

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY PADERO, ACCUSED-APPELLANT.

G.R. No. 106274. September 28, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a complaint[1] filed on 21 January 1992 with Branch 45 of the Regional Trial Court of Bais City, Negros Oriental and docketed therein as Criminal Case No. 741-B, Jocelyn Cadeliña, a sixteen-year-old lass and a resident of sitio Amalao, barangay Tagpo of Bais City, charged Henry Padero, her uncle-in-law, with the crime of rape committed as follows:

"That on or about August 31, 1991, at Bais City, Philippines and within the jurisdiction of this Honorable Court, said accused, armed with a knife, and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will."

The warrant for the arrest of the accused, issued on 21 January 1992,[2] was served upon him on 4 March 1992.[3] No bail was recommended for his temporary liberty.

A plea of not guilty having been entered by the accused at his arraignment on 13 March 1992,[4] the case was set for continuous trial.

The prosecution presented as its witnesses complainant Jocelyn Cadeliña and Cherryl Palacios for its evidence in chief, and Clara Cadeliña, Rev. Lemuel Felecio, and Damiana Cadeliña on rebuttal. The accused took the witness stand in his defense and presented Loreta Samane, Elsa Garcia, Macrina Padero, and Marietta Padero as his witnesses.

In a decision promulgated on 22 June 1992,[5] the trial court convicted the accused of the crime charged. The dispositive portion thereof reads as follows:

"WHEREFORE, premises considered, this Court finds accused, HENRY PADERO, guilty beyond reasonable doubt of the crime of RAPE as charged, and there being neither aggravating nor mitigating circumstance, thereby sentences him to RECLUSION PERPETUA and indemnify offended party, Jocelyn Cadeliña the amount of THIRTY THOUSAND (P30,000.00) PESOS, and to pay costs.

SO ORDERED."

The trial court gave full faith and credit to the version of the complainant who it said testified "with sincerity, honesty and candidness, and with answers direct to the point, in a logical and straightforward manner, and free from inconsistencies."

On the other hand, it characterized the testimonies of the defense witnesses as "laden with inconsistencies" and described their manner of testifying as "clearly wanting of candor, honesty, and elements of straightforward

manner of delivery" and "fraught with hesitations." [6]

The version of the prosecution, as summarized by the trial court, is as follows:

"Complainant, JOCELYN CADELIÑA, 16 years old, jobless, single and a resident of sitio Amalao, barangay Tagpo, Bais City, testified that:

She knows the accused as the latter is the husband of Marietta Indiao who is her mother's sister, by affinity, accused is her uncle-in-law. At about 2:00 o'clock in the afternoon of August 31, 1991, she attended the services of the Youth Services Organization in Bais City, and after the service, she helped in the cleaning of their church, which ended at 5:00 o'clock in the afternoon. Afterwards, they had choir practice, and having finished practice, ate supper in the house of the pastor upon invitation of the latter. Later at 10:00 o'clock in the evening, together with a co-member of the choir, Cherryl Palacios, they proceeded home riding on a pedicab, their houses being near to each other. Together with her sister and friends, they were renting a house situated at Aglipay St., Bais City which was owned by one Macrina Padero, mother of the accused. At that time, she stayed at the second floor of the rented house as the school is far from their home at barangay Tagpo. Upon arrival at said rented house at past 10:00 o'clock in the evening of August 31, 1991, and before she went up to the second floor, she noticed accused sleeping inside a mosquito net at the ground floor. She was not surprised on seeing the accused sleeping at the ground floor that night as she had been used to seeing the accused slept [sic] there. She immediately went upstairs to the second floor, and went to sleep alone that night as her sister, Darwinda, and her friends, Melissa Adalid and one Marilou were not there. At about 11:00 o'clock, that same night, she woke up to find accused on top of her with his right arm holding a knife, and his left hand holding her right arm. Accused told her 'don't shout because if you shout I will kill you'. (TSN, p. 12, March 18, 1992) For fear, she did not shout. After having removed her blouse and panty with his left hand, accused successfully raped her. She tried to resist but was pinned down by the accused, who was aiming the knife at her. After warning her not to report the incident otherwise he will kill her, accused went back to sleep on the ground floor, but she was not able to sleep the rest of the night. With the threat to kill her by the accused, she did not report the incident to anybody, until after several months, she was forced to tell her mother as she was conceiving. Her mother, Damiana Cadeliña, immediately filed a complaint. She suffered sadness and mental anguish caused by the sexual abuse on her by the accused, and leaves to the court damages that may be awarded to her." [7]

