

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENEDICTO CRUZ Y MACALALAD, ACCUSED-APPELLANT.

G.R. No. 101844. November 18, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The accused-appellant Benedicto M. Cruz questions the decision of the Regional Trial Court, Branch 152, Pasig, Metro Manila which found him guilty beyond reasonable doubt of the crime of robbery with rape and sentenced him to an indeterminate penalty of imprisonment from Twelve (12) Years of prision, mayor, maximum to Seventeen (17) Years of reclusion temporal medium, and to indemnify the victim in the sum of Ten Thousand Pesos (P10,000.00) for moral damages and One Thousand One Hundred Twenty Pesos (P1,120.00) for the value of the property which was taken.

The appeal was originally raised to the Court of Appeals. The Court of Appeals affirmed the judgment of conviction but modified the penalty. Appellant Cruz was found guilty of two (2) crimes: First for rape, where he was sentenced to reclusion perpetua, and second for robbery, where he was sentenced to an indeterminate penalty of Six (6) Months and One (1) Day of prision correccional as minimum to Six (6) Years and One (1) Day of prision mayor as maximum.

Following the rule found in Section 13, paragraph 2 of Rule 124 of the Rules of Court and the precedents set in *People v. Daniel* (86 SCRA 511 [1978]), *People v. Ramos* (88 SCRA 486 [1979]) and *People v. Traya* (89 SCRA 274 [1979]) that when the penalty of reclusion perpetua or higher is imposed in a case, the Court of Appeals after discussing the evidence and the law involved, shall render judgment imposing the penalty, refrain from entering judgment and forthwith certify the case and elevate the entire records thereof to the Supreme Court for review.

The decision of the Court of Appeals reads as follows:

"Accused Benedicto M. Cruz (Benedicto for brevity) appeals from the Decision dated February 5, 1990 of the Regional Trial Court, Branch 152, at Pasig, Metro Manila, convicting him of the crime of Robbery with Rape defined and penalized under Article 293 in relation to Art. 294 of the Revised Penal Code as amended by Presidential Decree No. 767.

STATEMENT OF THE CASE

On February 13, 1989, Benedicto was accused of the crime of Robbery with Rape in an Information reading as follows:

That on or about the 31st of January, 1989 in the municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the intent of gain and by means of violence and intimidation, did, then and there wilfully, unlawfully and feloniously take, steal and carry away the following items, to wit:

1. One (1) Citizen wrist watch -----
2. One Gold necklace with cross pendant -----
3. Cash money -----

P350.00

450.00

120.00

P1,120.00

with the total amount of P1,120.00, belonging to one Ana Esconde y Omogowog, to the damage and prejudice of the said Ana Esconde y Omogowog in the aforesaid amount of P1,120.00; that on the occasion of the said robbery, the accused by means of violence and (sic) wilfully, unlawfully and feloniously have carnal knowledge upon the person of said Ana Esconde y Omogowog against her will.

Contrary to law. (p. 1, Record)'

On February 5, 1990, the trial court convicted Benedicto of the crime charged in the above information. The dispositive portion of the trial court's decision reads as follows:

'WHEREFORE, premises considered, the Court finds the accused Benedicto M. Cruz GUILTY beyond reasonable doubt of the crime of robbery with rape defined and punished under Article 293 in relation to paragraph 2, Article 294 of the Revised Penal Code as amended by PD No. 767 without any mitigating nor aggravating circumstance attendant thereto and after applying the Indeterminate Sentence Law, sentences him to suffer imprisonment from TWELVE (12) YEARS of prison mayor, maximum to SEVENTEEN (17) YEARS of reclusion temporal medium, to indemnify the victim Ana Esconde, P10,000.00 as moral damages, and to pay the sum of P1,120.00 value of the property taken, without subsidiary imprisonment in case of insolvency, and to pay the cost.

SO ORDERED. (pp. 7-8, RTC Decision, x x x)'

Hence, this appeal wherein Benedicto assigned the following errors:

I

THE COURT A QUO ERRED WHEN IT CONVICTED THE ACCUSED OF ROBBERY WITH RAPE, WHEN ACTUALLY THERE WAS NEITHER RAPE, NOR ROBBERY.

