

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FARHAD HATANI Y ABOLHASSAN, ACCUSED-APPELLANT.

G.R. Nos. 78813-14. November 08, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decisions of the Regional Trial Court, Branch 105, Quezon City, convicting appellant in Criminal Cases No. Q-11867 and No. Q-11868.

The dispositive portion of the decision in Criminal Case No. Q-11867 reads as follows:

"WHEREFORE, premises considered, the Court finds the accused Farhad Hatani y Abolhassan, GUILTY beyond reasonable doubt of illegal practice of medicine in violation of R.A. 2382 otherwise known as the Medical Act of 1959 (Secs. 8, 10) penalized by Section 28 thereof with "a fine of not less than one thousand pesos nor more than ten thousand pesos with subsidiary imprisonment in case of insolvency, or by imprisonment of not less than one year nor more than five years, or by both such fine and imprisonment, in the discretion of the court; and considering the circumstances of the case and the ignominy caused by him to his two teen-aged, female, then unmarried victims, this Court exercising its discretion granted under said Section 28 of the law, hereby SENTENCES said accused FARHAD HATANI Y ABOLHASSAN to pay a fine of ten thousand pesos (P10,000.00) with subsidiary imprisonment in case of insolvency AND to suffer imprisonment of five (5) years; and to pay the costs.

This Court further recommends that after service of his sentence the accused be deported as undesirable alien" (Rollo, p. 35).

The dispositive portion of the decision in Criminal Case No. Q-11868 reads as follows:

"WHEREFORE, premises considered, the Court finds the accused, FARHAD HATANI y ABOLHASSAN, GUILTY beyond reasonable doubt of the crime of rape punishable under Article 335 of the Revised Penal Code and hereby SENTENCES said accused to suffer life imprisonment or reclusion perpetua; and to indemnify the complainant, Precila Borja, in the sum of fifty thousand pesos (P50,000.00) and to pay costs" (Rollo, p. 41).

The information in Criminal Case No. Q-11867 charged appellant with illegal practice of medicine, in violation of R.A. No. 2382, otherwise known as the Medical Act of 1959, committed as follows:

"That on or about the 6th day of July, 1979, in Quezon City, Philippines, the above-named accused, knowing fully well that he has not satisfactorily passed the corresponding Board Examination, neither is he a holder of a valid Certificate of Registration duly issued by the Board of Medical Examiners, as in fact he does not even appear to have taken or completed the course leading to a medical degree, did, then and there, willfully, unlawfully and feloniously for compensation, fee and salary, paid to him directly, physically examined Priscila (sic) Borja Y Loquero and Wilma Borja Y Loquero, diagnosed, treated and administer injections on the persons of Priscila (sic) Borja Y Loquero and Wilma Borja Y Loquero, in Violation of Section 10, in relation to Section 28, Republic Act No. 2382" (Records, Vol. I, p. 1).

The information in Criminal Case No. Q-11868, charged appellant with Rape, committed as follows:

"That on or about the 6th day of July, 1979, in Quezon City, Philippines, the above-named accused, with lewd designs, and while she was deprived of reason or unconscious after having been drugged or administered medicine, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with the undersigned PRECILA BORJA Y LOQUERO, without her consent and against her will, to her damage and prejudice in such amount as may be awarded under the provisions of the Civil Code" (Records, Vol. II, p. 1).

It appears that in the morning of July 6, 1979, Agustina Borja visited her comadre, Maura Fontreras, and requested malunggay leaves as medication for her 16-year old daughter, Precila, who had high fever and loose bowel movement. Upon learning that Precila was sick, Marita, Maura's daughter, introduced Agustina to her husband, appellant herein, whom she said was a medical doctor. Marita suggested that her husband treat Precila and Agustina agreed.

Appellant and Marita went to the Borja residence, where he examined Precila. He gave her tablets to take and administered two injections (to her), one in the morning and the second at noon. After each injection, Precila would feel dizzy and fall asleep.

It was appellant's diagnosis that Precila was a drug addict and required further observation and treatment. Appellant offered to attend to Precila at his house and again, Agustina agreed in the belief that her daughter was a drug addict.

