

FIRST DIVISION

[G.R. No. 127491, May 28, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JULIAN BAÑARES
Y BESMONTE, APPELLANT.**

D E C I S I O N

AZCUNA, J.:

This Court is once again called upon to apply the guiding principles in the review of a conviction for rape in this appeal from the Decision dated May 16, 1996 of the Regional Trial Court (RTC) of Tabaco, Albay, Branch 16, in Criminal Case No. T-2397.

In an Information dated May 6, 1993, appellant herein Julian Bañares y Besmonte was charged with the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code. The accusatory portion reads:

That on or about the 25th day of April, 1992 at Barangay Bonga, Municipality of Bacacay, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law and with lewd design, by means of force and intimidation and without the consent and against the will of SUSAN BARCELO, a 15-year old girl, did then and there wilfully, unlawfully and feloniously have sexual intercourse and succeeded in having carnal knowledge with the latter, to her damage and prejudice.

ACTS CONTRARY TO LAW.^[1]

Upon arraignment, the appellant pleaded not guilty. Trial ensued thereafter.

The evidence of the prosecution relied mainly on the testimonies of the complainant, Susan Barcelo, her father, Domingo Barcelo, and the Municipal Health Officer of Bacacay, Albay, Dr. Evelyn Amador, who examined complainant some months after the alleged rape occurred.

Complainant Susan Barcelo, then a fifteen-year old girl, testified that sometime after lunch on April 25, 1992, she was climbing up the guava trees and picking their fruits near their house in Bonga, Bacacay, Albay. All of a sudden, appellant Julian Bañares called up to her and asked her what she was doing there. Complainant did not answer him and instead continued gathering fruits. Appellant then pulled her down and dragged her towards the area planted with *caragomoy*, about twenty-two (22) to twenty-five (25) meters away from complainant's house. Complainant tried to kick her attacker, but instead wounded herself in the process. Appellant then forced her to lie down, removed her shorts and panties, and her white t-shirt. All the while, appellant kept on kissing her and pressing her vagina. Then, appellant removed his pants and immediately inserted his penis into complainant's vagina. Complainant thereafter noticed that her vagina was bleeding. His lust having been satisfied,

appellant then dressed himself and threatened complainant that should she reveal what occurred, he would kill her and her parents. He left her and complainant went to the well near their house to clean herself.^[2]

Complainant positively identified appellant as her attacker in open court. According to her, appellant lived with them and was considered a part of their family since she was five (5) years old. At the time the alleged rape occurred, complainant's parents were in a ricefield a kilometer away from their house, where they were supervising the harvest of palay.

During cross-examination, complainant revealed that on the same day, she reported the incident to appellant's brother, Benjamin, who in turn, told her father. She alleged that her father had appellant summoned but he never answered the said summons. She was allegedly advised by appellant's brother that she should not get married to appellant since he is a "tough guy."^[3]

Also during cross-examination, she revealed that her brother's house was only around five (5) meters away from the place where the alleged rape occurred. At that time, her brother's mother-in-law, Eleuteria, was weaving a mat inside the house. Complainant testified that Eleuteria could not have heard her scream for help since the said woman was a little hard of hearing.^[4]

The second witness testifying for the prosecution was complainant's father, Domingo Barcelo, fifty-eight (58) years old and a farmer. He revealed that his daughter initially did not tell him anything about the incident which occurred on April 25, 1992. On May 5, 1992, he brought his daughter to Irosin, Sorsogon so that she could live with an aunt who promised to send her to school. His daughter started the school year in Irosin. Sometime around July, 1992, he visited his daughter and as he was about to leave, his daughter suddenly did not want to part with him. That was when complainant revealed to him that she was already pregnant. His daughter also related to him that she was raped by appellant Bañares earlier that year. He then brought his daughter home to Bacacay, Albay.^[5]

The third prosecution witness, Dr. Evelyn Amador, Municipal Health Officer of Bacacay, Albay, identified the Medical Certificate^[6] she issued. She conducted an external and internal examination on complainant Barcelo on November 5, 1992. Complainant was already seven (7) months pregnant during the examination, which led her to conclude that the time of conception would be around April, 1992. This, she testified, is consistent with the allegation by complainant that she had sexual intercourse with appellant on April 25, 1992.^[7]

The defense, on the other hand, also presented three witnesses: Salvador Nuñez, Benjamin Bañares, and appellant himself.

