

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO TORREVILLAS Y ABALARAO, DEFENDANT-APPELLANT.

G.R. Nos. 93847-48. November 14, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 124, Caloocan City, in Criminal Cases Nos. C-31436 and C-31437, convicting the appellant, Alberto Torrevillas y Abalarao, of two counts of rape and sentencing him to suffer the penalty of reclusion perpetua in each case, to indemnify the offended party, Evelyn Quinez y Aguilar, in the total amount of P50,000, and to pay the costs. The dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing, this Court finds the accused ALBERTO TORREVILLAS Y ABALARAO GUILTY beyond reasonable doubt of the crime of rape committed on April 6, 1988 with the use of force and intimidation as charged in the Information (C-31436) and as penalized under Art. 335 of the Revised Penal Code and hereby sentences said accused to suffer imprisonment of Reclusion Perpetua; to indemnify the victim, Evelyn Quinez, in the amount of P25,000.00 and to pay the costs.

"This Court likewise finds the accused ALBERTO TORREVILLAS Y ABALARAO GUILTY beyond reasonable doubt of the crime of rape committed on May 4, 1988 with the use of force and intimidation as charged in the second Information (C-31437) and as penalized under Art. 335 of the Revised Penal Code and hereby sentences said accused to suffer imprisonment of Reclusion Perpetua; to indemnify the victim Evelyn Quinez in the amount of P25,000.00 and to pay the costs.

"The accused shall be credited with the period of time he has undergone preventive imprisonment in the service of his sentence(s) under Art. 29 of the Revised Penal Code." (pp. 23-24, Rollo.)

The facts of the case, as set forth in the decision of the trial court, are quoted below:

"Evelyn Quinez was 20 years old at the time of the incidents on April 6, 1988 and on May 4, 1988. She grew up under the custody of her grandmother, Marceline Aguilar but she went to live with her mother, Leticia Aguilar, when she started to work at the Island Biscuit Factory in about the month of January, 1988. She was living in the same house with her mother and stepfather, Alberto Torrevillas, at the time of the incidents in question.

"At about 8:00 o'clock in the evening of April 6, 1988, Evelyn was inside her house. Her mother had left for Nueva Ecija early in the morning of said date to earn a little by helping in the harvesting of palay. While Evelyn was cooking food for supper, Alberto called her. When Evelyn approached Alberto who was inside the bedroom, the latter suddenly pointed a knife which was almost a foot long at Evelyn's neck. Alberto warned Evelyn not to shout and pushed her towards the bed. Evelyn was hurt because her back hit the sidings of the bed. Alberto then used his right hand in removing the blouse, skirt and the panty of Evelyn while he held the knife in his left hand. Evelyn tried to struggle but it was useless. She got sick of polio while she was a child and as a result, her left leg is very much smaller and weaker than her right leg. She found it also fruitless to use

her arms to resist the advances of Alberto because of the knife pointed at her. She could not shout as she was afraid. Alberto thereafter removed his pants and his brief and placed himself on top of Evelyn. He later managed to insert his male organ inside Evelyn's female organ. Alberto remained on top of Evelyn for a long time. Evelyn could not estimate how long Alberto actually performed the intercourse. After consuming his desire, Alberto stood up and warned Evelyn not to tell her mother or grandmother about the incident. He then left the house.

"At about 8:00 o'clock in the evening of May 4, 1988, Evelyn was alone inside the house located at Petronia Street, Camarin, Kalookan City. She was sitting on a chair beside the window waiting for her mother. Her mother returned from Nueva Ecija a few days earlier but left the house to go to the market at Camarin. Alberto, who was inside the house, called Evelyn and the latter approached him, Alberto pointed a knife on the right side of Evelyn's body. It was the same knife Alberto used in the evening of April 6, 1988. Alberto warned Evelyn not to shout and laid Evelyn forcibly on the same bed. Evelyn cried as she could not offer any resistance. Alberto again removed the clothes of Evelyn and after doing so, he shed off his pants and brief. He then forcibly placed himself on top of Evelyn and inserted his male organ inside the organ of Evelyn. After satisfying his desire, Alberto dressed up and again threaten Evelyn not to tell the matter to anybody. Evelyn was already sleeping when her mother arrived from the market at about 10:00 o'clock in the evening of May 4, 1988.

"On September 28, 1988, Evelyn told her mother that her monthly menstruation failed to come on the expected date. She was therefore brought to Dr. Susana Uy for a check up by her mother and grandmother at 8:00 o'clock in the evening of said day. As a result of the medical examination, Evelyn was found to be pregnant. Her mother began pressing Evelyn to admit who caused her pregnancy but Evelyn was afraid to do so.

"Early the following day, September 29, 1988, Alberto warned Evelyn not to tell her mother anything. However, later in the day, Evelyn's mother and grandmother alternated in forcing Evelyn to tell the truth. As a result, Evelyn was forced to reveal what Alberto did to her on April 6, 1988 and May 4, 1988. As a result, Evelyn was accompanied to the Caloocan Police Headquarters on the very same night by her grandmother, Marcelina, to file a complaint against Alberto Torrevillas. Evelyn executed a sworn statement before the police (Exhibit 'A'). She then had herself examined at the medico-legal unit of the NBI. Evelyn gave birth to a baby boy, Joel Quinez, on February 9, 1989." (pp. 19-20, Rollo.)

On September 30, 1988, the complaining witness, Evelyn Quinez, filed two separate complaints against Alberto Torrevillas before the Regional Trial Court, Branch 124, Caloocan City, charging the accused with two crimes of rape, as follows:

"That on or about the 6th day of April, 1988, in Caloocan City, MM, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and taking advantage of his superior strength, by means of force, threats and intimidation employed on the person of one Evelyn Quinez y Aguilar, did then and there wilfully, unlawfully, and feloniously lie with and have sexual intercourse with the undersigned complainant, against her will and without her consent." (p. 6, Rollo.)

