

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROCHEL TRAVERO, ACCUSED-APPELLANT.

G.R. No. 110823. July 28, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Thirteen-year old Agnes Cuba was barely in her teens when she met her tragic fate at the hands of herein accused-appellant Rochel Traverro. On the night of October 3, 1992, the young Agnes was raped by accused-appellant.

Upon submission by Agnes of her complaint-affidavit accusing Rochel Traverro of the crime of rape, the corresponding criminal complaint was filed by the City Prosecutor of Danao City before the Regional Trial Court of Danao City, Branch 25.[1] During the arraignment, accused-appellant pleaded not guilty. However, at the conclusion of the trial, the trial court found otherwise and convicted him of the crime charged, sentencing him to suffer the penalty of reclusion perpetua and to indemnify Agnes Cuba the sum of P40,000.[2]

Accused-appellant is now before this Court seeking the reversal of his conviction on account of the following errors allegedly committed by the trial court: (1) in failing to scrutinize complainant's testimony with extreme caution; (2) in receiving complainant's testimony with precipitate credulity; (3) in disregarding strong indications pointing to the possibility that the rape charge was merely motivated by some factors except the truth as to its commission; (4) in failing to appreciate the consent of complainant to the sexual congress; (5) in disregarding the existence of reasonable doubt as to the guilt of accused-appellant, and (6) in rendering judgment which is contrary to the evidence adduced.[3]

The antecedents as summarized by the prosecution in their Brief are as follows:

"At around 10 p.m. of October 3, 1992, Agnes Cuba, a 13-year old high school sophomore at the Cebu State College of Science and Technology (CSCST) was in Maslog, Danao City with her cousin, Washington Lawas, to attend a coronation ceremony which was about two kilometers from her house. They were already at the 'peryahan' when Lawas' companion from elementary days arrived. Lawas' companion brought him to his grandmother's house to eat (TSN, January 19, 1993, pp. 27, 31-33).

"After Lawas and his friend left, Agnes met her other cousin, Flores Baclado who was with two friends. The latter asked Agnes to go with them to buy ice water, to which Agnes agreed. After buying ice water, the group left with Baclado and her companions walking five meters ahead of Agnes (TSN, Ibid., pp. 34-36).

"Suddenly, appellant who was then a second year college student and an official of a school organization at CSCST grabbed Agnes from behind. He pointed a pistol at Agnes's head and ordered her not to shout, or else she will be shot. He held the gun with his left hand while his right hand held the girl's left arm. He also threatened Agnes that if she will not go with him, he will kill her (TSN, ibid, pp. 35, 36, 38-40).

"Appellant dragged Agnes to a dark place between a parked cargo truck and salwag trees, around ten meters from where people was holding the Fiesta Celebration. The truck was along the road. At the side of the road

was an eight-feet high concrete wall two meters distant from the truck. The house of the girl's grandmother was ten meters away from the cargo truck. The peryahan was about eighty meters from the house of her grandmother and sixty meters from the parked cargo truck. To the north of peryahan was the basketball court here the coronation night is being held. Seven meters away from the cargo truck, the friends of accused were drinking (TSN, *ibid.*, pp. 10,11, 12, 14, 20, 26, 30-45; TSN, January 20, 1993, pp. 10-14, 40).

"Agnes did not shout for help because of the threats made by the appellant. She was seized by extreme fear because appellant was big, stout fellow and he was holding her. When the appellant and Cuba were already by the side of the cargo truck, he removed her garter short pants and underwear. Thereafter, appellant tucked his gun at the back pocket of his pants, Agnes (sic) [should be appellant] lowered his pants a little and lifted one of her thighs. Thereupon, with both of them standing, he held his penis and inserted the same into her vagina. Cuba was shocked and was not able to stop the appellant. Agnes tried to push appellant but she was not able to (sic) [put] up much resistance because appellant had a big body and held her against steel portion of the cargo truck. Agnes felt pain when the penis was inserted into her vagina which lasted for about two minutes (TSN, January 19, 1993, pp. 23, 25, 40-41, 46-53; TSN, January 20, 1993, pp. 18-19, 22-23).

"After the incident, appellant immediately left with a companion on the latter's motorcycle, bringing with him Agnes' panty. Agnes observed that her vagina was bleeding. She cried because of the intense pain in her vagina. She put on her garter short pants which she used together with the lower portion of her t-shirt in wiping the blood from her private parts. Not long after, a patrolman arrived (TSN, January 19, 1993, pp. 53-57; Exh. 'D', 'E'; TSN, January 20, 1993, pp. 3-6, 9).