On the other hand, the accused, who was 21 years old at the time he testified on 1 April 1992, admitted having sexual intercourse on several occasions with the complainant, the niece of his wife, but alleged that these were all with her consent. His testimony is condensed by the trial court in this wise:

"His relationship with Jocelyn started sometime in March, 1991, at the house of her mother, where Jocelyn was renting. It started when he noticed that she usually sat on his lap, and paid special attention to him. He reminded her that how could they maintain such relationship considering that she is his niece, but Jocelyn countered that she was in love with him and her aunt (accused's wife) was not around. From the commencement of their relationship, and whenever he was in Bais City, he usually slept in the house rented by Jocelyn. In furtherance of said illicit relationship, they started kissing each other. It was in the month of August, 1991 that they had their first sexual intercourse. On that day, Jocelyn who arrived from the market at 9:00 o'clock in the evening, told him to bring his mosquito net and folding bed to the house she was renting. At that time, he was drinking beer with his brother in front of his mother's store. After having brought the mosquito net and the folding bed to the rented house, he went back to continue drinking with his brother. Later, past midnight, he went back to the rented house, and saw complainant already lying on his folding bed. He asked her what she was doing in his folding bed, but she cautioned him to be silent, and she pulled him down, and thereupon they have their first sexual intercourse. After that, they had sexual intercourse for about fifteen (15) times in that very house, usually at the time when the other occupants in the rented house were not around. They likewise engaged in sexual activities short of intercourse in

the house of Jocelyn, and in his father-in-law's house in sitio Amalao. His relationship with Jocelyn ended in October, 1991, when he avoided her due to the latter's wish that they go away but which wish he did not agree as he has a wife and children. During their intimate moments, Jocelyn revealed to him that she had relationship with a certain Pedring, Ali Labeste and a certain Amay. Jocelyn was motivated into filing this case against him for his having avoided her, and the condition imposed by her mother that they should see first the appearance of the child to be given birth before they will give expenses for delivery." [8]

He sought to buttress his defense with the testimonies of Loreta Samane, Elsa Garcia, Macrina Padero, and his wife, Marietta Padero. Loreta Samane, the accused's maid, declared that one early morning in March 1991 when she was in the house of Clara Cadeliña, she was requested by Clara to get a plate and spoon from the house of Damiana Cadeliña (mother of the complainant); that when the door of the latter's house was opened for her by Wengweng, a 14-year old sister of the complainant, Loreta saw the accused and the complainant covered by a blanket underneath a table. Suddenly a gust of wind blew away the blanket and she saw the complainant fondling the sex organ of the accused. On another occasion, also in March 1991 at about noon, she saw the latter and the complainant lying down in the middle of the house with the complainant's legs wrapped around those of the accused. [9] Elsa Garcia, who has been occupying the unit adjacent to that rented by the complainant and one Marilou since 16 September 1991, declared that in the evening of that date she heard noises from the unit occupied by the complainant, so she peeped through a hole in the wall and saw the complainant, who was not fully dressed, on top of the accused on a folding bed while caressing him. At another time, she also saw the complainant approach the accused, who was sitting at the doorway of Elsa's unit, and tell him that she was "two months pregnant." [10]

Macrina Padero, the mother of the accused, testified that sometime in October 1991, she met Damiana Cadeliña at the house of Elsa Garcia. Damiana told her that the complainant and the accused "had a relationship" and that "in case of delivery of the baby," she (Macrina) "is obligated to spend on the delivery." Macrina stated that she was willing to spend for the child on condition that she "should see first the appearance of the child". Elsa, the accused, and his wife were present at the time. [11]

Marietta Padero testified that she frequently quarreled with her husband, the accused herein, because she "was jealous with their [sic] relationship with the woman, Jocelyn, her niece." During the instances when Jocelyn came to her house, she observed that when she turned her back, Jocelyn and her husband talked to each other, but when she was near them they would stop conversing. At one time, Jocelyn accompanied her husband in fetching water. She was present during the meeting between her mother-in-law (Macrina) and Damiana wherein the former told the latter, "Day, if Jocelyn gave birth, we will just help in the expenses." [12]

