

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIAM MALAGAR, ACCUSED-APPELLANT.

G.R. Nos. 98169-73. December 01, 1994

Ponente: VITUG, J.

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VITUG, J.:

A father is looked up to as the protector and as the guardian of his family, remaining ever wary of even the slightest harm that might befall it. It is difficult to thus imagine that any such man could instead stand as the predator of his own flesh and blood. Yet, we occasionally would find ourselves so regrettably contending with it as a fact.

Appellant William Malagar is charged by his own daughter, Felicidad Malagar, with the commission of rape, not once but repeatedly, in five (5) separate complaints and informations.[1]

Upon arraignment, the accused entered a plea of not guilty.[2]

The brief filed by the Solicitor-General concisely narrates the factual circumstances that led to appellant's conviction by the trial court.

The first rape was committed on 27 February 1988.

"Felicidad testified that at 6:30 o'clock in the evening of that day she was in the kitchen of their house in Dulag, Leyte cooking rice. Her companions were her five year old sister Iris and her two-year old nephew, Frenchie. Her brothers were in her grandmother's house and her mother was yet to arrive from the market. While cooking, her father, William, arrived drunk. He went up their house then he put off the light coming from their lamp. Felicidad then tried to put on the light again but somebody forcibly pulled her arms. She identified the person who pulled her arms to be her father. She was pulled to the sala then thrown to the bed causing her head to bump against the wall. Her father then showed her his gun and the eight bullets kept in its chamber. He warned her not to tell anybody of what he was going to do or he would kill her. The father then took off his shirt, his pants and his underwear. While he was about to place himself on top of Felicidad, she begged him not to do to her what he did to her sister Menchu. But her father answered her with a box at the pit of her stomach causing her to lose consciousness. (TSN, pp. 2-5, dated August 6, 1990, a.m.).

"When Felicidad regained consciousness, she was completely naked. She noticed that her vagina was wet and that blood came out from it. Noticing her father already sleeping on the floor, she immediately dressed herself and together with Iris and Frenchie, ran to her grandmother's house. She proceeded to the bathroom to wash her vagina. While so doing, she again noticed some sticky fluid with blood on her private part. She then proceeded to her grandfather's (Simplicio) house and passed the night there. She kept everything to herself. That day was her 15th birthday." (TSN, pp. 6-9, dated August 6, 1990, a.m.).

"The following morning, she was summoned home by her father. When her mother returned from the market, where she sells fish for a living, she did not have the courage to tell her what transpired the night before as fear overpowered all her other emotions, (TSN, pp. 10 and 12, August 6, 1990, a.m.)."[3]

The second rape was committed on 02 December 1989.

"At 5:30 in the afternoon of that day, Felicidad was sweeping their yard when her father arrived. He went up the house and from there directed her to close the windows of their house. She replied that her younger brother Randy has been tasked to do so. Her father, however, said that Randy has been sent on an errand by their grandfather Simplicio. She was then forced to oblige. After closing the windows in the sala she proceeded to the bedroom where he followed her. While in the bedroom he held her left shoulder and told her not to leave because she has something to do for him. He then removed her t-shirt and her underwear and, after reminding her of the bullets in his gun he started to remove his own shirt and lowered his briefs down to his knees. She again begged him not to touch her for fear that he might get her pregnant like her sister Menchu. He paid no heed and instead pushed her to the floor. She tried to free herself, but one hand of her father clipped her hands to her side while his other hand parted her legs. She felt pain when her father inserted his organ into hers and begun pushing and pulling it. When he had finished, he instructed her to go to the market and get rice from her mother. She proceeded first to her grandfather's house to wash her vagina and then did what she was told. That evening she left their house when her father arrived and passed the night in the house of her grandfather Simplicio. For fear of her father's threat, she told no one of her ordeal. (TSN, pp. 3-7, August 6, 1990, 2:00 p.m.)."[4]

The third rape was committed against Felicidad on 26 January 1990.

