

THIRD DIVISION

[G.R. No. 135699-700, 139103, October 19, 2000]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR CLADO, ACCUSED-APPELLANT. D E C I S I O N

GONZAGA-REYES, J.:

In Criminal Cases Nos. T-2863, T-2864 and T-2865 of the Regional Trial Court of Tabaco, Albay (Branch 16), accused-appellant Cesar Clado was charged on October 13, 1997 with three counts of rape under separate informations filed on the bases of complaints sworn to by the complainant, Salve Cariño.

The information in Criminal Case No. T-2863^[1] alleges:

"That on April 14, 1997 at around 10:00 o'clock in the evening, more or less, inside the Dita's Beauty Parlor, Market Site, Poblacion, Municipality of Tiwi, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with SALVE CARIÑO, 15 years of age, against her will and consent, to her damage and prejudice."

while that in Criminal Case No. T-2864^[2] avers:

"That on April 15, 1997 at around 11:00 o'clock in the evening, more or less, inside the Dita's Beauty Parlor, Market Site, Poblacion, Municipality of Tiwi, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with SALVE CARIÑO, 15 years of age, against her will and consent, to her damage and prejudice."

The information in Criminal Case No. T-2865 is a verbatim copy of the information in Criminal Case No. T-2864.

During the arraignment, appellant entered a plea of not guilty to the offenses charged. The cases having been consolidated, the lower court, after a joint trial, rendered judgment on September 4, 1998 finding appellant guilty of two counts of rape as charged in Criminal Cases Nos. T-2863 and T-2864 and sentencing him to suffer the penalty of *reclusion perpetua* for each count and to indemnify the victim in the amount of P50,000.00 in each of the two cases. Criminal Case No. T-2865 was dismissed for insufficiency of evidence.

The prosecution presented as its witnesses - Salve Cariño, the private complainant, Editha Cariño, the former's sister and Dr. Leonides Cruel, municipal health officer of

Tiwi, Albay. For its part, the defense presented the accused-appellant himself, Juanito Credo, a stall owner in the market site and Salvacion Crucillo, a friend of accused-appellant.

The testimonies of the witnesses for the prosecution established the following facts succinctly summarized in the Appellee's Brief^[3] as follows:

"On April 14, 1997, Salve Cariño was tending Dita's Beauty Parlor located at Market Site, Tiwi, Albay in the absence of her sister, Editha Cariño, who left for Manila to buy wedding gowns. It had only been three (3) days since she arrived from Bulacan after she was fetched by Editha to assist her in the store (TSN, December 10, 1997, p. 7; January 29, 1998, p. 9).

At about 7:00 o'clock in the evening, accused-appellant borrowed a water jug from Salve, which the latter immediately lent. He came back at about 10:00 o'clock that evening to return it. When Salve opened the door to return the water jug, accused-appellant forced his way inside, switched off the lights and closed the door. Then, he embraced and kissed her while threatening to kill her should she make an outcry. He covered her mouth with his hand while fondling her. He pushed her to the bed and stripped her of her t-shirt and shorts. Despite Salve's efforts to extricate herself from his solid grip, he successfully forced himself on her. After he had satisfied his lust, he warned Salve not to tell the incident to her sister Editha and left her crying (TSN, Dec. 10, 1997, pp. 4-7).

The following day, April 15, 1997, at about 11:00 o'clock in the evening, Salve was in deep sleep when she was awakened by somebody knocking and borrowing a match and candle. Without second thought, she got up and opened the door only to find out that it was accused-appellant, who directly went inside, hurriedly switched off the lights and slammed the door. Salve pleaded for him to leave as she was alone. But instead of leaving, accused-appellant embraced her and kissed her. He threw her on the bed and pinned her down. She managed to push him and he fell down. She tried to run, but he caught her at the waist. Enraged, he forcibly laid her on the cement floor where he ravished her twice that night (ibid., pp. 7-9).

When Editha Cariño returned from Manila on April 18, 1997, she noticed that Salve was unusually silent and unable to eat. The next day, April 19, 1997, Salve begged Editha to allow her to go home to their mother at Pulangui, Albay, ahead of her scheduled departure on April 21, 1997. Since Salve was unaccustomed to travelling alone and Editha could not afford to close the store on a weekend to accompany her, Editha refused to let Salve go. Probing for the real reason for her sudden decision to leave, Salve finally told Editha of her ordeal. Editha lost no time in confronting accused-appellant, who denied the accusation. Confused and unsure whom to believe, Editha went back to Salve who assured her that she was telling the truth (TSN, Dec. 10, 1997, pp. 9-10; Jan. 29, 1998, pp. 10-12).

Editha and Salve went to the police station where Salve's Sworn Statement was taken. Thereafter, they were advised to proceed to Mayor

Gutierrez who gave them a referral letter to Dr. Leonides Cruel, the Municipal Health Officer. The latter asked them to return the next day as it was Sunday then and he had no employee to assist him. Meanwhile, upon the advise of the police, they fetched their mother at Pulangui, Albay (TSN, Dec. 10, 1997, pp. 10-16; Jan. 29, 1998, pp. 13-14; 21).

Upon examination, Dr. Cruel issued the following Living Case Report:

FINDINGS:

1. 1. No external physical injury noted.
2. 2. Hymen revealed superficial fresh healed lacerations at 5:00 o'clock and 7:00 o'clock before the face of a watch.
3. 3. Vaginal orifice admits one finger with difficulty.

