

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALUSTIANO TISMO, ACCUSED-APPELLANT.

G.R. No. L-44773. December 04, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a verified complaint filed by the offended party, Lolita A. Avila, with Branch IX of the Court of First Instance (now Regional Trial Court) of Leyte, accused was charged with the crime of rape allegedly committed on 12 December 1972 in Burauen, Leyte. The accusatory portion of the verified complaint reads:

"That on or about the 12th day of December, 1972, in the Municipality of Burauen, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a revolver and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with herein complainant, against her will.

All contrary to Article 335 as amended by Republic Act 2632 and Republic Act 4111."

Following his apprehension pursuant to the warrant of arrest issued after the filing of the complaint, the accused filed a motion to be admitted to bail. Hearing was had thereon. Both the prosecution and defense agreed that the evidence presented by the former be considered as its evidence in chief. No ruling was had on the motion even after the prosecution rested its case. The accused also presented his evidence and thereafter rested his case. The parties agreed to consider the case submitted for decision. It was only then that the trial court realized that the accused had not yet been arraigned. Thereupon, the court notified the parties of this "inadvertence" and the accused was called for arraignment. He pleaded not guilty. Fortunately, the prosecution and the defense agreed, and prayed that the court consider the evidence respectively presented by them as re-introduced and re-presented, which the latter granted. Thereafter, the case was considered re-submitted for decision.[1]

In a decision dated 30 June 1976 but promulgated on 13 July 1976, the trial court found the accused guilty beyond reasonable doubt of the crime of rape and sentenced him:

"x x x to the penalty of RECLUSION PERPETUA, to indemnity Lolita Avila (now Lolita Avila Posion, she having gotten married during the pendency of this case) in the amount of P12,000.00 and to pay the costs."[2]

Accused (hereinafter referred to as Appellant) interposed an appeal from said decision to this Court which was accepted in the Resolution of 29 September 1976.[3]

In his Brief filed on 18 November 1977,[4] appellant, represented by the then Citizens Legal Assistance Office, assigns the following errors:

I

THE COURT A QUO GRAVELY ERRED IN CONCLUDING THAT COMPLAINANT LOLITA AVILA AND ACCUSED SALUSTIANO TISMO ARE NOT SWEETHEART (SIC).

II

THE COURT A QUO GRAVELY ERRED IN HOLDING THAT ACCUSED COMMITTED THE CRIME OF RAPE AND IN CONVICTING HIM THEREFORE (SIC).

III

THE COURT A QUO FAILED TO CONSIDER THE PRIVILEGED MITIGATING CIRCUMSTANCE OF MINORITY AND VOLUNTARY SURRENDER.

IV

THE COURT A QUO GRAVELY ERRED IN ORDERING THE ACCUSED TO PAY LOLITA AVILA THE AMOUNT OF P12,000.00."

The facts of this case as summarized in the People's Brief are as follows:

"The complainant, Lolita Avila, who was then 24 years of age, and living at Poblacion, Burauen, Leyte, finished her teaching course sometime in 1969 at the Divine Word University of Tacloban. Complainant began teaching on August 1, 1969 in a public school at Bo. Matinao, Leyte up to January, 1972 (pp. 9, 10, t.s.n., Sept. 18, 1973). From January 20, 1972 to December 12, 1972 complainant was assigned in Bo. Toboanon, Burauen, Leyte, and thereafter to Lusad Elementary School at the poblacion of Burauen (p. 11, tsn, September 18, 1973).

While assigned at Taboanon, which is about 3 kilometers from Poblacion, Burauen, where she resided, complainant brought along her 'baon' and ate her lunch at Taboanon in the house of Hospicio and Trinidad Tismo, parents of the accused Salustiano Tismo. Complainant left Poblacion at 6:45 in the morning riding a motorcycle and reached Taboanon at 7 o'clock in time for her classes which started at 7:30 a.m. Complainant returned home to Poblacion, Burauen by the same means of transportation after her classes end at 5:00 p.m., but since the last week of November, 1972, she had been taking a jeep together with her co-teacher, Mrs. Brosas (pp. 11-13, tsn, Sept. 18, 1973).

On December 12, 1972, at about 5:30 p.m., complainant was at the house of Hospicio Tismo fetching the container of her 'baon' and at the same time seeking shelter from a slight rain. The jeep was parked in front of the house of Hospicio Tismo. Mr. and Mrs. Brosas, together with Mrs. Trinidad Tismo, were conversing at the kitchen while complainant was at the sala sitting on a bench waiting for the Brosas couple to come out for her to join them in going home. At this juncture, accused Salustiano Tismo approached complainant demanding that she reciprocate his love for her. She answered him in the negative, telling the accused that she does not want to get married yet (pp. 13-14, tsn, Sept. 18, 1973).

Complainant then stood with the intention of going ahead to the parked jeep, but accused took hold of her leftwrist (sic) and kissed her, covered her mouth and dragged her towards the dining room (p. 15, tsn, Sept. 18, 1973), and touched her left breast. Complainant could not shout as her mouth was covered by the hand of the accused who continued dragging her towards the dining room. She tried to hold onto everything her hands could lay on but to no avail. She squeezed (sic) at the stomach of the accused. By this time, the people inside the kitchen had already sneaked out thru the kitchen door. The accused forced complainant to sit and lie down on the bench in the dining room. (pp. 16-18, tsn, Sept. 18, 1973).

