

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BIANE BONTUAN Y JAGUNOS, ACCUSED-APPELLANT.

G.R. Nos. 142993-94. September 05, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Biane Bontuan y Jagunos was charged with two counts of rape, docketed as Criminal Cases Nos. 9895 and 9896 of the Regional Trial Court of Tagbilaran City, Branch 2. Except for the time of commission, the two amended complaints are similarly worded as follows:

That on or about the 21st day of June, 1997, at or about 9:00 o'clock in the evening at barangay Sinakayanan, municipality of Catigbian, province of Bohol, Philippines and within the preliminary jurisdiction of this Honorable Court, the abovenamed accused, by means of force, intimidation and threat, armed with a knife, forcibly removed the victim's short pant and panty and thereafter, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said Jennifer Quimno y Gelecame against her will and consent; to the damage and prejudice of the said offended party in the amount to be proved during trial.

Acts committed contrary to the provisions of Article 335 of the Revised Penal Code, as amended, in relation to R.A. 7659.[1]

The second rape was allegedly committed thirty minutes later, at 9:30 of the same evening.

Accused-appellant pleaded "not guilty" to both charges. Thereafter, the two cases were jointly tried.

The prosecution established that at around 8:00 in the evening of June 21, 1997, complainant Jennifer Quimno was feeding her two children, 4-year-old Honeylyn and 2-year-old Michael, inside their house in Barangay Sinakayanan, Catigbian, Bohol, when accused-appellant and Gilbert Gromontil, both habal-habal[2] drivers, arrived. Accused-appellant forced open the door of Jennifer's house and went inside. He looked for Jennifer's husband, from whom he allegedly ordered a bottle of mango juice. Jennifer replied that her husband was still in Cebu. She then asked them to leave and told accused-appellant that she will just deliver the mango juice the moment it arrives. Accused-appellant ignored Jennifer and asked Gilbert to buy some drinks. However, Gilbert had to go home because it was late and his wife was waiting for him. Jennifer requested Gilbert to take along accused-appellant with him. Accused-appellant insisted in staying and watched television. Jennifer pleaded for him to leave, saying she was tired and had to wake up early to tend to her cow. However, accused-appellant refused to go away.

After Gilbert left, accused-appellant pulled out a knife from his back and pointed it at Jennifer, saying, "I have been planning this since Thursday." [3] He then tried to grab her arm, but Jennifer ran outside and shouted for help. Accused-appellant caught up with her and dragged her back inside the house. After closing the door, he hugged and kissed her. She tried to resist, but accused-appellant slapped her and boxed her on the midsection, causing her to feel weak and fall down. While Jennifer was lying on the ground, accused-appellant took off her gartered shorts and panties while pointing a knife at her. He removed his pants and inserted his penis into

Jennifer's vagina. After the rape, he warned her not to report the incident, otherwise he will kill her.

Thirty minutes later, accused-appellant, still armed with a knife, pushed Jennifer down on the floor and again forcibly had sexual intercourse with her. He reiterated his warning to Jennifer, and thereafter, he finally left the house.

The following day, Jennifer reported the incident to her parents and her husband. That same evening, complainant together with her husband reported the incident to the Catigbian Police who advised her to submit to medical examination.

Dr. Alberto Pancho of the Catigbian Emergency Hospital found that Jennifer sustained multiple scratches on the shoulder and left torso, and contusions on the left jaw.[4] Dr. Pancho referred Jennifer to the provincial hospital, where Dr. Emma Perpetua B. Fudolig certified to the absence of external injuries and spermatozoa but found minimal whitish mucoid.[5]

On the other hand, accused-appellant denied the accusations against him. He testified that Jennifer used to be his regular passenger on the habal-habal, whenever she visits her in-laws at Catigbian West. Due to their constant meetings, they became friends and, eventually, lovers. Upon Jennifer's initiative, accused-appellant would go to her house at midnight to give her money. During their trysts, they just embraced and kissed each other.

On June 18, 1997, accused-appellant met Jennifer at the market. She invited him to come to her house at midnight because she missed him. She even warned him that if she ever catches him with another woman, she will break up their relationship.