In the evening of the same day, Precila was fetched by appellant and Marita and was brought to appellant's house. Again, Precila was given an injection which caused her to sleep. When she awoke, she realized that she was naked and her entire body was in pain. Appellant was seated on the bed and was fondling her private parts. Shocked, Precila called for her mother and tried to get up. Appellant, however, punched her on the chest and forced her to lie down. He pressed a pillow on her face and injected her again, causing her to fall asleep.

When Precila awoke the second time, she found appellant in bed with her. He was naked and fondling her private parts. The pain all over her body lingered. When Precila touched her private parts, she saw blood stains on her hand. She tried to stand up but she was too weak. Appellant gave her another injection rendering her unconscious.

The following morning, Agustina went to fetch Precila. Upon reaching the Fontreras' residence, she went straight to the bedroom, where, to her great dismay, she found Precila and appellant both asleep and naked. She hurriedly dressed up Precila and brought her home.

When Precila woke up, she noticed she was already home and her mother was crying. Precila remained dizzy, with throbbing pains all over her body. When talked to, she was incoherent.

That evening, Precila's oldest sister, Josefina, a nurse by profession, came home and saw Precila looking very weak. Her mother, who was crying, narrated what she had witnessed that morning. She also told Josefina that appellant was in the other bedroom, treating another sister, Wilma whom he also diagnosed as a drug addict. Josefina immediately proceeded to the bedroom and saw appellant about to inject Wilma.

Josefina saw the open bag of appellant, which contained empty capsules of dalmene and empty vials of valium. She inquired on the need of the injection and appellant replied that a second shot of plain distilled water was required to cure Wilma of her drug addiction. Josefina told appellant to stop but he persisted. Only upon threat that she would call the police did appellant stop. Appellant and his wife then left the Borja residence.

The following day, Agustina and Josefina brought Precila and Wilma to the Philippine Constabulary Headquarters at Camp Crame, Quezon City, where Josefina and Wilma gave their statements (Exhs. "D" and "F"). Precila was

physically examined by a doctor, whose medical report stated that Precila's hymen had "deep, healing lacerations" and that "subject is in non-virgin state physically" (Exh. A). Several needle puncture marks were also found on Precila's arms and buttocks.

A physical examination was likewise done on Wilma, which showed that she too had a needle puncture, as shown in the Medico-Legal Report (Exh. "L").

Acting on the complaint filed before the Constabulary Anti-Narcotics Unit (CANU), a surveillance of appellant's residence was conducted. Subsequently, a search warrant was secured from Judge Jose P. Castro of the Court of First Instance of Quezon City. Armed with the warrant, CANU agents raided appellant's residence on July 15, 1979.

Assorted drugs, such as dalmene, valium and mogadon, as well as prescription pads in the name of Dr. Jesus Yap (Exhs. "H" - "H-4") and other medical instruments, such as a "thermometer, a hygrometer (sic), stethoscope, syringes and needles, were seized."

The Handwriting Identification Report (Exh. "I") on the prescription slips showed that these were written by the appellant himself. The report on the chemistry examination of the seized tablets and capsules (Exhs. "J" - "J-1") confirmed the presence of mogadon, dalmene and valium.

After the preliminary investigation, separate informations for rape and violation of R.A. No. 2382 were filed. Appellant pleaded not guilty to both crimes.

The defense's version is that in the evening of July 6, 1976, Agustina and Precila Borja visited the mother-in-law of the appellant, Maura Fontreras. In the course of the conversation, Agustina asked Marita if she could help Precila. Marita obliged and agreed to take care of Precila for the night and allow her to sleep in her bedroom.

Precila and Marita chatted the whole night. Accordingly, Precila confessed that she was not really sick. She merely related her personal problems, involving her parents. She also admitted her vices, such as drinking, smoking and taking drugs.

Their talk lasted until the wee hours of the morning and during their conversation, appellant would occasionally enter the room but he never joined their discussion.

