PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX DE LOS SANTOS Y SANTOS, DEFENDANT-APPELLANT.

G.R. No. 120235. September 30, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision of the Regional Trial Court, National Capital Judicial Region, Branch 128, Kalookan City,[1] convicting accused Alex de los Santos y Santos of the crime of rape committed against Rubilita Ganto y Fernandez, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the accused Alex de los Santos is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of Reclusion Perpetua and to pay private complainant P50,000.00 as moral damages and P30,000.00 as exemplary damages."

On September 17, 1993, Assistant City Prosecutor Dioniso C. Sison of Kalookan City filed with Regional Trial Court, Branch 128, Kalookan City, an information charging the accused with rape, which reads:

> "The undersigned Asst. City Prosecutor accuses ALEX DE LOS SANTOS Y SANTOS of the crime of RAPE, based on the duly subscribed Sworn Statement of RUBILITA GANTO y FERNANDEZ, copy of which is hereby attached as integral part of this Information, committed as follows:
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> "That on or about the 15th day of September 1993 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with (sic) and have (sic) sexual intercourse with RUBILITA GANTO y FERNANDEZ, against her will and without her consent."
>
> "CONTRARY TO LAW."[2]

Upon arraignment on October 18, 1993, accused, assisted by counsel de oficio, pleaded not guilty.[3] After due trial, on April 24, 1995, the trial court found accused guilty beyond reasonable doubt of the crime of rape, and sentenced him to the penalty of reclusion perpetua, and awarded damages, as quoted in the opening paragraph of this opinion.

Hence, this appeal.

The prosecution presented the following witnesses: the victim, Rubilita Ganto, her grandfather, Marvin Sumlin, Dr. Floresto Arisala, Jr., SPO1 Gaudencio Domingo and Federico Velasco. Only accused Alex de los Santos testified in his own defense.

The facts are as follows:

On September 15, 1993, around 3:00 in the afternoon, Rubilita Ganto, a 15 year-old student, was preparing her school project at home. At that time, accused Alex de los Santos, a neighbor, barged into the former's house and pointed an icepick at her neck. Accused threatened her with death if she shouted. While continuously threatening

her with the icepick, accused forced Rubilita to go to her bedroom. He repeatedly ordered her to undress. She initially resisted, crying and begging the former to have mercy. Instead of showing remorse and compassion, accused pressed the icepick deeper into Rubilita's neck, scrapping her skin. In fear of her life, Rubilita had no choice but to abide by accused's wishes. Upon his insistence, she removed her clothes and lay down. Thereafter, accused removed his clothes and lay on top of her. While pressing the icepick at Rubilita's neck, accused told her to open her thighs and inserted his penis inside her vagina. Accused stayed on top of her for about five (5) to ten (10) minutes, and she could not do anything but cry silently as accused continued the sexual assault. After consuming his lust, accused ordered her to dress up, and he hurriedly left the house.[4]

Marvin Sumlin, Rubilita's grand uncle, arrived home at around 6:00 p.m. He saw Rubilita crying in the living room and trembling with fright. Upon repeated inquiry, Rubilita finally told him about the rape committed by the accused. Thereafter, Marvin Sumlin reported the incident to barangay officials, who immediately looked for accused and arrested him.[5]

On September 16, 1993, Dr. Floresco Arisala, Jr. examined Rubilita, and issued a medico-legal report, with the following findings:

> "GENITAL EXAMINATION:
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> "Pubic hair, fine, short, scanty. Labia Majora and labia minor, coaptated. Fourchette, tense. Vestibule, pinkish, smooth. Hymen, originally annular, moderately tall, thick, with a healing deep laceration at 6:00 o'clock position corresponding to the face of a watch, edges of which are congested and edematous. Hymenal orifice, admits a tube, 2.5 cm. in diameter with marked resistance. Vaginal walls, tight. Rugosities, prominent.
>
> "CONCLUSIONS:
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> "1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of the examination.
>
> "2. Healing deep hymenal laceration, present, compatible with sexual intercourse with a man on or about the allegation of commission."[6]

Dr. Arisala explained that the healing deep laceration meant that sexual intercourse occurred within one to three days from the date of examination.[7]

Accused Alex delos Santos denied the charge of rape. He testified that on September 15, 1993, at about 2:30 p.m., he was drinking beer with some companions in the house of one Alex Anuba, with whom he was staying at that time. He went over to Rubilita's house at around 3:30 in the afternoon to watch television. He stayed there for one and a half (1 ½) hours and chatted with Rubilita. After the television show, he went home. Accused believed the reason he was charged with rape was due to a feud between Rubilita and Alex Anuba's wife.[8]

In convicting the accused, the trial court gave full credit to the testimony of the victim. It accepted Rubilita's straightforward testimony and ruled that it was sufficient to convict the accused. The trial court held that the inconsistencies in the victim's testimony were too minor to affect her credibility. The trial court dismissed accused's contention that the motivating factor for charging him with rape was the feud between Anuba's wife and Rubilita.