Salvador Nuñez, fifty-three (53) years old, is a farmer and a resident of Upper Bonga, Bacacay, Albay. He claimed that he knows appellant because the latter worked in his ricefield. He also knows the complainant's family because they live near his ricefield and the complainant herself goes to the same school as his daughter. He testified that he would sometimes rest in the house of the Barcelos while he was working in his ricefield. Sometime around April 10, 1992, during one of those occasions while he was resting in the house of the Barcelos, Domingo Barcelo

mentioned to him that he had sent his daughter to Irosin, Sorsogon to live with her aunt. The witness also testified that he knew that appellant had been living with the Barcelos for a long time. One day, however, he saw appellant and complainant sitting close to each other and picking lice from each other's heads.^[8]

The second witness for the defense was Benjamin Bañares, forty-four (44) years of age and a farmer. He is the brother of appellant. During his testimony, he said that there could not have been any rape on April 25, 1992 since complainant was sent to Irosin by her father on April 10, 1992. On their way to Irosin, they even dropped by his house and there, Domingo Barcelo told him that he was bringing his daughter to live with her aunt in order to avoid a scandal and to put a stop to his daughter's relationship with appellant. The witness also revealed that he has long known about this romantic relationship between complainant and appellant. He started noticing this when he observed that complainant would often throw a tantrum whenever her mother would attempt to pick lice from her hair, but would willingly submit if it was the appellant who would do the job. Also, on April 9, 1992, he chanced upon the appellant and complainant having sexual intercourse among the tall caragomoy plants. He later confronted the two about what he saw and they merely told him that there was nothing wrong about what they did because both of them were single. The witness further testified that he reported what he saw to Domingo Barcelo, but the latter merely accused him of being jealous.^[9]

Appellant Julian Bañares, for himself, testified that he had been living intermittently with the Barcelo family ever since complainant was five (5) years old. He was already twenty-seven (27) years old when the alleged rape occurred. He developed a romantic relationship with complainant as the latter grew older. This romantic relationship started in 1991. In the morning of April 9, 1992, complainant asked if they could talk around noon. They met again that noon, as arranged, beside the house of complainant. There, complainant informed him that she did not have her menstrual period for that month. He then told her that they should inform her parents and she answered that they should wait for a while since her parents are still harvesting palay. They conversed for around thirty (30) minutes and then complainant started embracing him. He embraced her back and felt aroused. They then had sexual intercourse, which according to him, was consensual. Afterwards, his brother, Benjamin Bañares, arrived and asked them why they had sexual intercourse. Allegedly, complainant answered that nothing can hinder them from doing so since they were both single. Appellant, on the other hand, claimed that he had answered that he already wanted to get married and settle down. Thereafter, he saw his brother walk towards the nipa hut where the parents of complainant were staying. Seeing this, complainant immediately went home and appellant proceeded with his harvesting of palay.