On rebuttal, Clara Cadeliña denied the testimony of Loreta Samane that sometime in March 1991 she ordered her to get a plate and spoon from Damiana's house which is only two meters from her house [13] and the testimony of Macrina Padero that she had a conference with Macrina in the house of Elsa Garcia and that she requested Macrina to support the child of the complainant. Clara further declared it is not possible, as testified to by Loreta, that the complainant and the accused were covered with a blanket under the table, and that the complainant was fondling the sex organ of the accused. [14]

The accused seasonably appealed from the judgment [15] and in his Appellant's Brief filed on 2 March 1993 assigns the following errors:

"I. THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF COMPLAINANT JOCELYN 'JOY' CADELIÑA CONSIDERING THAT IT IS CONTRARY TO COMMON HUMAN KNOWLEDGE AND EXPERIENCE AND THIS IS HIGHLY IMPROBABLE.

II. THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE EVIDENCE FOR THE DEFENSE.

III. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.”[16]

The accused admits having carnal knowledge of the complainant not only on the date alleged in the information but for fifteen (15) more times thereafter but maintains that he and the complainant are lovers and that the complainant voluntarily had sex with him. His testimony pictured the complainant as a woman passionately in love with him, who not only initiated the first sexual encounter but longed for and welcomed the others. Accused further maintains that an analysis of the complainant's testimony discloses other signs of the absence of force or intimidation: she manifested no form of resistance; she made no outcry at the start of the sexual assault nor did she plead with the accused; she shed not a single drop of tear at her defloration;[17] and after the sexual act, instead of crying or cursing the accused for his dastardly act, she nonchalantly sat down with the accused.[18] Finally, the accused points out that although the alleged rape took place on 31 August 1991, it was only about three months later, upon learning that she was pregnant, that the complainant revealed the alleged rape to her mother; her explanation for the delay -- that the accused threatened to kill her if she reported the incident -- is unacceptable because the threat, if any, was not continuing.[19]

In rape cases, the following guidelines have been laid down by this Court: (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 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.[20] Accordingly, the complainant's testimony should not be received with 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.[21]

The credibility then of the complainant is under scrutiny here. The trial court gave her testimony full faith and credit. The general rule is that when the issue of credibility of witnesses is involved, appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of value have been plainly overlooked which, if considered, might affect the result of the case.[22]

The core issue here is whether the accused had carnal knowledge of the complainant through the use of force or intimidation,[23] or whether the complainant willingly consented to the sexual intercourse.

A painstaking review of the evidence discloses vital facts of immense importance in the determination of this issue -- -facts which would necessarily affect the result of this case but which the trial court apparently overlooked or glossed over. This case then falls under the exception to the general rule.

For one, despite the positive testimony of the accused which squarely traversed the complainant's version of force or intimidation by stating that he and the complainant had an intimate relationship, with the latter as the more aggressive partner, and that their first sexual encounter in August of 1991 was followed by fifteen more encounters at the same place during week-ends when the complainant was alone, all of which were new facts, the complainant was never recalled to the witness stand to rebut these obviously damaging revelations of the accused. The prosecution was simply contented with the presentation of Clara Cadeliña, Rev. Lemuel Felecio, and

Damiana Cadeliña to rebut some less important, if not minor or trivial, matters brought out in the testimonies of Loreta Samane and Macrina Padero. Why the complainant herself was not made to rebut the damaging evidence against her is beyond us. After the second rebuttal witness, Rev. Felecio, had finished his testimony, the prosecutor simply announced to the court that the last rebuttal witness would be Damiana Cadeliña.[24]

The function of rebuttal evidence is to explain, repel, counteract, or disprove the evidence of the adversary.[25] Its office is "to meet the new facts put in by the opponent in his case in reply" and is "necessary only because, on a plea in denial, new subordinate evidential facts have been offered, or because, on an affirmative plea, its substantive facts have been put forward, or because, on any issue whatever, facts discrediting the proponent's witnesses have been offered." [26] While the presentation of rebuttal evidence is discretionary with the prosecution in a criminal action,[27] in the instant case, the overwhelming import of the new facts disclosed by the accused which have a damaging effect on the complainant's version made it imperative for the prosecution to present rebuttal evidence. Relegating the complainant to the background and presenting other witnesses to rebut minor or trivial matters brought out in the evidence in chief for the defense engender serious doubts on the integrity of her story.