II

THE COURT A QUO ERRED WHEN IT BELIEVED THE COMPLAINANT THAT THE RAPE WAS CONSUMMATED INSIDE THE COMFORT ROOM WHEN THE PLACE AND THE POSITIONS AND CIRCUMSTANCES AS TOLD BY THE COMPLAINANT, THE SEXUAL ACT COULD NOT HAVE BEEN PHYSICALLY DONE.

III

THE COURT A QUO ERRED WHEN IT SAID THAT THE TAKING OF THE PERSONAL PROPERTIES WAS NOT DISPUTED BY THE DEFENSE.

IV

THE COURT A QUO ERRED IN QUOTING MANY UNFACTUAL FACTS OF THE CASE WHICH GIVES DOUBTS AS TO ITS HONEST AND ACCURATE EVALUATION OF THE EVIDENCE TO IT.'

The issues raised in the above assignment of errors boil down to whether or not, under the facts and circumstances established by the evidence, Benedicto is guilty of the Special Complex Crime of Robbery with Rape, a joint discussion of these assignment of errors is warranted.

An accusation for rape can easily be made because the nature of the crime is such that its veracity is difficult to prove or disprove. In such an offense where it is usually only the accused and his victim who can testify as to its occurrence, conviction or acquittal hinges almost solely upon the credibility of the witnesses (see *People v. Lucas*, G. R. No. 80102, January 22, 1990).

The Supreme Court was more emphatic on this in *People v. David* (G.R. No. 72355-59, Sept. 15, 1989):

'Ang kasalananang panggagahasa ay totooang mahirap patunayan sapagkat ang karaniwang nakakaalam lamang nito ay ang pinagsamantalahan at ang nagsamantala. Samakatuwid, hindi maasahan na mayroon pang ibang makapagpapahayag ng pangyayari. Hindi pangkaraniwan na ang salang ito ay nagaganap ng may saksi. Sa ganitong dahilan ang hukuman ay umaasa sa katapatan ng pahayag ng nagsusumbong at tinitimbang ito laban sa pagtanggì o pagpapasinungaling ng inuusig. (see *People v. Barranco*, G.R. No. 58847, August 31, 1989).'

In the case at bar, the court a quo found 'no room to doubt the credibility of the complainant and her version of the incident.' It expressed in its assailed Decision that Ana's testimony is 'positive and sufficient to justify a conviction.'

We concur with the trial court's deduction not only because it was in a better position to observe the witnesses' demeanor, and manner of testifying so much so that its findings on the credibility of the witnesses are entitled to great weight (see *People v. Patola*, 141 SCRA 401), but also because after scrutinizing and evaluating the testimony of the complaining witness as transcribed in the transcript of stenographic notes, We find her firm and straightforward in her answers to the incisive interrogations of the defense. This, despite the fact that she was observed by the defense to be visibly pregnant at the time they grilled her on stand. Her testimony is clear and cohesive, free from any serious contradictions. She was unwavering in her identification of Benedicto as her defiler, to wit:

'On January 28, 1989, she got married in Bicol (TSN, August 30, 1989, p. 3). After spending two days there, she and her spouse, together with her sixteen year old nephew, returned to Manila on January 31, 1989. It is her nephew's first time to come to Manila. He still does not know how to speak Tagalog. They reached the city at around 9:00 o'clock A.M. of the same day (p. 9). Upon their arrival in their two-storey apartment, her husband went to work, leaving her and her nephew in their apartment. After her husband left their apartment, she locked its main door (p. 20.). In the afternoon of the same day, her nephew was sleeping in a room located at the upper floor of their apartment. Her nephew was at that time sick (p. 20) with flu (p. 6). At around 5:00 o'clock P.M. of the same day, she was inside their comfort room, 'dumudumi' (p. 3). The comfort room was then closed (p. 16). All of a sudden, Benedicto barged inside of the comfort room and thereafter closed the door (p. 17)_. At that time, she had just finished 'dumudumi' (p. 4) and had just stood up with her maong shorts and her panty down below her knees (p. 18). On top, she was wearing a blouse (p. 7). She was not able to pull up her panty and maong shorts (p.