The accused twisted and pinned around the bench the left wrist of complainant who, however, managed not to lie straight on the bench by bending her knees. But the accused straddled and sat on top of her, kissed her and touched her private parts, including her vagina and its immediate perimeter. The accused even pulled her hair down to prevent her from rising up. She struggled to free herself by whatever means she could muster, biting or pulling away at the accused but her efforts were not enough. Accused continued touching her breasts and vagina alternating his hands in the process. He even tried to remove complainant's underwear consisting of her shorts and panty. Complainant bit accused with all her might which caused the latter to release her momentarily, thus frustrating his attempts at removing her shorts and panty (pp. 19-24, tsn, Sept. 18, 1973).

Just as soon as complainant sat up, Trinidad Tismo appeared and sat at complainant's left side while accused sat at complainant's right side, with his left hand over her shoulder and his right hand holding unto her dress. Accused placed his thigh over complainant's legs to prevent her from standing up. Complainant struggled with and pushed accused and Trinidad Tismo but complainant was not able to free herself from their clutches. Complainant could not shout because she had chest pains as a result of her struggle. A week before the incident, she was treated at the Tacloban TB Pavilion for enlarged lungs as evidenced by a medical certificate (Exh. "B", p. ___, record) signed by Gerardo C. de Guzman, Chief of the Tacloban TB Pavilion Hospital. She attempted to run outside the kitchen door but the accused grabbed and dragged her back to the kitchen (pp. 25-28, tsn Sept. 18, 1973).

At around 6:00 p.m., Trinidad Tismo ordered the driver of the jeep to go ahead and leave complainant behind as the latter would be staying with the former. It was at this juncture that Hospicio Tismo arrived, and who (sic) closed and locked the doors and windows of the house except the kitchen door. Hospicio then joined the accused and Trinidad in convincing complainant to marry the accused. Without saying anything complainant tried to run away but was foiled by Trinidad who shoved and pulled complainant by the latter's dress (Exh. "C") which was torn (Exh. "C-1"), (pp. 32-37, tsn, Sept. 18, 1973). Accused's younger brother, Bienvenido Tismo arrived and stationed himself at the main door. After three or four minutes, Jose Calvara with a flashlight entered thru the kitchen door and joined the others in convincing complainant to marry the accused. Complainant could not answer because of the pain in her chest. Trinidad Tismo tore a page from complainant's lesson plan (Exh. "G") and instructed her to write that she was staying in their house of her free will, and to sign the same by writing her name therein (pp. 55--57, tsn, Oct. 16, 1973).

Complainant refused to write and Jose Calvara instructed her to just sign her name at the bottom as he will be the one to take care of writing above it (pp. 66-67, tsn, Oct. 16, 1973). Trinidad Tismo then placed a yellow ballpen on her hand and guided it while Hospicio Tismo was at her back persuading her to sign and for her to agree to a civil marriage with the accused so that everything would be alright. Complainant complimented them with her initials on the assurance that she would be released. Trinidad Tismo took hold of the piece of paper saying 'alright we are in possession of the evidence' (pp. 67-72, tsn, Ibid). They were not contented with the initials so they made complainant sign for the second time on the same piece of paper (Exh. "G-8"). She obliged but with the same initials (p. 74, tsn, Ibid).

They did not comply with their promise to release complainant but instead told her to sit down on a dining bench (p. 4, tsn, Oct. 22, 1973). Then Trinidad, Hospicio and Bienvenido Tismo conversed behind a wall. Complainant heard them say that she should be transferred to the house of Jose Calvara. While complainant was being dragged outside the house she tried to hold on to anything but they would disentangle her hold. Complainant was dragged by the accused with the help of Trinidad Tismo from their kitchen door to the kitchen of Jose Calvara's house. Jose Calvara opened the door for them. The accused while holding complainant, entered first followed by Trinidad Tismo who was pushing complainant at the back. Hospicio and Bienvenido followed suit (pp. 6-10, tsn, Oct. 22, 1973).

Once inside Jose Calvara's house, the accused helped by his mother dragged complainant to the second floor of said house. Meanwhile, Hospicio, Bienvenido and Jose Calvara stayed at the ground floor. At the second floor the accused and his mother Trinidad were convincing complainant to marry the accused. Complainant

remained silent. Trinidad left the accused and complainant on the second floor and went downstairs. Accused pointed a pistol at complainant and asked her whether she would agree to a marriage or not. Complainant answered in the negative, preferring death. Frustrated, the accused dragged complainant to the bedroom (pp. 10-14, tsn, Oct. 22, 1973). Complainant resisted and held the doorframe but the accused succeeded in pulling her into the bedroom. She sat on the bed at the same time holding the side bar. Accused removed complainant's hands from the side bar and twisted her arms to weaken her. Then accused threw her flat on the bed but she crossed her legs. Accused sat on her belly then straightened and layed (sic) on top of her. He tried to open the zipper of complainant's dress and pull down her shorts and panty. Complainant tried very hard to prevent the accused from removing her undergarments but her efforts proved futile. Her shorts and panty were lowered to the middle part of her thigh. Accused then unzipped his pants, lowered the same, took out his private part and tried to have sexual intercourse with complainant, who however, struggled and resisted but thereafter discovered that her vagina was wet with sticky fluid so she immediately put on her shorts and panty. The accused was then at the door guarding and resting (pp. 15-24, tsn, Oct. 22, 1973).

At this juncture, accused's mother Trinidad Tismo entered the room carrying food, eggs, and milk. Trinidad sat on the right side of complainant while the accused sat on her left side. Trinidad coaxed complainant to eat the food the former brought along but the latter refused. Complainant was forced to drink the milk by forcibly inserting the spoon between her teeth but the milk just dripped down her neck. The accused and his mother Trinidad reiterated their 'unfriendly persuasion' but complainant did not answer them. Because they could not get complainant to agree to their proposal of marriage, Trinidad left and went downstairs. Thereafter, the accused forcibly threw complainant down flat on the bed after pulling and twisting her arm in the process. Although she crossed her legs, accused straddled over (sic) her, touched her private parts and kissed her (pp. 25-27, tsn, Oct. 22, 1973). Accused by this time was only wearing his nylon briefs as he had removed his pants after his mother went downstairs (p. 30, tsn, *Ibid*). Accused then inserted his knees between complainant's legs, touched her vagina and kissed her. She tried to free herself from his clutches by biting and pushing him but her struggle was not enough as she felt pain (pp. 31-32, tsn, Oct. 30, 1973).

