

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO FABIAN Y MARI, ACCUSED-APPELLANT.

G.R. Nos. 148368-70. July 08, 2003

Ponente: PUNO, J.

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PUNO, J.:

On review is the Decision[1] of the Regional Trial Court of Quezon City in Crim. Cases Nos. Q-99-85973 to 75, dated March 21, 2001, finding appellant Eduardo Fabian y Mari guilty beyond reasonable doubt of three (3) counts of rape, and imposing upon him the penalty of imprisonment of reclusion perpetua for each count.

In three (3) separate Informations, Eduardo Fabian was charged with three (3) counts of rape, committed as follows:

Crim. Case No. Q-99-85973

That on or about the 3[rd] day of October 1998, in Quezon City, Philippines, the said accused, by means of force and intimidation did then and there wilfully, unlawfully and feloniously undress one MARIETTA TINGSON Y SUIZA inside her house located at No. 35 Gitna Street, Brgy. Apolonio Samson, this City, put himself on top of her and thereafter have carnal knowledge with her against her will and without her consent.

CONTRARY TO LAW.[2]

The Informations in Criminal Cases Nos. Q-99-85974-75 were similarly worded except as to the dates of the commission of the other two rape incidents. One was committed allegedly on August 16, 1998,[3] and the other on March 15, 1999.[4]

Appellant pleaded not guilty to all offenses charged and was tried for three (3) counts of rape. Having the same accused and the same victim in all the three cases, the latter were consolidated and tried jointly.

Appellant Eduardo Fabian is 31 years old and a resident of No. 35 Kaingin Bukid Gitna, Barangay Apolonio Samson, Quezon City. Private complainant Marietta Tingson is 51 years old, a widow who makes a living by doing laundry work. At the time material to the alleged rape incidents, she was living with her mentally retardate twenty-year old son, renting a room at the ground floor of the house of appellant's mother. The appellant was living with them in the same house.

The prosecution's evidence is based on Marietta's narration of the events that transpired on those three (3) fateful days. Marietta testified that the appellant raped her on three (3) occasions. The first time took place at around 1:00 a.m. of August 16, 1998. She was fetching water near the door of their house when she saw the appellant descending from the stairs. The latter sat beside her and all of a sudden, kissed her on the lips. Angered, Marietta stood up holding a "tabo". But the appellant immediately embraced her, inserted his right hand inside her blouse and touched her breast, while his left hand reached inside Marietta's "duster" and touched her genitalia. Marietta hit the appellant with the "tabo" she was holding and then tried to go inside the house, attempted to close the door but she was easily pulled out by the appellant. Marietta shouted and called her son who was then sleeping. Before

complainant could wake her son, appellant covered her mouth and brought her to the room of his brother located at the second floor. Once inside, appellant pushed Marietta who fell to the floor. Unmindful of Marietta's pleas, appellant stripped her of her clothes and then removed his own clothes, placed himself on top of her, inserted his penis into her genitalia, and made some pumping motions. Marietta tried to push him away, to no avail, for he managed to penetrate her for the second time. After satisfying his lust, appellant warned Marietta not to tell anyone of what transpired between them.[5]

Despite the threat, Marietta disclosed the incident to the appellant's older sister named Nene who could only assure her that she would advise her brother. The thought of reporting the matter to the police crossed her mind but she felt confused because of the respect she still has for the family of the appellant, having known them and lived with them for so long now. She likewise confided her ordeal to Maming, their neighbor and sister-in-law of the appellant. Maming could not offer any help because of fear of being driven out of the house by the mother of the appellant.[6]

