

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO LO-AR Y BERING, ACCUSED-APPELLANT.

G.R. No. 118935. October 06, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the decision of the Regional Trial Court of Zamboanga City[1] convicting herein appellant Fernando B. Lo-ar of Forcible Abduction with Rape.

The complaint charging appellant with said offense states:

That on or about July 13, 1993, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a hard object, by means of force and intimidation, and with lewd designs, willfully, unlawfully and feloniously, abducted the undersigned Isabelita Campoy y Dampayla by then and there forcibly dragging her from Oscar Hardware, R.T. Lim Boulevard, this City, where she was then walking and placed her on board a waiting jeep and thereafter brought her inside Cottage No. 17, Greenhill Motel, located at Lunzuran, this City, where said accused by means of force and intimidation willfully, unlawfully and feloniously have carnal knowledge of her against her will; there being present an aggravating circumstance in the commission of said offense as it was facilitated with the use of motor vehicle.

CONTRARY TO LAW.[2]

Arraigned on August 13, 1993, appellant pleaded “not guilty” to the above charge. Trial commenced on October 6, 1993.

The prosecution’s version of the facts is as follows:

The victim, Isabelita O. Campoy, was 17 years old when the alleged crime was committed. Originally a resident of Taliga, Sindangan, Zamboanga del Norte, Isabelita came to Zamboanga City on June 25, 1993. There, she stayed with her aunt, Catherine Acogedo, and helped the latter manage her store located along R.T. Lim Boulevard. The store would usually open in the afternoon and close at 2:00 the next morning.

At around 2:00 in the morning of July 13, 1993, before closing time, complainant went to the restroom about 80 or 90 meters from her aunt’s store to relieve herself. The restroom was closed, however. Complainant thus proceeded to the Oscar Hardware about 50 to 60 meters farther away but found the place too dark. Before she could head back to the store, one of the two persons aboard a jeep parked at the side of the road called her in Visayan dialect “Kadyut lang,” meaning, for a moment. As complainant approached the jeep, the accused alighted from the vehicle and grabbed her. Complainant struggled to free herself as the accused lifted her into the jeep, but her resistance went for naught. The accused pushed complainant into the seat behind the driver and sat beside her. He covered her mouth and poked something on her back as the jeep drove off.

Upon arriving at the vicinity of Greenhills Motel in Guiwan, Lunzuran, the accused ordered complainant to alight

from the jeep. Complainant refused but the accused forcibly pulled her out of the jeep, after which the vehicle left. The accused then brought the complainant to the compound near the highway where there were small houses or cottages. The accused talked to an old man for a while and warned complainant not to make any noise as the man was his friend. The accused then ordered complainant to enter one of the cottages. Complainant refused, so the accused forced her into the cottage. The accused closed the door and turned off the light. Complainant however turned it on. This angered the accused who turned off the light anew and slapped complainant on the face. Thereafter, the accused pushed complainant into the bed, took off her shirt, bra and pants, and forced her to lie down. The accused initially was not able to have his way with complainant on account of the latter's resistance. The accused, however, eventually overpowered complainant and succeeded in having sexual intercourse with her. She felt pain in her private part.

After satisfying his bestial lust, the accused lay on the bed until he fell asleep. At this juncture, complainant saw the chance to escape. She put on her clothes and went out of the house without being noticed. She walked past the hotel gate and, upon reaching the road, flagged a tricycle. Complainant told the tricycle driver to take her to her aunt's house where she found her friends to whom she related her ghastly experience. Complainant's friends accompanied her to the police station where complainant narrated her ordeal to SPO4 Abraham Rojas. She then signed a Complaint-Assignment Sheet. Informed by the complainant that the suspect was still at the cottage, SPO4 Rojas, together with the complainant, her friends and two others proceeded on board a police vehicle to the scene of the crime. The investigating party first went to the Country Living Motel at Guiwan, but complainant said that that was not the place where she was abused. Rojas thus told the driver to proceed to Lunzuran. Along the way, complainant saw a sign board of the Greenhills Motel and realized that that was the place where she was brought by the accused.

Upon reaching the Greenhills Motel, SPO4 Rojas approached the Desk Information counter and was informed that the accused was still in the cottage. Rojas, together with a motel employee entered the cottage and saw a naked man sleeping on the bed. Complainant identified the man as the very person who abducted and abused her. Thereupon, Rojas apprehended appellant.

