

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAULINO AQUINO AND ALEJANDRO AQUINO, ACCUSED-APPELLANTS.

G.R. Nos. 84913-15. June 05, 1990

Ponente: PARAS, J.

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PARAS, J.:

Before Us is an appeal from the judgment of the Regional Trial Court of Rosales, Pangasinan, Branch 53, involving three (3) cases of rape filed by Maria Eliza S. Jorique against the brothers Paulino Aquino and Alejandro Aquino. Upon her sworn complaint, Second Assistant Provincial Fiscal Jovito C. Peralta filed two informations against Paulino Aquino and one against Alejandro Aquino which read as follows:

CRIM. CASE NO. 2070-R

"That on or about the 25th day of June, 1985, in Brgy. Cabalaoangan Norte, Municipality of Rosales, Province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force or intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with Maria Eliza S. Jorique against her will and consent and to her damage and prejudice.

Contrary to Article 335, Revised Penal Code."

CRIM. CASE NO. 2086-R

"That on or about the 12th day of September, 1985, in Brgy. Cabalaoangan, province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, or intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with Maria Eliza S. Jorique against her will and consent and to her damage and prejudice.

"Contrary to Article 335, Revised Penal Code."

CRIM. CASE NO. 2071-R

"That on or about the 15th day of June, 1986, in Brgy. Cabalaoangan, Norte, municipality of Rosales, province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force or intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with Maria Eliza S. Jorique against her will and consent and to her damage and prejudice.

"Contrary to Article 335, Revised Penal Code."

(pp. 21-22, Rollo)

Upon arraignment both accused pleaded not guilty to the crime charged and trial proceeded accordingly. The court a quo jointly heard the said criminal cases. On July 28, 1988, after trial on the merits, the lower court rendered its consolidated Decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 2070-R, the Court hereby finds Paulino Aquino GUILTY beyond reasonable doubt of the crime of rape without any mitigating or aggravating circumstance and sentences him to suffer the penalty of Reclusion Perpetua; to indemnify Ma. Eliza S. Jorique in the amount of P30,000.00 as and for moral damages; and to pay the costs.
2. In Criminal Case No. 2071-R (sic: should be Criminal Case No. 2086-R), the Court finds Paulino Aquino NOT GUILTY and consequently acquits him on reasonable doubt, with costs de oficio.
3. In Criminal Case No. 2086-R (sic: should be Criminal Case No. 2071-R), the Court finds Alejandro Aquino GUILTY beyond reasonable doubt of the crime of rape and sentences him to suffer the penalty of Reclusion Perpetua; to indemnify Maria Eliza S. Jorique in the amount of P30,000.00 as and for moral damages; and to pay the costs.

"SO ORDERED."

(p. 3, Brief for the Appellee; p. 98, Rollo)

Not satisfied therewith, the accused interposed the present appeal alleging three (3) errors committed by the court a quo but only in so far as Criminal Cases Nos. 2070-R and 2071-R, respectively, are concerned and these are the following:

I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF COMPLAINANT MA. ELIZA JORIQUE.

II

THE LOWER COURT ERRED IN CONVICTING ACCUSED PAULINO AQUINO DESPITE HIS ACQUITTAL IN CRIM. CASE NO. 2086-R.

III

AND IN BOTH CASES, THE LOWER COURT ERRED IN HOLDING ACCUSED GUILTY BEYOND REASONABLE DOUBT.

(p. 4, Brief for the Appellee; p. 99, Rollo)

The facts, as narrated in the People's Brief, are as follows:

"1. Liza was born on December 7, 1970. In June, 1985, she was living with her aunt Ester Salimbay who is the mistress of Alejandro Aquino. They lived in a rented home in Cabalaongan Norte, Rosales, Pangasinan. With them in the same house are the two minor children of Ester Salimbay namely, Madonna, 10 years old, and Renier, 8 years old, and Liza's cousin named Oliver Soto, 11 years old.

Liza was enrolled at the Rosales National High School. She was in the third year.

Paulino Aquino is the younger brother of Alejandro Aquino. They are natives of Nueva Ecija. Some few days before June 25, 1985, Paulino Aquino arrived in his brother's rented home in Cabalaoangan Norte, Rosales, Pangasinan, where he sojourned for several days.

On June 25, 1985, in the morning, Liza and Paulino Aquino were left alone in the house. The house is a bungalow with three bedrooms, a bathroom, a sala and a terrace. At about 9:00 o'clock that day, Liza took a bath in the bathroom. When she came out from the bathroom, she was only clad with a towel. She saw Paulino Aquino standing at the terrace. Not long after she had entered her bedroom, and while she was getting her clothes from the cabinet, Paulino Aquino opened the door. She was astonished and dumb-founded. Her immediate reaction was to run towards the door to get out. Paulino Aquino blocked her way and pushed her to the bed. She landed astride. The towel with which she was clad dropped. She was nude.