6) because she was caught aback. Because the main door of their apartment was locked (p. 3), she suspected that Benedicto climbed thru the kitchen (where one can also gain entry to their apartment). Thereafter, Benedicto choked her (p. 3). She was able to shout for 'saklolo' many times but Benedicto slapped her (pp. 5 & 10), causing her mouth to bleed (p. 10). And then Benedicto pushed her, causing her to fall to the ground of the comfort room (p. 5). Her head fell near the side of the closed door of the comfort room and her feet beside the 'inodoro' (p. 19). At that time, her panty and maong shorts were still down her knees (pp. 18 & 6) but her bra and blouse were still on (p. 21) and she has not washed herself yet (p. 18). Despite that, Benedicto 'put down' his short and brief (p. 6) and suddenly laid on top of her (pp. 5 & 18). She felt his private part entered her private part. After a few minutes (p. 7), he stood up. He saw her watch with a leatherette bracelet and tried to grab it (p. 9). This pained her arms (p. 9) because she was reclining then (p. 10), so she just removed her watch and gave it to Benedicto (p. 9). Unsatisfied, he grabbed her necklace, hurting her neck (p. 9). He also asked for her money. For fear that he might harm her, she got her One Hundred Twenty (P120.00) Pesos from her pocket (p. 7) and gave it to him (p. 9). Thereafter, he went out of the comfort room and threatened her not to tell her husband about the incident otherwise he will kill her (p. 7). When Benedicto left the place where he is standing outside of the comfort room, she immediately put on her panty and her shorts and went out of the comfort room. She found her nephew sitting downstairs (p. 5). She also saw Benedicto passed beside her husband who had just arrived and did not know what had happened to her. Her husband saw Benedicto (p. 9) but only after the incident. When her husband came near her, she related to her husband that she was raped and her money and jewelries were taken (p. 10). Her husband immediately chased Benedicto. This created a commotion which attracted the attention of their neighbors. She learned from them (their neighbors) that they did not help her because they thought that she and her husband were just quarreling (p. 9). She also learned from her nephew that the latter, who was then upstairs at the beginning of the incident, went down to the ground floor when he heard her shout. But her nephew did not do anything, thinking that she and her husband were only quarreling (p. 20), and besides, he was sick with flu at that time. Also, her nephew just came from the province and does not know how to speak Tagalog (p. 5).

She claims that she does not know Benedicto before the incident happened but she testified having seen him passing by their apartment (p. 8).

She and her husband reported the matter to the police immediately after the incident on the same day (pp. 10 & 12). After she narrated everything to the police (Exh. "C", Prosecution), Pat. Celso Cruz of the Marikina Police asked her to just come back because there was nobody who would investigate her case. At any rate, she was told to proceed to the Eulogio Rodriguez, Sr. Memorial Hospital, District Health Office II, at Marikina, Metro Manila, for medical examination. She heeded the advice and on the same day, she went to E. Rodriguez Hospital. She arrived there at 7:00 o'clock in the evening. There, she only complained about the parts of her body where she was slapped and choked (p. 3). She did not relate to the examining doctor that she was raped because she was told by Pat. Celso Cruz that they do not examine rape victims at E. Rodriguez Hospital (p. 14). She was advised by the police to go instead to the Camp Crame for examination (p. 14). The E. Rodriguez Hospital issued her a Medical Certificate some days later, reading as follows:

"This is to certify that ANA ESCONDE Female, 24 years, of D. Bakal, Sto. Niño, Marikina, Metro Manila examined/treated in this hospital from/on January 31, 1989 x x x (sic) for the following:

Hematoma 3 cm, x 3 cm. right zygomatic area Hematoma, 0.5 cm. x 0.5 cm. lateral aspect right upper lip.

Erythema, 4 cm. linear, anterior neck, left. xxx" (p. 111, Records)

Following the advice of Pat. Celso Cruz, she went to Camp Crame on the same day. They arrived at Camp Crame late that night (p. 3). Unfortunately, no doctor was around (p. 3), so they were told to come back the next day. The

following day, she was subjected to a laboratory examination at the Camp Crame. They also examined her private parts (p. 3). After several days, she was issued a Medico Legal Report (p. 3) (Exh. "B", Prosecution), reading as follows:

GENITAL AND EXTRAGENITAL:

"Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with dark brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and soft."