The accused then tried again to open the zipper of the complainant's dress but was prevented by complainant. The accused shifted his hands to her underwears (sic) and was able to push down anew her shorts and panty by tugging at them with an upward and downward motion, tearing the same in the process. When her shorts and panty were down to her knees accused kicked them off after he had inserted his knees between her legs. The accused then raised her dress above the waistline exposing her organ. He seized the zipper of her dress and which was halfway down, then unlatched the hook and eye of her bra and grabbed the shoulder straps tearing the same. All this time, complainant was biting and pinching the accused whenever she could get her hands free (pp. 33-47, tsn, Oct. 30, 1973).

The accused tried again to have sexual intercourse with the complainant. He made the push and pull movement -- his penis directed towards the vagina of complainant who kept moving her body so that accused's penis was only brushing the top of complainant's organ. The accused hugged complainant tightly while performing the push and pull movement and after sometime she felt a sticky fluid on her vagina after he trembled. After that, accused sat down on the bed and rested on her side. A short time later, Trinidad entered the room bringing eggs and milk (pp. 48-53, tsn, Oct. 30, 1973).

Accused and his mother, Trinidad, forced complainant to eat but she did not partake of anything. Again they asked her to agree to marriage with the accused. Complainant told them that she doesn't want to get married yet. Trinidad went down. Accused pulled down his brief and immediately forcibly pulled complainant down from the sidebar of the bed. Because complainant was holding tight to the bar of the bed (sic), accused disentangled her hold and twisted her arm towards her back (pp. 20-21, tsn, Nov. 2, 1973).

Complainant was not able to do anything but cry. Tired, weakened and with only her back dress on, complainant was easily thrown to the bed. Naked, accused straddled on top of her. He pinned her down and twisted her arm (pp. 23-26, tsn, Nov. 2, 1973). Complainant, lying flat on her back with legs crossed moved

her body from side to side in order to prevent accused from inserting his penis into her vagina. Accused forced open her thighs by pressing down hard on her and inserting his knees between her thighs and twisting her arms (pp. 26-28, tsn, Nov. 2, 1973).

Accused succeeded in penetrating complainant by guiding his penis with his left hand. With her free hand, complainant tried to take hold of accused's hand holding his penis but her efforts prove (sic) unavailing because he was stronger. She felt his penis reach up and penetrate her labia minors. She tried moving her body but she could only move her hips as accused was very heavy. After a while, accused trembled and complainant felt something warm inside and over her vagina. After satisfying his lust, accused dressed himself (sic) and rested (pp. 28-31, tsn, Nov. 2, 1973). It was more or less 5:00 o'clock in the morning.

Even after the accused succeeded in consummating the offense, complainant tried all possible means of escape but she was closely guarded by the accused who sat by her side on the bed and put his left arm around her back and his right arm on her breast. Trinidad Tismo entered the room, this time carrying biscuits, eggs and cooked rice. She forced complainant to take something but she did not eat. Trinidad went down. Complainant asked accused that she be allowed to go home but her pleas fell on deaf ears (pp. 32 & 33, tsn, Ibid).

At around 7:00 o'clock in the morning, complainant insisted on leaving and said that she would attend her classes. Accused did not allow her and placed his pistol on his waistband. Seeing the gun, complainant cried and sobbed thinking that something else might happen again. At about 8:00 o'clock in the morning, the barrio captain, Florencio Tobias, of Toboanon arrived, went up the stairs and entered the bedroom. He tried to persuade her into acceding to a civil marriage with accused but she refused. She was threatened with an administrative charge by the barrio captain if she did not agree but she just dared them to go ahead. The barrio captain left. Just then, Demit Araña, brother of Trinidad, arrived and together with the latter again tried to convince complainant to marry accused but again she refused (pp. 34-36, tsn, Ibid).

At about 10:00 a.m., complainant's uncle, Engracio Aragon arrived calling for her name. She answered back and stood up but the accused pulled her by her dress and made to sit down (sic). Engracio Aragon reached up to the stairs but was intercepted by Trinidad Tismo and met by the accused at the doorway. Accused, armed with a pistol, threatened Engracio who was not able to do anything except to go downstairs. Complainant tried to follow her uncle but was prevented by the accused (pp. 36, 38, tsn, Ibid.)

At around 1:00 o'clock in the afternoon, she heard her younger brother, Rodrigo Avila, calling for her name from the outside. She answered that she was inside the house. Rodrigo was accompanied by their two nephews, Juan Acero, Tingting Logronio and some others. Complainant was able to get near the door with the accused holding her tightly. Her brother forced his way into the house and unsheathed his bolo which sent Trinidad Tismo, Demit Araña and Hospicio Tismo scampering away. Complainant was able to break loose from the accused and ran (sic) to her brother and embraced him while the accused ran away. They proceeded for (sic) home and arrived at the poblacion at past 3:00 o'clock in the afternoon (pp. 38-41, tsn, Ibid).