Precila and Marita shared the same bed. Appellant, who was wearing only his pajama pants, slept on the floor at the opposite end of the room.

The following morning Agustina arrived and Marita related some of Precila's problems. Nothing untoward happened that day and Agustina headed for home while Precila and Marita followed later.

At past midnight of July 15, 1979, a raid was conducted by CANU agents in the house of the appellant under the supervision of CIC Agustin Timbol, Jr. The raid was made upon Josefina's complaint for illegal possession of drugs.

Appellant and his wife were driven out of their bedroom, while three men remained. Later, appellant was called to join them in the bedroom and he was shocked to see assorted drugs scattered around. Appellant denied owning them. Photographs were taken of him with the drugs. A barangay official was called to attest to the list of the confiscated drugs. Appellant, however, refused to sign the said list.

CIC Timbol offered to fix the case in exchange of money. Instead of acceding, appellant demanded to see the search warrant. CIC Timbol failed to show a warrant on the pretext that they were military men without need of any identification or search warrant. Appellant, his wife and brother-in-law were forced to join CIC Timbol for

questioning in Camp Crame. Upon boarding the van, appellant saw Josefina aboard kissing CIC Timbol and both exchanged victory signs.

The trial court rendered two separate decisions and convicted the appellant of both crimes. In finding appellant guilty of illegal purchase of medicine, considerable weight was given to the prosecution's exhibits.

The Professional Regulation Commission certified that appellant is not among the list of registered physicians nor among those with special permit to practice medicine in a limited scope (Exh. "K").

Appellant failed to refute the Handwriting Identification Report (Exh. "I") released by the PC Crime Laboratory showing that the signature of Dr. Jesus D. Yap (Exhs. "H" - "H-4") prescribing medicine belonged to him. The pictures also taken during the raid (Exhs. "G" - "G-8") undeniably reveal several medical equipment used by practicing physicians.

Notwithstanding the trial court's finding that there was no direct evidence of rape, it concluded that circumstantial evidence indicate that rape was consummated by appellant considering the following:

“1. The medico - legal examination of victim Precila, taken on July 8, 1979 at 10:25 in the morning or less than 48 hours from the evening of July 6, 1979 found "hymen with deep, healing lacerations at 4, 6 and 9 o'clock position"; thus indicating that the lacerations were recent as they are in the process of healing; (Exh. "A-1")

2. The above undeniable findings of the expert confirms the statement of the victim, a young girl of 16 or 17 years of age, that when she held private parts which were painful then, she noticed blood. (tsn. Alma, Feb. 9, 1984, pp. 4-5)

"The fresh laceration of the hymen further confirms the carnal assault." (People vs. Ocampo, L-47335, Aug. 13, 1986)

3. In the two short waking moments of the victim she noticed she was naked and beside her on the same bed was the accused, also naked. (tsn. Alma, Feb. 9, 1984, pp. 3-5)

4. The accused, then 21 years of age was in the prime of youth, and the unconscious girl beside him was just 16 or 17 years of age, thus in the full bloom of womanhood. The sexual excitement on the part of the accused was therefore exceedingly great.

5. When the mother, Agustina, came into the room of the accused that early morning of July 7, 1979 she saw her daughter and the accused on the same bed and both naked. (tsn., Rogato, Jan. 27, 1981, p. 9)

6. The medico-legal found several needle puncture marks on the arms and buttocks of Precila (Exh. "A"); thus confirming Precila's testimony that she had been injected by the accused, rendering her unconscious (tsn. Alma, Feb. 9, 1984, pp. 4-5; tsn., Nenita, May 21, 1984, pp. 3--6; also pp. 29-30).

7. The medico-legal found the victim 'in non-virgin state physically.' (Exh. "A-1")

8. At the time of the medico-legal examination, i.e. morning of July 8, 1979, the victim was found to be 'incoherent.' (Exh. A)-after effect of the injections or drugs.

9. At the time of the incident (July 6, 1979) the Borjas and Fronteras (sic) were 'comadres' and neighbors. There is no enmity between and among them.