Marietta was raped again on October 3, 1998. At about 8:00 a.m., while she was in her room dressing up and preparing to leave for work, she remembered that her flat iron that she would be bringing to work was borrowed by the mother of the appellant. So she went upstairs and even met Maming on her way up. Then she heard somebody saying that the flat iron is under the bed. Upon entering the room of appellant's mother, Marietta saw no one but heard a voice coming from the direction of the door. The voice turned out to belong to the appellant. The latter immediately closed the door and windows, after Marietta struggled to open them. Marietta however couldn't get out as she was pulled in by the appellant. She put up a fight with the appellant, having been able to grab the latter's wrist watch which was destroyed while the two (2) were grappling with each other. Consequently, appellant got mad. He held Marietta's neck and pulled her to the corner of the room. Thereafter, he pushed Marietta to the floor, undressed her, then held her feet and dragged her. In a kneeling position while Marietta was lying on the floor, he inserted his finger into her vagina and bit her breast. Not satisfied, appellant turned Marietta around, making her lie with her face downward, then penetrated her from behind. Hurt, she rolled over the floor. But the appellant, still wanting more, held up her thighs, then again inserted his penis into her vagina, and proceeded to make pumping motions. After the appellant had ejaculated, he put on his shorts. Marietta, using her panties, wiped her vagina which was bleeding and already swollen. Upon seeing this, appellant even advised Marietta to take some medicine. Marietta could not let out any reply as she could no longer hold back her tears.[7]

The last incident took place on March 15, 1999. At about 7:00 p.m., Marietta was in her room fixing her things. Although the door was closed, it was not locked which allowed the appellant to gain entry. He pushed Marietta to the floor, undressed her, and placed himself on top of her. He held her thighs apart and sucked her breasts. Marietta pushed him and was able to get away for a split second. But the appellant easily grabbed her and pushed her to the floor. Again, he went on top of her, and this time, he was able to consummate his lust. Appellant then stood up and ordered his victim not to report the matter to the police. Before leaving, the appellant even had the nerve to ask money from Marietta. When the latter gave none, he searched the room, saw Marietta's wallet from which he took a fifty-peso bill. Appellant got out of the room leaving Marietta crying.[8]

On May 13, 1999, Marietta reported the rape incidents to the barangay authorities and gave her statement[9] before the Philippine National Police - Laloma Station, Quezon City. On that same day, a medical and genital examination was likewise conducted on Marietta by Dr. Winston Tan, a medico-legal officer at the PNP Crime Laboratory, Camp Crame, Quezon City. She testified that she was unable to report the matter promptly to the police authorities because at that time, she and her son were still living with the appellant and his family, and she still had no money to transfer to another place. She was also afraid that the accused would make good his threat to kill her and her son if she goes to the police.[10]

Dr. Tan stated in his report the following findings:[11]

FINDINGS:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: regular built

MENTAL STATUS: Coherent female suspect

BREAST: pendulous with the dark brown areola and nipples from which no secretion could be pressed out

ABDOMEN: flat and soft

PHYSICAL INJURIES: none

GENITAL:

PUBIC HAIR: abundant growth

LABIA MAJORA: full, convex and gaping

LABIA MINORA: dark brown

HYMEN: presence of carunculae myrtiformis

POSTERIOR FOURCHETTE: obliterated

EXTERNAL VAGINAL ORIFICE: slight resistance

VAGINAL CANAL: wide with flattened rugosities

CERVIX: slightly protruding from the external vaginal canal, no congestion, no abrasion

PERI-URETHRAL AND VAGINAL SMEARS: Negative for Spermatozoa and for gram negative diplococci.

CONCLUSION: Subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.

