

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL TRIPOLI, ACCUSED-APPELLANT.*G.R. Nos. 74062-63. January 22, 1990*

Ponente: CRUZ, J.

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The complainant was at the time of the alleged crimes 47 years old. The accused was only twenty-one. The complainant claims she was raped and robbed. The accused says she was his "sugar mommy" and had sex with him that night for a fee. The trial court disbelieved him. In its decision dated December 4, 1985, he was convicted of the dual crimes of rape and robbery with rape.[1] That decision is now before us on appeal.

The complainant is Maria Bongato, a public school teacher. She is married to Paulino Bongato and has four children by him with ages ranging from 12 to 20. According to her, the offenses in question were committed at about midnight of March 21, 1984, in Barangay Poooc Oriental, Tubigon, Bohol.

In the morning of that day, she attended the graduation of her son at the Holy Cross Academy in Tubigon. At about 11 o'clock in the morning, she left for Tagbilaran City, arriving there at about two o'clock in the afternoon. Her purpose was to visit her ailing father. From there, she proceeded back to Tubigon, bringing with her two cartons containing seven chickens. The truck she took left at nine o'clock and she reached her destination at about eleven o'clock in the evening.[2]

Alighting from the truck, she started walking to her house, which was about one-and-a-half kilometers away. She stopped at the Tubigon Catholic Church to put her ring and wristwatch in her handbag. Passing by Teresa Fermin's store, she saw the accused with two companions. Joel Tripoli asked her what she was carrying and she replied they were chickens.[3]

Tripoli followed her from a distance. She walked on. As she neared the girl's toilet of the Tubigon Elementary School, Tripoli suddenly approached her and hooked his arm around her neck and dragged her toward the back of the school canteen. She shouted three times for help. The accused-appellant pressed a knife on her neck and threatened to kill her if she continued shouting.[4]

The details of her violation are ugly but must be related. Tripoli ordered the complainant to remove her panty. She refused at first but finally obeyed out of fear. Tripoli inserted his forefinger into her vagina, pushing and pulling in simulated coitus. It was her first day of menstruation. After a while, he withdrew his finger, made her smell it, and wiped it on her hair and back. Then he forced the complainant to masturbate him and later to insert his organ into hers. She refused and so he did it himself. He ordered the complainant to "grind" and as they stood thus joined, he ejaculated.[5]

Apparently not yet satisfied, Tripoli forcibly opened her mouth and kissed her, then sucked her nipples. All the while, he held on to the hunting knife. To her plea to be released, he asked if she preferred that he did what he was doing to her daughter instead. Then he dragged her to the front of the canteen and ordered her to lie on the cement

floor. Forcibly removing her panty, he mounted her again and consummated the rape a second time.[6]

The complainant says he was bent on a third attack for he ordered her next to lie on a bench where he intended to take her again. She pleaded that he let her go as she was feeling very weak and blood was spurting from her vagina due to her menstruation. He finally agreed but only after taking from her handbag P182.00 in cash, the ring worth P300.00 and the wristwatch valued at P300.00 plus two passbooks.[7]

Upon arriving home at about one o'clock the following morning, she immediately reported the outrage committed against her to her husband and children. That same morning, accompanied by her husband, she complained to the police, who took her sworn statement. She also submitted to physical and medical examinations conducted separately by Dr. Adoracion L. Torregosa, municipal health officer of Tubigon,[8] and Dr. Jacinta F. Pestillos of the Loon Emergency Hospital.[9]

Testifying on his own behalf, Tripoli denied the charges and claimed he and the complainant were lovers. They had been so since October 1983 and had had sex about twenty times at the rate of once a week. He claimed the complainant was not happy with her husband. He also said she gave him from P20.00 to P40.00 every time they had a tryst and he gave her "sexual joy." The only person who knew about their affair was his cousin Ricardo Atabilo.[10]

The coitus with the complainant he does not deny. In fact, he said he penetrated her three times that night and had an orgasm only at the last try. Afterwards, she took her handbag and gave him two twenty peso bills, and then he escorted her to her home. What he does deny is that he threatened her with a hunting knife either for the purpose of raping or robbing her.

