

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOAQUINITO GAN, DEFENDANT AND APPELLANT.***G.R. No. L-33446. August 18, 1972*

Ponente: ANTONIO, J.

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Appeal from the decision of the Court of First Instance of Oriental Mindoro, Branch I, Calapan, finding the accused Joaquinito Gan in Criminal Case No. C-82 guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, and sentencing the said accused to suffer the penalty of reclusion perpetua or life imprisonment; to indemnify the offended party in the sum of P20,000.00; and to pay the costs.

The accused having pleaded not guilty to the charge, the prosecution tried to establish its case through the testimonies of Alita Selosa, Felizardo Selosa, Sr. and Dr. Lorenzo Goco, Jr.

The evidence presented by the prosecution has established the following facts:

On the night of December 3, 1970, Alita Selosa, a 14-year old girl, was at her home at an isolated place, in Barrio Bambanin, Victoria, Oriental Mindoro. At that time only her sister Cristina, 6-1/2 years of age, her brothers Lazaro, 7 years of age, Armando, 5 years of age, Philip, 3 years of age and Melchor, 2 years of age were with her. Her father Felizardo Selosa, Sr. and her mother were then away having left a month earlier for Tigkan, Calapan, Oriental Mindoro. Dwelling with them in the same house as a boarder for about a month, was the accused Joaquinito Gan, who was then employed as a laborer on the land owned by a certain Ben Concepcion. Felizardo Selosa, Sr. was overseer of the said property.

At about 10:00 o'clock of that evening, while Alita and her brothers and sister were sound asleep, she was suddenly awakened by a man who was embracing and holding both her hands. She struggled to free herself, but the man whom she then recognized as the accused threatened to kill her if she made an outcry, with a knife, the point of its blade pressed against her neck. Overpowered by the superior physical strength of the accused and cowed by fear for her life the accused succeeded in tearing forcibly her panties and in consummating the sexual intercourse. The following day, on December 4, 1970, the accused Joaquinito warned Alita not to report the incident and even threatened to kill her younger brothers and sister if she ever left the house.

Thus guarded by the accused and kept a virtual prisoner, said accused on the night of that day, again threatening her with the knife succeeded after giving her a fist blow on her stomach, in having sexual intercourse with her. He repeated his warning that he would kill her if she ever reported the incident. The following day she was again prevented by the accused from leaving the house. On the evening of that day, the accused employing the same force and intimidation, succeeded again in having carnal knowledge of her. The whole day of December 6th, she was again guarded and prevented from leaving the house. At about 2:30 in the early morning of December 7, the accused assisted by one Ernesto Bernardo, dragged her out of the house. As they were dragging her, Felizardo Selosa, Jr., her 13-year old brother who had arrived a few hours earlier was awakened by the noise. He tried to

come to the aid of his sister but he was forcibly pushed against the post of the house. The accused and his companion then brought Alita to a bus where she was taken to Barrio Nacoco in Calapan, and there confined in the house of one Fred de Castro. In that house she was guarded alternately by the accused and one person by the name of Fred Felizardo, Jr. immediately proceeded to Tigkan, Calapan, to inform his father about the incident, who upon hearing of this turn of events immediately returned to Barrio Bambanin, then went to Calapan where he sought the assistance of his landlord Ben Concepcion in looking for Alita. Ben Concepcion accompanied Felizardo Selosa, Sr. to the Municipal Building of Calapan to look for the Chief of Police but they found that he was not around. As they were coming out of the building however a tricycle passed by and recognizing the tricycle driver to be the accused, they followed him. When the latter stopped they apprehended the accused and brought him to the PC Headquarters for investigation. Upon questioning the accused admitted that Alita was in the house of Fred de Castro at Nacoco, Calapan. Thereupon Felizardo, Sr., the accused and some PC soldiers proceeded to Nacoco where they found Alita in the house mentioned by the accused. They then returned to the PC Headquarters, and on the way Alita recounted to her father the incidents adverted to. She was interrogated by Sgt. Tugade of the Philippine Constabulary and later executed a statement which was subscribed before Municipal Judge Rogelio of Calapan. On December 8, 1970, Alita was brought by her father to the Oriental Mindoro Provincial Hospital where she was physically examined by Dr. Lorenzo V. Goco, Jr. Thereafter the corresponding complaint for rape was filed with the Municipal Court on December 15, 1970 against the accused.