"Forthwith, the policeman, an unidentified lady and Agnes went to her grandmother's house nearby to inform her relatives of the rape. Agnes was then accompanied to the police station by an aunt and two cousins. The girl complained to the police that she was raped by appellant. That same evening, she was also brought to a hospital where she was examined by Dr. Angelina Bartilet, a medico-legal officer (TSN, January 19, 1993, pp. 57-61; exh. 'C', 'C-1').

"The medical examination showed that Agnes' outer vaginal wall was with blood clots. There was a laceration at 6 o'clock, abrasion with laceration with 3 o'clock, and laceration at 9 o'clock positions. Her hymen was broken with difficulty inserting one finger. He feet was full of mud. Her vaginal smear showed few blood cells (TSN, January 19, 1993, pp. 14-15; Exh. 'A' 'A-1' and 'A-2')."[4]

Accused-appellant, on the other hand, has a different version. He denies that he raped Agnes Cuba and instead claims that they were sweethearts. According to him, this was what transpired during that fateful night:

"After buying ice water, Agnes left her companions and distanced herself 5 meters away to go near and chat with Rochel 10 meters away from the 'peryahan', a well lighted place where there were many people who participated and watched the parlor games there (pp. 36-37 TSN Jan. 19, 1993, Nuñez).

"Rochel chatted with Agnes and then suggested that they stroll around, as what sweethearts usually do. Then they stopped beside a parked cargo truck on the east side of the road. As lovers, they conversed with each other, leaned on the truck and made occasional necking and petting (TSN p. 7 Feb. 10, 1993, Nuñez).

"However, their occasional kissing heightened their mutual passion, that they were able to go beyond the bounds of mere petting, by have had a pre-marital sex while standing (TSN 2/10/93 Nuñez p. 7, and TSN Jan. 19, 1993, p. 47, Nuñez)

"Their sex act was consummated, without sexual climax on the part of Rochel, as on this stage, Agnes noticed there were people, including a police man on the cargo truck, clandestinely watching them (TSN, p. 14 Feb. 10, 1993 Nuñez)

"Agnes pushed Rochel and withdrew his penis which ejaculated outside (TSN p. 16 February 10, 1993, Nuñez). They dressed hurriedly but Rochel noticed that Agnes was bleeding. This is however, normal, since

Agnes was a virgin. Rochel took off his T-shirt and wiped the blood of Agnes.

“They proceeded to the house of Arsenio Hermosilla, father-in-law of Zacarial Navales, neighbor of Rochel accompanied by Police Officer Salvador Basubas, among those people who watched them doing sex act, where Rochel tried to borrow a T-Shirt to wear in going home (TSN P. 27, Feb. 10, 1993, Nuñez).

“Later, the policeman told Rochel to just go home as he will escort Agnes home (TSN P. 10, Feb. 10, 1993, Nuñez)

“ A rumor was then circulated that Rochel had raped a woman. Upon the advice of his friends and for his safety, Rochel went to the Police Headquarters to deny the charges of rape. But he was subsequently detained.”[5]

In reviewing the evidence in rape cases, the Court is guided by three (3) settled principles, namely: (1) an accusation of 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 of rape where two (2) persons 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 for the weakness of the evidence for the defense.[6]

Herein accused-appellant contends that there is no evidence to merit his conviction. In his first and second assignment of error, he faults the trial court giving too much credence to the testimony of the complainant despite being fraught with inconsistencies vis-à-vis the declarations in her affidavit with regard to the following points: whether Agnes and his cousin were able to buy ice water before the incident or not; whether both her hands were being held by appellant while she was being dragged or only her right hand; whether there was a tricycle or not; whether appellant poked a gun at her head or at her body; whether there was policeman at the “peryahan” or not; whether 45 minutes elapsed after the incident before she reported the same to the police. Moreover, accused-appellant noted other fabrications which complainant allegedly made when she testified which dealt with whether the existence of the gun was proven whether there were houses in the vicinity of the crime scene; whether the weight of the .45 caliber pistol would have pulled down appellants pants; whether appellant left victim immediately after the incident; whether there was a policeman near the crime scene; whether the house nearest the church was visible; whether Agnes was shocked during the incident; and whether she was conscientious student.