Complainant submitted herself to medical examination because she was then in pain all over her body. She was examined by Dr. Jose P. Rosal who thereafter issued her a medical certificate (Exh. "A"). Afterwards she filed a complaint (for rape) against the accused (pp. 42 & 43, tsn, Nov. 2, 1973)."[5]

Upon the other hand, the theory of the appellant is summarized in his Brief, thus:

"On the otherhand the defense sought to establish that accused and complainant Lolita Avila became acquainted and later on became sweethearts. According to the accused the accusation of complainant Lolita Avila is not true because they are sweethearts. Lolita Avila stayed with him of her own free will and voluntary act. That the hematoma's (sic) and abrasion suffered by complainant Lolita Avila Pacion was sustained by the latter when he (sic) was dragged by her brother out of the house of the accused. In his testimony he declared: He came to know Lolita Avila because she taught in their (accused's) barrio for about a year or less and besides, she used to stay in their house together with another teacher, Mrs. Brosas where they would eat their

meals at noon.

Lolita Avila and he became acquainted with each other and later on became sweethearts. He wrote her a letter and personally gave it to her. Lolita Avila merely received the letter. She accepted his offer of love to her but he cannot remember what month it was. He says that they are sweethearts because he kissed her and she allowed him to kiss her. After accepting his love Lolita Avila continued to eat in their (accused's) house.

The testimony of Lolita Avila that she was forcibly taken on December 12, 1972 to the house of Jose Calvara and raped by him is not true. The truth was that it was their agreement to go to the house of Jose Calvara. At about 5:00 o'clock that afternoon, December 12, 1972, Lolita Avila was in their (accused's) house because there was (sic) no more classes. He and Lolita Avila talked about their relationship and about getting married. They conversed for about an hour. After their conversation they went to the house of Jose Calvara which is just behind their house, to spend the night there. Lolita Avila was afraid to sleep in their (accused's) house because her brother and sisters might come. Lolita's brothers do not like him (accused) because he comes from a poor family. That night, Jose Calvara agreed to let them (Salustiano Tismo and Lolita Avila) to sleep (sic) in his house although Jose Calvara was apprehensive that he might be involved. Lolita Avila and he went up to the bedroom of Jose Calvara's house. Food for their supper was brought by his mother. While in the bedroom they kissed each other. They stayed in the bedroom the whole evening. It is not true that he tried to rape her three times because she said that they will have their sexual intercourse after the wedding. He was not able to have sexual intercourse with her that night.

It is true that Engracio Aragon went to the house of Jose Calvara on December 13, 1972. The purpose of Engracio Aragon in going there was to invite him to go to his (Aragon's) house to make arrangements for their (accused's and Lolita Avila's) civil marriage at the municipal building. He answered that he will go.

It is also true that Rudy Avila went to the house of Jose Calvara on December 13, 1972, after lunch. Rudy had several companions and they forcibly entered the house of Jose Calvara. They kicked open the door while he and Lolita Avila were still in the bedroom. When Rudy Avila appeared at the door of the bedroom he and Lolita Avila went out to talk to him but Rodrigo Avila slapped. Lolita Avila immediately Lolita Avila fell down and was maltreated. He approached Rudy Avila and told him not to maltreat her as it is their agreement but Rudy Avila drew his bolo and said, 'Sonny, do not interfere.' Rudy Avila kicked Lolita Avila on the thighs. He (accused) could not do anything. After that, Rudy Avila dragged Lolita Avila out while his nephews pushed Lolita Avila. Upon getting out, Rodrigo Avila said, 'Sonny, wait, we will come back and kill you.' Because he (accused) was afraid, he left the house of Jose Calvara."[6]

Questioned in the first two (2) assigned errors are the findings of fact of the trial court. In holding that appellant and the complainant were not sweethearts and that rape was indeed committed, the trial court made the following findings and conclusions:

"x x x Thus, it can be readily seen that the main questions to be resolved before the main question of rape itself are whether the complainant and the accused are or were sweethearts at the time of the incident and whether the complainant voluntarily or of her own free will went with the accused to the house of Jose Calvara to spend the night with him.

As stated above, relevant and material to the solution of the main question of rape in view of the disparity in the versions offered by the complainant and the accused is whether they were sweethearts at that time. The complainant maintains that she and the accused were not sweethearts although she admitted that the accused courted her by sending her a letter of love. On the other hand, the accused contends that he and the complainant were sweethearts. The accused declared in support of his claim that he and Lolita became sweethearts in March; that he wrote Lolita Avila a letter which he personally gave to her in their (accused's) house and said letter was received by Lolita Avila; that Lolita Avila accepted his offer of love but he cannot remember the month; that he says that they are sweethearts because he kissed Lolita Avila and she allowed

herself to be kissed by him; that Lolita Avila continued to eat in their (accused's) house after accepting his love. Although Lolita Avila admitted the fact that the accused sent her a love letter she denied that she answered him and accepted his love. After carefully scrutinizing the testimonies of the complainant and the accused on this point, the Court is inclined to believe the claim of the complainant that she and the accused were not sweethearts. The proof shown by the accused is too unconvincing to be believed. Not even the testimonies of Jose Calavara who expressed the conclusion that as far as his observation is concerned he believed that the accused and the complainant were sweethearts, and Mrs. Cristina Brosas who expressed the same view as Jose Calavara, can prop up the unconvincing evidence presented by the accused. The accused cannot even tell or remember when Lolita Avila accepted his love. He merely stated that he concludes that they were sweethearts because he kissed her and she allowed herself to be kissed yet, again he did not say when he made his first kiss on her and where. While it cannot be denied that memory is more tenacious on facts than on dates, yet, the occasion in a man's life of having been successful in the pursuit of his lady love is one event that registers most vividly and indelibly, most especially his first kiss, that it is just difficult to believe that a man would brush this away and cannot (sic) remember this singular and pleasurable event in his life. Moreover, the accused could not and did not present even a single momento (sic) or any concrete evidence of their love or their being sweethearts. He does not know the birth date of Lolita Avila. It is for these reasons that the Court finds itself unpersuaded by the accused's claim that he and Lolita Avila were sweethearts, more so that Lolita Avila had denied said fact likewise.