On the other hand, the accused admitted his commission of the various sexual acts on the dates aforementioned with the offended party, but avers that it was with her consent. In support of his defense, the accused offered his uncorroborated testimony to the effect that: Sometime in the month of June, 1970, he went to Barrio Bambanin, Victoria, Oriental Mindoro, to look for a job and boarded at the house of Felizardo Selosa. During his stay therein, he sometimes talked with Alita, who was then a student of the Good Shepherd Academy at Victoria. Later, he noticed her affection for him, so that he began courting her although not seriously. After the lapse of three (3) weeks when he left to visit his wife who was living in another town, Alita gave her picture and pleaded with him not to forget her and to return as soon as the harvest season was over.

After his return sometime in the month of November of that year, he told her that he could have lived a better and happier life had his wife been endowed with the good traits and qualifications of Alita, to which Alita allegedly replied that she was wondering herself why she fell in love with him although he was a married man. On November 28, 1970 when his wife arrived at Barrio Bambanin, he tried to avoid Alita but the latter persisted in showing to his wife that they were sweethearts to the extent of embracing and kissing him in her presence. At about 11:00 o'clock on the evening of December 2, 1970, his wife discovered them embracing and kissing each other. Upon seeing them acting in that manner his wife stood up from her bed, got a bolo and tried to hack Alita, but he was able to disarm her. After advising her not to create trouble, his wife scolded Alita, but Alita remained silent, covered herself with a blanket and pretended to be asleep. The following morning, December 3, he accompanied his wife to the poblacion of Victoria where the latter took a bus for Roxas. At about 11:00 o'clock as per their agreement, he met Alita in the poblacion of Victoria and stayed there with her until they returned to Barrio Bambanin at 6:00 o'clock in the afternoon. On their way home, he allegedly blamed Alita for the sudden departure of his wife saying: "See what happened to me and my wife; my wife left and she is angry at you because you never concealed to her your love for me."

At about 10:00 o'clock on the night of December 3, 1970, after a prearranged signal he approached the place where Alita was lying, held her, and touched her cheeks. She then lay on the floor face upward and, in that position, they embraced and kissed each other. She held him by the nape and, at that moment, she suggested to him that they start the sexual intercourse by saying: "Ganito na lamang ba tayo? They had sexual intercourse three times that evening until dawn, with an hour interval between the first and second intercourse, while the third was

consummated at about 4:00 o'clock in the morning. During the first intercourse, he discovered that she was a virgin. On the following evening, December 4, they had another sexual intercourse, repeated on the evening of the following days, December 5 and 6, and agreed to continue doing the same act until the arrival of her parents.

On the evening of December 6, 1970, Alita told him that she was afraid that what they had done might come to the knowledge of her parents, so she requested him to take her away, but the latter told her that he was penniless, as he had only P2.30. At about 2:00 o'clock the following morning of December 7, 1970, he told Alita that he was going home to Roxas. Alita answered that she would go wherever he may go, as she was afraid lest his brothers and sister might report to their father what they had been doing. When he refused Alita followed him saying she had enough money for their fare and upon reaching Calapan, she would sell her watch. He agreed and when they reached Calapan at about 4:30 o'clock that same morning, they proceeded directly to the house of one Fred de Castro, a "compadre" of his father, at Nacoco, a district of Calapan.

