

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE MARAPAO AND CESAR RELIVO, DEFENDANTS-APPELLANTS.

G.R. Nos. 68265-66. August 02, 1990

Ponente: PARAS, J.

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PARAS, J.:

Charged with rape under separate informations were Felipe Marapao and Cesar Relivo before the then Court of First Instance Branch I of South Cotabato in Criminal Cases 1758 and 1759, respectively.

The information in Criminal Case No. 1758, reads:

"That on or about the 10th day of June, 1979 in the evening thereof at Barrio Linek, Municipality of Kiamba, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the accused armed with a garand rifle and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant ANITA INSAN against her will." (p. 18, Rollo)

The information in Criminal Case No. 1759, reads:

"That on or about the 10th day of June, 1979 in the evening thereof at Barrio Linek, Municipality of Kiamba, Province of South Cotabato, Philippines, and within the jurisdiction of the Honorable Court, the said accused armed with a garand rifle and by means of violence and intimidation, did then and there wilfully, unlawfully have carnal knowledge with the complainant HEBELEN TANEDO against her will." (pp. 18-19, Rollo)

Marapao was accused of having raped one Anita Insan while Relivo was accused of raping Hebelen Tanedo, Insan's friend. The complainants are both T'boli women. Both cases were committed on the same occasion, hence, were jointly tried.

The facts as summarized by the Solicitor General in his brief are as follows:

"On or about June 10, 1979 at around 4:00 o'clock in the afternoon, Hebelen Tanedo and Anita Insan were walking along a road at Barrio Linek, Kiamba, South Cotabato, waiting for Hebelen's husband, George Tanedo, to pick them up to go to Itis (tsn., November 8, 1982, p. 4 and 16). Just then, the accused Cesar Relivo, who came from the nearby MILUDECO Compound, passed them by and asked them what they were doing there. Hebelen replied that they were waiting for her husband (supra, pp. 5-6). Thereafter, Relivo left. Some time later when the sun had already set, Relivo came back with his co-accused Marapao (supra, p. 7) both carrying long firearms (supra, p. 24). Relivo sat beside Hebelen, held her arms and said "Do not be angry. I will tell you something." Pointing his gun at her he threatened Hebelen that if she did not do as he pleased, she would be killed (supra, p. 10). Suddenly he embraced her and placed himself on top of her. Hebelen struggled but to no avail (supra, p. 8). Relivo then ravished her.

"In the meantime, Marapao had succeeded in pulling Anita away to some grasses where he forced her to lie down, removed his pants, tore her panty and succeeded in having sexual intercourse with her (tsn., November 9, 1982, p. 42).

"Both accused, giving vent to their unsatiable desires, abused the women twice (tsn., November 8, 1982, p. 8

and tsn., November 2, 1982, p. 42), after which they left their broken victims weeping, with the warning that if the women dared to report the incident, they would be killed (tsn., November 8, 1982, p. 11).

"It took some time for Hebelan and Anita to regain themselves, but when they did, they left and headed for Itis. There they told their parents everything (tsn., November 8, 1982, p. 11 and November 9, 1982, p. 43). George Tanedo arrived later and was also informed of the dreadful news. Hebelan and George, together with Anita and her husband, proceeded to the MILUDECO office. From these they went to Kiamba and reported the crime before the sala of Judge Mondragon (tsn., November 8, 1982, p. 12)." (pp. 3-5, Brief for the Plaintiff-Appellee)

On the other hand, the defense version, as summarized by the trial court, is as follows:

"Alfredo Logarte, a security guard by occupation testified that on June 10, 1979 he was assigned as guard supervisor of the security force of MILUDECO at Linek, Kiamba, South Cotabato, with 14 or 15 security guards under his supervision; that the accused were members of the security force of MILUDECO and were detailed as guards of MILUDECO on post No. 2 from 4:00 P.M. to 12:00 o'clock midnight; that at around 4:00 o'clock P.M. on June 10, 1979, the accused called him up by phone requesting him to assume post No. 2, because of a report which both accused wanted to verify up in quarry, which he did; that upon arrival at Post No. 2, both accused left their post and went up the quarry to verify the presence of some persons thereat; that after twenty (20) minutes both accused returned to their post and he (Alfredo Logarte) too, went back to his office, after both accused told him the presence of two women thereat, whom they advised to leave the place as it was critical. This witness also testified that as guard supervisor on the night of June 10, 1979, the presence of both accused Cesar Relivo and Felipe Marapao at post No. 2 was always checked by him through the phone every thirty (30) minutes; that their presence in their post was also shown by the detex clock which was punched by the accused themselves every fifteen (15) minutes; that from 5:00 o'clock P.M. to 8:00 o'clock P.M. this witness has always checked the presence of both accused at Post No. 2 every thirty minutes by phone; that in post No. 2, one shotgun, gauge 12 was issued thereat and per scheduled these two accused were detailed at Post No. 2 from 4:00 o'clock P.M. to 12:00 o'clock midnight; that the first time this witness called the two accused in Post No. 2 was at 5:30 the third was at 6:00, the fourth was at 6:30; the fifth was at 7:00; the sixth was at 7:30 and so on and so forth and every time he called the accused at said post, they readily answered.