10. Between accused and Marita on one hand, and the victim, her mother, and sisters, on the other hand, there was no misunderstanding before the incident. There is absolutely absence of any ulterior motive for the teen-aged victim or her family to file the serious charge of rape which would expose her to embarrassment of examination of her private parts and public trial" (Rollo, pp. 38-39).

In his first assignment of error, appellant questions the credibility of the prosecution witnesses.

Appellant faults complainant for recounting her ordeal only after four years when she took the witness stand. This argument is misleading. The record shows that the day after the rape, Josefina and Wilma Borja, accompanied by their mother, Agustina, issued their statements at Camp Crame. Agustina gave her statement twice on separate days. Precila did not give any statement due to her weak condition but it cannot be denied that she was instead physically examined. Suffice it to say, the Medico-Legal Report (Exh. "A") indicates swellings and lacerations and concludes that Precila was no longer a virgin. Although the records fail to show any sworn statement by Precila, such is not fatal where the sworn affidavits of her mother, her two sisters and the medico-legal report are sufficient to show probable cause of rape (*People v. Yambao*, 193 SCRA 571 [1991]).

Precila was either dizzy or unconscious at the time she was sexually abused. We find her testimony consistent and credible. While her testimony is limited to the times when she would gain her consciousness, it is not unlikely that such traumatic incidents would still be engraved on her mind even four years after.

Appellant's assertion that Precila failed to inform her family of his misdeeds is explainable. As correctly pointed out by the Solicitor General, Precila was still dizzy and incoherent as a consequence of the injections administered by appellant. In fact, when Precila was physically examined by the doctor the day after, she was still sleepy and groggy (TSN, March 31, 1980, pp. 7-8).

Appellant also finds it strange that considering the acts allegedly committed by him against Precila, the medico-legal report fails to specify any injuries on the body of Precila. Appellant need not inflict heavy blows on Precila for the simple reason that she was under sedation. The absence of the injuries does not negate the commission of rape (*People v. Torrevillas*, 203 SCRA 576 [1991]; *People v. Arenas*, 198 SCRA 172 [1991]) for rape may be committed after rendering a woman unconscious (Art. 335, Revised Penal Code; *People v. Gerones*, 193 SCRA 263 [1991]).

Appellant alleges that Precila was no longer a virgin on that fateful day and that her bleeding was actually the start of her menstrual cycle. It is settled jurisprudence that virginity is not an essential element of rape (*People v. Corro*, 197 SCRA 121 [1991]; *People v. Banayo*, 195 SCRA 543 [1991]). To claim that Precila's menstrual cycle began on that day is highly speculative.

Appellant claims that the sworn statements of the Borjas (Exhs. "D", "E" and "F") were antedated and were prepared after the illegal search was conducted in his residence. He also cites some inconsistencies in said statements. We find the claim to be devoid of merit. It is only now on appeal that appellant disputes the execution of these affidavits. When they were presented and offered as evidence, appellant failed to raise such objections and to refute them.

The alleged inconsistencies in the testimony of the prosecution witnesses merely refer to minor details, which cannot destroy their credibility (*People v. Doctolero*, 193 SCRA 632 [1991]). This is also true where statements made while on the witness stand are claimed to be inconsistent with the affidavit, which are generally incomplete (*People v. Lagota*, 194 SCRA 92 [1991]; *People v. Avanzado*, 158 SCRA 427 [1988]).

With regard to the second assignment of error, appellant insists that his conviction arose from insufficient evidence and his failure to prove his innocence.

Indeed, the circumstantial evidence established at the trial are more than sufficient to prove the guilt of appellant. The Medico-Legal Report on Precila, taken within 48 hours from the commission of rape confirmed that her hymen had "deep, healing lacerations at 4, 6 and 9 o'clock position" and Precila was "in non-virgin state physically" (Exh. "A"). Furthermore, the report confirms that Precila had at least six needle puncture marks and

swellings, which confirm that appellant had injected her several times.