At about 8:30 o'clock on the morning of that day, December 7, 1970, they went to the poblacion of Calapan to sell her wrist watch for P30.00, but could not consummate the sale because the buyer offered only P10.00 for her watch. He then thought of driving the tricycle of Fred to earn at least P15.00 which they could spend in going to Manila where they agreed to stay. It was while driving the tricycle on December 8, 1970, when he was spotted by Felizardo Selosa, Sr., Ben Conception and some policemen of Calapan. Upon seeing them he stopped his tricycle and, thereupon, he was taken to the PC Headquarters.

After the trial of March 16, 1971, His Honor, the trial Judge rendered the appealed judgment.

In this appeal, the accused-appellant now contends that the trial court erred:

1. In not giving weight and credence to the evidence presented by the accused that the sexual intercourse was consummated with the consent of the offended girl.
2. In ruling that the story of the accused is unworthy of the belief and basically incredible.
3. In finding that the evidence of the prosecution is more worthy of belief, although the declaration of the offended girl was not fully corroborated.
4. In finding the accused Joaquinito Gan guilty beyond reasonable doubt of the crime of rape, and sentencing him to reclusion perpetua, and requiring him to indemnify the offended party the sum of P20,000.00 and to pay the costs.

The issue posed is one of credibility of witnesses. The trial court in rejecting the version of the accused, and upholding that of the prosecution made the following findings and conclusions:

"The Court cannot give weight and credence to the evidence presented by the accused in support of his defense that the sexual intercourse was consummated with the consent of the offended girl. Not only is his testimony bare in corroboration but it is also wanting in sincerity and truthfulness. * * *.

"The offended girl was only fourteen years old when the offense was committed. She was a pupil of the Good Shepherd Academy located at the poblacion of Victoria. She is a very young barrio girl, innocent, unsophisticated and uncontaminated by the destructive modern ways and behaviour and conduct of uncontrolled and licentious urbanites who bury in their journey to life the beautiful tradition and virtues of the Filipino barrio girls. The Court has observed the conduct and demeanor of the offended girl with an intense longing to penetrate her inner feelings that was pained and aggrieved by the accused. And in all, the Court found her truthful and sincere when she testifies, narrating the harrowing experience she underwent under the malevolent hands of the accused.

"The story of the accused is unworthy of belief. It is basically incredible. We cannot believe his testimony that

this very young girl could have the brazen will and courage to devise an arrangement by which she could have sexual intercourse with the accused. She could not have told the accused to make the approach after she had answered the coughing which the accused would first do to signal his desire for sexual intercourse. Neither could we believe the testimony of the accused that this girl could have been the one who first expressed love and romance to him. Nor could we believe that this girl was the first to have enticed the accused to have sexual intercourse with him.

"All this was farthest from the thought of this girl and alien to her behaviour and conduct. She is so young, a mere child, so innocent, reared in the barrio, studying in the catholic school that she could not possess the slightest feeling, much less, knowledge and understanding of what romance is and of what it pretends to be. This girl could not even have the slightest urge to accompany romance with sexual intercourse. For this is beyond her comprehension. Her upbringing in the rural area precludes such understanding. She still lives with our virtues and tradition. She could not exclaim "Ganito na lang ba tayo," when allegedly she and the accused were indulging in sexual intercourse. A typical barrio girl of fourteen years, the complainant could not have enticed and provoked the accused to romantic adventure. If we are to believe the accused she was the one who by deeds and words expressed affection to the accused. This could not happen with this young girl. She could not have expressed affection to a married man who is a relative of her father. This is very incredible to believe. If she treated the accused well while boarding in her parent's house, assuming it be true, it was not due to love or affection, but due to a sense of hospitality that we usually bestow upon our relatives and guests.

"Therefore the testimony of the accused imputing to this young girl as the one who proffered affection to the accused accompanied by invitation to the accused to have sexual intercourse with her is obviously incredible and unbelievable. We cannot believe that this girl could have shown love and affection to the accused, much less, can we believe she was the one who enticed and invited the accused to have sexual intercourse with her. This young girl could not have done it. This girl could not have given consent to an act she did not know and could not have felt. Romance and sexual intercourse are alien to her. Hence, she could not give consent to a thing unknown to her. And to cap all the incredibilities of the declarations of the accused, it could not be true that sexual intercourse was done thrice on the evening of December 3, because the young girl who was virgin could not have withstood such number of sexual acts. It would pain her and would cause bleeding that would prevent repetition after the first if there was really love and consent between them. * * *.