Dr. Tan later testified in open court and explained on his conclusion that there were no external signs of physical trauma. He said that this is normal because of the age of the victim.[12]

The appellant has a different story to tell. He denied having raped Marietta, claiming instead that they were lovers. According to the appellant, their relationship began on January 15, 1999 when Marietta who was then washing clothes seduced him while he was fetching water. She even made him a cup of coffee that night. Since then, they would have sexual trysts twice a week. The appellant added that Marietta always gave him money to buy food and cigarettes. Even their neighbors, Letty and Rachel, knew about the relationship. The former, Leticia dela Cruz, was presented as witness and corroborated appellant's statement that Marietta always gave him money since 1998. She also was often requested by Marietta to call the appellant. According to her, Marietta became angry with the appellant when the latter lived in with her friend Dory. As the appellant testified, it was jealousy that motivated Marietta to file these cases against him because he was already living with another woman named Dory beginning on October 20, 1999.[13]

The defense assigns as errors the following:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE AND UNBELIEVABLE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

As the trial court ruled, the evidence for the prosecution has clearly established that Marietta, in all three instances, was forced to submit to appellant's bestial desires, the latter employing force and intimidation. In all the three (3) rape incidents, the appellant used physical violence upon the person of Marietta to consummate his purpose of copulating with the latter. Marietta put up a struggle every time the accused forced himself upon her, but in all instances, she was inevitably subdued by his strength. As we held in *People vs. Baltazar*,^[14] nowhere is it required in law or jurisprudence that a woman must offer tenacious resistance to a sexual assault. The law does not impose on the rape victim the burden of proving resistance. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.^[15] Not all offended parties in the crime of rape react the same way. There are those who even freeze because of fright and shock, unable to move nor shout. We cannot fault the latter for not putting up a "tenacious" resistance. In the case at bar, we find that Marietta put up a good fight, but because of her mature age and the disparity between her and appellant's physical strength, she was easily subdued by her attacker.

Marietta was direct, consistent and unwavering in her claim that she was raped by the appellant. The trial court found her to be a credible witness, without any ill-motive to lie. Her testimony was clear and straightforward. Even appellant's imputation that jealousy motivated Marietta to file these cases against him cannot hold water. He claims that Marietta was jealous and grew angry with him when he lived in with another woman beginning October 20, 1999, and this was what motivated the private complainant to file the charges against him. However, as the records show, Marietta filed these charges as early as May 13, 1999, long before October 20, 1999.

It has been held in a long line of cases that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect. It is the trial judge who sees the behavior and demeanor of the witness in court. The evaluation or assessment made by the trial court acquires greater significance in rape cases because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is the victim's testimony.^[16] In the case at bar, no compelling reason exists to disturb the trial court's finding disregarding the testimonies of the defense witnesses and upholding the credibility of Marietta who stood firm on her claim and testimony all throughout the trial. Her very clear and straightforward testimony can stand alone to warrant a conviction, particularly so that no proof of ill-motive on the part of Marietta was clearly shown to exist in filing these cases against the appellant. The defense failed poorly in proving that Marietta was motivated to falsely implicate the appellant in the commission of such a grave crime. The absence of convincing evidence showing any such improper motive on the part of Marietta strongly supports the conclusion that no such improper motive exists, and that her testimony is worthy of full faith and credence.^[17] It is settled that a person accused of rape can be convicted solely on the testimony of the victim if the trial court finds said testimony to be credible, natural, convincing, and consistent with human nature and the normal course of things.

On the other hand, evidence for the defense was anchored solely on the claim of the appellant that he and Merly were sweethearts. He alleged that the several incidents of sexual intercourse between him and Marietta, twice a week on the average, were consensual. We agree with the finding of the trial court that this "sweetheart defense" put up by the appellant was preposterous and concocted merely as an afterthought. No other evidence than the

self-serving testimony of the appellant was presented to support such a defense, like love letters, pictures, mementos, etc. The supposedly corroborative testimony of Leticia dela Cruz did not say much. All she stated was that Marietta always gave money to the appellant since 1998, that Marietta always asked her to call the appellant, and that Marietta got angry with the appellant when the latter lived in with her friend Dory.[18] None of the latter statements could prove that Marietta and the appellant were sweethearts. As the trial court correctly observed, if the appellant were really her boyfriend, then Marietta would not have gone to the extent of bringing to court this criminal action which inevitably exposed her to the humiliation of recounting in public how she was abused. Unless truly wronged, she would not have instituted these cases. That she was already fifty-one (51) years old rendered her exposure to a public trial of rape all the more embarrassing and painful.