There is abundant growth of pubic hair. Labia majora are full, convex and gaping with the pinkish red, hypertrophied labia minor preventing in between. On separating the same are disclosed an abraded posterior forchette and an elastic, fleshy-type hymen with shallow, healed laceration at 7 and deep healed lacerations at 3, 6 and o'clock. External vaginal orifice offers slight resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency with moderate amount of whitish, mucoid secretion.

C O N C L U S I O N :

"Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma.

REMARKS:

Vaginal and peri-urethral smears are positive for extracellular gram-negative diplococci but negative for spermatozoa.

TIME AND DATE COMPLETED: 1120H, 07 February 1989" (p. 114, Records)

She went back to the Police Station on February 3, 1989.

Ana's testimony on her injuries on her face and neck, caused when Benedicto choked and slapped her and when Benedicto abruptly grabbed her necklace, was confirmed on stand by Dr. Jose Rey Raquepo, the resident physician who examined her at the E. Rodriguez Hospital. Dr. Raquepo identified the above Medical Certificate he issued and declared in open court that:

At around 7:30 PM on January 31, 1989 (TSN, Sept. 20, 1989, p. 7), he treated Ana's injuries on her face and neck (p. 8). He explained that the first and second entry (Hematoma) in the above certificate is 'pasa' which may have been caused by a blunt object, like a wood, stone, steel or an open fist; while the third entry (Erythema) is 'namula' which may have been caused by a blunt or may have been caused by choking or by scratching the skin by finger nails.

Dr. Desiderio Moraleda, the physician at the PC Crime Laboratory at Camp Crame, Quezon City, who examined Ana on February 1, 1989 also testified and he explained the method he used in arriving at his findings embodied in the above Medical Report he issued to Ana:

He inserted a speculum in Ana's vagina. He found that Ana's internal as well as the external organ were already altered because the 'labia mejora is already creeping hypertrophied labia minora'. Also 'the hymen shows deep insertion of the vagina speculum and an index finger offers only slight resistance.' Thus, his conclusion in the above Medical Report that: 'subject is in non-virgin state physically' (TSN, Oct. 31, 1989, p. 2). He explained further that the hymen is a fleshy membrane that hangs and partially covers the opening of vaginal canal. The insertion of any object to the vaginal canal will or may lacerate this membrane. The laceration of the hymen is

usually caused by sexual intercourse. The examination of Ana's hymen, however, showed that there were shallow healed laceration at 7 and deep healed lacerations at 3, 6 and 9 o'clock position. These are like the face of the clock, 3, 6 and 9 o'clock. His finding is that Ana's laceration has already recuperated, and usually laceration healed in two weeks time. But he is quick in adding that if a woman has already lost her virginity by previous sexual intercourse, succeeding intercourse cannot produce new laceration.

He also explained that the entry under remarks in the medico legal report: 'vaginal and peri-urethral smears are positive for extracellular gram-negative diplococci but negative for spermatozoa', means that Ana is negative for spermatozoa of a male germ cell but is positive of extracellular bacteria ('extracellular gram-negative diplococci'). This bacteria is the one that cause gonorrhea (sic), usually introduced by sexual intercourse of an infected partner. Very rarely could this bacteria be transmitted or caused by using dirty water because it cannot exist long outside of the vagina. Usually, in order to be infected with gonorrhea (sic), the bacteria should be inside the cell. In Ana's case, there is no infection yet because the bacteria is still outside her cell. He is quick to emphasize that the absence of spermatozoa does not necessarily mean that there was no sexual intercourse because there are cases of rape of women where the rapist could not have ejaculated.

The entry which says that 'there is no external signs of any form of trauma' means that there is no injury in the whole body at the time of their examination. But again he emphasized that this does not necessarily mean that before he examined Ana, she sustained no injuries. It really depends on the gravity of the injury. There are injuries which can only cause the reddening of the face. These injuries could disappear the following day.

Pat. Celso Cruz also confirmed on stand that:

At the date of the incident, Ana came to their station. He advised Ana to go to the E. Rodriguez Hospital and Camp Crame for medical examination because he noticed that she has injuries (TSN, Sept. 11, 1989, p. 11). He took Ana's statement three (3) days after (p. 12) the date of the incident.'