"The Court finds the evidence of the prosecution worthy of belief. The declaration of the offended girl is credible to believe. Indeed the Court finds her testimony sincere and truthful. It reflects and reveals the facts and circumstances which surrounded the commission of the offense of rape. Her testimony was fully corroborated in all material points. The Court, therefore, finds from the evidence the consummation of the sexual intercourse thru violence and intimidation and not with consent of the offended girl. In all, the evidence of the prosecution shows beyond reasonable doubt the guilt of the accused."[1]

We have consistently held that appellate courts, as a rule will not disturb the findings of the trial court on the credibility of witnesses, it being acknowledged that the latter is in a better position to evaluate their testimonies, having seen and heard the witnesses themselves and observed their demeanor and manner of testifying. To depart from such rule appellant must satisfactorily show that the trial court "overlooked, misunderstood or misapplied some fact or circumstance of weight and substance as would offset the results of the case." [2]

Appellant has failed in that task. His argument that since the medical findings does not show any "external physical injuries" on the body of the offended, it is evident that the latter did not resist, is not persuasive. The medical testimony shows that the offended girl sustained physical injuries in her hymen which according to Dr. Lorenzo Goco, showed "complete laceration at 2:00 o'clock, 6 o'clock and 10 o'clock positions," indicating a "tearing of the hymen completely at the base of the vagina." [3] Considering that the medical examination was done a few days after the victim was criminally abused, it is probable that any superficial abrasion or contusion on her person may not be readily visible. At any rate the absence thereof does not militate against the claim of the

ravished woman, if her narration carries the impeccable imprimatur of sincerity and veracity. This, the Court found in its analysis of her testimony. It is undisputed that the victim of the heinous offense, was only a young girl of 14 years, a virgin, innocent and unsophisticated, and as a student of a religious school, there is no reason for her to concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial; if she was not motivated solely by a desire to have the culprit apprehended and punished.[4] No young Filipina of decent repute would publicly admit that she had been criminally abused, unless that is the truth. For it is her natural instinct to protect her honor.[5]

Her narration that she was criminally abused for about four nights, and kept a prisoner in a barrio hut, is not improbable. Her house was in an isolated place, the nearest neighbor in that barrio being about 1-1/2 kilometers away. Her only companions being a sister of 6-1/2 years, and brothers with ages of 7, 5, 3 and 2 years. She naturally realized the futility of escape, considering the threat made by the accused that he would kill her young sister and brothers if she ever tried to flee and seeing the determined manner in which the armed accused guarded them.

It is true that there was some variance on the number of times the accused had carnal knowledge of her during such period, with that contained in her affidavit before the municipal judge. It must be remembered that when she made the first statement she just came through a shocking experience. It is understandable that in such a state, confusion and even errors on minor details would occur. In any event they are not of such significance as would impair the veracity of her testimony.

Upon the other hand, appellant's testimony is fraught with inherent improbabilities. Appellant's testimony, that a young barrio lass, of only fourteen years of age, educated in a catholic school, indisputably a virgin and without any previous experience on matters of sex, would readily tell a married man that she is in love with him, without any prior courtship or to blatantly show to the wife of such married man, her alleged amorous relationship with the latter's husband, to the extent of embracing and kissing him in her presence or be the first to suggest to such married man that they should have a sexual intercourse or for such virgin as aforesaid to agree to three successive sexual intercourses on the first night that she ever experienced such sexual act[6] certainly taxes human credulity. Such purported conduct on the part of the offended party is contrary to human nature and inconsistent with the common experience and observation of mankind.

We are satisfied, therefore that on the basis of the evidence, force and intimidation were employed by appellant on the offended party in perpetrating the sexual acts adverted to.