Accused-appellant went to Jennifer's house in the evening of June 21, 1997. He was accompanied by Gilbert Gromontil, who stayed outside the house for a while then left. Jennifer asked him for money, but accused-appellant was unable to give her any because he was still paying for the amortization of his motorcycle. Accused-appellant and Jennifer started kissing and embracing, but she told him to stop because her children, Honeylyn and Michael, were in the living room eating.

Accused-appellant claims that Jennifer filed the rape charges against him because she was apprehensive that her children might tell their father what they saw that night.

On December 8, 1999, the trial court rendered judgment as follows:

WHEREFORE, in light of the foregoing, the Court finds accused Biane Bontuan y Jagunos, guilty beyond reasonable doubt of two (2) counts of Rape, defined and penalized under Article 335, No. 1, of the Revised Penal Code, as amended by R.A. 7659, as embraced in the aforequoted amended complaints, and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA, for Criminal Case No. 9895 and the same penalty of RECLUSION PERPETUA, for Criminal Case No. 9896, with the accessory penalties of the law, to indemnify the offended party Jennifer Quimno the sum of P150,000.00; attorney's fees in the amount of P15,000.00 and to pay the costs.

The accused who is a detention prisoner is hereby credited in full of the period of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.[6]

Hence, the instant appeal where accused-appellant contends that: (1) he and Jennifer were lovers; (2) the presence of massive whitish mucoid fluid in Jennifer's vagina was proof that they were lovers as it was an indication of Jennifer's extreme pleasure or excitement; (3) Jennifer filed the rape case against him for fear that her children, particularly Honeylyn who allegedly saw the incident, would tell her father what she saw; and (4) the non-presentation of Honeylyn to corroborate Jennifer's testimony is proof that Honeylyn's testimony would have been prejudicial to the prosecution's cause.

Being an affirmative defense, the allegation of a love affair must be supported by convincing proof.[7] Accused-appellant miserably fails in this regard. He testified that Jennifer was his habal-habal suki, and that he conducts her three times a week to the house of her in-laws in the poblacion. It was during the times when Jennifer rode accused-appellant's habal-habal that they allegedly became friends and eventually lovers. In a span of more than a year, accused-appellant visited her four times, during which they would only embrace and kiss each other. He alleged that on June 21, 1997, he and Jennifer were only embracing and kissing each other when seen by her two children.

Accused-appellant's version is difficult to believe. As correctly found by the trial court:

Given the accused's admission that he and the complainant have embarked on embracing and kissing each other in the conducive confines of the complainant's home, the Court finds it highly unnatural for consenting adults who without any disturbance or interruption whatsoever, would stop in the middle of their sensuous arousal without pursuing it to its desired end. Human instinct tells us that lovers, after arousing themselves would naturally quench their desire in sexual intercourse which is barely a step away from the foreplay of kissing and embracing.[8]

Evidence to be believed must not only come from a credible source but must also be credible in itself such as one that the common experience and observation of mankind can approve as probable under the circumstances.[9]

Accused-appellant's contention is untenable and unsupported by any evidence.

Dr. Emma Perpetua B. Fudolig certified that she found only minimal whitish discharges after conducting a speculum examination, and minimal whitish mucoid after conducting a bimanual pelvic examination[10] three (3) days after the incident. It is not true, therefore, that massive whitish mucoid fluid was found in Jennifer's genitalia, as accused-appellant insists.

In fact, Dr. Fudolig testified that it is difficult to "document"[11] the secretion of whitish fluid if it is brought about by sexual arousal such as "hard kissing"[12] or by menstruation. In the latter case, the secretion of the whitish fluid is a normal occurrence.[13]

Still insisting that they were lovers, accused-appellant alleges that Jennifer filed rape charges against him out of fear that Jennifer's husband might find out about their affair through Honeylyn and Michael.

In this connection, we agree with the trial court's observation:

The Court is loathe to accept accused's interposition that purposely they aborted their passionate romance due to the presence of complainant's kids. The Court firmly believes that children 4 and 2 years of age are still naïve to understand much less communicate their perceptions on the foregoing acts. To claim therefore that these cases were interposed by the complainant for fear that her children might tell their father of what they allegedly observed, is more apparent than real.