As to whether Lolita Avila was forcibly taken to the bedroom in the second floor of the house of Jose Calvara at Taboanon, Bureau, Leyte that evening of December 12, 1972 as claimed by her or whether she of her own free will accompanied the accused as claimed by the latter, a rigorous and impartial scrutiny of the evidence presented by the prosecution and the defense on the matter would show that Lolita Avila did not voluntarily go with the accused to the house of Jose Calvara. The first reason to support this view would be the fact or finding that Lolita Avila and Salustiano Tismo the accused are not or were not sweethearts. It would be the height of naivete on the part of the Court to believe that a lady public school teacher such as the complainant would readily spend the night with a man not her sweetheart in the house of a third person and with the full knowledge of the parents of the man and the owner of the house. Moreover, what the Court cannot understand is why the accused would bring Lolita Avila to the house of Jose Calvara in order to spend the night there when his house is just very near to (sic) the house of Jose Calvara, if his claim, that they were sweethearts was true. The Court cannot buy the accused's argument that they went to the house of Jose Calvara because they were afraid Lolita Avila's brothers might come to their (accused's) house because her brothers do not like him he being from a poor family, because if the claim of the accused that Lolita Avila voluntarily agreed to spend the night with him, then there was no need to fear for the brothers of Lolita Avila as the latter can just tell them that she wants to stay with the accused as she is in love with him. Lolita Avila, then being of age already can say so and there was no need to hide therefore in the house of Jose Calvara. That attempt to hide from the brothers of the complainant betrays the claim of voluntariness on the part of Lolita Avila in spending the night with the accused at the house of Jose Calvara. This is further bolstered by the fact that Lolita Avila was not allowed to attend to her classes the following morning. If it were true that Lolita Avila voluntarily went with the accused to the house of Jose Calvara, she would have been free to go out of the house and the accused would have nothing to fear because then he could just say that he did not force Lolita Avila to be with him and Lolita Avila herself could say so, but as it was, when Lolita Avila asked the accused to be allowed to go to her classes when she heard the school bell ring, the accuse (sic) did not allow her. As a matter of fact Lolita Avila and the accused stayed the entire morning in the same room they spent the night together, with the accused's brother and parents staying outside as if guarding them. Thus, if it was the intention of the accused and the complainant to leave the following morning as what Jose Calvara testified in trying to justify the defense's claim that Lolita Avila voluntarily spent the night with the accused why was it that they did not leave but instead stayed in the same room until the brother of Lolita Avila and companions forcibly took her away? These circumstances simply negates (sic) the claim of the defense that Lolita Avila stayed with the accused in the house of Jose Calvara that night of December 12, 1972 of her own free will.

As to the main question of the rape, the accused has presented the defense of denial. The accused denied having or trying to have sexual intercourse with Lolita Avila that whole night of December 12, 1972 when they were alone together in the bedroom at the second floor of the house of Jose Calvara at Taboanon, Burauen, Leyte. He said he did not have sexual intercourse with her because Lolita Avila said that they would have their sexual intercourse only after the wedding. All they did the whole night therefore was kissing and romancing (sic).

Again the Court finds itself unconvinced by this pretension of the accused. The Court finds it highly incredible and contrary to common experience and observation that the accused a healthy and well developed male of 18 or 19 years, alone the whole night in a room with the woman he loves, would just content himself (sic) with kissing and romancing (sic) her and not try to have sexual intercourse simply because he was told to wait until the wedding. Moreover, this claim of the accused is disputed by the complainant. The complainant Lolita Avila has pictured in stark details how the accused succeeded in having sexual intercourse with her despite her efforts to defend herself. There is more reason to believe the complainant's assertion because there is simply no motive on the part of the complainant to charge the accused with such a serious crime if it were not true. It is very hard to imagine that a woman such as the complainant herein who is a public school teacher would 'willingly expose herself to the embarrassment of a public trial, allow her private parts to be examined by a doctor, and narrate publicly the details of the violation of her person if indeed such were not the case.' It is noteworthy at this instance to state that the Court has closely observed the conduct of the complainant on the witness stand and the Court has noted her firm, categorical and straightforward testimony. Notwithstanding the long and searching questions propounded on (sic) her during which time she would now and then (sic) cry when she reaches that part of her testimony regarding the violation of her person, the complainant stuck to her claim that the accused succeeded in forcibly having sexual intercourse with her. The Court is convinced of the sincerity of her testimony. The Supreme Court in the case of *People vs. Royeras*, L-31886, April 29, 1974 ruled that 'When a woman testifies that she has been raped, she says in effect all that is necessary to show that rape has been committed. If the testimony is not improbable, the defendant may be convicted on the basis of such uncorroborated testimony' (*U.S. vs. Ramos*, 1 Phil. 81). This is what the complainant has done in this case. In addition to her testimony she has likewise shown her clothing and intimate garments, ripped and torn, mute witnesses to the futile resistance she put up.