"x x x at around 7:00 o'clock in the evening as she was preparing the beddings for her nephew Frenchie, her father William arrived from a drinking session in Cabarasan, Leyte. When she finished preparing the beddings, she went down to get Frenchie who was already asleep. When she was placing her on the beddings she prepared, her father also laid down beside Frenchie. Sensing danger, she immediately stood up but her father grabbed her skirt and she fell on the floor. While lying, her father raised her skirt, pulled her panty to her knees and opened her blouse. After that, he opened her legs and led his penis into her vagina. She tried to push him but her hands were clipped by her father. When she started to cry, her father reminded her once again of the bullets in his gun. The rape was not consummated when he thought that Felicidad's mother arrived. She tried to go down but her father summoned her back to attend to Frenchie who was then crying. She changed Frenchie's diapers and was about to go down again when her father held her shoulder and pushed her down. She was raped for the second time that night (TSN, pp. 16-20, dated August 7, 1990).

"She passed the night again in her Lolo Simplicio's house and returned home only when she was told that her father was leaving for Sitio Cabarasan with Tony Orias (TSN, pp. 21--22, August 7, 1990).

"xxx xxx xxx.

"Felicidad was alone at about 7:00 o'clock in the evening of March 20, 1990 in their house, when her father arrived drunk from Sitio Cabarasan. She was busy collecting the soiled clothes for washing when her father approached her from behind. He began to hold and mash her breast. She faced him and tried to escape. But she was overpowered by her father. While standing facing each other, he started to remove his t-shirt and remove his shorts and pulled his briefs to his knees. Then he removed her shorts and her panties. She tried to box him but he pinned her hands against the wall. He successfully spread her legs, inserted his penis inside her vagina, embraced her hard and mashed her breast. He pushed and pulled his penis. When he had satisfied his lust, he laid down in the sala (TSN, pp. 31, 33-35, dated August 7, 1990).

"When Felicidad recollected herself she again proceeded to her grandfather's (Simplicio) house and cried herself out in one of the bedrooms. She told no one because of fear. She stayed there for five days only to return to their house when her father told her to, for as she testified:

"I had to go to the place where my father would instruct me to do (sic) because whenever he would call me in order to take care of the child I seem to lose myself and begin to be afraid. (TSN, pp. 35--36, August 7, 1990)""[5]

The fifth and the last rape, was also committed at their family house, at about 6:30 in the evening of 26 April 1990.

"x x x she was cooking dinner when she heard somebody tinkering with tin cans in the upper portion of their house. She thought it was her brother Randy and so she called out to him inquiring what the noise was all about. She went upstairs to check. When she reached the sala she tapped the shoulder of a person whom she thought was Randy. To her surprise, it turned to be her father who was cleaning his gun in a container with oil. Her immediate reflex was to run but her father was quick to grab the hem of her skirt causing her to trip over his foot and fall flat on the floor. He held her arms and drew her close to him. She shouted for help calling their nearest neighbor, Juanito Cagara. Her father who is now on top of her hit her hard with his fist on the pit of her stomach causing her to faint and lose her consciousness. When she regained consciousness, she was totally naked. She knew she was again raped for she found her private part wet and she felt pain in it and in her abdomen. She hurriedly dressed up, checked the rice she was cooking, took two pieces of clothes and fled to the house of her grandfathers Simplicio and locked herself in the room (TSN, August 7, 1990, pp. 38-41). The following day, her mother arrived in her grandfather's house. She took the opportunity and revealed everything to her mother. Her mother left without saying anything (TSN, August 7, 1990, pp. 44).

"In the evening of May 4, 1990, Felicidad was in the Plaza watching basketball when a friend informed her that her father was heading for that direction. She immediately left the Plaza but she met her father. The latter instructed her to buy rice from her grandmother. Felicidad obliged. Since there was none in her grandmother's house she was instructed to buy from her grandfather. But again there was none. This angered her father who boxed her hard three times and kicked her thigh three times. She ran to the house of her grandfather and from the window thereof, shouted to her father and told him that she would tell everything he did to her and to her sister Menchu (TSN, August 7, 1990, pp. 28-29).

"The following day, May 5, 1990 she went to see her mother in the market, to ask for money so she could go to Tacloban. Her mother gave her P20.00 but she also reprimanded her for being talkative. Sensing her mother's lack of sympathy, she went to her aunt Ester and confided to her what happened. Her aunt encouraged her to write her sister Menchu who was in Manila. With her Aunt's and sister's moral support, Felicidad finally gathered courage to file a complaint against her father on May 11, 1990 (TSN, August 7, 1990, pp. 32-33. 45)."[6]

The accused was arrested on 13 May 1990 and forthwith brought to trial.