It is significant that a hunting knife was found in his possession when he was arrested in his house in the morning of March 23, 1983.[11] His own mother testified that he had shown her two twenty peso bills which he said came from his "sugar mommy." [12] Moreover, he submitted no evidence whatsoever of his claimed relationship with the complainant, such as love letters, or Valentine cards, or other usual tokens of affection. It is true that these things may not be expected of a cautious married woman having a discreet illicit affair. Nevertheless, it is equally true, if not more so, that allegations of such liaisons are not lightly accepted either. Even the cousin Atabilo was not presented to corroborate the clandestine romance.

The complainant was a middle-aged married woman with four children. She was a public school teacher and respected in her community. It is not likely that she would concoct her accusations out of thin air or falsely charge a man young enough to be her son and against whom she had until the incident no known hostile motive.

But that is not all. The prosecution does not rely on her own testimony alone. Two witnesses were presented who swore they heard a woman's cries for help on the night in question.[13] The medical reports of the two physicians supported her averments that he had gripped her neck and exerted violence on her, causing a number of abrasions and contusions as he forced his lust on her.[14] The morning after the incident, she was found in shock, emotionally disturbed and trembling, requiring her confinement at the St. Joseph Hospital for four days.[15] Her torn panty was submitted in evidence.[16] It was also established that after the incident, she went home in a state of agitation and forgot the two cartons of chickens, which her husband later retrieved from the scene of the crime.[17] All these circumstances point to the truth of the complainant's accusation and belie Tripoli's feeble defense.

The Court is satisfied from an evaluation of the evidence that the trial court acted correctly in finding the accused-appellant guilty of the separate offenses of rape and robbery with rape. There is no question that he exerted force and threats on the complainant when he violated her twice and that he also robbed her of her

valuables when he committed the second rape.

The consummated rape was correctly punished with reclusion perpetua, in accordance with Article 335 of the Revised Penal Code. This penalty should also be imposed for the second offense of robbery with rape, pursuant to P.D. No. 767, which provides that the offense shall be punished with reclusion perpetua to death if it was committed with a deadly weapon or by two or more persons. A knife was used in the case at bar and there are no generic mitigating or aggravating circumstances. As for the monetary awards, the same are all approved.

The opening paragraph of the decision penned by Judge Fernando S. Ruiz of the Regional Trial Court of Tagbilaran City, suggests the moral character of the accused-appellant with this narration of his activities on that fateful day when the offenses were committed:

After 21-year old Joel Tripoli, the accused herein, took his breakfast in the morning of March 24, 1984, he played mahjong. At noon, he and his friends had a tuba drinking spree in his aunt's store at Tubigon, Bohol, until past one o'clock that afternoon, after which he went back to play mahjong up to three o'clock in the afternoon when he ran out of money. That evening he attended the birthday party given by his cousin Ricardo Atabilo where they drank tuba after which he and his friends Henry Cano and Ricardo Atabilo went to his aunt's store where they continued to drink Añejo rum.

It is tragic that at that time, the accused-appellant was no longer a stranger to the vicious life of liquor and gambling although he was only twenty-one years old. As this young man ponders his crimes during the many years to come, may he find within the prison walls the redeeming grace of repentance and rehabilitation.

WHEREFORE, the appealed sentence is AFFIRMED as above modified, with costs against the accused-appellant. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 53-60. Penned by Judge Fernando S. Ruiz.

[2] TSN, August 29, 1984, pp. 7-10.

[3] Ibid., pp. 10-14.

[4] Id., pp. 14-15.

[5] id., pp. 16-19.

[6] id., pp. 19-20.

[7] Id., pp. 24-26.

[8] Exhibit "H."

[9] Exhibit "I."

[10] TSN, February 11, 1985, pp. 21-24; TSN, October 1, 1984, p. 4.

[11] TSN, April 10, 1985, p. 64.

[12] TSN, July 16, 1985, p. 31.

[13] Original Records, pp. 8 & 10.

[14] Exhibits "H" and "I."

[15] TSN, November 12, 1984, p. 17.

[16] TSN, October 1, 1984, p. 2.

[17] TSN, August 29, 1984, pp. 27-28.

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