The Court has seriously considered the testimony of Dr. Jose P. Rosal, the physician who conducted the internal examination on Lolita Avila who in addition to his findings that the external genitalia of the complainant at the time of his examination was normal; that there was slight congestion but no lacerations seen at the introitus and hymen; that the vagina barely admits two fingers with difficulty (sic) and interse (sic) pain; that whitish and viscous discharge was seen at and taken from the vagina and that microscopic examination showed that it was negative for spermatozoa, declared that he cannot categorically say that the victim was raped. After a thorough analysis of said testimony, the Court is of the considered view that said opinion of Dr. Rosal does not change the conclusion reached by the Court in view of the pertinent rulings of the Supreme Court on the matter. In the case of *People vs. Cañete*, L-340491, Jan. 21, 1972, the accused were convicted of (sic) rape notwithstanding the absence of laceration (sic) in the complainant's vagina at the time of her medical examination in an effort to show that her testimony was incredible (sic). In that case, the vagina of the victim also admitted two fingers but 'very tightly' and with some pain. In brushing aside the claim of the accused, the Supreme Court citing 3 Wharton and Stille Medical Jurisprudence, mentioned of 'the case of a girl 18 years of age, whose vagina was notably enlarged by coition, although the hymen was uninjured. This membrane was crescentic, thick and fleshy, but as elastic as india rubber.' This may be applied here although it was unfortunate that the matter of the complainant's lack of laceration (sic) in her vagina was not raised by the defense in view of their stand that there was no sexual intercourse.

The finding of Dr. Rosal that microscopic examination of the whitish discharge taken from complainant's vagina was negative for spermatozoa can be explained by the fact that the examination conducted by him was two days after the incident. As ruled in the case of *People vs. Solfaison, et al.*, L-14732, Jan. 28, 1961, 'The

fact that during the physical examination of the complainant no spermatozoa was found in their organ does not necessarily mean that they (sic) had not been raped. The slightest (sic) penetration is sufficient to consummate the rape. The complainant must have washed or flushed themselves (sic), not only for the sake of cleanliness but more particularly to avoid conception.' As stated above, the lack of spermatozoa in the whitish discharge taken from the vagina of the complainant may be due to the fact that the examination was made two days after the incident and that the complainant may have flushed or washed herself.

On the basis of the evidence presented, the Court is morally convinced that the accused did rape the complainant. The Court however cannot go along with the contention of the prosecution that the rape was committed with the use of a firearm. The evidence presented by the prosecution was not clear and convincing as to the use of the said firearm. The matter of the firearm just dropped up suddenly in the course of the testimony of the complainant during her struggle to free herself when brought to the bedroom at the second floor of the house (sic) of Jose Calvara. But even assuming that the firearm was duly shown to be with the accused, the evidence just do (sic) not show that the rape was accomplished with the use of the said firearm. Said firearm cannot therefore be considered in the computation of the penalty to be imposed." [7]

It is a well-settled rule, reiterated in a long line of cases, that appellate courts will generally not disturb the factual findings of the trial court since the latter are in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying, unless it is found that the trial courts have plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. [8]

In the review of rape cases, however, this rule must yield to the following basic principles: (1) an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two (2) persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. [9]

In the light thereof, We ruled in the recent case of *People vs. Pido* [10] that in rape cases:

"x x the culpability of the offender almost invariably hinges on the story of the complainant. In the light of the presumption of innocence that the accused enjoys, the complainant's testimony must perforce be carefully scrutinized and examined to satisfy the judicial conscience that the accused did in fact commit the crime. Her testimony should not be received with the precipitate credulity, especially when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. Such testimony must be impeccable and ring true throughout, or credible and positive. Clearly, therefore, as in other criminal cases, the evidence for the prosecution in rape cases must stand or fall on its own merits; it cannot be allowed to draw strength from the weakness of the evidence for the defense. x x x"

However, equally settled is the rule that when a woman says she has been raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. [11]

The reason for this seems quite obvious, especially with respect to the Filipina. Considering a Filipina's inbred modesty and antipathy in airing publicly things that affect her honor, it is hard to conceive that she would assume and admit the ignominy she had undergone if it were not true. [12] A complainant would not risk ruining her future and exposing herself to ridicule if her charge were not true. [13] If she does undergo the expense, trouble and inconvenience of a public trial, suffer the scandals, embarrassments and humiliation such action would indubitably invite, as well as allow an examination of her private part, it is to bring to justice the person who had

abused her.[14] Indeed, if a complainant had voluntarily consented to have sex with the accused, her most natural reaction would have been to conceal it and keep it is this would bring disgrace to her honor and reputation as well as to her family.[15]

We have painstakingly studied the records of this case, and with the above principles as Our guiding light, We do not hesitate to conclude that the findings and conclusions of the trial court are fully supported by that quantum of proof required for the conviction of the accused. More specifically, as to the issue of whether appellant and the offended party were sweethearts, the former had the burden of proving that indeed they were. We agree with the trial court that appellant failed to do that. Not only was this claim categorically denied by the offended party, but there was no substantial evidence, such as "love notes, mementoes or pictures," presented by the appellant,[16] to support it.

Even granting for the sake of argument that appellant and the offended party were in fact sweethearts, that fact alone would not negate the consummation of rape. A sweetheart cannot be forced to have sex against her will;[17] from a mere fiancée a man cannot definitely demand sexual submission and worse, employ violence upon her on mere justification of love. Love is not a license for lust.[18] In the instant case, the acts committed by the appellant are clearly inconsistent with his claim of a special amorous relationship; his were acts of a frustrated suitor who, in a remarkable display of vengeance because of an unrequited love, substituted love's tender care with the violence of his bestial instincts. What moved him was spiteful lust.

As to the second assigned error, appellant has not shown Us any plausible and acceptable reason why the offended party would impute upon him an offense so grave and heinous such as rape. If she were indeed his sweetheart, as he proudly claimed, appellant must prove some ill-motive on her part, for her immediate denunciation of the act and submission to an examination of her private organ are hardly the acts of a sweetheart, or, in the words of *People vs. Mancilla*,[19] are "hardly the conduct of a young woman who has just been transported with ecstasy in the discovery of the pain and the sweetness and the promise of a portal that is opened to a tremblingly anticipated guest."