"Cesar Relivo, accused in CC No. 1759 testified that he was a member of the security Guard Force of MILUDECO at Linek, Kiamba, South Cotabato, in June 1979; that as such security guard he was detailed on guard duty on Post No. 2 with Felipe Marapao from 4:00 P.M. to 12:00 o'clock midnight; that at about 4:00 o'clock P.M., they were called up by guard Supervisor Alfredo Logarte for them to assume their post and to verify a report of the existence of some persons or something on top of the quarry; that after the arrival of Alfredo Logarte they both went up the quarry bringing their firearms and they found two women, Hebelan Tanedo and Anita Insan whom they advised, after asking their presence thereat, not to stay long in the place, as it was critical, after which both accused went back to their post. This accused further testified that they did not go back to the place where they saw the two offended parties; that when they were arrested, they were surprised why they were charged with the crime of rape against the two women they saw on top of the quarry; that both accused were no longer connected with the Security Guard Force of MILUDECO as they were retrenched after the incident.

"Leopoldo Pahinagan, a bulldozer operator of MILUDECO, testified that at around 6:30 P.M. of June 10, 1979 he was actually on duty in view of a landslide on the logging road going to Itis; that while thereat two women passed by, one of whom he knew personally to be Hebelan Tanedo as she is a resident of Itis.

"Felipe Marapao, accused in CC No. 1759, testified that he had been a security guard of Miludeco in the month of June, 1979; that two days after the alleged rape committed by him and Cesar Relivo on the offended parties, Anita Insan and Hebelan Tanedo, he met George Tanedo, husband of the latter, telling him to testify in his favor against Cesar Relivo so that they could get money from the company; that George Tanedo was mad

against Cesar Relivo. On cross-examination this accused admitted having been on duty as security guard of MILUDECO on post No. 2, which is around 100 feet away from the quarry; that in the afternoon of June 10, 1979, he, together with his co-security guard Cesar Relivo went up to the quarry to investigate the report about the presence of suspicious persons after their guard supervisor Alfredo Logarte gave them permission to verify about the report; that they saw two women thereat and advised them to leave the place, as it was critical, after which both accused returned to their post while Alfredo Logarte also returned to office," (pp. 26-27, Rollo)

After trial, the trial court rendered a decision, dispositive portion of which states:

"WHEREFORE, IN VIEW OF THE FOREGOING, this Court hereby finds both accused (Felipe Marapao in CC No. 1758 and Cesar Relivo in CC No. 1759) guilty beyond reasonable doubt of the crime of rape.

"The penalty for the crime of rape if committed with the use of deadly weapon is Reclusion Perpetua to Death. There being two aggravating circumstances that of nighttime and use of deadly weapon (gun) and no mitigating circumstances, this court hereby sentences each accused to suffer the penalty of Death pursuant to Art. 63 (1) of the Revised Penal Code as amended. Felipe Marapao in CC No. 1758 is ordered to indemnify Anita Insan in the amount of P6,000.00 and Cesar Relivo in CC No. 1759 is ordered to indemnify Hebelan Tanedo in the amount of P6,000 and to pay the cost." (p. 2, Brief for the Plaintiff-Appellee; p. 147, Rollo)

Accused-appellants filed a motion for new trial dated November 7, 1984 with this Court alleging newly discovered evidence, to wit:

"The circumstances of its discovery came about when the wife of the accused Cesar Relivo met the complainant Anita Insan and the latter inquired from the former the status of the case, referring to the case of the husband of the former and the wife of Cesar Relivo answered that her husband together his co-accused, Felipe Marapao were convicted and were sentenced to death. The complainant Anita Insan was surprised and she said that "how could that be when I had signed a statement wherein I said that your husband and Felipe Marapao did not molest me and Hebelan Tanedo."

