

## **PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGUSTIN DIAZ @ “OTIE” OR JOSE GOCO,” ACCUSED-APPELLANT.**

*G.R. No. 117323. October 04, 1996*

Ponente: DAVIDE, JR., J.

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### **DAVIDE, JR., J.:**

This is an appeal from the decision[1] of 23 April 1994 of the Regional Trial Court of Northern Samar (Catarman), Branch 20, in Criminal Case No. C-1810 finding accused Agustin Diaz, alias "Otie" or "Jose Goco," guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua; to indemnify Cherryl A. Naval in the amounts of P50,000.00, by way of moral damages, and P25,000.00, as exemplary damages; and to pay the costs.[2]

The testimony of Cherryl Naval, the complainant; Jenny Naval, Cherryl's mother; and Dr. Melodia Nerida, Medical Officer IV of the Northern Samar Hospital, established the case of the prosecution as follows:

On 14 July 1993, at around 11:30 a.m., Cherryl Naval, a 17-year-old student of the University of Eastern Philippines in Catarman, was at a shed in Bobon, Northern Samar, waiting for a vehicle bound for her home in Catarman. She had just accomplished an errand for her mother. At that instance, accused Agustin Diaz, who had been introduced to her sometime earlier by Mylene Ponio, her best friend who was working as a waitress at the Plaza Inn owned by him, arrived on his motorcycle. He offered to bring her to her destination. She initially declined the offer, but when the accused remarked that she was "too much" and that she did not "trust him," she finally agreed.

Instead of going towards the direction of Catarman, however, the accused headed the opposite way. Cherryl protested, but the accused said that they would first see Mylene Ponio for a while. He entered a diversion road going to a beach resort in Dancalan, Bobon. He brought her to an open cottage along the shore where they sat for a while; after which, he told her to wait because he would see Mylene Ponio. Since it was 12:00 noon and she was hungry, she told the accused that she would just go ahead of him. The accused forthwith stood up and went to another cottage, talked with a man, and thereafter returned with an opened bottle of coke and some food for her. Cherryl drank the coke and ate the food on a table. The accused was seated opposite her. In less than five minutes, she began to feel dizzy and sleepy, and then drifted off to sleep and lost consciousness. Before she lapsed into unconsciousness, the accused was still seated opposite her.[3]

When Cherryl recovered from her unconsciousness at around 5:30 p.m., she found herself already inside a room in another cottage. She was feeling pain in her vagina and on her thigh, and was naked from the waist down. She immediately put on her clothes and went out of the room. Upon seeing the accused at the right side of the doorway, she asked him what he did to her. The accused answered by threatening her that if she would tell anybody what had happened, he would kill her. She was so afraid that she could not do anything but obey the accused when he ordered her to ride on his motorcycle. Upon reaching the highway, she alighted as directed by the accused.[4]

Cherryl did not, however, immediately go home. She first went to a parking lot to think about what had happened to her and why it had to happen to her. It was already 7:00 p.m. when she arrived home. She handed to her sister the hat of the accused, which she found on top of her clothes when she regained consciousness and which she inadvertently brought with her from the cottage. When she was undressing herself, she found bloodstains on her underwear, which she had not noticed before. She did not yet inform her mother and sister of what had happened because the threat made by the accused still lingered in her mind and bothered her.[5]

The next day, Cherryl thought of ending her life by committing suicide. She was already dangling from a rope when her mother, Jenny Naval, found her and timely helped her down. It was only then that she revealed to her mother that she had been raped by the accused.

Accompanied by her mother, Cherryl went to the Northern Samar Provincial Hospital, where she underwent physical examination by Dr. Melodia R. Nerida,[6] whose findings[7] are as follows:

P.E. = Complained of pain at anterior thigh (L)

Pelvic Exam.: LMP June 28, 1993

Introitus - nulliparous

Genitalia - grossly normal

Hymen - incompletely healed hyminal [sic] laceration at 3, 5 o'clock laceration. Slightly superficial laceration with erythema at (L) labia minora.

S/E:

Cx = small pinkish, closed with erosion at posterior cervical lip with scanty non-foul smelling discharge.

I/E:

Cx = small, sl-firm, closed, non-tender or wriggling.

U = small

A = (-) masses/tenderness

D = scanty whitish non-foul smell discharge.

Laboratory Result:

= Failed to find any sperm cells.