The offended party in this case is a public school teacher. Absent the most compelling reason or motive, it is inconceivable that she would openly and publicly tell a lie or concoct a story which could send a man to jail. In *People vs. Avila*,[20] this Court said:

"Indeed, it is improbable for the complainant, a public school teacher, to fabricate matters and thereby undergo the travails of a public trial exposing herself to humiliation and embarrassment by unraveling nasty matters against her virginity by lodging against her supposed sweetheart so grave and serious a charge, if not true." [21]

As to the absence of lacerations at introitus and hymen, and of spermatozoa, the rule is settled that to sustain a conviction for rape, full penetration is not required; proof of entrance of the male organ within the labia or pudendum of the female organ is sufficient;[22] the slightest penetration of the labia of the pudendum is sufficient;[23] penetration of the penis by entry into the lips of the female organ even without rupture or laceration of the hymen is sufficient;[24] laceration of the hymen is not necessary to prove the consummation of rape;[25] and a finding that the victim's hymen is intact does not negate rape.[26] Also, absence of spermatozoa does not negate rape.[27]

And now on the third assigned error.

There is merit in the appellant's claim that he was 17 years old at the time the crime was committed; however, We agree with the appellee that there is nothing on record to prove voluntary surrender. The crime was committed on 12 December 1972. When he testified on 11 April 1975, or two (2) years, three (3) months and 29 days later, appellant stated under oath that he was 19 years old.[28] It logically follows that he was less than 18 years old on

12 December 1972. In the summary of the evidence in its decision, the trial court categorically stated that appellant was 19 years old at the time he testified.[29] In another, portion of the decision, the court, disbelieving the testimony of the appellant that he did not have sexual intercourse with the complainant, describes the appellant as "a healthy and well developed male of 18 or 19 years." [30] The prosecution did not bother to cross-examine him on his age or to present contradictory evidence. There is then reasonable doubt upon this issue, to the benefit of which the appellant is entitled. In the 1903 case of U.S. vs. Bergantino,[31] the accused testified that she was below 15 when the crime was committed; this was corroborated by her mother and her husband. No other evidence, like the baptismal certificate, was offered to support this claim. The prosecution did not offer any contradictory evidence. This Court gave credit to the testimony of the accused, holding that:

"While the evidence upon this point is not entirely satisfactory, yet it is a sufficient to raise a reasonable doubt upon this material question in the case, to the benefit of which the defendant is entitled. The baptismal certificate or other evidence of this character would have been much more satisfactory to the court, and, if obtainable, should have been introduced. Neither the prosecution nor the defendant saw fit to introduce such evidence."

Then in U.S. vs. Roxas,[32] where the trial court rejected the claim of the accused that he was but 16 years old because it was not corroborated by other proof, this Court overturned said ruling in this wise:

"The evidence shows that the prosecution made no attempt to prove that the defendant was more than 16 years of age. We are of the opinion that the statement of the defendant that he was but 16 years of age, until the fact is disproved by other evidence, must be accepted as a fact. There is nothing in the record which shows that the statement of the defendant was untrue."

In U.S. vs. Barbicho,[33] We ruled:

"In regard to the doubt as to whether the accused is over or under 18 years of age, and in the absence of proof that on the day he committed the crime he was 18 years old, he must perforce be considered as still under that age, and therefore, the mitigating circumstance mentioned in paragraph No. 2 of article 9 of the code should be applied in his favor x x x."

In U.S. vs. Agadas, et al.,[34] this Court held:

"While it is true that in the instant case Rosario testified that he was 17 years of age, yet the trial court reached the conclusion, judging from the personal appearance of Rosario, that 'he is a youth 18 or 19 years old.' Applying the rule enunciated in the case just cited, [U.S. vs. Estavillo and Perez, 10 Off. Gaz. 1984] we must conclude that there exists a reasonable doubt, at least, with reference to the question whether Rosario was, in fact, 18 years of age at the time the robbery was committed. This doubt must be resolved in favor of the defendant, x x x."

We therefore rule that the appellant was less than 18 but more than 15 years of age when the crime in question was committed and that, therefore, he is entitled to the privileged mitigating circumstance of minority under the second paragraph of Article 13 of the Revised Penal Code. And pursuant to the second paragraph of Article 68 of said Code, the penalty next lower than that prescribed by law shall be imposed upon him. The penalty prescribed for the crime of rape, as established in this case, is reclusion perpetua.[35] The penalty next lower in degree is reclusion temporal.[36] No aggravating circumstance was proven by the prosecution. Appellant urges this Court to appreciate in his favor the ordinary mitigating circumstance of voluntary surrender. As We stated above and shall show later, the plea has no basis. Pursuant then to Article 64 (1) of the Revised Penal Code, the penalty should be imposed id its medium period.

As to the ordinary mitigating circumstance of voluntary surrender, appellant merely claims in his Brief that he

"voluntarily went to the PC Headquarter (sic)."[37] If indeed he did so in order to surrender, then We find no reason why he deliberately suppressed from his solemn claim the most important word -- surrender. Appellant was just being candid and honest. He did not surrender. The trial court found that he was arrested after a warrant for his arrest was issued.[38] In order that voluntary surrender may be appreciated, it is necessary that the same be spontaneous in such manner that shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred for his search and capture.[39]

Finally, on the fourth assigned error, the appellant faults the trial court for awarding to the offended party the amount of P12,000.00 as indemnity. The error is premised on the claim that no rape was committed and that there is no proof that damage was sustained. As discussed above, appellant committed the crime, and as correctly pointed out by the appellee, the offended party suffered pain and shame. Asked why she was crying on the witness stand, she answered:

"Because I remember the pain I suffered and the shame I encountered (sic) to the public.[40]

She is, therefore, entitled to moral damages pursuant to Article 2219 of the Civil Code which provides that moral damages may be recovered in cases of seduction, abduction, rape or other lascivious acts. Considering that the offended party is a public school teacher, the award of P12,000.00 is inadequate. Conformably, therefore, with recent decisions of this Court, the indemnity should be increased to P50,000.00.[41]

The appellant is entitled to the benefits of the Indeterminate Sentence Law.[42] He may, therefore, be sentenced to an indeterminate penalty whose minimum shall be within the range of prision mayor and whose maximum shall be that as above stated after appreciating in his favor the privileged mitigating circumstance of minority.