Thereafter, complainant subjected to a medical examination. Dr. Henry Cawley, a Medico-Legal Officer from the National Bureau of Investigation who examined complainant submitted a report[3] with a finding of a "fresh incomplete deep hymenal laceration" present in the victim's genitalia "compatible with sexual intercourse with a man on or about the alleged date." The report also revealed the presence of spermatozoa.

The accused, on his part, admitted the sexual intercourse with the complainant but claimed that the same was consensual. He alleged that it was complainant herself who "made the first move." His account of the events which transpired at the time of the alleged incident is as follows:

At around 8:00 to 9:00 in the evening of July 12, 1993, the accused was having dinner alone at Stall No. 40 located along R.T. Lim Boulevard. The woman who served his order approached him and asked if she could sit by his side. She introduced herself as Libeth, supposedly the nickname of complainant Isabelita Campoy. The accused told her to take a seat and asked her if she wanted anything to drink. Complainant asked for a bottle of Coke. She then told him that she had a problem.

Complainant related that she used to work as a helper in Dapitan. Later, she was taken by her aunt who promised her a good job in Zamboanga City. Upon arriving in Zamboanga City, complainant was made to work for her aunt at the barbecue stand, serving and entertaining customers. She was not paid any salary but was instead given P2.00 for every bottle her customer ordered. Complainant asked if she could borrow money from the accused. She said that she could not borrow money from her aunt to whom she owed P150.00 for the fare from Dapitan.

Moreover, her aunt would not allow her to look for another job because it was difficult to look for waitresses in Zamboanga City.

Complainant then told the accused that she would agree to go with him if he would give her P300.00. The accused who described himself as a “civilian agent from the intelligence division” of Recom 9, demurred saying that he was still conducting surveillance at that time. He told her, however, that “ if you want to go with me, it’s up to you, and the money that you need, I can give it to you.” Complainant replied that he could come back at her “off-time” at 2:00.

The accused claimed that as a result of their long conversation, he and complainant became “sweethearts.” Thus, at around 1:45 a.m., the accused came back to the store. He told complainant that they could not go together because there were many people in Zamboanga City who knew him. He then gave her P30.00 for her fare so they could ride separate tricycles to Lunzuran. The couple alighted right at the entrance of the Greenhills Motel, just along the highway.

The accused knocked at the gate and a man from the motel counter opened the gate for them. The accused asked the man whether there was a vacant room. The man replied that Cottage No. 17 was still available. The accused then asked him how much and asked for an extra blanket. The man gave him a blanket and the accused paid him.

The man conducted the couple to the cottage and opened the door. The couple then entered the cottage. Complainant later went outside and relieved herself behind the cottage. After five minutes, she went back to the cottage.

Complainant requested that the light be turned off as she was ashamed and had not yet “tasted” any man. After engaging in some conversation, the couple had sexual intercourse twice.

Thereafter, the complainant informed the accused that she could not go home. This surprised the accused who replied, “you know how to come with me, so you must know how to go home.” Complainant explained that she might be killed by the husband of her aunt, Ernesto Salcedo, a policeman, because she was not able to go home that night. She asked him to go with her to their house. The accused refused, saying “this is not our agreement.” Complainant warned the accused that if he would not go with her, she would demand P50,000.00 from him. Should he refuse to pay her the said amount, she would report to the police that she had been raped. “It’s up to you,” the accused replied.

At around 5:30, complainant asked if she could go home. The accused consented to her request. After she left, the accused went to sleep.

A little before 7:00 a.m., the accused heard someone knocking at the door. He opened the door to find several policemen who informed him that he was a rape suspect. The accused then put on his clothes and went with the policemen.

Salustiano Infante, an employee of the Greenhills Motel since 1977, testified in behalf of the defense. He narrated that at around 2:00 in the morning of July 13, 1993, Infante, who was stationed at the counter, saw a man walking with a woman coming from the main road towards the counter, the woman about one meter behind the man. Infante recognized the man as a regular customer who had previously checked in many times at the motel. Upon reaching the counter, the man introduced himself as an intelligence officer and asked whether there was a vacant room. The woman stood by, waiting for the man. Infante replied that there was a vacant room available and conducted them to Cottage No. 17, about 20 meters from the counter. Infante opened the door of the cottage and switched on the light while the couple waited right at the stairs leading to the cottage. The man then went up the stairs followed by the woman. Infante left the couple and went back to the counter. He did not observe anything

unusual throughout the couple's stay at the cottage.