We find the aforementioned protestations bereft of merit. In the first place, discrepancies between statements in an affidavit and those made on the witness stand would seldom discredit the declarant.[7] The reason being that testimonies given during trials are much more exact and elaborate than those stated in sworn statements. Ex-parte affidavits are almost always incomplete and often inaccurate for varied reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Witness cannot be expected everytime, except when told, to distinguish between what may be consequential and what may be mere insignificant details.[8] Additionally, an extra-judicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant’s statement, hence, omissions and misunderstandings by the writer are not infrequent.[9]

Nevertheless, the alleged inconsistencies, if at all, are inconsequential, herein considering that they are referred to trivial details which have nothing to do with the essential fact in the commission of the crime of rape, that is carnal knowledge through force or intimidation. The Court has consistently adhered to the rule that inconsistencies on minor details of the testimony of a witness serves to strengthen his credibility as they are badges of truth rather than an indicia of falsehood.[10] A rapist cannot expect the hapless object of his lechery to have the memory of an elephant and the cold precision of a mathematician because total recall of the an incident

is not expected of a witness, especially if it is the victim herself who is on the witness stand.[11] She cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[12] This is particularly true in this case where the rape victim is only thirteen years of age and hails from a rural area, it being improbable for a young girl like her and not one exposed to the ways of the world to impute a crime as serious as rape to any man if it were not true.[13]

Accused-appellant's desperate attempt to assail complainant's credibility becomes evident as he tried to make much of complainant's failure to exhibit any emotional instability when she testified by not crying or appearing to be sad. According to the accused-appellant, the charge of rape against him was motivated by other factors except the truth, and insists that the filing of the case was instigated by complainant's parents against her will.

The notion of equating emotional outbursts on the witness stand with credibility is clearly misplaced. A rape victim's testimony is not rendered less credible if not accompanied by emotional overtures. Contrary to appellant's claim, the trial court observed complainant's conduct and demeanor while testifying and found no reason to doubt the same. Accordingly, we are not inclined to depart from its findings because the matter of assessing the credibility of witness is an area within the almost exclusive province of a trial judge whose findings and conclusions are normally accorded weight and respect.[14] Anent appellant's insinuation that complainant was merely forced by her parents to file charges against him, we find the same baseless on account of appellant's failure to show any motive on the part of his accusers to implicate him in such a serious charge. Moreover, it is hard to believe that a rape victim and her family would publicly disclose the incident and thus sully their honor and reputation in the community unless it is true.[15]

In a bid to exculpate himself, accused-appellant also sought to establish that the sexual intercourse took place with the consent of the complainant owing to the fact that they were lovers and the absence of any external injury on the part of the latter. Appellant contends that it was improbable to have sexual intercourse in standing position unless both parties act in concert. These contentions are equally devoid of merit. In countless times, it has been held that the absence of external signs of physical injuries does not negate the commission of rape.[16] Regarding the claim that sexual intercourse in a standing position is impossible, it has already been held that sexual intercourse in a standing position while perhaps uncomfortable, not improbable. [17] Appellant's "sweetheart theory" must also be discarded, having failed to present any evidence to support the same, such as love letters, tokens or pictures, coupled with complainant's total denial of any relations with appellant other than being schoolmates. Moreover, it has been held that being lovers does not negate the commission of rape because such fact does not give the accused the license to deflower the complainant against her will, and will not exonerate him from the criminal charge of rape.[18]

Neither are we impressed with appellant's attempt to portray complainant as an aggressive and uninhibited young girl who would easily fall prey to the charms of an alleged school celebrity like appellant and succumb to the latter's sexual advances. This according to appellant, is due to the fact that the young people here, like their foreign counterparts, are now more sexually active. On the contrary however, this Court has taken judicial cognizance of the fact that in rural areas in the Philippines, young ladies are strictly required to act with circumspection and prudence, and that great caution is observed so that their reputation shall remain untainted.[19]

Appellant's assertion that there was no proof that force and intimidation was employed on complainant because the prosecution failed to establish the existence of the gun allegedly used to threaten the complainant also deserves scant consideration. The non-presentation of the weapon used in the commission of the rape is not essential to the conviction of the accused. It suffices that the testimony of the rape victim is credible because the established rule is that the sole testimony of the offended party is sufficient to sustain the accused's conviction if it rings the truth

or is otherwise credible.[20] What must be established is that there was indeed some form of force or intimidation at the time of the sexual assault. In fact, considering that human reactions vary and unpredictable, thus different persons react differently to the same situation, the force of intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime.[21] The force and intimidation need not even be irresistible, it being enough that it is present and it brings about the desired result.[22] Undoubtedly, considering the tender age of herein complainant, she was easily intimidated and cowed into submission by accused-appellant who, aside from being older and bigger, menacingly threatened to kill her with a gun if she resisted his sexual advances.

