

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAULINO MAGDADARO Y GERONA, ACCUSED-APPELLANT.

G.R. Nos. 89370-72. May 15, 1991

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Convicted in a Joint Decision[**] by the Regional Trial Court (RTC) of Cagayan de Oro City of three (3) counts of Rape, committed on three (3) different occasions, and sentenced to three (3) penalties of reclusion perpetua, accused-appellant, Paulino Magdadaro, now seeks a reversal.

The Complainant, Beverlinda Abrasado, is a 16-year old country girl, a Grade VI student, daughter of Leonardo Abrasado. The latter is a tenant of accused-appellant Magdadaro at the latter's farm at Balubal, Cagayan de Oro City. Beverlinda helps her father till the farm. Appellant is a farmer, 54 years of age, married, residing at Tin-ao, Cagayan de Oro City.

Beverlinda's narration of the three (3) happenings follows:

The 10 July 1988 incident:

At about 10:00 o'clock in the morning, when Beverlinda was gathering "guyabano" near Appellant's house at Balubal, Cagayan de Oro City, the latter suddenly appeared, held Beverlinda by the hand and pulled her towards the cornfield nearby. She tried her best to extricate herself but was no match for Appellant's strength. The latter then held her hand again and boxed her in the stomach, making her fall to the ground. She lost consciousness. When she regained her senses, Appellant was already on top of her, taking advantage of her womanhood.

The event over, Beverlinda was ordered to go home by Appellant with the threat not to reveal the occurrence to any one at the risk of her life and that of her family.

The 15 July 1988 incident.

On this date, while Beverlinda was fetching water from the well near Appellant's house, the latter appeared, held her by the hand, and pulled her towards the cornfield, despite her resistance and attempts to free herself. She was again boxed, fell to the ground, and when she came to, Appellant was on top of her "making the push and pull movements."

As in the first incident, Beverlinda did not reveal the episode for fear of her life.

The 21 August 1988 incident.

At about 3:00 o'clock in the afternoon of this date, Beverlinda was tethering a carabao in a grassy area adjoining Appellant's house at Balubal. From out of the bushes, Appellant appeared and chased her. She was able to run but Appellant caught up with her and held her hand tightly. She shouted for help. Appellant boxed her in the stomach. She lost consciousness and fell to the ground. Regaining her senses, she found Appellant already astride her,

having carnal knowledge of her.

Unknown to Beverlinda and Appellant, Leonardo Abrasado, Beverlinda's father, heard the shouts and proceeded towards the direction where they came from. Leonardo testified that upon reaching there, he could hardly believe his eyes when he saw Appellant, his own landlord, abusing his own daughter. Enraged, he called "Gaw" and unsheathed his bolo. But Appellant was quick on his feet, stood up, naked from waist down, and ran away, leaving his pants, his underwear and his hat in his haste. The father chased Appellant but lost the latter in the bushes.

Appellant was found about two hours later by some members of the Bantay Bayan and the military, approximately 300 meters away from the place of the incident, still hiding in the bushes (Tsn., 29 September 1988, p. 18). He was "wearing his coat, but no pants, he just wrapped himself in the lower portion of his body with a long sleeved sweater." The witness asked him if he was Paulino Magdadaro and "why did you do it?" but the latter did not answer (ibid., pp. 10-11). Appellant was then taken to the checkpoint of the PC detachment by Sgts. Lustre and Viras.

When the search party arrived at the scene of the incident, they found the corn plants toppled down, a pair of long pants, a pair of briefs, a hat and the underwear of a woman. Beverlinda was also still there, seated, crying (ibid. p. 25).

The genital examination of Beverlinda, on 22 August 1988, at the Northern Mindanao Regional Training Hospital, Cagayan de Oro City, disclosed "incomplete hymenal laceration at 1:00, 3:00, 7:00 and 9:00 o'clock position," "suggestive of sexual intercourse," but "negative of spermatozoa" (Exh. D).

Beverlinda's father declared that on his way to the City Hall on 22 August 1988 in the company of Sgt. Romero, his wife, a Bantay Bayan, and Appellant, the latter asked for forgiveness twice and offered to pay damages but that he refused because the matter was already before the authorities (Tsn., 11 October 1988, pp. 21, 23). Again, during the investigation at the Fiscal's Office, Appellant asked for settlement of the case (ibid., p. 24) but he gave the same answer.

So much for the prosecution evidence. Now, for Appellant's own account:

He states that he knows Beverlinda because she is the daughter of his tenant, Leonardo Abrasado. He admits having had carnal knowledge of her on 10 July, 15 July and 21, August 1988 but maintains that the act was consummated upon mutual agreement.

On 10 July 1988, he had sex with Complainant at his own house, adding that she was no longer a virgin as he was able to penetrate immediately and without obstacle (Tsn., 19 December 1988, pp. 5, 7 & 8). The act consummated, Beverlinda asked him for money so she could buy a birthday dress. He replied that he had to go home first to get the money. On 14 July 1988, he went to Beverlinda's house at Balubal, bringing with him fish and P200.00 (ibid., pp. 10-12).

The following day, 15 July 1988, Beverlinda went to his house and he handed her the money. One thing led to another and they made love. Beverlinda invited him for her birthday but he begged off because of another appointment in Zamboanga, but promised that he would try and be back.