Infante again saw the woman at around 5:30 a.m. at the gate and walking towards the main road. The woman would later come back at 6:30 in the morning with several policemen.

After hearing, the trial court, on November 4, 1994, rendered its decision the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, this Court finds the accused FERNANDO LO-AR y BERING guilty beyond reasonable doubt as principal in the complex crime of FORCIBLE ABDUCTION WITH RAPE and taking into account the presence of the aggravating circumstance of use of motor vehicle in abducting the victim which is not off-set by any mitigating circumstances hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA, to pay the amount of P50,000.00 to private offended party Isabelita Campoy y Dampayla as moral damages and to pay the costs.

Being a detention prisoner, the said accused is entitled to the full time of the period of his preventive detention provided he has abided with the conditions set forth in Article 29 of the Revised Penal Code.

SO ORDERED.[4]

Hence, this appeal, the lone assignment of error being--

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BEYOND REASONABLE DOUBT OF THE CRIME OF FORCIBLE ABDUCTION WITH RAPE.

While appellant admits that he succeeded in having carnal knowledge with complainant, he claims that none of the circumstances enumerated in Article 335[5] of the Revised Penal Code is present in this case.

Firstly, complainant was 17 years old then. She was of sound mind and not demented.

Secondly, accused had not deprived her of reason. Throughout the incident, she had the presence of mind.

Thirdly, her allegation that accused used force on her is highly improbable and incredible.[6]

In support of his contention that he did not use force upon the victim, appellant claims that complainant did not shout or call the attention of the people along R.T. Lim Boulevard when she was being abducted. Neither were there visible signs of physical injury on complainant's body, nor was there any tear in her clothing. Finally, the motel caretaker, Salustiano Infante, testified that appellant and complainant did not make any noise while inside the cottage.

We are not impressed.

Appellant's assertion that complainant did not shout while she was being abducted is belied by the records. Complainant testified that she did shout and struggle to resist appellant's advances. Thus:

Q Did you try to struggle when he was lifting you into the jeep?

A Yes, sir, I was struggling.

Q That was the reason why he was not able to lift you into the jeep right away because you were struggling?

A When he was lifting me, I was struggling, but he was not able to put me into the jeep immediately.

Q When you were struggling, did you shout?

A I was able to shout only once.[7]

Once inside the jeep, complainant was prevented from shouting when appellant covered her mouth and she was afraid he might kill her as appellant poked something at her back.

ATTY. ELUMBA:

Q So, the accused was covering your mouth, when the jeep was running

A Yes, sir, he covered my mouth and the other hand was poking something at my back.

Q And he was covering your mouth until you reached Green Hills Hotel?

A Yes, sir, he brought me to Lunzuran.

Q He was covering your mouth while the jeep was running?

A Yes, sir, he was covering my mouth until we reached Lunzuran.

Q He was poking something at your back at the same time?

A Yes, sir.

Q Can you remember more or less how long was the jeep running until it reached Greenhills Hotel?

A I was not able to notice how long because I was really afraid he might kill me.[8]

Also, complainant was not able to shout at the time she was brought to the cottage because, as adequately explained by her, there was no one else in the area except the old man, the caretaker, who was supposed to be a friend of appellant:

A I was not able to shout because he warned me not to shout anymore, because according to him those people are his friends.

COURT:

Are you referring to the old man?

A Yes, sir.

ATTY. ELUMBA:

Q Did you really believe that oldman was the friend of the accused?

A I believed that they are close friends because upon arriving thereat, Fernando Loar went near the oldman and the oldman attended to him.

Q Did you tell the police that the oldman is the friend of the accused?

A Yes, sir, I told the police that they are friends.[9]

Clearly, shouting would have been futile for, in complainant's mind, the caretaker would not come to her succor.

Q And then you walked towards this cottage?

A He brought me to this small house.

Q Did you not see any person around at the time?

A While we were inside the compound, I noticed a person there, one person, an oldman.

Q What did this man say to you?