At any rate, ill-motive is never an essential element of a crime. It becomes inconsequential in a case where there are affirmative and categorical declarations towards the accused-appellant's accountability for the felony.[14]

Well-settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[15]

Also, no woman would concoct a story of defloration, allow the examination of her private parts and subject

herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. A woman would think twice before she concocts a story of rape unless she is motivated by a patent desire to seek justice for the wrong committed against her.[16]

No decent woman in her right mind would tell a tale that could sully her reputation and bring undue embarrassment and shame to herself and expose her family to all sorts of public aspersions if it is not the truth. If her story had only been contrived, she would not have been so composed and consistent throughout her entire testimony in the face of intense and lengthy interrogation. Indeed, if an accused had really nothing to do with the crime, it is against the natural order of events and human nature and against the presumption of good faith that the prosecution witness would falsely testify against the former.[17]

We find no merit in accused-appellant's averment that the non-presentation of Honeylyn to corroborate Jennifer's testimony is proof that Honeylyn's testimony would have been prejudicial to the prosecution's cause.

Under Rule 131, Section 3(e) of the Rules of Court, the rule that "evidence willfully suppressed would be adverse if produced" does not apply if (a) the evidence is at the disposal of both parties; (b) the suppression was not willful; (c) it is merely corroborative or cumulative; and (d) the suppression is an exercise of a privilege.[18]

Be that as it may, accused-appellant may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, positive, convincing and otherwise consistent with human nature.[19] When a woman declares that she has been raped, she says in effect all that is necessary to mean that she has been raped, and where her testimony passes the test of credibility, the accused can be convicted on the basis thereof. This is because from the nature of the crime, the only evidence that can be offered to establish the guilt of the accused is the complainant's testimony.[20]

In the case at bar, Jennifer's testimony is clear, positive, convincing and consistent with human nature. It is on record that Jennifer cried during her direct testimony, and when questioned by the trial court while narrating the violation committed against her womanhood and denying accused-appellant's claim that they were lovers.[21] The victim's act of crying during her testimony bolsters the credibility of the rape charge with the verity born out of human nature and experience.[22]

Needless to say, this is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry great weight and substance.[23]

Thus, the trial court did not err in finding accused-appellant guilty beyond reasonable doubt of two counts of rape and in sentencing him to suffer the penalty of reclusion perpetua for each count.

The trial court's award of P150,000.00 as civil indemnity must be reduced to P100,000.00, or P50,000.00 for each count of rape, in line with prevailing jurisprudence. In addition, an award of P100,000.00, or P50,000.00 for each count of rape, as moral damages, is proper.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Tagbilaran City, Bohol, Branch 2 in Criminal Cases Nos. 9895 and 9896, finding accused-appellant Biane Bontuan y Jagunos guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of reclusion perpetua for each count, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is ordered to pay the victim the total amount of P100,000.00 as civil indemnity and P100,000.00 as moral damages. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

- [1] Record of Documentary Evidence, pp. 1 & 3.
- [2] A motorcycle for hire.
- [3] TSN, June 24, 1998, p. 19.
- [4] Exhibit “C”, Records, p. 5.
- [5] Exhibit “D”, Records, p. 7.
- [6] Penned by Judge Baudilio K. Dosdos.
- [7] *People v. Monfero*, 308 SCRA 396 [1999] .
- [8] Decision, Records, p. 84.
- [9] *People v. Caratay*, 316 SCRA 251 [1999] .
- [10] Medico-Legal Certificate, Records, p. 7.
- [11] TSN, March 18, 1999, pp. 11-12.
- [12] *Ibid.*, p. 10.
- [13] *Id.*, pp. 9-12, 21-23.
- [14] *People v. Dy*, G.R. Nos. 115236-37, January 29, 2002.
- [15] *People v. Dy*, *supra*.
- [16] *Ibid.*
- [17]] *Id.*
- [18] *People v. Padrigone*, G.R. No. 137664, May 9, 2002.
- [19] *People v. Belga*, G.R. No. 129769, January 19, 2001.
- [20] *Id.*
- [21] TSN, June 24, 1998, pp. 22-24; TSN, September 9, 1998, p. 49; TSN, September 28, 1999, p. 7.
- [22] *People v. Dy*, *supra*.
- [23] *Ibid.*

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