In the morning of 21 August 1988, Appellant went fishing. Later, with his two children, he went to Balubal and gave his catch to Leonardo, his tenant. After having lunch at the latter's house, both went out to gather fruits and cassava. An hour later, or at 2:30 P.M., they placed what they had gathered in sacks and Appellant instructed his children to hurry so they could catch the bus headed for home. Appellant accepted Leonardo's offer to help the

children carry the sacks. After Leonardo and the two children had left, Beverlinda went to his house. After a brief conversation, Appellant discovered that he had not brought the house keys. Beverlinda suggested that they go instead to the cornfield near the house and repeat what they had engaged in on two other occasions. Upon reaching the cornfield, he took off his pants and brief. After spreading his pants and brief on the ground, Beverlinda removed her panty. They made love afterwards. Minutes later, Appellant heard Leonardo calling him "Gaw." Upon seeing him, he took off immediately, leaving behind his pants and brief.

In the course of his testimony, Appellant stoutly denied having forced Beverlinda to have sex with him; or, having boxed her and rendering her unconscious to satisfy his desire; or, having threatened her and her family if ever she reported the incidents to the authorities. In a nutshell, Appellant's version is that he and Beverlinda were sweethearts.

The Trial Court disbelieved Appellant, found him guilty in all three criminal cases; sentenced him to three (3) penalties of reclusion perpetua, the maximum duration of his sentence not to exceed forty (40) years under the threefold rule; and to indemnify Beverlinda in the amounts of P30,000.00, "which is jurisprudential" and P20,000.00 as moral damages."

Appellant now faults the Trial Court:

"I. In holding accused-appellant guilty beyond reasonable doubt, when the evidence presented by the prosecution is insufficient to support a conviction;

"II. In accepting as gospel truth the highly improbable, incredible, fabricated and concocted testimony of the complainant and that of her witness;

"III. In holding that as between the version of the complainant and the version of the accused regarding the incident, the court is inclined to believe the testimony of the complainant - and in holding that the testimony of the accused is incredible;

"IV. In holding that a) the flight of the accused from the scene of the crime is evidence of guilt; b) the alleged repeated request for settlement of the case by the accused is an implied admission of guilt; and c) the failure of the accused to answer the question of Francisco Bagtong when the accused was asked 'are you the one who committed the crime?', which would have naturally called for comment if not true, is admission of guilt;

"V. That the decision of the lower court is contrary to law and jurisprudence."

From the evidence before us, it is difficult to see how Appellant can profess innocence. Even if we were to discount Beverlinda's testimony, her father's declarations point to Appellant's clear culpability. He had heard his daughter's shouts (not knowing then that it was she) while she was being pulled by Appellant. He had actually seen him consummating his dastardly act. Infuriated, the father chased him with a bolo but he was fast on his feet and successfully eluded pursuit. That immediate flight is strongly indicative of his consciousness of guilt. "The wicked flee when no man pursueth; but the righteous are as bold as the lion."

When found, still hiding behind the bushes, Appellant was still without his brief and pants, was uncovered from the waist down, his private part exposed. He was caught literally with his pants down. The pieces of clothing needed to cover him up were all found at the very site of the incident. What more physical evidence is necessary? They eloquently confirm Beverlinda's testimony that after having undressed himself Appellant had violated her on 21 August 1988.

Appellant's flight upon discovery by Beverlinda's father of his shameful act, belies consent by Beverlinda for if that had been so, she would not have been found crying her heart out, nor would he have fled in fear.

His silence when asked by the Barangay Captain "why he had done it?" is likewise significant. His claim that there was no admission by silence on his part since he was not given the opportunity to make a reply besides the fact that whoever asked the question was not known to him, hardly deserves consideration.

"Silence is assent as well as consent, and may, where a direct and specific accusation of crime is made, be regarded under some circumstances as a quasi-confession. An innocent person will at once naturally and emphatically repel an accusation of crime, as a matter of self-preservation and self-defense, and as a precaution against prejudicing himself. A person's silence, therefore, particularly when it is persistent, will justify an inference that he is not innocent" (Underhill's Criminal Evidence, 4th ed., p. 401).

Appellant's offers to settle the case in exchange for money or land, which were all rejected by Beverlinda's father, were correctly appreciated by the Trial Court as evidential of his culpability. An offer of compromise by the accused may be received in evidence as an implied admission of guilt (Rule 130, Sec. 24, Rules of Court).

Discrepancies there may be in Beverlinda's testimony and her affidavit where she did not mention that Appellant had boxed her but instead said that she had been pushed. Be it one or the other, however, the inconsistency will not affect the crucial fact that Beverlinda had suffered disgrace at Appellant's hands. Moreover, as we have consistently held, an affidavit, being taken ex-parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion, sometimes for want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject (People v. De Dios, G.R. No. 58174. 6 July 1990, 187 SCRA 228).

Arrayed against the testimonial and physical evidence presented, Appellant's protestations of innocence pale into nothingness. We find no hesitation in upholding conviction.

WHEREFORE, the appealed Decision is hereby AFFIRMED, with the modification that the award of P50,000.00 as damages is reduced to P30,000.00, consistent with current jurisprudence.

Costs against accused-appellant, Paulino Magdadaro.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[**] Penned by Judge Leonardo N. Demecillo

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