Besides Felicidad, the prosecution likewise presented her elder sister Menchu to testify on a similar experience that befell her. The latter declared that she was only twelve (12) years old and a Grade VI pupil when their father, the accused, first raped her sometime in 1978 or 1979. Thereafter, he "used" her once a week until she ultimately got pregnant. The baby died. She finally left Dulag, Leyte, in 1988 to become a night club singer in Pasay City.[7]

Another witness for the prosecution, Dr. Glenda Vilches, identified the medico-legal report, Exhibit "C," which, in part, provided:

"Pelvic Exam:

"External Genitalia - grossly normal

"Introitus - complete, old, healed hymenal lacerations at 4 and 8 o'clock positions; healed lacerations at 2 and 10 o'clock position; admits 2 fingers with ease."[8]

The accused, in this appeal, continues to profess his innocence, presenting his defense thusly:[9]

As early as 22 February 1988, he was in Barangay Esperanza, Inopacan, Leyte to check the plants in their land and returned to their house only on 03 March 1988 at about 10:00 o'clock in the morning (TSN, 08 August 1990, pp. 11-12). For eleven (11) days, he stayed with Antonio Costimiano (Rollo, p. 110). On 02 December

1989, he left for Sitio Cabarasan, Barangay Suhi at around 5:00 o'clock in the morning. He returned home on the same day at around 9:00 o'clock in the evening. On 26 January 1990, accused was also in Barangay Cabarasan attending to his sand and gravel business (TSN, 08 August 1990, p. 24). On 20 March 1990, in the early morning of that day, he went to Barangay Calubian, Dulag, Leyte, a barrio five kilometers away from his residence and stayed at the residence of Claudia Caminoc. He returned home only on the following morning (Ibid., 28). As early as 5:00 o'clock in the morning of 26 April 1990 he was at Cabarasan and supervised the extraction of gravel and sand the whole day. He returned to his residence only at around 11:00 o'clock in the evening (Ibid., 31).

Wilma Malagar, wife of the accused and mother of the victim, expressed disbelief to Felicidad's accusation against her own father inasmuch as she was at home during all the occasions that the alleged rape took place (TSN, 23 August 1991, pp. 32-33). She testified that the charges were but mere ramification of the maltreatment committed by her husband to Felicidad on 04 May 1990 (Ibid., 29). Wilma Malagar described her daughter as a problem child and since 1987 she started to notice that Felicidad was becoming a vagabond (Ibid., 26). She could not even be relied upon to cook and wash dishes (Ibid., 28). At a youthful age, Felicidad had an amorous relationship with a certain Gil Olino with whom she was frequently seen in dark places. She had admonished her for such acts yet Felicidad had shown stubbornness by continuing to visit Gil Olino at the latter's residence (Ibid., 31).

To corroborate accused's alibi, Antonio Orejas testified that he and Malagar were together not only on 02 December 1989 from 5:30 in the morning to past 8:30 in the evening of the same day but also on 26 January 1990 up to 9:30 p.m. and 26 April 1990 up to 11:00 p.m., when the second, third and fifth rapes were allegedly committed by the accused.[10] Claudia Caminoc was likewise presented to say that the accused stayed with "them" from 20 to 21 March, 1990, when the supposed fourth rape took place.[11]

Not convinced by the evidence for the defense, the court a quo found the accused guilty and, in consolidated decision,[12] dated 04 September 1990, sentenced him to suffer:

"1. In Criminal Case No. 90-06-247 to Reclusion Perpetua;

"2. In Criminal Case No. 90-06-250 to Reclusion Perpetua;

"3. In Criminal Case No. 90-06-246 to Reclusion Perpetua;

"4. In Criminal Case No. 90-06-248 to Reclusion Perpetua;

"5. In Criminal Case No. 90-06-249 to Reclusion Perpetua;

or a total of 150 years."