For another, we find enough evidence of the intimate relationship between the complainant and the accused. On cross-examination, she admitted that the accused used to sleep in the unit of the house which she rented from his mother. Thus:

"Q You will agree with me that it was not the only occasion [referring to 31 August 1991 when she was allegedly raped] that Henry Padero slept on that unit of the house.

A Yes.

Q Because there were several occasions in the past that he slept on that unit?

A Yes.

Q And in those times Henry Padero occupied the ground floor?

A Yes." [28]

She further revealed that the door to her room at the upper story of the unit has no lock:

"Q According to you, you were occupying the upper storey, that room you were occupying has a door is that correct?

A Yes, but there's no lock.

Q And that was the place which according to you that Henry raped you [sic]?

A Yes " [29]

And, as further testified to by her on cross-examination, she declared that the accused usually came to her rented unit every weekend since June 1991 and slept there despite the fact that the house of his mother is only nearby:

"Q How many times did Henry sleep in that house before this alleged incident?

A He usually went there every weekend in my rented house.

Q And his parents' house is very near to the house where you were renting?

A Yes.

Q About what month was that Henry started sleeping in your house where you were occupying?

A June 1991."[30]

Why the accused chose weekends can easily be explained by the fact that the complainant's companions in the rented unit, including her own sister, usually went home on Fridays. He testified thus:

"Q In those times that you have these activities together[31] in the morning, where were the other occupants in that dwelling occupied by Jocelyn?

A They usually go home during Fridays."[32]

If indeed there was no liaison between the complainant and the accused, we find it rather unusual that the accused would spend his weekends in her rented unit and not at his parents' residence which was just nearby, and that instead of going home to her parent's home in Amalao, Tagpo, Bais City, just as her companions were wont to, the complainant preferred to welcome the accused in her rented unit and allow him to spend his weekend nights alone with her. She offered no satisfactory explanation therefor. These facts do not appear to us to be innocuous coincidences. Rather, they eloquently manifest a mutual understanding or a predetermined plan. She could not just have accommodated an uncle-in-law even if he were in need of a place to sleep after a hard day's work and reposed in him complete trust and confidence during the tempting hours of the night without any lock on the door of her room to keep her safe just in case he was overpowered by the beast in him.

Also, her conduct during and after coitus unmistakably discloses absence of even token resistance and betrays her consent to the sexual congress.

In one salient portion of the cross-examination, we find her totally submissive in the face of the assault against her most prized possession and unusually observant of the preparatory acts of the accused and his eventual physiological and emotional transformation in fulfilled libido. Thus:

"Q Did you notice Henry Padero when you were lying down?

A Yes.

Q He was on top of you when he held your right hand?

A Yes.

Q He was on top of you when he threatened you with a knife?

A Yes.

Q How was he able to remove your pantie when he was on top of you?

A When he was on top of me he released my right hand and with his left hand he removed my pantie.

Q When [he] removed your pantie your right hand therefore was already free?

A Yes.

Q Did he remove his pants?

A At the time he was on top of me he was only wearing shorts.

Q Had his t-shirt on?

A None.

Q What was the color of his short pants?

A I can not remember anymore.

Q Did he remove his short pants?

A Yes.

Q What arm did he use to remove his short?

A With his left.

Q When [he] removed his short pants did you see his penis?

A No.

Q Was he wearing underwear?

A I can not remember anymore.

Q Did he insert his penis into your vagina?

A Yes.

Q Did he separate your legs?

A Yes, because he parted my legs.

Q When he inserted his penis were you hurt?

A Yes.

Q How long did he stay (sic) that penis in your vagina?

A I can not remember anymore.

Q When he inserted that he was making a push and pull movement?

A Yes.

Q And you noticed that there was something [that] came out from his penis?

A Yes.

Q There was that push and pull movement by Henry Padero for several times?

A Yes.

Q Maybe about in your reasonable estimate 20 to 30 times?

A I can not recall anymore.

Q After that there was fluid which you felt came out from the penis of Henry Padero before he pulled out his penis?

A It took long time."[33]

After the sexual intercourse, both parties merely sat down. The accused then went down to the ground floor to sleep:

"Q So after he had sex intercourse [sic] with you he did not stand up right away?

A No.

Q He had sexual intercourse with you only once?

A Yes.

Q He did not stand up right away but after that he sat down while you were lying down still?

A I also sat down.

Q After that Henry Padero went back to the ground floor?