A How can I say, I was not able to shout because he already warned me if I am going to shout nobody will help me and that oldman was his friend and that oldman will help him.

Q Did you see that oldman?

A They talked for a while, and I was not able to run because I was afraid and because this oldman might help him.

x x x

ATTY. ELUMBA:

Q You did not try to run also?

A I did not run because I was thinking if I am going to run they will catch me because there were two of them.[10]

The absence of bruises, scratches or abrasions in complainant's body or tear in her clothing does not rule out rape. The lack of such telltale signs of force is not necessarily inconsistent with complainant's testimony regarding the manner by which appellant succeeded in satisfying his lust. She struggled hard to prevent him from deflowering her. She kicked him. But in the end, the last ounce of her resistance deserted her through sheer exhaustion. Thus:

Q When the accused was removing your T-shirt were you standing or were you sitting down?

A I was sitting when he took off my T-shirt.

COURT

Q Were you sitting on the bed?

A Yes, sir, on the bed.

ATTY. ELUMBA:

Q Was he holding anything at the time?

A I was not able to see because it was dark because he put off the light.

Q But he was using his both hands when he was trying to remove your T-shirt?

A Only one hand, was used to remove my T-shirt and his other hand was holding my hands.

Q How was your T-shirt removed, by the way, was your T-shirt with buttons or none?

A None, T-shirt.

Q Was it removed through your head or down?

A By the head.

Q Necessarily you have to raise your hands also?

A No, sir, because he raised my hand one after the other, to remove my T-shirt because I have no more strength to resist.

Q You said you struggled, did you not try to kick him?

A I was struggling and I was afraid because that was my first time, it never happened to me in our place.

Q While he was removing your pants, did you not kick him?

A I just struggled by kicking my feet, and he was able to take off my panty.

Q When you were already without your panty, he went on top of you?

A Yes, sir.

Q Was he holding your both hands?

A Yes, sir, he held my both hands.

Q You said you were struggling, how were you struggling?

A The first time when he tried to have a sexual intercourse with me, I struggled and I was trying to kick him and moved, and he was able to succeed when I lost my strength, in the second time.

Q The second time, you were just lying down and he was not holding you anymore?

A I cannot do anything, because I was already tired.

Q He was not holding you anymore?

A He was still holding me.

Q He was holding you where?

A My both hands.

Q At the time, he was trying to insert his penis to your private part?

A Yes, sir, he was able to succeed.

Q My question, when he was holding your both hands, that was the time when he inserted his penis to your private part?

A Yes, sir.

Q He was not holding his penis?

A I just do not know because I have no knowledge and it was so dark.

Q But you are sure that at the time, he was holding both of your hands?

A Yes, sir.

Q He was holding your hands with both of his hands, is that correct?

A I do not know sir, how he was holding my two hands, but I was not so sure on how the manner he was holding, it was so dark and he was able to succeed in fucking me.

Q That time, you did not struggle anymore because you said you were tired already?

A Yes, sir, I was already very tired.[11]

Evidently, appellant did not need to inflict blows upon complainant or to tear at her clothes to consummate his criminal act. The force required in rape cases is relative and need not be overpowering or irresistible when applied. What is necessary is that the force employed in accomplishing it is sufficient to consummate the purpose which the accused has in mind.[12]

Appellant next attacks complainant's credibility by likening her to "other ladies in the barbecue stalls" who "for a fee, willingly entertain men." He claims that the charge against him is nothing but a scheme to extort money from "sex hungry male prospects." Since complainant's uncle is a member of the police force, according to appellant, her scheme was "not farfetched."

Appellant is adding insult to injury by picturing complainant as a loose woman. His self-serving allegation without a shred of substantiation betrays his desperation to exculpate himself from liability. It is ridiculous to depict the complainant as a vile and cunning creature who would offer her flesh to a stranger, then blackmail him, and when rebuffed, would fabricate a case against him and willingly undergo the humiliation of an examination of her private parts and the travails of a public trial. A naive barrio girl of seventeen who came to the city to help her aunt to tend a store could not be that wild and daring girl as appellant described her to be. On the contrary, the trial court found complainant to be a decent barrio lass who was honest, truthful and straightforward in her testimony:

In her narration of the ordeal she has undergone in the hands of the accused Lo-ar, as already recounted, the herein private complainant has exuded her naiveness which are commonly seen in barrio girls. Nevertheless, the questions propounded on her were answered in a frank and straight-forward manner devoid of any exaggeration.[13]

xxx

The mere fact that the private complainant escaped from the cottage where she was sexually molested by the accused is indicative of the fact that her being in such place was against her will. Her reporting the incident to the police soon after her escape and allowing her private parts to be examined by a doctor and thereafter be the

subject of a public trial are clear indications that indeed she was raped. In the case of *People vs. Joya*, 227 SCRA 9, the Supreme Court said, that the ‘Conduct of the Woman immediately following the alleged assault is of utmost important as tending to establish the truth or falsity of the charge.’ Truly, applicable to the instant case is the ruling of the Supreme Court in a host of cases that ‘When a woman says that she has been raped, she says, in effect, all that is necessary to show that she had indeed been raped, and if her testimony meets the test of credibility, the accused may be convicted on the basis of the victim’s testimony. (*People vs. Lascuna*, 225 SCRA 386; *People vs. Segundo*, 228 SCRA 691; *Anciro vs. People*, 228 SCRA 629).

The credibility of the herein private complainant is beyond question because during the course of her testimony as she recounted the ordeal and humiliation she suffered in the hands of the accused, the Court observed that she shed tears. In the case of the *People vs. Joya*, supra, it was ruled that ‘the crying of the victim during her testimony is evidence of the credibility of the rape charge.’[14]

On the other hand, the trial court, in correctly debunking appellant’s incredible testimony, had this to say:

xxx (T)he manner and attitude of the accused while on the witness stand as well as the answers he gave to the questions asked of him indicated manifestly a supercilious attitude. This is clearly shown in the defense he has cleverly concocted.

x x x

The Court rejects the testimony of the herein accused as a complete fabrication, it being unbelievable and specious. For instance, the accused Lo-ar claimed that it was the private offended party who asked to sit down at the table where he was eating his supper and he even offered her something to drink. Then according to the accused, the private complainant told him about her financial problem and tried to borrow the amount of P300.00 from him. To the mind of the Court, this is an improbability, because there is no evidence that the accused and the private complainant are acquaintances or sufficiently known to one another for one to confide personal problems to the other and even borrow money. It is unnatural for anyone to borrow money from a perfect stranger or even expect that a stranger will be willing to lend the money.

Another instance illustrative of the specious character of the testimony given by the accused is shown by his answers during the course of the cross-examination.

Q While you were inside the cottage together with the private complainant, according to you, the private complainant told you that, that is the first time that she was able to taste a man?

A Yes.

Q In fact, she was very shy that she wanted the lights to be put off, correct?

A Yes.

Q Now, however, you said, it was the private complainant who took off her shirt first and then her bra, correct?

A Because we had already a long conversation and we became ‘sweethearts.’

Q When she took off her shirt, that was before you?

A Yes.

Q When she took her bra, was the light put off?

A Yes, it was already put off because it (took) her a long time to accept me.

(tsn., pages 40 & 41, November 24, 1993)

From the foregoing, one could gleaned the deceptive nature of the accused’s answers, which could only be the product of a devious mind. This is so, because while insisting on one hand that he paid P300.00 for the sexual favors of the private complainant, here he mentions that after a “long conversation” inside the cottage, he and

the private complainant became “sweethearts”, thus implying that it was because of their becoming sweethearts, that the private complainant willingly submitted herself to his sexual advances. In the case of *People vs. Casao*, 220 SCRA 362, the Supreme Court ruled that “Sweetheart Theory” in rape is not credible on bare testimony of the accused.” In the instant case, analyzing the testimony of the herein accused, it appears he puts up two types of defenses, the first one, is that he paid, the private complainant for having sex with her or what may be called the “Paid for Sex Theory” and the second one, is the “Sweetheart Theory”. These theories are, in the thinking of the Court, a contradiction. They cannot exist together in a given case, because if a woman submits herself freely to the sexual advances of a man due to the fact that she loves the man, they being sweethearts or lovers, then it is incongruous and ridiculous for her to demand money for her sexual favors.

Another example of the extent of the prevarication conjured up by the herein accused is found in the answers he gave to some questions of the Court during the trial. Thus:

Q. Do you remember that a while ago, you said, you did not want the girl or the woman to take the same tricycle with you because you do not like to be seen together with her?