WHEREFORE, judgment is hereby rendered AFFIRMING the decision appealed from finding the appellant, SALUSTIANO TISMO, guilty beyond all reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, subject to the modifications above indicated. As modified, the appellant is hereby sentenced to an indeterminate penalty ranging from TEN (10) YEARS of prision mayor as Minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal as Maximum, and to indemnity the offended party in the sum of P50,000.00.

The appellant shall be entitled to a full credit of the period of his preventive imprisonment.

No pronouncement as to costs.

IT IS SO ORDERED.

Gutierrez, Jr., Bidin, and Romero, JJ., concur.

Fernan, C.J., on leave.

[1] Decision, 2-3; Rollo, 32-33.

[2] Id., 72.

[3] Id., 78.

[4] Rollo, 120-145.

[5] Brief for Appellee, 2-14.

[6] Brief for Appellant, 7-8; Rollo, 128-130.

[7] Rollo, 62-71.

[8] Among the recent cases reiterating this doctrine are *People vs. Beringuel*, 192 SCRA 561; *People vs. Montante*, 192 SCRA 483; *People vs. Mañago*, 191 SCRA 552; *People vs. Felipe*, 191 SCRA 176; *People vs. Toring*, 191 SCRA 38; *People vs. Serio*, 190 SCRA 548; *People vs. Manzon*, 190 SCRA 378; *People vs. Gupo*, 190 SCRA 7; *People vs. Manalansan*, 189 SCRA 619; *People vs. Demecillo*, 186 SCRA 161; *People vs. Payumo*, 187 SCRA 265.

[9] *People vs. Aldana*, 175 SCRA 635; *People vs. Alburo*, 184 SCRA 655; *People vs. De Guia*, 185 SCRA 336.

[10] G.R. No. 92427, 2 August 1991, consolidating rulings in various cases.

[11] *People vs. Avero*, 165 SCRA 130; *People vs. Poculan*, 167 SCRA 176; *People vs. Abonada*, 169 SCRA 530; *People vs. Rosell*, 181 SCRA 679; *People vs. Dalinog*, 183 SCRA 88; *People vs. Barcelona*, 191 SCRA 100.

[12] *People vs. Magdaraog*, 160 SCRA 153; *People vs. Bulosan*, 160 SCRA 492; *People vs. Avero*, supra.; *People vs. Fernandez*, 165 SCRA 302; *People vs. Pacnis*, 165 SCRA 609; *People vs. Eclarinal*, 182 SCRA 106; *People vs. Fabro*, 191 SCRA 386.

[13] *People vs. Cariño, Sr.*, 167 SCRA 285.

[14] *People vs. Muñoz*, 163 SCRA 730; *People vs. Viray*, 164 SCRA 135; *People vs. Robles*, 170 SCRA 557; *People vs. Estebal*, 173 SCRA 209; *People vs. Albarillo*, 188 SCRA 113; *People vs. Camasis*, 189 SCRA 649.

[15] *People vs. De Dios*, 187 SCRA 228.

[16] *People vs. Soterol*, 140 SCRA 400; *People vs. Hacbang*, 164 SCRA 441.

[17] *People vs. Timbang*, 189 SCRA 279.

[18] *People vs. Mercado*, 161 SCRA 601.

[19] 173 SCRA 373.

[20] 192 SCRA 635.

[21] Citing *People vs. Nunag*, 173 SCRA 274.

[22] *People vs. Bacani*, 181 SCRA 393; *People vs. Mangalino*, 182 SCRA 329.

[23] *People vs. Somera*, 170 SCRA 428; *People vs. Cruz*, 180 SCRA 765; *David vs. Court of Appeals*, 182 SCRA 675.

[24] *People vs. De Guia*, supra.

[25] *People vs. Tumulad*, 188 SCRA 203; *People vs. Ortiz*, 189 SCRA 239.

[26] *People vs. Abonada*, supra.

[27] *People vs. Bulosan*, supra.; *People vs. Villanueva*, 162 SCRA 257; *People vs. Sato*, 163 SCRA 602; *People vs. Tabago*, 167 SCRA 65; *People vs. Ando, Jr.*, 180 SCRA 412; *People vs. Eclarinal*, supra.; *People vs. Barro, Jr.*, 188 SCRA 284; *People vs. Paringit*, 189 SCRA 478.

[28] Rollo, 23.

[29] Rollo, 55.

[30] Id., 67.

[31] 3 Phil. 118.

[32] 5 Phil. 375 (1905).

[33] Phil. 616.

[34] 36 Phil. 246.

[35] Article 335, Revised Penal Code.

[36] Article 25, Id.

[37] Rollo, 144.

[38] Id., 32.

[39] People vs. Sakam, 61 Phil. 27; People vs. Namoc, 106 Phil. 1166; People vs. Lagrana, 147 SCRA 281; People vs. Alegarbes, Jr., 154 SCRA 125; People vs. Lingatong, 181 SCRA 424.

[40] TSN, 2 November 1973, 29.

[41] People vs. Felipe, 191 SCRA 176; People vs. Godines, et al., G.R. No. 93410, 7 May 1991.

[42] Act No. 4103, as amended.

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