"And thereafter, the wife of Cesar Relivo asked Anita Insan, if she was still in possession of the statement she was referring to and Anita Insan said "yes, I have it at home."

"And so Mrs. Relivo and Anita Insan proceeded to the house of the latter and so they found the document which is hereto attached as an annex. The contents of which are self-explanatory and if presented to the Honorable Court of Origin, the same could probably have made a different decision.

"It is perhaps noteworthy to mention at this point, that the accused failed to formally offer in evidence their exhibits during the trial although the failure to formally offer in evidence their exhibits may perhaps be attributable on the part of the accused, yet if the same have been properly appreciated the trial Court may perhaps have rendered a different decision." (underscoring supplied) (p. 55, Rollo)

In a minute resolution dated December 13, 1984, We denied said motion for new trial. A motion for reconsideration of said resolution was subsequently filed but was likewise denied for lack of merit in a resolution dated March 28, 1985.

Accused-appellants submit that the trial Court erred in the following:

"1. In not considering the findings of the medical examination of Dr. Benjamin G. Pagarigan (Exhs. C and C-1, CC. Nos. 1758-59) which were conducted a mere four (4) days after the alleged crimes were committed, in view that:

‘(a) Both complainants bore no abrasions, hematomas or like deformities in any part of their bodies;

‘(b) Both complainants were free of any blood or semen stains in the genital area;

'(c) Both complainants were free of any swellings; tenderness, lacerations or abrasions in the vulva, vagina, hymen, labia majora and minora area,'

inspite of the fact that both complainants alleged and testified that they were both fighting back the assailants and were forcibly raped, not once, but twice.

"2. In giving greater weight to the positive testimonies of the alleged victims which are rife with inconsistencies more particularly the unnatural attitude taken by the victims after the alleged rapes were committed.

"3. In not considering the positive testimony of Leopoldo Pahinagan, who testified that while being on duty atop a bulldozer on or about 6:30 p.m., the alleged victims passed him by, away from the alleged site of the crimes.

"4. In not considering the positive testimony of Alfredo Logarto, guard supervisor that:

'(a) He repeatedly checked on appellants at regular fifteen (15) minutes intervals;

'(b) The presence of the appellants at their post was shown by the punching of the TEX clock at fifteen (15) minutes intervals;

'(c) The appellants only had one (1) shotgun issued for their post on that fateful night.'

"5. In not considering the defense of alibi in the appellants' separate testimonies,

"6. In not considering the influential character, and practices of George Tanedo, husband of one of the alleged victims, in view that:

'(a) He exerted great influence over the victims who were T'boli women, to the extent that he pre-conditioned their minds before the same gave their testimonies;

'(b) He was accused of trying to extort money from the company, MILUDECO;

'(c) There was vengeance on his part with regard to the appellant Cesar Relivo for the latter's refusal to heed his proposal for extortion.

"7. In not considering that the place where the alleged rapes took place was not lighted and that the alleged victims testified that they could not see each other because it was dark, which casts serious doubt on the positive identification of appellants.

"8. In not considering that the tribe to which the alleged victims belonged to, believe in polygamy and thus cannot be judged on christian ethics and morals." (pp. 2-3, Brief for the Appellants; p. 134, Rollo)

Resolving the first assigned error, complainants could not really have borne cuts or bruises on their buttocks or legs or in any part of their body since the rape occurred on plain, smooth ground (tsn., November 8, 1982, p. 35). In addition, the examination was conducted four days after the incident (tsn., March 23, 1983, p. 72), giving enough time for any bruises to heal. The trial court correctly ruled when it said that the findings of the examining physician Dr. Pagarigan are not inconsistent with the crime charged. The victims although still minors were already married and hence, the injury that may have been caused to the vulva, vagina or labia majora and minora, and hymen as is common to virgins, no longer prevail or exists. The findings therefor cannot be conclusive that the crime of rape was not committed. (p. 35, Rollo)

With regard to the second assigned error, We find the alleged "inconsistencies" immaterial. Appellants contend that the victims stated in their affidavits that the former used garand rifles, but during trial, the victims said that appellants were holding a "long gun." (tsn., November 8, 1982, p. 10). We find the apparent discrepancy to be

slight and thus, it cannot affect their credibility, since a garand rifle is actually a long gun.

Another "inconsistency" was about the logging truck. In their brief, they alleged that Hebelen and Anita were waiting for a logging truck to bring them to Itis contrary to the victims' claim that they were there waiting for Hebelen's husband to pick them up.