Appellant also testified that he and complainant engaged in sexual intercourse several times prior to the incident on April 9, 1992. In open court, he specifically enumerated the dates when and the places where they had sexual intercourse. According to his testimony, they had sexual intercourse around twenty (20) times. Complainant also allegedly gave her picture to him so that he could remember her in Manila. The said picture, however, was never presented in court.^[10]

As rebuttal witnesses, the prosecution presented Domingo Barcelo and complainant Susan Barcelo. The former testified that he did not bring his daughter to Irosin,

Sorsogon on April 10, 1992, but he brought her there on May 5, 1992. His daughter only returned to Bonga, Albay on July 1, 1992.^[11] Complainant, on the other hand, testified that she never had any kind of romantic relationship with appellant Bañares and the sexual intercourse on April 25, 1992 was without her consent. She was forced by appellant to have sex with him on that day.^[12]

On May 16, 1996, the Regional Trial Court (RTC) of Tabaco, Albay, Branch 16, rendered the herein assailed Decision finding appellant Julian Bañares y Besmonte guilty of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code. The dispositive portion of the assailed Decision states:

WHEREFORE, in the light of the foregoing, the Court finds the accused JULIAN BAÑARES y BESMONTE of Upper Bonga, Bacacay, Albay, guilty beyond reasonable doubt of the crime of rape as defined and punished under Article 335 of the Revised Penal Code and hereby imposes the following, to wit:

1. To suffer the penalty of Reclusion Perpetua, with all the accessory penalties provided by law;
2. To pay the offended party Susan Barcelo and complainant-father Domingo Barcelo the sum of FIFTY THOUSAND PESOS (P50,000.00) as moral damages; TWENTY THOUSAND PESOS (P20,000.00) as exemplary damages;
3. To pay the costs; and
4. To give support to the said child in the amount of ONE THOUSAND PESOS (P1,000.00) a month.

It appearing from the records that accused has been detained for his failure to post a P30,000.00 bond for his provisional liberty from December 2, 1992 when he was incarcerated by virtue of a warrant of arrest issued against him, up to the promulgation of the judgment, this 16th day of May, 1996 or a period of THREE (3) YEARS, FIVE (5) MONTHS and FOURTEEN (14) DAYS, he shall be credited in the service of this judgment with the whole period of time during which he has undergone preventive imprisonment.

SO ORDERED.^[13]

Hence, this appeal on the following assigned errors:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH A PRINCIPAL ELEMENT OF THE CRIME OF RAPE, I.E., THE USE OF FORCE OR INTIMIDATION BY THE FORMER

THE TRIAL COURT GRAVELY ERRED IN LENDING UNDUE CREDENCE TO [THE] PROSECUTION'S EVIDENCE DESPITE THE INHERENT AND APPARENT IMPROBABILITIES AND CONTRADICTIONS THEREIN ON

MATERIAL POINTS AND DESPITE ITS BEING REplete WITH ASSERTIONS
WHICH ARE GROSSLY CONTRARY TO NORMAL HUMAN EXPERIENCE.^[14]

Generally, this Court respects the factual findings of the trial court unless there exists a fact or circumstance of weight and influence that has been ignored or misconstrued by the trial court.^[15]

Appellant's counsel argues that the prosecution failed to establish that appellant employed force and intimidation to succeed in having sexual intercourse with complainant.

In construing the word force as an element of the crime of rape, this Court has held that it is imperative for the prosecution to prove that force or intimidation was actually employed by the accused-appellant upon his victim to achieve his end. Failure to do so is fatal to its cause.^[16]

To prove that force and intimidation was involved, the prosecution merely reproduced in its brief that portion of complainant's direct examination where she described how appellant succeeded in having sexual intercourse with her. There, complainant claimed that she was pulled down from the guava tree by appellant and dragged towards the area planted with caragomoy and then raped. She also claimed that she kicked appellant and suffered a wound just above her inner ankle.

COURT:

Q After you were scared, what happened next?

-

A - He pulled me towards to the caragomoy planted area.

Q What part of your body did he hold when he pulled you [to] that place?

-

INTERPRETER:

At this juncture witness pointed to her right hand.

COURT:

Proceed.

PROS. PIFAÑO:

Q What happened after the accused pulled you towards the place where the caragomoy were planted?

-

A I kicked him.

-

Q And were you able to hit him?

-

A No, Sir.

-

Q What happened?

-

A Because the accused moved backward.