A. Yes.

Q. Can you tell the Court why you do not like her to be seen by other people?

A. Because I have a live-in partner and she is a teacher.

Q. And you do not like to let your live-in partner know that you are fooling around with another woman, is that not it?

A. Yes, Your Honor, considering that it was just a mere accident, when I met the lady.

Q. An accident which you pursued because you went back after leaving the place? Is that what you mean by accident?

A. Yes, Your Honor, because I was not thinking that she will still be there; it was just a joke.

Q. And you went there to verify, to be sure?

A. Yes, Your Honor, and upon arriving she was still there.”

(tsn, pages 46 & 47, November 24, 1993).

It is admitted by the accused himself that it was 2:00 o'clock in the early morning of July 13, 1993, that he brought the private complainant to the Greenhill Motel. At that time, the streets of Zamboaga City are practically deserted, except for a few on legitimate errands or people like him with mischief in mind, like a predatory animal looking for a suitable prey to pounce upon. If the only reason why he and the private complainant took separate tricycles to the Greenhill Motel was because he was afraid he would be seen by his live-in partner who is a teacher, such a reason is a shallow one, acceptable only to the gullible and the naive. In the first place, as already stated, at that time of night, his chances of being seen by his live-in partner is very nil, besides the fact, that a live-in partner is not a wife who may resort to some legal action against him for his infidelity. It is clear that the insistence of the accused that he and the private complainant took separate tricycles was cleverly designed by him to perhaps convince the Court that there was voluntariness on the part of the private complainant in submitting herself to him. He had even the temerity to tell the Court, and even proud to say it, that he has a live-in partner who is a teacher, thus indicating his depravity and lax morals.

It is the insinuation of the accused that he was unarmed and therefore could not have threaten or intimidated the private complainant into going with him to the motel. He even goes further by stating that when they were at the counter of the motel arranging for a room, he was not even holding the private complainant, nor did the private complainant shout for help while passing the police station and a police checkpoint or even when they were already in the cottage of the motel. It will be recalled that the private complainant has stated that when she was lifted up on the jeep by the accused while they were still near the Oscar Hardware along R.T. Lim Boulevard, the accused sat beside her, covering her mouth with one hand and poking a hard object at her back.

It is a truism that different persons react to a given situation in different ways. Confronted by the same situation in different ways. Confronted by the same situation as that which confronted the herein private complainant in the night of July 13, 1993, some women might fight tooth and nail to preserve their virtue even at the expenses of losing their lives. There are those who can easily be cowed into submission, perhaps thinking that their life is more precious than their virtue. Said the Supreme Court in the case of *People vs. Segundo*, 228 SCRA 691, "There is no standard form of behavior when one is confronted by a shocking incident." In one case, the Supreme Court said, "It is well settled that the force or violence required in rape cases is relative; when applied, it need not be overpowering or irresistible." (*People vs. Codilla*, 224 SCRA 104). Still in another case, the same Court said that "Intimidation is a relative term just like force and violence depending on the age size and strength of the parties and their relationship with each other." (*People vs. Magpayo*, 226 SCRA 13).

It is well-settled that the assessment of the trial judge regarding the credibility of witnesses is accorded great respect by appellate courts.[15] In the absence of substantive facts which have been overlooked, we defer to the above findings of the trial judge.

IN VIEW OF THE FOREGOING, the decision of the trial court is hereby AFFIRMED in toto.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] Branch 13, presided by Judge Carlito A. Eisma.

[2] Records, p. 1.

[3] Exhibit "G."

[4] *Id.*, at 68-69.

[5] Not Art. 355, as cited by appellant. Said Article 335 states in part:

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

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

[6] Rollo, p. 58.

[7] TSN, October 6, 1993, p. 44; underscoring supplied.

[8] *Id.*, at 49; underscoring supplied.

[9] *Id.*, at 53; underscoring ours.

[10] TSN, October 6, 1993, pp. 51-52; underscoring supplied.

[11] TSN, October 6, 1993, pp. 53- 56.

[12] *People v. Corea*, G.R. No. 114383, March 3, 1977; citation omitted.

[13] Rollo, p. 75.

[14] *Id.*, at 80.

[15] *People vs. Sonza*, G. R. No. 114183, February 3, 1997.

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