On the two occasions that Precila woke up, she positively stated that appellant was with her on the bed and that they were both naked. She also tried to free herself on both attempts from accused, but, he made her unconscious through injections (TSN, February 9, 1984, pp. 3-5). This is corroborated by the testimony of Agustina, who saw her daughter and accused together naked on bed (TSN, January 27, 1981, p. 9). These unbroken chain of events leads one to a fair and reasonable conclusion that accused actually raped Precila.

As held in *People v. Yambao*, supra, credence is given to the findings of the trial court where the rape victim's testimony is buttressed by the corroborative testimony of the mother and the medico-legal report, as well as the report of the police investigator.

It must also be borne in mind that at the time of the commission of the crime, Precila was just sixteen years old. No young lady at the prime of her youth would concoct a story of defloration, allow an examination of her intimate parts and later bare herself to the disgrace brought to her honor in a public trial unless she was motivated solely by a desire to have the culprit apprehended and brought to justice (*People v. Patilan*, 197 SCRA 354 [1991]; *People v. Yambao*, 193 SCRA 571 [1991]).

Appellant claims that his right to be presumed innocent was violated. He cites the trial court's decision holding that it -

"x x x finds that with these circumstantial evidences (sic) pieced together the prosecution has proved the crime of rape, and the burden shifted on the defense to show the contrary" (Rollo, p. 40).

Appellant was afforded a fair trial and in fact he availed of sur-rebuttal evidence. The statement of the trial court, as correctly argued by the Solicitor General, implies that the circumstantial evidence is sufficient to support appellant's conviction unless the defense is able to provide evidence to the contrary.

With respect to his conviction of illegal practice of medicine, appellant presented inconsistent claims. On one hand, he claims that the drugs and other paraphernalia were planted by the raiding team; while on the other hand, he claims that these were seized without any warrant.

If indeed the evidence were all planted, how can appellant explain his handwriting on the prescription pads in the name of Dr. Jesus Yap? A perusal of the photographs showing accused during the raid, fails to indicate any protestation by him. In fact, the other photographs (Exhs. "G-1", "G-2", "G-4" - "G-8") do not bear any sign of disorder, in contrast to appellant's testimony that his room was made into a mess during the raid.

The records fail to disclose a copy of a search warrant. However, the prosecution was able to present its return (Exh. "ZZ") and we are satisfied that indeed a lawful search warrant was obtained. Besides, the judge who granted the search warrant was the same judge who initially heard both criminal cases. It can therefore be presumed, that the search was made with a search warrant and absent of any showing that it was procured maliciously, the items seized are admissible in evidence (*People v. Umali*, 193 SCRA 493 [1991]).

The evidence is overwhelming that appellant actually treated and diagnosed Precila and Wilma Borja. The positive testimony of Agustina, Precila, Wilma and Josefina Borja; the medico-legal reports (Exhs. "A", "A-7", "C", "L" and "L--1") which attest to the needle marks; the Handwriting Identification Report (Exh. I); the photographs (Exhs. "G-1" - "G-8") showing assorted drugs and medical equipment in appellant's room; and the chemistry reports (Exhs. "J" - "J--1") prove that appellant was engaged in the practice of medicine. And as to his allegation that there was no proof of payment, the law specifically punishes said act whether or not done for a fee.

Appellant claims that Precila admitted in her cross-examination that she was in school the whole day of July 6,

1979 and it was therefore impossible for him to have treated and diagnosed her on that date. An accurate reading of the transcript, however, will show that Precila's testimony was in response to a question regarding her school schedule for that day.

Finally, appellant claims that the ponente of both decisions was not the trial judge, ergo said judge was thus deprived of the opportunity to assess the credibility of the prosecution witnesses.

Admittedly, the ponente's participation was limited to the resolution of the cases. The fact that the judge who heard the evidence is not the one who rendered the judgment, and for that reason the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case, does not render the judgment erroneous (*People v. Ramos, Jr.*, 203 SCRA 237 [1991]; *People v. Villamayor*, 199 SCRA 472 [1991]), especially where the evidence on record is sufficient to support its conclusion.

WHEREFORE, the judgments appealed from are AFFIRMED in toto. Costs de oficio.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

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