva was introduced to him by Niño and Larry Bawang sometime in May, 1994. He knew her to be a stand-by at Holiday Plaza, 'pakawala' or a pick-up girl. He had seen her in the company of Ricky Uy and Rick Ong. (TSN, June 5, 1997, pp. 2-12)

"Accused ALFREDO CATUBIG, JR. testified that he first saw Cherry Genotiva in the company of Niño,

Ricky, Larry and his barkadas at the wake of his brother on September 22, 1995 between 6:00 and 7:00 p.m. He was then drinking with his friends in front of his grandmother's house when Niño Repia together with the complainant approached him and asked permission to stay for a while in the house being built at the back of his house as they would have sex. He allowed them to stay there but warned them to do it fast for they might be seen by his brother. At about 10:00 pm. Niño and the complainant went to the wake, the latter asked for a beer. They drank [u]p to 4:00 o'clock in the morning. Complainant intimated to him that she was 'bitin' with Niño. Not minding such utterance, he attended to his visitor from Tagaytay whom he [brought] to the house of his friend to sleep. Returning to the vigil, he approached the complainant and asked what she meant by 'bitin'. They continued to drink beer. Then Niño invited them to have shabu. They went at the back of his house and consumed P200 worth of shabu. Niño intimated to him that he could use the complainant, a pick-up girl at Holiday Inn. Thereafter, Niño left, leaving the complainant with him. With the complainant left to him, he asked her how much he should pay her and she answered it [was] up to him. After their sex, which lasted only for a short time, he paid her P300.00. Complainant intimately told him that she had been raped by her stepfather, and she allowed herself to be used because of shabu.

"He denied that he and his friends sexually molested the complainant from 9:00 p.m. of September 22, 1995 to 6:00 a.m. of the following day. He admitted he had sex with h[er] at 5:30 a.m. [during] which she did not resist [or shout] for help. He did not do it at the point of a knife. Complainant was good in sex and knew various positions. (TSN, June 6, 1997, pp. 2-5; June 9, 1997, pp. 2-58)"

Ruling of the Trial Court

The trial court gave credence to the testimony of complainant that appellant and the four other accused conspired to rape her. Ruling that she had no motive to testify falsely, it opined that her lone declaration was sufficient to sustain conviction.

It rejected appellant's claim that complainant was a prostitute, because it had "observed the victim to be a comely 17-year-old girl with no affectations or mundane attributes. If at all, she appears to be naive and innocent x x x." Likewise, it disbelieved the claim that she was a former drug addict.

Assignment of Errors

In his Brief, appellant imputes to the trial court this lone error:

"The trial court failed to prove beyond reasonable doubt that complainant Cherry Genotiva was gang raped by accused-appellant Alfredo Catubig, Jr. and his friends." [10]

In the main, appellant questions the credibility of the prosecution evidence.

The Court's Ruling

The appeal is devoid of merit.

Main Issue:

Credibility of Prosecution Evidence

Appellant argues that complainant's testimony is improbable. He points out that rape could not have been perpetrated inside a room in a thickly populated squatters' area, where the houses were made of light materials and built close to each other. Moreover, there was a wake for appellant's dead brother at the time. He also maintains that the victim did not shout or resist the alleged gang rape.

We are not persuaded. It is axiomatic that the assessment by a trial court of the credibility of witnesses is entitled to the highest respect [11] because it heard them and observed their behavior at the witness stand. Absent any showing that it overlooked some facts or circumstances of weight and substance that would affect the result of the

case, its factual findings will not be disturbed on appeal.[12]

In the present case, neither the records nor appellant's arguments present any reason to disturb the findings of the trial court. On the contrary, it appears that complainant was straightforward in testifying that appellant and the four other accused intimidated her and helped one other in raping her. She testified as follows:

"Q.

And so, what happened after accused Catubig threatened you that he will kill you?

A.

Then he called his friends and asked them to undress me.

Q.

And so Catubig's friend were able to undress you?

A.

Yes, sir. Catubig's friends were able to undress me. Thereafter Catubig went out of the room.

Q.

And so what happened after they were able to undress you?

A.

Catubig's friends held me by my hands and feet.

Q.

Then what happened next?

A.

Catubig's friend who was stout went on top of me and all of them were laughing.

x x x x x x x x

Q.

What happened when this stout man, a friend of Catubig, [lay] on top of you?

A.

He used me (ginalaw ako.).

Q.

During that time, the other male companion[s] were holding your hands and feet while the stout man was on top of you?

A.