It is an accepted rule that the force employed in rape need not be so great nor of such character as could not be resisted. It is only that the force used by the accused be sufficient to enable him to consummate his purpose.[7]

Force or violence threatened for the purpose of preventing or overcoming resistance, if of such character as to create real apprehension of dangerous consequences or serious bodily harm or such as in any manner to overpower the mind of the victim so that she dares not resist, is in all respects equivalent to physical force actually exerted for the same purpose.[8]

The claim by appellant that the lower court erred in basing its judgment of conviction on the sole and uncorroborated testimony of the offended party is equally untenable. We have said that the lone testimony of an offended party in a crime of rape, if credible, is sufficient to sustain the conviction of the accused. This is so because owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party.[9]

Finding no error in the conclusion of the trial Judge that the charge of rape has been proven beyond reasonable

doubt, We find the penalty of reclusion perpetua properly imposed. It is explicit from the provisions of the third paragraph of Article 335 of the Revised Penal Code, as amended by Republic Act 4111, that when rape is committed with the use of a deadly weapon, the penalty shall be reclusion perpetua to death. In the instant case, the testimony of the offended party has shown that the appellant was armed with a deadly weapon — a sharp pointed bladed instrument – with which he threatened to kill the victim, to facilitate the commission of the offense. Absent any aggravating circumstance, the lesser penalty of reclusion perpetua is correctly applied.[10]

Finally appellant contends that the lower court erred in requiring him to indemnify the offended party in the sum of P20,000.00 as moral damages. There is no question that moral damages are recoverable by the offended party, in cases of rape pursuant to Article 2219 of the New Civil Code, the amount of which is left to the discretion of the Judge according to the circumstance of each case.[11]

ACCORDINGLY, the judgment under review is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J. B. L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

[1] Decision, dated March 16, 1971. CFI, Oriental Mindoro, pp. 8-12.

[2] People vs. Berganio, 110 Phil. 322; People vs. Oteza, 6 SCRA 109; People vs. Lumayag, 13 SCRA 502, 506-507; People vs. Labis, 21 SCRA 875, 881; People vs. Dorado, 30 SCRA 53.

[3] (T.S.N. pp. 6-8)

[4] People vs. Selfaison, 110 Phil. 839; People vs. Jore, 93 Phil. 1017; People vs. Canoste, 80 Phil. 421, 433.

[5] People vs. Taño, 109 Phil. 912.

[6] (T.S.N. pp. 9-20)

[7] U. S. vs. Villarosa, 4 Phil. 434; People vs. Momo, 56 Phil. 86; People vs. Rivera & Jimenez, 93 Phil. 137.

[8] U. S. vs. Versosa, 3 Phil. 444. See, also, 44 Am. Jur. 904, where "The term 'by force' does not necessarily imply the positive exertion of actual physical force in the act of compelling submission of the female to the sexual connection; hut force or violence threatened as the result of noncompliance, and for the purpose of preventing resistance, or extorting consent, if it is such as to create a real apprehension of dangerous consequences, or great bodily harm, or such as in any manner to overpower the mind of the victim so that she dares not resist, is, and upon all sound principles must be, regarded, for this purpose, as in all respects equivalent to force actually exerted for the same purpose. -Nor need the threats be of force to be used in accomplishing the act. In fact, it would seem that the requirement in reference to force is satisfied by any sexual intercourse to which the woman may have been induced to yield, only through the constraint produced by the fear of great bodily harm or danger to life or limb, which the defendant, for the purpose of overcoming her will, caused her to apprehend, as the consequence of her refusal, and without which she would not have yielded."

[9] People vs. Selfaison, 110 Phil. 839; People vs. Macaya and Cagawaran, 85 Phil. 540; People vs. Ganal, 85 Phil. 743; People vs. Ariarte, 60 Phil. 326; People vs. Dazo, 58 Phil. 420.

[10] Par. 2, Article 63, Revised Penal Code.

[11] Article 2216, Civil Code of the Philippines.

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