The fact that it took Marietta some time before she could report the rape incidents to the police authorities is not an indication of a fabricated charge nor does it cast doubt on her credibility. As Marietta explained, at those times, she and her son were still living with the appellant and his family, and she still had no money to transfer to another place. She was also afraid that the accused would make good his threat to kill her and her son if she goes to the police. Marietta is a mere laundry woman, taking care of a mentally handicapped son. She took the threats of the appellant seriously because she knew him to be a drug user who has been in and out of jail, and thus capable of making good his threats.

The law governing the instant case is Section 2 of Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, amending the Revised Penal Code, to wit:

Section 2. Rape as a Crime Against Persons. - The crime of rape shall hereafter be classified as a Crime Against Persons under Title Eight of Act No. 3815, as amended, otherwise known as the Revised Penal Code. Accordingly, there shall be incorporated into Title Eight of the same Code a new chapter to be known as Chapter Three on Rape, to read as follows:

Chapter Three

Rape

Art. 266-A. Rape; When and How Committed. - Rape is committed:

1) By a man who has carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d)

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x

Art. 266-B. Penalties. - Rape under paragraph I of the next preceding article shall be punished by reclusión perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusión perpetua* to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

x x x. (emphasis supplied)

The prosecution, through Marietta's testimony, has clearly established that on at least three (3) occasions - August 16, 1998, October 3, 1998, and March 15, 1999 the appellant Eduardo Fabian y Mari forced himself on Marietta and succeeded in having carnal knowledge with her. He employed physical force and intimidation, and even threatened her that he would kill her and her son if she reports to the police. The foregoing satisfy all the elements of rape as defined and penalized in Section 2 of Republic Act No. 8353, and warrant the imposition of the penalty of imprisonment of *reclusión perpetua* upon the accused for each of the three (3) counts of rape.

IN VIEW THEREOF, the Decision of the Regional Trial Court of Quezon City in Crim. Cases Nos. Q-99-85973 to 75, dated March 21, 2001, finding appellant Eduardo Fabian y Mari guilty beyond reasonable doubt of three (3) counts of rape, and imposing upon him the penalty of imprisonment of *reclusión perpetua* for each count, and payment of indemnity in favor of complainant Marietta Tingson y Suiza in the amount of FIFTY THOUSAND PESOS (P50,000.00) as actual or compensatory damages for each count is hereby AFFIRMED with the MODIFICATION that the accused-appellant is ordered to pay the complainant Marietta Tingson y Suiza the additional amount of P50,000.00 as moral damages,[19] for each count of rape.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Records, pp. 95-99.

[2] "Information," Records I, pp. 1-2.

[3] "Information," Records III, pp. 1-2.

[4] "Information," Records II, pp. 1-2.

[5] TSN, 30 May 2000, pp. 1-8.

[6] TSN, 03 July 2000, pp. 3-4.

[7] Id. at 4-12.

[8] TSN, 23 February 2000, pp. 4-10.

[9] Exhibit "A," Records, pp. 4-5.

[10] TSN, 03 July 2000, pp. 13-14.

[11] Exhibit "E," Records, pp. 75, 78.

[12] TSN, 24 August 2000, p. 6.

[13] TSN, 6 November 2000, pp. 6-11; TSN, 4 December 2000, pp. 2-4.

[14] G.R. No. 115990, 31 March 2000.

[15] *People vs. Tayaban*, 296 SCRA 497, 507-508 (1998).

[16] People vs. Nardo, G.R. No. 133888, 01 March 2001.

[17] People vs. Pajo, et al., G.R. No. 135109, 18 December 2000.

[18] TSN, 04 December 2000, pp. 3-4.

[19] People vs. Sitao, G.R. No. 146790, 22 August 2002.

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