Paulino Aquino pinned her down. He strangled her with his right hand even as he held her right hand with his other hand. She wanted to shout but she could not owing to her strangulation. For ten minutes she struggled to free herself. It was futile, Paulino Aquino was heavy and strong. Her legs were spread apart by his two legs placed between her legs. She felt excruciating pain as his private organ was being driven into her genitalia. Paulino Aquino drove her buttock up and down for five minutes.

Copulation was consummated. Paulino Aquino stood up and warned Liza not to report the matter to her aunt or to anyone or else something would happen to her and the whole family.

When Paulino Aquino left her, she scrutinized her private parts. It was bleeding. She cannot do anything but cry her misfortune.

2. In the afternoon of September 12, 1985, Liza was sleeping inside her bedroom. At about 4:00 o'clock of that day, she was roused by Madonna Gozon who told her that Paulino Aquino arrived. After Madonna left her room, Paulino Aquino entered and started to undress himself. She was scared and surprised. She cried because she was afraid and speechless. She did not resist because she thought it was useless and futile. He removed her panty and mounted her. It took him about five minutes to consummate coition. Paulino Aquino enjoined her not to report the matter to anybody or else he would kill her and the members of her family.

3. On June 15, 1986, at about 7:00 o'clock in the morning, Liza was in the kitchen cooking breakfast. Earlier that day, her aunt left for Umingan, Pangasinan. The children were still asleep in their room. Alejandro Aquino approached her from behind, held her by the shoulder, and instructed her to follow him to the master's bedroom because he would tell her something. She obliged. As she entered the room, Alejandro Aquino pushed her back. He went on top of her. She struggled to extricate herself but he was too strong. He removed her panty and inserted his sexual organ into her private part. Then he made a push and pull movement until he reached orgasm.

Prior to June 15, 1986, Liza declared that she was raped by Alejandro Aquino inside a motel in Urdaneta, Pangasinan. That was on February 11, 1986. This incident was mentioned by her in the sworn statement she gave to the Rosales Police, marked as Exhibit "F". However, she was unable to sue Alejandro Aquino for this act because the venue was in Urdaneta, Pangasinan. Nonetheless, she confided to her uncle, Mauricio Salimbay, her horrible experience. Mauricio Salimbay accompanied Liza to the police authorities in Rosales, Pangasinan where she was asked to give a written statement, marked as Exhibit "F".

5. On June 17, 1986, Liza submitted herself to a physical examination by Dr. Reymund S. Peralta, Municipal Health Officer of Rosales, Pangasinan. Dr. Peralta found Liza's hymen ruptured with healed laceration, 0.5 cm. at 6:00 o'clock position. Her vulva admits two (2) fingers. Dr. Peralta opined that the laceration in Liza's hymen may have been caused by sexual intercourse." (pp. 5-8, Brief for the Appellee; pp. 100-103, Rollo)

All the assigned errors raised by the accused-appellants revolve around the issue of credibility of the witnesses, especially the complaining witness.

Appellants Paulino Aquino and Alejandro Aquino imputed to the trial court, as its first error, its giving credence

to the testimony of complainant Ma. Eliza Jorique. In their attempt to mislead this Honorable Court and to destroy the credibility of the testimony of herein complainant, they cite portions of complainant's testimony which do not pertain to Criminal Case No. 2070-R (case subject of this appeal) but rather to Criminal Case No. 20866-R, wherein as declared by the court a quo, the prosecution had failed to prove the element of force and intimidation but not in so far as the issue of carnal communication is concerned, hence, in said Criminal Case No. 2086-R the appellant Paulino Aquino was acquitted.

Such allegations of the appellants deserve no merit. The aforementioned gross misrepresentation made by the appellants serves as their desperate attempt to show that the court a quo erred in its findings of fact and conclusions, but as can be gleaned from the records of the case, the trial court was morally convinced and unequivocally stated without doubt, "that indeed Alejandro and Paulino Aquino did really had sexual congress with Liza on the dates specified in the three (3) informations. Such fact is confirmed by the healed laceration in Liza's hymen at 6:00 o'clock position, and the fact that the vulva can admit two fingers, a circumstance strongly indicating that she had sexual intercourse more than once" (RTC, Decision, p. 9, Rollo, 104).

It was not difficult for Alejandro Aquino to accomplish his bestial act because, like his brother Paulino Aquino, he was robust and tall, about five (5) feet and nine (9) inches, against Liza who was small and short. It is also important to note that Alejandro Aquino had an ascendancy over Liza because he was regarded by her as an uncle (being the common-law husband of her aunt Ester Salimbay). Under the circumstances, Alejandro Aquino had exercised strong moral and physical influence over Liza which aided him in consummating sexual intercourse with her with least resistance (Rollo, p. 36, RTC Decision).