Ana's husband, Jimenez Esconde, substantiated Ana's testimony specially on the events that transpired immediately after the rape. He declared that:

"They rent a small apartment (TSN, August 16, 1989, pp. 8-9) consisting of two (2) floors (p. 9). One can enter their apartment thru its front door located at its ground floor and by passing thru the kitchen at the back of their apartment, by using a stand (p. 10). Their ground floor has no window (p. 10). In this floor, their comfort room can be found. Their comfort room measures about 1 1/2 by two (2) meters. At the upper floor of their apartment, there are two (2) rooms (p. 9).

At about 5:00 o'clock in the afternoon of January 31, 1989 the day of the subject incident, he went home from his upholstery shop (p. 3). Upon reaching the main entrance of their apartment, he pushed their main door. It was locked (p. 4), so he went around their house (p. 10) and entered their apartment by passing through their kitchen going to the second floor. When he was already near the door of their room. at the second floor (p. 4), he saw Benedicto, then attired in shorts and blue t-shirt (p. 7), facing the opened door (p. 6) of their comfort room (p. 5) and pointing his finger and talking to 'somebody' inside the comfort room. He hid himself. But from his place where he was at that time, he cannot see the inner portion of the comfort room (p. 6). He heard Benedicto to have said to that 'somebody' in the comfort room 'Ikaw huwag kang magsusumbong sa asawa mo, papatayin kita.' (p. 4). When he heard Benedicto uttered those words, he went out from where he is hiding (p. 16). Benedicto saw him and passed beside him, and told him: 'Ikaw, may atraso sa akin'. He did not do anything as he was caught aback by Benedicto's statement. He was thinking about what his 'atraso' is (p. 5). Benedicto at that time had left by passing thru the kitchen (the same way he entered their apartment) (p. 20). When Benedicto left, he saw his wife came out from the comfort room (p. 17). Her mouth was bleeding. He came near her and asked her what

happened. She related that she was abused: 'Pinagsamantalahan daw po siya' (p. 5). Upon hearing that, he immediately chased Benedicto but he was not able to catch him because 'he was already at a far distance' (p. 6).

When placed on stand, accused Benedicto claims that:

Ana is his neighbor (TSN, Nov. 10, 1989, p. 3) and his sweetheart (p. 2) since December 8, 1988. On the date of the incident on January 31, 1989, he happened to pass by Ana's apartment in going home from a day's heavy driving of a passenger tricycle. At Ana's apartment door, he saw Ana standing. Ana called her. He came near her. She invited him to come inside their house. When he acceded and he entered Ana's apartment, Ana closed the door of the apartment. She asked him to sit in the long sofa located at the ground floor of their apartment. Thereafter, she sat beside him and 'nilalandi po ako.' She is 'trying to embrace me and caress me' (p. 4). then they kissed each other (p. 3). Suddenly, he felt that someone is walking upstairs (p. 4). So he asked her if there are people upstairs. She answered 'yes' (p. 3). Ana's nephew went downstairs (p. 5), but immediately returned to the second floor of the apartment. Ana saw this opportunity, she invited him inside the comfort room (p. 5). He followed her, but he stopped in front of the door, outside the comfort room. Ana, once inside the comfort room, undressed herself naked and beckoned him to come in (p. 7). At that position, Ana's husband arrived (pp. 3-6). This happened at about 7:00 o'clock P.M. He saw Ana's husband peeped into the window the comfort room from outside the apartment (p. 3) and saw his wife naked. Ana's husband 'asked' her wife why there was other people in their house. But Ana did not reply. He was about to leave the comfort room when all of a sudden, Ana's husband slapped her (p. 4) twice inside the comfort room (pp. 6-7). Ana has already put on her short and blouse at that time (p. 7). Seeing this, he stepped out of the house but her husband chased him with a pointed object (p. 4). So he ran fast as he could.

Thereafter the owner of the apartment which Ana and her husband are renting had him apprehended (p. 4).

But on cross examination, he declared that:

At the time that Ana's husband peeped into the comfort room's window, seeing her wife naked, he (Benedicto) was still there in front of the comfort room. He was about to leave then (p. 10). But Ana's husband proceeded first in changing his clothes (p. 8), after which, he (Ana's husband) went to confront Ana and slapped her (p. 7).