On 16 July 1993, Cherryl and her mother reported the incident to the police authorities,[8] who then took down Cherryl's sworn statement.[9]

On that same day, the accused, accompanied by a certain Gilbert Hilum, one policeman by the name of De Luna, and one Buna, went to Cherryl's house. When they met Cherryl's mother, the accused declared that they came to amicably settle the case and to see Cherryl. Her mother did not allow them to do so. Sometime later, one Romy Daclag, a mutual friend of Cherryl's mother and the accused, also went to see Cherryl's mother and told her that the accused would pay P10,000.00 for the settlement of the case. Cherryl's mother chided Daclag, saying that they do not need the money even if they are poor; what they want is justice.[10]

The accused, on the other hand, maintained his innocence and claimed that nothing happened between him and Cherryl. He declared that it was Cherryl who asked to hitch a ride with him to a beach resort in Dancalan where she was supposed to meet her friends. The accused acceded to her request. They arrived at the resort where a policeman was celebrating his birthday. He admitted that he and Cherryl took some food and softdrinks. He, however, claimed that he did not serve Cherryl, for that was done by a waiter. After paying the bill, he

immediately left and headed towards the town of San Jose. He denied ever having sexual intercourse with Cherryl, having threatened her, and having made an offer to settle the matter amicably.[11]

Alfredo Asinas, the waiter at the beach resort, corroborated the accused's testimony that he [the accused] and Cherryl merely ate lunch at one of the cottages and that after paying the bill, he left, while Cherryl stayed behind.[12]

The trial court did not hesitate to accept Cherryl's story of her defloration. It took into account the presumption of her good moral character and reputation and of her virginity prior to the incident, since no evidence to the contrary was shown. It noted other indicia of her truthfulness, thus:

As she appeared in court to undergo the rigors of the public trial, the complainant was a picture of an innocent Filipina about to be ushered to her full womanhood, deceived, pierced and cheated of that most precious asset ever of a woman. Her hatred for the person responsible for that flashed and accelerated in vehemence as she narrated the outrage and her own shame that impelled her to hang herself.

It also considered the total absence of any ulterior motive on the part of Cherryl to charge the accused with the crime of rape, and the accused's offer to settle the case amicably. Appreciating against the accused the generic aggravating circumstance of the use of a motor vehicle, the trial court rendered a verdict of guilty.

On 29 April 1994, the accused erroneously appealed from the decision[13] to the Court of Appeals.[14] The trial court likewise erroneously transmitted the record of the case to the Court of Appeals which, however, forwarded it to this Court on 24 September 1994.[15]

We accepted the appeal on 20 February 1995.[16]

The accused contends that the trial court erred

1. In convicting the accused-appellant Agustin Diaz on the contradictory, inconsistent, improbable testimony of the prosecution witnesses Cherryl and Jenny Naval;
2. In disregarding the testimony and conclusion of Dr. Melodia Nerida as to the state of healing of the hymenal laceration and as to the possibility that the said hymenal laceration was perpetrated or sustained by Cherryl Naval not only on July 14, 1993;
3. In disregarding and not giving credence to the testimony of the accused and his witness Alfredo Asinas.[17]

The People, through the Appelle's Brief filed by the Office of the Solicitor General, counter this charge by saying that Cherryl's narration was consistent in all material points; that if ever there were inconsistencies, they were minor and inconsequential and were in fact badges of veracity that even strengthen her credibility; that having become dizzy and finally rendered unconscious, Cherryl could not be expected to completely remember all the details; that the only motive that could be ascribed to Cherryl is her desire to tell the truth; and that the trial court is the best judge as regards credibility of witnesses.[18]

We sustain the conviction of the accused.

Carnal knowledge of a woman in any of the following instances is rape: (1) when the intercourse is done by the use of force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when she is under twelve years of age.[19]

Before us now is the second scenario. Cherryl Naval claimed to have been unconscious when she was raped by the accused. There was no other witness to such rape than the accused himself. Hence, her defilement by the accused may only be proved indirectly by other evidence.[20] And we find sufficient circumstantial evidence to convince us with moral certainty that the accused did rape Cherryl Naval when the latter was in a state of

unconsciousness.

Section 4, Rule 133 of the Rules of Court provides the conditions when circumstantial evidence may be sufficient for conviction. It reads:

SEC. 4. Circumstantial Evidence, when sufficient. -- Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all circumstances is such as to produce conviction beyond reasonable doubt.

These requisites have been satisfied in this case. The following circumstances have been proved, and their combination and cumulative effect point to the accused beyond any shadow of doubt as the author of the crime of rape:

- (1) The accused offered Cherryl a ride on his motorcycle to bring her to her destination -- Catarman; instead of doing so, he brought her to a beach resort in Dancalan on the pretext that her best friend Mylene Ponio was there.
- (2) He brought her to a cottage at the said resort, and after resting for a while, he told her to wait because he would see Mylene Ponio.
- (3) He went to another cottage to order food; when he came back, he was bringing an opened bottle of coke and some food, which he gave to Cherryl.
- (4) Cherryl ate the food and drank the coke; thereafter, in less than five minutes, she fully lost consciousness.
- (5) Before Cherryl lost consciousness, only the accused was with her in the cottage.
- (6) When she regained consciousness at around 5:30 p.m. of the same day, she found herself in one of the two rooms of the cottage, naked from the waist down, and feeling pain in her private parts and on her thigh.
- (7) As she was about to leave for home, she saw the accused at the right side of the doorway.
- (8) When she confronted him for what he did to her, he threatened to kill her if she would tell anyone of what had happened.
- (9) When she reached home and took off her underwear, she noticed bloodstains on it.
- (10) The examination of Cherryl by Dr. Melodia Nerida disclosed that she had "incompletely healed hyminal [sic] laceration at 3 and 5 o'clock -- and [s]lightly superficial laceration with erythema at (L) labia minora."
- (11) Upon learning of Cherryl's complaint, the accused, accompanied by a policeman by the name of De Luna and by two other men, went to see Cherryl and her mother to amicably settle the case; then, later, Romy Daclag came to tell her mother that the accused was willing to give them P10,000.00 for the settlement of the case.