The transcripts reveal otherwise.

"Hebelen Tanedo was asked on direct:

Q Why were you at MILUDECO?

A I was waiting for my husband George at that place because we would be going to Itis. (tsn., November 8, 1982, p. 16)

And then on cross she was asked:

Q Mrs. Tanedo, is it not a fact that when your husband did not arrive at that appointed time, you could have gone home to Itis?

A Because there was no more ride for us to take as it was already nighttime.

Q What ride were you expecting at the time?

A A logging truck."

(pp. 13-14, Brief for the Plaintiff-Appellee; p. 147, Rollo)

Anent the third, fourth and fifth assigned errors, being interrelated may be resolved in this wise. To bolster the defense' claim of alibi, Leopoldo Pahinagan testified that at around 6:30 P.M. of June 10, 1979, he was on overtime work bulldozing the landslide on the MILUDECO logging road at km. 13 going to Itis; that at that precise time he met the two offended parties going towards Itis. This piece of evidence tries to justify the defense or alibi of the accused; that it would have been impossible for them to have sexual intercourse with the offended parties because at the time that the alleged rape was committed on June 10, 1979, the said offended parties were no longer in the place where the alleged rape was committed. Against this version, the complaining witness steadfastly maintained that they were raped. It is a well-known principle in this jurisdiction that in crimes against chastity, the testimony of the offended party should not be received with precipitate credulity, when the conviction depends on any vital point on her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of utmost value in judging matter of this kind (People vs. Fausto, 51 Phil. 852). (pp. 41-42, Rollo)

The testimony of Alfredo Logarte, the guard supervisor is actually inconsistent with the appellant's claim. Logarte said that he called up the appellants every thirty (30) minutes (tsn, March 29, 1983, p. 155) while appellants said that the routine check call came every fifteen (15) minutes (tsn, December 12, 1983, pp. 219-220). Appellants should have presented their time cards to support their claim. There is not even an iota of proof to this contention.

It has been held over and over again that alibi cannot prevail over the well-settled rule that for it to be accepted as a defense theory, a minimum requirement must be that it was physically impossible for the accused to be at the scene of the crime (People vs. Catipon, 139 SCRA 192; People vs. Gani, 139 SCRA 301; People vs. Aragona, 138 SCRA 569; People vs. Vergel, 134 SCRA 483; People vs. Bihasa, 130 SCRA 62; People vs. Sambangan, 125 SCRA 726). The evidence for the prosecution shows that the post of appellants was only 100 feet or about 40 meters away from the rape scene. And also, the accused were positively identified by the victims.

With regard to the alleged "influential" character of George Tanedo, husband of one of the alleged victims, there is no showing that Tanedo intimidated the victims into filing the complaint. Furthermore, appellants maintained that Tanedo was trying to extort money from MILUDECO. As aptly pointed out by the Solicitor General:

"This is illogical. This case is not against the company, but against two of its guards. If these guards are implicated, the company suffers no damage. Why then, if Tanedo harbored a grudge against the company, will he bother with the two accused. He has no motive.

"And granting that he did, appellants have failed to show that it was through his machinations that this case was filed.

"Per contra, records reveal that the victims voluntarily reported the case before Judge Mondragon, subjected themselves to physical examination and the rigors of direct and cross. It is hard to believe that a woman would undergo the trouble and inconvenience of a public trial and allow an examination of her private parts if her motive was not to bring to justice the person who abused her (People vs. Macatangay, 114 SCRA 473)." (pp. 19-20, Brief for the Appellee; p. 147, Rollo)

Considering the seventh assigned error, appellants contend that since the victims stated that it was nighttime when the rape occurred, it was impossible for them to have positively identified the accused. This is totally unmeritorious. The natural illumination of the moon and the stars are enough to enable a victim to recognize a stranger whose face was right next to hers while raping her. Furthermore, when the victims went back to the MILUDECO Compound, they were able to identify and single out these two men, out of the rest of MILUDECO's employees, as the culprits.

Lastly, whether the victim be Christian or non-Christian, T'boli or Tasaday, foreigner or Filipina, if the crime was committed within our jurisdiction, the victim will surely be protected by our laws on rape.

PREMISES CONSIDERED, the lower Court's judgment is hereby AFFIRMED with the modification that the penalty be reduced to reclusion perpetua in accordance with the 1987 Constitution and the damages awarded are increased to P20,000 for each of the victims in accordance with the prevailing jurisprudence.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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