He also claims that he courted Ana. He was able to win her heart on December 8, 1988 (p. 11). Although they kept their relationship secret, they were seeing each other at the 'perya'.

At the time of the incident, he knew that Ana was already married (p. 11).

Benedicto's testimony was corroborated by his sur-rebuttal witness Pampillo Adona, thus:

He know (sic) Benedicto because he is his long time friend (TSN, January 9, 1990, p. 7) and his co-driver -- 'karelyebo' in the passenger tricycle he is driving (p. 3). He recounted having met Ana in the 'perya' in Marikina (p. 3) on December 9, 1988. When he saw Ana at the 'perya' she and Benedicto were then 'holding hands'. In fact, Benedicto introduced Ana to him (witness) as his (Benedicto's) girlfriend (pp. 4-5). He claims seeing them again last December 30, 1988 about to ride a 'perryswheel' in the 'perya' (p. 5). This time, he saw Benedicto placed his arm on the shoulder of Ana while riding the 'perryswheel' (p. 6). But he had not seen them together anymore in January 1989 (p. 8) and that he has no knowledge if they still have a 'relationship' on that date.

But Ana, as a rebuttal witness of the prosecution, disputed Benedicto's allegations in the latter's testimony and insists that:

When her husband arrived, he did not lift a finger or say anything to her because her husband at that time did not know that she was raped and robbed (TSN, December 11, 1989, p. 2). She categorically denied any relationship

with Benedicto. She insists that she does not know him. But her husband does (p. 2). Before the incident, she claims that she has never met this Benedicto (p. 3). She categorically denied having allowed Benedicto entry to their apartment (p. 5).

There is nothing incredible in Ana's story. There was no evidence of her insincerity. Neither is there any evidence of motive for her to falsely testify against Benedicto. On the contrary, considering the inbred modesty and antipathy of Filipino women to air things that affect their honor, it is not normal for a Filipina like Ana to publicly admit that she had been criminally abused and ravished, expose herself to the scandal, embarrassment and humiliation of a public trial wherein she would not only admit but also narrate the violation of her person unless that is the truth. It is her natural instinct to protect her honor (see *People v. Dinola*, G.R. No. 54567, March. 22, 1990). This ratiocination finds support in the case at bar where the victim, Ana, at the time of the rape, had been married for only two (2) days. Given that condition, it is just inconsistent with human experience that after she had voluntarily married her husband for only two (2) days, would commit, as what Benedicto feigns, an adulterous act that early and right inside their conjugal abode, unless Ana is a nympho, which has not been established by the evidence and is negated by Benedicto himself when he testified that he spent time in courting Ana after she allegedly agreed to his love proposal.

In rape cases, the conduct of the woman immediately following the alleged assault is of utmost importance. Here, the fact that Ana immediately reported the incident to the police and had her body examined by a doctor negates fabrication or prevarication. Ana's willingness to face police investigators and to submit to a physical examination is a mute eloquent testimony of the truth of her charge against Benedicto.

It is not Ana's but Benedicto's testimony which rings with implausibility. His declarations that: after Ana's husband peeped thru the window of the comfort room and seeing her naked, he (Ana's husband) proceeded first in changing his clothes in their room before confronting Ana why she is naked in the presence of a man inside their apartment (TSN, November 9, 1989, pp. 3-4, TSN, Nov. 10, 1989, pp. 6-7 & 10) is incredible. It's not Filipino custom this way. This testimony is just beyond persuasion.

Benedicto's argument that coition would be impossible in a small comfort room measuring two (2) meters by one and a half (1 1/2) meter (see Jimenez Esconde's testimony) is undeserving of consideration. Jurisprudence attests to the fact that Rape has been committed in many different places including places which to many would appear to be unlikely and high risk places for sexual embraces. (*People v. Ratanan*, G.R. No. 48382, Feb. 28, 1990). It can be committed in a five (5) meter room with five (5) people inside (*People v. Detuya*, 154 SCRA 410) or in the front seat of a jeep (*People v. Ison*, 173 SCRA 118), or on a pathway twenty (20) meters away from a beauty contest in progress (*People v. Gamboa*, 145 SCRA 289 [1986] or on the roadside at high noon (*People v. Lopez*, 141 SCRA 385 [1986] or inside a washroom adjoining a house (*People v. Jones*, 137 SCRA 166 [1985] or on a 'pilapil' where people usually pass by (*People v. Aragon*, 138 SCRA 166 [1985]).