All told, it is beyond dispute that accused-appellant's guilt was established beyond reasonable doubt. He was positively identified by complainant who did not waver in her testimony. On the other hand, appellant admitted that he had sexual intercourse with the complainant, but maintained that the latter consented. Unfortunately, the evidence on record proved otherwise.

It must be emphasized that no woman, especially one who is of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated by the desire to have the culprit apprehended and punished.[23] Moreover, it is highly improbable for a barrio girl of tender age like the complainant who is definitely inexperienced in sexual matters to fabricate charges, for no reason at all, that will put herself and her family in a very compromising situation which could even invite reprisal.[24]

WHEREFORE, the appealed decision, finding appellant Rochel Traverro guilty beyond reasonable doubt of the crime of rape and imposing him the penalty reclusion perpetua, is hereby AFFIRMED subject to the modification that he shall instead indemnify Agnes Cuba the increased sum of Fifty Thousand Pesos (P50,000.00) in conformity with present jurisprudence.[25]SO ORDERED.

Davide, Jr., Melo, and Panganiban, JJ., concur.
Narvasa, C.J., (Chairman), on leave.

[1] Docketed as Criminal Case No. DNO-1084.

[2] Decision, p. 9

[3] Appellant's Brief, pp. 1-2.

[4] Appellee's Brief, pp. 4-8.

[5] Appellant's Brief pp. 2-4.

[6] People vs. Florendo, 230 SCRA 599 (1994); People vs. Batis, 216 SCRA 673 (1994).

[7] People vs. Peralta, 251 SCRA 6, 17 (1995); People vs. Poneferada, 220 SCRA 46 (1993).

[8] People vs. Miranda, 235 SCRA 202, 213-214; People vs. Marcelo, 223 SCRA 24 (1993).

[9] People vs. Reyes, 245 SCRA 785 (1995).

[10] People vs. Ponayo, 235 SCRA 226 (1994); People vs. Silong, 232 SCRA 987 (1994); People vs. Vivar, 235 SCRA 257(1994); People vs. Bello, 237 SCRA 347 (1994); People vs. Jimenez, 235 SCRA 322 (1994).

[11] People vs. Mandap, 244 SCRA 457 (1995).

- [12] People vs. Cura, 240 SCRA 234 (1995); People vs. Ching, 240 SCRA 267 (1995).
- [13] People vs. dela Cruz, 251 SCRA 77 (1995); People vs. Vitor, 245 SCRA 392 (1995).
- [14] People vs. Dado, 244 SCRA 655 (1995); People vs. Pija, 245 SCRA 80 (1995).
- [15] People vs. Namayan, 246 SCRA 646 (1995).
- [16] People vs. Monteverde, 142 SCRA 668 (1986); People vs. Gapasan, 243 SCRA 53 (1995); People vs. Rivera, 245 SCRA 22 (1994).
- [17] People vs. Castro, 196 SCRA 679 (1991).
- [18] People vs. Tacipit, 242 SCRA 241 (1995); People vs. Tismo, 204 SCRA 535 (1991).
- [19] People vs. Godoy, 250 SCRA 676 (1995).
- [20] People vs. Martinez, 219 SCRA 502 (1993); People vs. Vallena, 244 SCRA 685 (1995); People vs. Dado, supra; People vs. Rivera, 242 SCRA 26 (1995).
- [21] People vs. Bantisil, 249 SCRA 367 (1995).
- [22] People vs. Corro, 197 SCRA 121, 127 (1991); People vs. Antonio, 233 SCRA 283 (1994).
- [23] People vs. Sanchez, 250 SCRA 74 (1995); People vs. Manzana, 290 SCRA 152 (1995).
- [24] People vs. Guibao, 217 SCRA 64 (1993).
- [25] People vs. Alimon, 257 SCRA 658(1996) citing People vs. Escoto, 229 SCRA 430 (1994).

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