In this appeal, the accused argues that the trial court erred:

I

IN IGNORING THE SUBSTANTIAL DELAY ON THE PART OF THE AGGRIEVED PARTY IN REPORTING TO THE AUTHORITIES THE ALLEGED RAPE COMMITTED AGAINST HER BY THE ACCUSED, WHICH IS A REASONABLE DOUBT TO UPHOLD THE PRESUMPTION OF INNOCENCE OF THE ACCUSED.

II

IN NOT GIVING CREDENCE TO THE TESTIMONY OF THE MOTHER OF THE AGGRIEVED PARTY WHO WAS PRESENT AT THE PLACE AND TIME THE ALLEGED RAPE WAS COMMITTED BY ACCUSED AGAINST THE AGGRIEVED PARTY.

III

IN IGNORING THE BAD MORAL CHARACTER OF THE AGGRIEVED PARTY WHICH REASONABLY ESTABLISHED THE IMPROBABILITY OF THE OFFENSE CHARGED.

Appellant, in fine, would want this Court to conclude that the victim's charges are all fabricated.

We are not at all convinced. The sexual attacks against Felicidad were narrated by her in a most detailed and straightforward manner. The first assault on her honor was characterized by brute force and intimidation. She was thrown in bed with her head hitting the wall; her stomach was boxed; and her thighs were kicked. A gun with eight (8) bullets was used to further intimidate her.[13] She found herself "seized with fear"[14] when, finally, she was threatened to be killed unless she would yield to his demands. The succeeding attacks were committed with like brutality and passion.

Felicidad was in her mid-teens when she was made to undergo these assaults on her chastity. At that tender age, she could not have been expected to have the capability and the nerves of steel[15] to ward off the attack, let alone the equanimity to disregard the threat on her life.[16] It would be absurd to say that a daughter, without her resistance being subdued, would simply give in to her own father's beastly desires,[17] or that she would accuse her own father of this heinous crime had she really not been aggrieved.[18]

Despite the wrong wrought on her, Felicidad had tried to keep the matter to herself and to suffer in silence until it reached a point when she no longer could endure the ordeal she was being subjected to.

Vacillation in the filing of complaints by rape victims is not an uncommon phenomenon. This crime is normally accompanied by the rapist's threat on the victim's life, and the fear can last for quite a while.[19] There is also the natural reluctance of a woman to admit her sullied chastity, accepting thereby all the stigma it leaves, and to then expose herself to the morbid curiosity of the public whom she may likely perceive, rightly or wrongly, to be more interested in the prurient details of the ravishment than in her vindication and the punishment of the rapist.[20] In *People v. Coloma*[21] we have even considered an 8-year delay in reporting the long history of rape by the victim's father as understandable and so not enough to render incredible the complaint of a 13-year old daughter.

The court a quo had keenly observed the deportment of Felicidad even as she tried to recall the details of her traumatic experience "in tears and in slow cadence that she (had) to arch her lips and clench her hands," all indicative of how difficult it really was for her in the process to testify against her own father. Appellant would attribute to the trial court reversible error in failing to give due credence to the testimony of Wilma Malagar (mother of Felicidad). All that the mother could really say, in fact, was that her daughter Felicidad might have been prompted to file the charges only because of the maltreatment she had been receiving from her father.[22] Felicidad's own testimony, it might be noted, was to the effect that every time her father committed the bestial acts, her mother, a fish vendor, was not in their house but was at the market place.[23] In any case, in *People vs. Manuel, et al.*, G.R. No. 93926-28, 28 July 1994, we said:

"In an appeal, where the culpability or innocence of an accused hinges on the issue of credibility of witnesses and the veracity of their testimonies, the trial court's findings are entitled to the highest degree of respect and will not ordinarily be disturbed by an appellate tribunal absent, of course, any clear showing that it has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could affect the results of the case. The reason for this rule, we have repeatedly explained, is because of a good chance on the part of the trial court, an opportunity that is not equally open to an appellate court, of being able to personally observe the expression of witnesses on the stand and their demeanor under questioning."