In *People vs. Savellano*, 57 SCRA 328, it was held that force or violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other. It is not necessary that the force employed be so great or of such character as could not be resisted; it is only necessary that the force used by the guilty party be sufficient to consummate the purpose (*US vs. Villarosa*, 4 Phil. 434).

Appellant Alejandro Aquino asserts that the rape charges against him were instigated by Liza's mother Elena Salimbay, who allegedly was his former mistress, out of hatred and jealousy, for taking another woman, Ester Salimbay (Elena's own sister), as his new mistress.

This contention is likewise unmeritorious. A perusal of the records would reveal that Liza filed the charges by herself, unaided by her mother. In fact it was not to her mother that she revealed her horrible experience, rather she sought the assistance of her uncle Mauricio Salimbay. There is therefore no possible motive on the part of this young and unsophisticated girl in bringing this suit, but only to seek justice and vindication of the wrong committed against her honor (Rollo, p. 39, RTC Decision).

Moreover, this court has, time and again, stated in similar cases of rape that no woman, especially one of tender age, would willingly expose herself to the embarrassment and humiliation of a public trial wherein she would have not only to admit but also to narrate the violation of her person, unless such was really the case.

Another argument interposed by the appellants is that the alleged incidents of rape are unbelievable because of the actuations of the complainant Ma. Liza Jorique before, during and after the commission of said sexual abuse.

We find no merit in this pretense. We hold the same opinion as that of the lower court, that it is not uncommon to see women coming out of the bathroom in their respective homes clad only with a towel, especially so when the bathroom is just a few steps away from bedroom or adjacent to the bedroom.

With regard to the claim that the complainant did not lock her bedroom, said actuations can be considered as lacking in precaution but this cannot in any way impair her credibility. What is important to note is that appellant

Paulino Aquino succeeded in having carnal knowledge of Liza by the use of force and violence and against her will. Undoubtedly, all the essential elements of rape existed.

Appellant further claimed that complainant did not offer any resistance against Paulino Aquino's lustful advances.

This contention is likewise untenable. It is very clear from the records that the victim Liza Jorique in her direct and cross-examination categorically declared before the court that she really offered resistance all throughout the sexual attack of Paulino Aquino, but her resistance proved to be futile. As aptly explained by the court a quo:

"x x x she is a petite but pretty girl and not more than five feet tall as against Paulino who as seen by the court is robust and about five feet and nine (9) inches tall." (Rollo, p. 110, RTC Decision)

It is therefore important to point at this instance, that the failure of the complainant to successfully resist Paulino Aquino's carnal advances is not a manifestation of consent, but rather an indication of an involuntary submission in the face of the consummation of the outrage. It is also an indication that the complainant yielded because of authentic apprehension and real fear of immediate death or great bodily harm (*People vs. Dolores*, CA-G.R. No. 18065-R, August 23, 1957).

Furthermore, herein appellants aver that there are several inconsistencies and contradictions in the testimony of complainant Liza Jorique. However, after a careful review of the entire record, We find that such inconsistencies and contradictions are minor and trivial which will not necessarily affect complainant's disposition of being candid, straightforward, spontaneous and sincere in her declarations.

Moreover, such inconsistencies are well-expected to come from an unexposed barrio lass not used to the rigors of public trial (*People vs. Valdez*, 150 SCRA 405).

Finally, herein appellants claim that delay in the filing of the complaint (only on June 17, 1986) casts a serious doubt on the veracity of the accusations made (Appellant's Brief, pp. 10-11; Rollo, p. 116).

Again, We find the said argument to be lacking in merit. Clearly, the records of the case show that the complaints were filed on June 17, 1986, which is two days after Alejandro Aquino committed his dastardly act on June 15, 1986. The fact that the complainant Liza Jorique did not immediately report the previous sexual congresses committed against her was due to her fear for her life and the lives of her relatives. (Rollo, p. 116)

It is not odd for young girls to conceal for sometime the assaults on their virtue because of the rapist's threat on their lives (*People vs. San Buenaventura*, 164 SCRA 150). This court has already recognized that concealment by young girls of rape against them are not uncommon because of their fear not only for their own life but also the lives of their relatives and their friends. We also repeatedly held that delay in reporting a rape incident due to death threats is justified. (*People vs. Valdez*, supra).

PREMISES CONSIDERED, the guilt of appellants Paulino Aquino and Alejandro Aquino for the crime of rape, as separately charged, has been proved beyond reasonable doubt.

The decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED in toto. With costs against appellants Paulino Aquino and Alejandro Aquino.

SO ORDERED.

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

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