Yes sir."[13]

The process was repeated as the other accused took turns in raping her. She explained the role of appellant in this wise:

"Q.

x x x. Who is this Junjun you are referring to?

A.

That Junjun I am referring to is accused Alfredo Catubig.

Interpreter: Witness pointing to the accused.

Q.

Earlier you narrated how you were rape[d]. Who was the very first who abused you?

A.

The first one to abuse me was the fat man.

Q.

This Junjun appearing in question and answer no. 9, was he the second, third, fourth or fifth person?

A.

Junjun was the fourth to use me.

Q.

Where were you sexually abused by this accused Alfredo Catubig?

A.

Also in that room.

Q.

Also on that same night?

A.

Yes, sir.

Q.

And how were you abused by this Alfredo Catubig?

A.

He pointed a knife at my neck. He abused me while pointing a knife at my neck.

x x x x x x x x

Q.

And all along what were you doing there?

A.

I was pleading, sir."[14]

Indeed, when an alleged rape victim says she was violated, she says in effect all that is necessary to show that she

was raped.[15] As the trial court pointed out, there was no reason for her to testify falsely against appellant, whom she did not even know prior to the incident.

Alleged Improbabilities

The Court has repeatedly held that rape is not a respecter of place or time.[16] Hence, the mere fact that the rape was committed inside a room in a thickly populated squatters' area during a wake does not by itself discredit the claim of complainant. Moreover, having been threatened by appellant and his cohorts, she was thereby prevented from shouting or otherwise effectively attracting attention to her ordeal.

We are not convinced by appellant's argument that the account of the victim was not credible because she had "shouted not so soft and not so loud." The well-settled rule is that rape victims have no uniform reaction to sexual assault. While one may offer strong resistance by shouting at the top of her voice, another may be too cowed and thus suffer her ordeal in silence.[17] In this case, the victim showed that the sexual assault was against her will by shouting, though not very loudly.

Sexual Congress

Not Voluntary

Appellant also submits that the sexual congress was voluntary because the victim was a prostitute or a woman of loose morals. We reject this grave allegation.

First, we find no adequate showing that she was a prostitute, other than the bare allegation of appellant and his witness. Second, even assuming that she was one, such fact did not give appellant or his gang any license to terrorize her and vent their lust on her.[18] As she herself testified, appellant had pointed a knife at her. Moreover, she vividly described how some of the conspirators had held her hand and feet during the assault. Clearly, there was no sufficient showing that she had voluntarily submitted to their carnal desires in the practice of her alleged trade.

WHEREFORE, the appeal is hereby DENIED and the assailed Decision of the Regional Trial Court AFFIRMED. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Spelled "Quevedo" by the trial court.

[2] Written by Judge Lilia C. Lopez.

[3] The five Informations were subsequently amended on January 28, 1997, in order to implead Niño P. Repia as one of the accused. Appellant's four co-accused were at large.

[4] Records, pp. 1-2, 32-33, 57-58, 77-78, 132-133.

[5] Order dated August 27, 1996; Records, p. 117.

[6] Records, p. 148.

[7] The case was deemed submitted for resolution on June 11, 2000, when this Court received appellant's Reply Brief signed by Atty. Liwayway J. Nazal of the Public Attorney's Office.

[8] Appellee's Brief, pp. 3-5. This was signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Antonio L.

Villamor, and Sol. Derek R. Puertollano.

[9] Appellant's Brief, pp. 4-6; rollo, pp. 67-69. This was signed by Attys. Arceli A. Rubin, Teresita S. de Guzman, and Liwayway J. Nazal of the Public Attorney's Office.

[10] Appellant's Brief, p. 1; rollo, p. 64.

[11] *People v. de la Cruz*, 276 SCRA 191, July 24, 1997; *People v. Corea*, 269 SCRA 76, March 3, 1997; *People v. Frago*, 232 SCRA 653, May 31, 1994.

[12] *People v. Miñano*, 220 SCRA 681, March 31, 1993; *People v. Nuñez*, 208 SCRA 341, April 10, 1992.

[13] TSN, October 1, 1996, pp. 9-10.

[14] TSN, October 1, 1996, pp. 4-5.

[15] *People v. Borja*, 267 SCRA 370, 379, February 3, 1997; and *People v. Ramirez*, 266 SCRA 335, 348, January 20, 1997.

[16] *People v. Alimon*, 257 SCRA 658, June 28, 1996; *People v. San Juan*, 270 SCRA 693, April 4, 1997.

[17] See *People v. Rabosa*, 273 SCRA 142, 150-151, June 9, 1997.

[18] *People v. Rivera*, 242 SCRA 26, March 1, 1995.

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