Appellant tries to exculpate himself by raising the defense of alibi. The trial court has correctly brushed this defense aside. Against positive evidence, alibi becomes a most unsatisfactory defense.[24] In order to sustain the

defense of alibi, furthermore, an accused must establish that it is physically impossible for him to be at the scene of the crime at the time of its commission.[25] On the day of the first rape, accused asserts having been at Barangay Esperanza, Inopacan, Leyte, with his cousin Antonio Costimiano (not presented to the court). Barangay Esperanza, Inopacan, Leyte, however, is only a 3-hour motorcycle ride to his house in Barangay Buntay, Dulag, Leyte.[26] On the second, third and fifth rapes, appellant contends being at Sitio Cabarasan, Barangay Suhi, Dulag, Leyte, to attend to his gravel and sand business. The place is only two (2) kilometers away from his house and can even be negotiated by a 30-minute walk.[27] On the fourth rape, he claims to be in Barangay Calubi-an, Dulag, Leyte, which is just about five (5) kilometers away from his house and not inaccessible.[28]

The appellant goes even further by impugning the moral character of his own daughter. He asserts that Felicidad is a loose woman who in her early age would often be seen in dark places with her boyfriend. This inference, even if true, has no positive effect on this Court.[29] It should be made clear that the victim's character in rape is immaterial.

We see no reason, all given, to reverse the trial court's factual findings. Appellant should also be condemned to pay damages. In consonance with Article 2219(3), in relation to Article 2217, as well as Article 2229 and Article 2230, of the Civil Code, appellant should be adjudged to pay moral damages, hereby fixed at P50,000.00 in each of the five (5) appealed cases, and exemplary damages of P25,000.00, likewise in each of the said cases.

WHEREFORE, the judgment appealed from, finding William Malagar guilty of five (5) counts of rape and correspondingly imposing upon him a prison term of five (5) reclusion perpetua, is **AFFIRMED** with the **MODIFICATION** that moral and exemplary damages, in the amounts of P50,000.00 and P25,000.00, respectively, are now also awarded to the offended party, Felicidad Malagar, in each of said cases. Costs against appellant.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.

Feliciano, J., (Chairman), on leave.

[1] Criminal Case No. 90-06-246 (RAPE); Crim. Case No.90-06-247 (RAPE); Crim. Case No. 90-06-248 (RAPE); Crim. Case No. 90-06-249 (RAPE); and Crim. Case No. 90--06-250 (RAPE).

[2] Original Records, p. 36.

[3] Rollo, pp. 156-158.

[4] Rollo, pp. 158-159.

[5] Rollo, p. 160-162.

[6] Rollo pp. 163-165.

[7] TSN, 08 August 1990, pp. 43-46.

[8] Rollo, p. 120.

[9] Appellant's Brief, 3-5, Rollo, 101-103.

[10] TSN, 23 August 1990, pp. 2-3.

[11] TSN, 23 August 1990, pp. 10-11; no witness was presented to corroborate accused's alibi with regard to the

first rape.

[12] Penned by Judge Pedro S. Espina, RTC, Eight Judicial Region, Branch 7, Palo, Leyte.

[13] TSN, 06 August 1990, pp. 4-5.

[14] Ibid., p. 5.

[15] People v. Sarra, 183 SCRA 34; People v. Fernandez, 165 SCRA 302; People v. Viray, 164 SCRA 135;

[16] People v. Jimenez, 200 SCRA 539.

[17] People v. Lucas, 181 SCRA 316.

[18] People v. Dusohan, 227 SCRA 87.

[19] People v. Dabon, 216 SCRA 656; People v. Olivar, 215 SCRA 759; People v. Abuyan, Jr., 211 SCRA 662; People v. Lim, 206 SCRA 176.

[20] People v. Cervantes, 222 SCRA 365.

[21] 222 SCRA 255.

[22] TSN, 23 August 1990, pp. 29-32.

[23] TSN, 06 August 1990, p. 9; p. 25; 07 August 1990, p. 20.

[24] People v. Magallanes, 218 SCRA 109; People v. Pamor, G.R. No. 108599, 07 October 1994; People v. Silfavan, 151 SCRA 617.

[25] People v. Dalanon, G.R. No. 107458, 14 October 1994; People v. Simon, 209 SCRA 148.

[26] TSN, 08 August 1990, pp. 11-12.

[27] TSN, Ibid., pp. 21-22.

[28] TSN, 08 August 1990, p. 28.

[29] People v. Danguilan, 218 SCRA 98.

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