"That on or about the 4th day of May, 1988 in Kalookan City, MM, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and taking advantage of superior strength, by means of force, threats and intimidation employed on the person of Evelyn Quinez y Aguilar, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with the undersigned complainant, against her will and without her consent." (p. 7, Rollo.)

Upon arraignment on October 11, 1988, the accused pleaded not guilty to the charges which were jointly tried.

Evelyn Quinez positively identified the accused during the trial. The prosecution presented Dr. Noel Minay, a medico-legal officer of the NBI, who testified that the complainant was about four months pregnant when she was

brought to the NBI for examination and that she had an old complete laceration in her hymen at 6:00 o'clock position, which were considered by him to be consistent with the complainant's claim that she was raped on May 4, 1988.

The appellant, however, denied that he was in his house on April 6 and May 4, 1988. He maintained that the complainant resided with her grandmother and that the complainant had a boyfriend in 1988. The complainant's mother, Leticia Aguilar, testified for the defendant. She alleged that she did not go to Nueva Ecija on April 6, because the harvest season was in August and September.

After the trial, the Court a quo rendered judgment finding the appellant guilty of the crimes charged and sentenced him to suffer two penalties of reclusion perpetua.

In this appeal, the appellant ascribes to the trial court the following errors:

1. in unquestioningly accept-ing the uncorroborated testimony of the alleged victim;
2. in convicting the accused of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

The appellant, through counsel, contends that the trial court blindly accepted the uncorroborated testimony of the complaining witness although her evidence did not clearly and convincingly show that the carnal acts were perpetrated on her person against her will. Appellant discredits Evelyn's allegation that he pointed a knife at her neck for as a matter of fact she was not wounded. He argues that the victim's declaration that:

"x x x at akin naramdaman na ang kutsilyo ay medyo bumaon sa aking tagiliran. x x x (Sinumpaang salaysay, September 29, 1988, Sagot sa Tanong bilang 5; underscoring supplied.)" (p. 9, Appellant's brief.)

is contradicted by the finding in the Medico-legal report that:

"GENERAL PHYSICAL EXAMINATION:

x x x

"No extragenital physical injury noted.

x x x

"CONCLUSIONS:

"1. No evident sign of extragenital physical injury noted on the body of the subject at the time of examination."
p. 9, Appellant's brief.)

However, the Solicitor General correctly pointed out that Evelyn never claimed that she was wounded by the appellant's knife. Her statement that the knife "bumaon" (pressed), qualified by the adverb "medyo" which is equivalent to "somewhat" or "slightly," means that the knife was pressed somewhat against her neck.

There is no merit in appellant's other argument that he could not have used a knife for if he had poked a knife at the victim's neck while he undressed and raped her, she would have been wounded in the neck.

The absence of any wound or injury on the complainant's neck does not disprove her allegation that the appellant threatened her with a knife. "Absence of external signs or physical injuries does not negate the commission of rape; Intimidation can be addressed to the mind as well." (People vs. Abonada, 169 SCRA 530, 533.)

The appellant's invocation of this Court's ruling in People vs. Apat, 114 SCRA 620, that, it can "hardly be envisioned how a man can successfully consummate the sexual act on an unwilling woman with his left hand

placed over her mouth (supposedly to prevent her from shouting for help) and with his right hand holding a hunting knife," is inappropriate because the factual situations there and here were dissimilar.

The victim's failure to cry out for help and immediately denounce her stepfather to her mother and grandmother or the proper authorities did not imply that she consented to the sexual assault committed against her. As pointed out by the trial court:

"Evelyn explained satisfactorily why she failed to resist the sexual advances of the accused and why she did not shout to attract her relatives who were living in nearby houses also inside the compound. She showed her left leg during her trial. It is very much smaller than her right leg. Her failure to shout on account of fear can be appreciated more fully if we come to consider that the accused exercised moral ascendancy over Evelyn. (See *People vs. Molero*, 144 SCRA 397.)" (p. 21, Rollo.)

Furthermore, the accused-appellant was armed with a deadly weapon, and he threatened to kill her if she told anyone about the crime. Evelyn obviously believed that the appellant could easily carry out this threat, because she lived under the same roof with him (*People vs. Nunag*, 173 SCRA 274).

The defendant's denial and alibi may not prevail over the clear identification of the accused by the rape victim, his stepdaughter (*People vs. Dumalag*, 128 SCRA 158), who had absolutely no ill motive to concoct a false charge against him (*People vs. Ocampo*, 143 SCRA 428; *People vs. Viray*, 164 SCRA 135).

Appellant's alibi, a weak defense (*People vs. Calicdan*, 165 SCRA 225), is made even weaker by his omission to explain his whereabouts if, as he alleged, he was not alone in the house with Evelyn at 8:00 P.M. on April 6, 1988 (p. 7, tsn, May 2, 1989). He did not bother to state where he was, who he was with, what he was doing, how far he was from the scene of the crime, nor any such other verifiable details.

WHEREFORE, finding no reversible error in the decision of the trial court convicting the appellant, Alberto Torrevillas, of two crimes of rape, the same is hereby affirmed except the award of civil indemnity in the sum of P25,000 for each count which is hereby increased to P30,000 (*People vs. Barranco*, 177 SCRA 103; *People vs. Hortillano*, 177 SCRA 729), or the total sum of sixty thousand pesos (P60,000) for both counts. Costs de oficio.

SO ORDERED.

Narvasa, (Chairman), Cruz, Feliciano, and Medialdea, JJ., concur.

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