A He went back to sleep to the ground floor.

Q You went back to sleep also?

A I was not able to sleep already."[34]

The claim of threat or intimidation through the use of a knife merits scant consideration. As shown above, and even from the complainant's direct testimony,[35] the alleged "more than a finger stretch length" knife was never accounted for during and after coitus. As admitted by the complainant during the cross-examination, she allegedly saw it for the first time when she was roused from her sleep and she noticed the accused on top of her, holding the knife in his right hand.[36] In this position, the accused could only be facing down at her. However, on direct examination, she declared that when she saw him wielding a knife and holding her arm, "[h]e was lying down, faced [sic] up":

"Q Will you please tell the court what was [the] unusual incident that happened?

A I woke up and noticed Henry Padero was holding my arm and on his right arm he was holding a knife.

Q What was the position of Henry Padero when he held your right arm and a knife with his right hand?

A He was lying down faced [sic] up."[37]

From then on she was silent about the knife. Although she distinctly remembered that the accused did not stand up immediately after the sexual act, that thereafter both of them sat down for a while, and that later the accused went down to the ground floor to sleep, she did not mention anything more about the knife.

We therefore have serious doubts on the guilt of the accused for the crime charged. Although rape is universally condemned as a most detestable crime, conviction therefor can, in light of the presumption of innocence which is solemnly guaranteed by the Bill of Rights, only lie upon proof beyond reasonable doubt or that degree of proof which produces conviction in an unprejudiced mind. Short of this, it is not only the right of the accused to be freed, it is the constitutional duty of the court to acquit him.[38] This is not, of course, to say that we approve of the conduct of the accused. Indisputably, he took undue advantage of the complainant's feelings for him and breached his vow of fidelity to his wife who happens to be the complainant's aunt. He should have acted as a father or adviser to the complainant who is his own niece-in-law and helped her develop in manners and virtue instead of corrupting her.

WHEREFORE, the challenged decision of Branch 45 of the Regional Trial Court of Bais City, Negros Oriental, in Criminal Case No. 741-B is REVERSED, and the accused HENRY PADERO is hereby ACQUITTED on the ground of reasonable doubt.

Costs de oficio.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quiason, JJ., concur.
Griño-Aquino, J., on leave.

[1] Original Records, (OR) 3; Rollo, 8.

[2] OR, 22.

[3] Id., 28.

[4] Id., 29.

[5] Id., 72-89; Rollo, 16-33.

[6] OR, 86; Rollo, 132.

[7] OR, 73-74; Rollo, 17-18.

[8] OR, 78-80; Rollo, 22-24.

[9] TSN, 26 March 1992, 4-9.

[10] Id., 36-39.

[11] TSN, 30 March 1992, 3-4.

[12] TSN, 30 March 1992, 29-31; 37-38.

[13] TSN, 7 April 1992, 9-10.

[14] Id., 23-26.

[15] OR, 91.

[16] Rollo, 89.

[17] Id., 90-91.

[18] Id., 98-99.

[19] Rollo, 99-100.

[20] *People vs. Tismo*, 204 SCRA 535 [1991]; *People vs. Casinillo*, 213 SCRA 777 [1992].

[21] *People vs. Pido*, 200 SCRA 45 [1991], citing cases.

[22] *People vs. Garcia*, 89 SCRA 440 [1979]; *People vs. Bautista*, 92 SCRA 465 [1979]; *People vs. Abejuela*, 92 SCRA 503 [1979]; *People vs. Florida*, 214 SCRA 227 [1992].

[23] Article 335, Paragraph 1, Revised Penal Code.

[24] TSN, 7 April 1992, 19.

[25] FRANCISCO, V.J., *The Revised Rules of Court in the Philippines (Criminal Procedure)*, 2nd ed., 1969, 766.

[26] 6 WIGMORE ON EVIDENCE § 1873 (1940).

[27] FRANCISCO, op. cit.

[28] TSN, 18 March 1992, 18-19.

[29] Id., 19-20.

[30] TSN, 18 March 1992, 32.

[31] Referring to their acts of sexual intercourse.

[32] TSN, 1 April 1992 (morning session), 11-12.

[33] TSN, 18 March 1992, 25-28.

[34] Id., 28-29.

[35] TSN, 18 March 1992, 11-13.

[36] Id., 26.

[37] Id., 11-12.

[38] People vs. Pido, supra.

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