It may be uncomfortable having coitus in a such small room but it certainly is not impossible. Besides, it was not shown although the trial court may have observed, that either Ana or Benedicto is too big to make coition in the said room an impossibility. Man, once overcome by bestial desires, chooses not the time, the place, the occasion, nor even the person (see *People v. Aragon*, G.R. No. 51736, Aug. 4, 1988).

Benedicto, insisting on his innocence, capitalizes on the absence of spermatozoa on Ana as borne-out by the Medical Report. This can not be given weight. What is determinative of rape is not the emission of semen but penetration of the female sexual organ (see *People v. Cruz*, G. R. 69251, Sept. 13, 1989). In fact, complete or total penetration of Ana's private organ is not necessary to consummate the crime of rape. The slightest penetration will suffice. Neither is the rupture of the hymen essential for the offense of consummated rape. It is enough that there

is proof of entrance of the male organ within the labia of the pudendum. It is not necessary to show to what extent penetration of the woman's body has been made. It is enough if the woman's body is entered, (see *People v. Bacani y Poliosco*, G.R. No. 77854, Jan. 24, 1990).

We concur with the trial court when it concluded that there was no lover relationship between Benedicto and Ana. If ever they have been lovers, it has not been satisfactorily established that the relationship continued after the marriage of Ana and up to the date of the incident.

IS THE COITION AGAINST ANA'S WILL?

It must be recalled that when Benedicto barged inside the comfort room, she has just stood up after she 'dumumi'. In fact she has not washed herself yet, and her panty and short were still down below her knees. Anybody in her position would be dumbfounded. At any rate she shouted 'saklolo' many times, but he choked her and then slapped her, then pushed her to the ground, her head hitting the stone wall of the comfort room. Then Benedicto put down his shorts and lay on top of her.

The working of human mind when placed under such emotional stress is unpredictable. In this given situation, some may shout, some may faint, and some may be shocked into insensibility as what happened to Ana. To Ana's mind at that point in time, Benedicto is determined to do whatever he intends to do. Fear of further injuries simply pinned her mind, overpowering and stifling any attempt to resist the sexual assault. Ana may have failed to successfully resist the accused's advances at the actual time of the sexual assault itself but such is not a manifestation of consent, but rather an indication of involuntary submission (see *People v. Aquino*, G.R. 84913-15, June 5, 1990. Anyway, force or intimidation itself is sufficient for a woman not to put up any resistance. Not only a firearm can produce intimidation. Intimidation is addressed to the mind. (see *People v. Corales*, G.R. No. 76922, Feb. 21, 1990).

Lastly, the trial court's observation is worthy of reiteration:

"The defense of the accused smacks of artificiality, is vague and inconclusive. The robbery charge which the prosecution proved but the accused did not deny argue against the defense interposed in the rape charge. A lover does not rob the object of his love and affection."

THE CRIME

The trial court in the dispositive portion of its assailed Decision found Benedicto guilty of the crime of Robbery with Rape as defined under Art. 293 in relation to paragraph 2, Art. 294 of the Revised Penal Code as amended by PD 767, as follows:

Art. 293. - Who are guilty of robbery. - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything shall be guilty of robbery.

Art. 294 - Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

xxx xxx xxx

2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery any of the physical injuries penalized in subdivision I of Article 263 shall have been inflicted; Provided, however, that when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons, the

penalty shall be reclusion perpetua to death (As amended by PD No 767).

xxx xxx xxx

5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases. (xxx)

The penalty imposed is not in accordance with the aforecited provisions of the law.

The immediately aforequoted provision of law on special complex crime of Robbery with Rape employs the clause 'when the robbery shall have been accompanied with rape.' In other words, to be liable under the said provision of law the offender must have the intent to take the personal property belonging to another with intent to gain and such intent must precede the rape (p. 601, Commentaries on the Revised Penal Code by J. Luis B. Reyes, 11th Ed., see also *People v. Atanacio*, G.R. No. L-11844, Nov. 29, 1960; *People v. Elizaga*, 86 Phil. 364; *People v. Glore*, 87 Phil. 736; *People v. Tolentino*, G.R. No. 59097, Sept. 20, 1988; - applying Robbery with Homicide by analogy; see also *People v. Dinola*, 183 SCRA 503).