In his sole assignment of error, accused submits that the evidence of the prosecution is insufficient to convict him beyond reasonable doubt of the crime charged. He avers that Rubilita's testimony is replete with inconsistencies that seriously cast doubt on her credibility. Firstly, accused claims that Rubilita's afternoon classes started at 1:30 p.m., hence, she could not have been home at 3:30 p.m., the alleged time of commission of the crime. Secondly, Rubilita testified that the icepick wounded her skin, however, Dr. Arisala stated that the victim did not have any

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other injuries other than in her genitalia.

Furthermore, accused asserts that it is contrary to reason that Rubilita failed to shout for help when she knew that her aunt and cousins living next door could have heard her. Accused contends that such failure to seek help when there was opportunity to do so casts doubt on the veracity of the charge. Accused also insists that the victim should have forcibly resisted his advances since a mere initial resistance is not the manifest and tenacious resistance required by law in rape cases.

We find accused's assertions untenable.

After a careful review of the records, we find no reason to disturb the findings of the trial court. The issue boils down to the credibility of the sole Prosecution witness, the victim Rubilita herself. We have repeatedly held that the trial judge is in the best position to assess the credibility of witnesses because of his unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination.[9] Moreover, as a rule, testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. [10]

At any rate, the inconsistencies enumerated by the accused are more apparent than real. As to the time of commission of the offense, accused merely assumed that Rubilita should have been in school at 3:30 p.m. on September 15, 1993. Such statement is too speculative to be considered. As regards the physical injuries, we find no apparent contradiction between the statement of the victim and the doctor's findings. The scrapping of the skin by a pointed icepick might not have been noticeable enough to catch the attention of the doctor. In any case, such minor inconsistencies and contradictions, do not destroy the witness' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[11]

We disagree with the contention that the victim's failure to shout for help constitutes lack of resistance and is fatal to the charge of rape. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety.[12] In this case, Rubilita failed to shout for help as she was threatened with death by the accused. During the whole sexual assault, accused poked the icepick at the victim's neck. When a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently, and her failure to take advantage of the opportunity to escape or seek help does not vitiate the credibility of her account.[13]

As regards the defense of denial, it is inherently a weak defense which cannot prevail over positive identification that accused perpetrated the crime charged.[14]

With respect to the award of damages, we note that the trial court failed to award civil indemnity to the victim. "Time and again, we have held that moral damages is separate and distinct from the civil indemnity awarded to rape victims. The moral damages cannot take the place of the civil indemnity. While the award of moral damages is discretionary on the part of the court, the civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape."[15] Hence, accused is ordered to pay the victim, Rubilita Ganto, the amount of P50,000.00, by way of civil liability. We sustain the award of moral damages amounting to P50,000.00, in accordance with current rulings.[16] However, we delete the award of exemplary damages for lack of legal basis.

WHEREFORE, the Court AFFIRMS the appealed decision with MODIFICATION. The Court finds accused ALEX DE LOS SANTOS y SANTOS guilty beyond reasonable doubt of rape committed against Rubilita Ganto y

Fernandez, as defined and penalized under Article 335 of the Revised Penal Code, before its repeal by R. A. No. 8353, effective on October 7, 1997, without aggravating or mitigating circumstances, and sentences him to suffer the penalty of reclusion perpetua, with the accessory penalties of the law, and to indemnify the victim Rubilita Ganto y Fernandez in the amount of P50,000.00 as civil indemnity, plus P50,000.00 as moral damages.

With costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In Criminal Case No. C-45096, rendered on August 24, 1995 by Judge Zenaida N. Elepaño, Rollo, pp. 12-14.

[2] Rollo, p. 4.

[3] Certificate of Arraignment, RTC Records, p. 9.

[4] TSN, November 29, 1993, pp. 1-34.

[5] TSN, December 1, 1993, pp. 1-9.

[6] RTC Record, p. 49.

[7] TSN, December 1, 1993, p. 12.

[8] TSN, June 28, 1994, pp. 1-20.

[9] People v. Ablog, G. R. No. 124005, June 28, 1999.

[10] People v. Bañago, G. R. No. 128384, June 29, 1999.

[11] People v. Rada, G. R. No. 128181, June 10, 1999.

[12] People v. Rebose, G. R. No. 131104, June 17, 1999.

[13] People v. Rebose, supra.

[14] People v. Silvano, G. R. No. 127356, June 29, 1999.

[15] People v. Bañago, supra.

[16] People v. Prades, 293 SCRA 411 (1998); People v. Fuertes, 296 SCRA 602 (1998); People v. Palma, G. R. Nos. 130206-08, June 17, 1999; People v. Albog, G. R. No. 124005, June 18, 1999; People v. Mosqueda, G. R. Nos. 131830-34, September 3, 1999.

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