CONCLUSIONS:

Physical virginity on the person of SALVE CARIÑO y REMODIS lost.

(Exhibit C; Rec. Vol. 1, p. 5)."

Accused-appellant refuted the charge against him by raising the defense that he and Salve were sweethearts, thus, the sexual intercourse that happened between them on the night of April 14 and April 15, 1997 was with their mutual consent. His version of what happened on the said dates is as follows: In the evening of April 14, 1997, he was at Dita's Beauty Parlor along with three other friends, playing records and tapes. The group stopped listening to the records and tapes at about 7:30 of that evening because of the agreement he and Salve had to have sexual intercourse later that evening. He and the rest of the companions left the parlor, but he returned because of the agreement he had with Salve. He returned to the parlor at around 10:00 and knocked softly three times as a signal upon instruction of Salve. She let him in and the two had sexual intercourse with each other with Salve positioned on top of him. He came back the following night on April 15, 1997, as he and Salve had an agreement to have sex again.^[4] Accused-appellant further testified that the reason Salve charged him with rape was because the former got angry with him when he decided to cool off the relationship after he found out that she was no longer a virgin and that she was experienced in performing sexual acts.^[5]

To bolster accused-appellant's contention that he and Salve were sweethearts and that the sexual intercourses on April 14 and 15, 1997 were with the voluntary will of the complainant, defense witness Salvacion Crucillo testified on the close relations between accused-appellant and Salve; while the other defense witness Juanito Credo who had been sleeping in a store two meters away from Dita's beauty parlor did not hear any unusual sounds during the nights in question.

As mentioned earlier, the lower court found accused-appellant guilty beyond reasonable doubt of two counts of rape. In arriving at the conviction, the lower court rejected the version of the accused-appellant, stating as follows:

"By reason of the accused's admission of having carnal knowledge with the complainant at the place and on the date and time in question, the

accused bears the burden of proving his defense by substantial evidence. (People vs. Bayani, 262 SCRA 660). Otherwise stated, the burden to prove that the sexual intercourse was voluntary on the part of the complainant or that it was mutually done by both complainant and accused is shifted to the accused. After all, it is settled that when a woman says that she has been raped she says in effect all that is necessary to show that she has been raped. (People v. Cristobal, 252 SCRA 507). Besides, the law does not impose upon a rape victim the burden of proving resistance. (People vs. Talaboc, 256 SCRA 441). What needs only to be established is the use of force or intimidation by the accused in having sexual intercourse with the victim. (People vs. Gecomo, 254 SCRA 82).

The Court does not find the defense put by the accused credible. The Court is not convinced that a fifteen-year old girl like complainant would hastily agree to have sexual intercourse with the accused whom she had known barely a week. Such an action is not in accordance with the ordinary course of events especially because complainant appears to have been devirginized by accused because the medical certificate (Exhibit C) shows that complainant's vaginal orifice admits one finger with difficulty. If complainant consented to have sexual intercourse with the accused, her natural reaction would have been to conceal it or keep silent about it instead of reporting the crime upon her chastity to her sister. (People vs. Español, 256 SCRA 137) Moreover, the claim of the accused that on April 19, 1997, complainant was with him swimming at Joroan, Tiwi, Albay from eight o'clock in the morning up to five o'clock in the afternoon, is clearly belied by the fact that at 9:50 o'clock in the morning of said date, complainant was not in Joroan but actually at the police station of Tiwi, Albay giving her statement about the rape incidents complained of and this is clearly shown by Exhibit B."^[6]

Hence, this appeal from the lower court's decision, with the sole assignment of error^[7] allegedly committed by and imputed to the court *a quo*:

"THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF TWO (2) COUNTS OF RAPE, WITHOUT HIS GUILT HAVING BEEN PROVED BEYOND A REASONABLE DOUBT."

It is appellant's position, as articulated in his lone assignment of error, that the lower court erred in convicting him of two counts of rape considering that the prosecution failed to prove the attendance of force and intimidation in the commission of the sexual acts. In support of his contention, appellant claims that he was unarmed on April 14 and 15, 1997, but complainant did not make any serious outcry or determined efforts of resistance; that the medical certificate does not contain any findings of external injuries on complainant's body; and that it is improbable that the alleged unconsented copulations took 30 to 40 minutes each as testified to by the complainant.

We are not impressed.

Appellant's assertion that the sexual congresses were consensual and that the same were not accomplished through force and intimidation is belied by the records.

Complainant testified that she struggled to resist appellant who used force and intimidation to subdue her. On the night of April 14, 1997, this is what happened:

Q: What happened after Cesar Clado knocked at your door?

A: I opened the door for him.

Q: What happened after you opened the door for him?

A: He went directly inside then switched off the light and closed the door.

Q: What happened when he went inside, closed the door and switched off the light?

A: He embraced me.

Q: What else did the accused do, if any?

A: He kissed me.

Q: He kissed you where?

A: On my neck.

PROS. PIFAÑO: (Continuing)

Q: Where else?

A: On my breast.

Q: Aside from kissing your breast, what else?

ATTY. BROTAMONTE:

Leading.

COURT:

Witness may answer.

A: Running his hands over my body.

PROS. PIFAÑO: (Continuing)

Q: What else after that?

A: He closed my mouth with his right hand.

Q: After that, what did he do?

A: He removed my t-shirt.

Q: What else?

A: And removed my shorts.

Q: What happened next?

A: He forcibly laid me on the bed.