In the case at bar, the Rape was Benedicto's primary objective and his taking away Ana's personal properties against her will was only an afterthought. Therefore, there is no special complex crime of Robbery with Rape under Art. 48 of the Revised Penal Code. Neither is Art. 48 of the Revised Penal Code on Complex Crime applicable because Benedicto's act of raping Ana and thereafter taking her money and jewelries do not constitute a single act (but separate acts) constituting two (2) or more grave or less grave felonies or it cannot be said that the crime of Rape is a necessary means to commit the crime of Robbery or vice-versa.

What Benedicto committed are two (2) separate crimes of Robbery and Rape under the aforequoted Art. 293, and Art. 335 of the Revised Penal Code reading to wit:

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

xxx xxx xxx

The crime of rape shall be punished by reclusion perpetua.

xxx xxx xxx

THE PENALTY

In *U.S. v. Padalit* (1 Phil. 426) where the accused was charged of Robbery with Homicide (also a special complex crime), the Supreme Court infers that he may be convicted of any one of them. In *People v. Dinola* (183 SCRA 496), the accused was charged and convicted of the crime of Robbery with Rape but the Supreme Court modified the judgment of the lower court by sentencing the accused to two distinct crimes of Robbery and Rape on account of its findings that the original design of the accused was to commit Rape but the accused after committing Rape also committed Robbery because the opportunity presented itself.

The crime of Rape is punished by Reclusion Perpetua (see Art. 335, above), thus, the Indeterminate Sentence Law (Act No. 4103 as amended) is not applicable (see *People v. Amores*, 58 SCRA 510). He should be punished by Reclusion Perpetua for the crime of rape.

Benedicto has also committed Robbery and must be punished by prision correccional in its maximum period to prision mayor in its medium period (see Art. 294, Nov. 5). Here, the Indeterminate Sentence Law applies. Thus, Benedicto should be penalized with an Indeterminate penalty within the range of arresto mayor in its

maximum period to prision correccional in its medium period of four (4) months and one (1) day to four (4) years and two (2) months as minimum and within the range of six (6) years and one (1) day to eight (8) years of prision correccional in its maximum period to prision mayor in its minimum period, as maximum.

WHEREFORE, the judgment of the trial court is MODIFIED as follows:

1) Benedicto M. Cruz is found guilty of RAPE and is sentenced to Reclusion Perpetua under Art. 27 of the Revised Penal Code.

2) Benedicto M. Cruz is also found guilty of the separate crime of ROBBERY and is sentenced to the Indeterminate penalty of six (6) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum.

The Division Clerk of this Court is hereby ordered to desist from entering judgment (see Revised Internal Rules of this Court, Sec. 5, Rule 11) and after the lapse of the period for filing a motion for reconsideration, is ordered to elevate this case and its complete records to the Supreme Court for review in accordance with Rule 124, Sec. 13 of the Revised Rules on Criminal Procedure.

SO ORDERED." (Court of Appeals' Decision, pp. 1-8)

We have examined the records of this case, read and evaluated the evidence including the transcripts of the stenographic notes of the witnesses for the prosecution and for the defense, deliberated on the arguments raised on appeal and agree completely with the findings and conclusions of the Court of Appeals. The decision of the appellate court is accordingly adopted in toto.

The crime was committed with a certain degree of perversity considering that the victim of rape had been married only three (3) days before the incident. The usual indemnity of Thirty Thousand Pesos which we impose in rape cases is therefore increased to Forty Thousand Pesos.

WHEREFORE, the judgment of the Court of Appeals is AFFIRMED as to both penalties for rape and robbery with a MODIFICATION in the crime of rape that the appellant is ordered to indemnify Ana Esconde y Omogowog in the amount of FORTY THOUSAND PESOS (P40,000.00) in addition to the TEN THOUSAND PESOS (P10,000.00) moral damages and ONE THOUSAND ONE HUNDRED TWENTY PESOS (P1,120.00) value of the property taken as imposed by the trial court and sustained by the Court of Appeals.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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