All these circumstances prove beyond moral certainty that Cherryl was deflowered while she was in the state of unconsciousness, which was proximately caused by a substance either in the coke or the food she had taken which the accused gave her, and that the accused was the one responsible for her defloration. Only the accused was with her before she lost consciousness and after she regained it. In short, they constitute an unbroken chain of events which leads to a fair and reasonable conclusion pinpointing the accused, to the exclusion of all others, as the guilty person, i.e., these proven circumstances are consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with any other hypothesis except that of guilty.[21]

The inconsistencies between the testimonies in court of Cherryl and her mother and the statements in their affidavits are not at all material to the fact that the rape was committed. They refer to minor, trivial, or inconsequential circumstances which even serve to strengthen the credibility of said witnesses, as they erase doubts that such testimonies have been coached or rehearsed.[22] Besides, affidavits, being taken ex-parte, are almost always incomplete and often inaccurate, sometimes for partial suggestion, or for want of suggestion and inquiries. Their infirmity as a species of evidence is a matter of judicial experience and are thus considered inferior to the testimony given in open court.[23]

The second assigned error merits scant consideration, for it is premised on a "possibility," not on a fact.

In the third assigned error, the accused has not shown why Alfredo Asina's testimony should have been believed by the trial court. The assessment of the credibility of a witness rests primarily in the trial court because available to it are the aids for an accurate determination thereof, such as the witness' deportment and manner of testifying, the witness' furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath.[24]

Against Asina's testimony and that of the accused is the version of Cherryl narrated in a candid and simple manner, which convinced the trial court of its truthfulness. Indeed, it is improbable that a young college student, like Cherryl, would tell a story of defloration, allow the examination of her private parts, and thereafter undergo the ordeal of a public trial, unless she was motivated by nothing more than an honest desire to obtain justice.[25]

Finally, it was sufficiently proved that the accused tried to amicably settle the case for P10,000,00. The offer of compromise was an implied admission of guilt[26] pursuant to the second paragraph of Section 27,[27] Rule 130 of the Rules of Court.

WHEREFORE, the appealed decision of Branch 20 of the Regional Trial Court of Catarman, Northern Samar, in Criminal Case No. C-1810 finding accused-appellant AGUSTIN DIAZ, alias "Otie" or "Jose Goco," guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, is hereby AFFIRMED in toto.

### **SO ORDERED.**

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), Criminal Case No. C-1810, 41-48; Rollo, 9-16. Per Judge Cesar R. Cinco.

[2] Id., 48; Id., 52.

[3] TSN, 19 April 1994, 29-35.

[4] Id., 35-41.

[5] TSN, 19 April 1994, 37, 42-44, 49.

[6] Id., 45-47; 20-21.

### **[7] OR, 10.**

[8] TSN, 19 April 1994, 47.

**[9] OR, 4-5.**

[10] TSN, 19 April 1994, 21-22.

[11] TSN, 21 April 1994, 9-19.

[12] Id., 31-34.

**[13] OR, 40.**

[14] Section 5(2)(d), Article VIII, 1987 Constitution; Section 3(c), Rule 122, Rules of Court.

[15] Rollo, 1.

[16] Id., 23.

[17] Id., 35.

[18] Rollo, 96-98.

[19] Article 335, Revised Penal Code; *People vs. Rejano*, 237 SCRA 627, 646 [1994].

[20] *People vs. Fabro*, 239 SCRA 146, 156 [1994].

[21] *People vs. Alvero*, 224 SCRA 16, 27 [1993]; *People vs. Oracoy*, 224 SCRA 759, 767 [1993].

[22] *People vs. Pamor*, 237 SCRA 462, 475 [1994]; *People vs. Utinas*, 239 SCRA 362, 370 [1994].

[23] *People vs. Marcelo*, 223 SCRA 24, 34 [1993]; *People vs. Enciso*, 223 SCRA 675, 685 [1993].

[24] *People vs. Delovino*, 247 SCRA 637, 647 [1995].

[25] *People vs. Patilan*, 197 SCRA 354, 366 [1991]; *People vs. Alib*, 222 SCRA 517, 528 [1993].

[26] *People vs. Manuel*, 198 SCRA 818, 825 [1991]; *People vs. Flores*, 239 SCRA 83, 104 [1994]; *People vs. Delovino*, *supra* note 24, at 649.

[27] It provides:

In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.

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