

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE VS. ROGELIO ANTIDO Y ABALAN, ACCUSED-APPELLANT.

G.R. No. 121098. September 04, 1997

Ponente: DAVIDE, JR. J.

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DAVIDE, JR. J.:

Accused Rogelio Antido y Abalan appeals from the decision of 25 January 1995[1] of the Regional Trial Court (RTC) of Davao City, Branch 17, in Criminal Case No. 33,585-94, finding him guilty of two counts of rape committed on 18 February and 18 March 1994 and sentencing him in each to suffer the penalty of reclusion perpetua with all the accessory penalties, to pay complainant Jonejeel Jugadora[2] and her parents the amount of P30,000.00 and to pay the cost of the suit.

Complainant, Jonejeel Jugadora, then only fifteen years of age at the time she was allegedly raped initiated the prosecution therefor by filing with the Office of the City Prosecutor of Davao City an affidavit, subscribed and sworn to on 23 March 1994,[3] charging accused with rape allegedly committed on 8 February, 14 February, and on 18 March of 1994. Since the accused had already been arrested, 2nd Assistant City Prosecutor Calixto Esparagoza proceeded thereon under Section 7 of Rule 112 of the Rules of Court and finding probable cause forthwith filed an Information[4] for the alleged rape committed on 18 March 1994, but in his Resolution[5] for the filing of said Information, he withheld action on the two other counts, advising complainant to file two separate complaints thereon “so that a regular preliminary investigation can be conducted.”[6]

The accusatory portion of the Information which was filed on 23 March 1994 with the Regional Trial Court (RTC) of Davao City and, reads as follows:

That on or about March 18, 1994, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Jonejeel Jugadora, 15 years of age, against her will.

Contrary to law.

The case was docketed as Criminal Case No. 33,585-94 and assigned to Branch 17 of said court.

Accused entered a plea of not guilty upon arraignment.[7] Trial on the merits thereafter ensued.

The prosecution’s witnesses were: the complainant, Jonejeel Jugadora; her mother, Tessie Jugadora;[8] PO3 Edgardo Mateo; PO1 Antonio Diagbel; Dr. Danilo Ledesma, Medico-Legal Officer of the National Bureau of Investigation (NBI); and Janice Betonio, Jonejeel’s neighbor and classmate. The witnesses presented by the defense were: the accused; Lolita Gumapac; Milagros Acidillo, accused’s neighbor; Jovita Alvarez, accused’s former boarder; Atty. Isaac Robillo, Jr; Atty. Reni Dublin, counsel for accused.

The factual backdrop of the case as established by the testimonies of the witness for the prosecution is as follows:

Complainant Jonejeel Jugadora the third in the brood of ten, was born of 5 July 1978 and resided with her parents in Tibangon, Pantukan, Davao del Norte. On or prior to 12 January 1994, she was a freshman high school student in Pantukan. On the morning of 12 January 1994, instead of proceeding to school, Jonejeel and her classmate, Janice Betonio, went to Davao City to buy groceries. Jonejeel did not ask permission from her parents and brought a bag containing her books. At Davao City, they shopped at J.S. Gaisano department store, and from there, watched a movie. As they were oblivious of the time, they were overtaken by night. They then went to San Pedro Street where they were approached by a certain Lita, also known as Gina, who invited them to stay in her room at a boarding house in Piapi Boulevard, Davao City near the Sta. Ana Police Sub-station. Having spent all their money, they had no choice but to accept the invitation and ended up staying at Gina's residence for almost a month. Since they had no income, Gina provided for their meals. Subsequently, Gina was evicted from her boarding house and moved to the house of the accused and occupied a room thereat. Jonejeel and Janice were constrained to go with Gina and stay at accused's house. At one time, Gina shut them out of her rented room, but accused had them sleep in his room. Although they did not want to, accused "ordered" them to sleep there. Since then, they slept with the accused on his bed. The accused took good care of their daily subsistence needs, and in turn, they would wash his clothes and cook for him.[9]

As it turned out, this Lita or Gina, as admitted by Jonejeel on cross-examination, was a prostitute.[10]

On the night of 8 February 1994, accused brought Jonejeel and Janice to his room. The three slept together on accused's bed, with Jonejeel lying in between accused and Janice. Shortly thereafter, accused undressed Jonejeel, who touched Janice to wake her up. Janice awoke, but could not do anything as accused pointed a double-bladed knife, at them, and warned them he would kill or bury them alive if they made noise. Accused, then naked, lay on top of Jonejeel and abused her.[11]

On cross-examination,[12] Jonejeel likewise disclosed that on the night of 14 February 1994, she and Janice slept with the accused on his bed, when he again undressed the abused Jonejeel. The following morning, she performed her usual house chores – washing clothes, cleaning the room cooking. She did not tell anybody about what happened due to fear, as accused had already "forewarned" her and Janice.[13]

On the night of 18 March 1994, Jonejeel was alone with the accused on his bed as Janice had earlier left his house to live elsewhere. Accused again abused Jonejeel after he took her dress off and removed her panty. Although she felt pain and cried, he admonished her not to shout or resist otherwise he would kill and bury her alive.[14]

Sometime after 18 March 1994, Jonejeel, through the help of a certain Joy, escaped from accused's residence. Joy then brought Jonejeel to Calinan, Davao City.[15]

The Jugadora family first learned of Jonejeel's disappearance on 12 January 1994 upon Mrs. Jugadora's return to her residence in Pantukan from her work in Tagum. According to Mrs. Jugadora, they looked for Jonejeel in Tagum, they went to other places in Davao City and Davao del Sur to look for her, but failed to find her.[16]

The parents of Jonejeel learned of the latter's whereabouts only when Janice Betonio returned to Pantukan on 16 March 1994 after she ran away from the accused's house.[17] Jonejeel's father met with Janice, who told him the Jonejeel was staying in Jacinto St., near Sta. Ana Police Sub-Station in Davao City. On 20 March 1994, Mr. and Mrs. Jugadora, accompanied by Jovelyn, sister of Mr. Jugadora, went to Davao City to look for Jonejeel, but could not find her in the place mentioned. They decided to fetch Janice so she could point out the specific place where Jonejeel stayed and sought assistance from the Sta. Ana Police Station. On 21 March, 1994, Jonejeel's parents, together with Janice returned to Davao City. Accompanied by the police, proceeded to the house of accused, but saw him only that afternoon. After accused told them that Jonejeel had already left his residence, the police brought him to the police station. Sometime later, a small boy informed Jonejeel's parents that a certain Joy

brought Jonejeel to Calinan, Davao City. Finally they were able to find Jonejeel in Calinan on 22 March 1994. They brought her to the Sta. Ana Police Station where she was investigated.[18]

On 22 March 1994, Jonejeel was examined by Dr. Danilo Ledesma of the Davao City Health Office. His findings contained in a Medico-Legal Report, [19] are as follows:

General Physical Examination:

Ht. 151.0 cms. Wt. 54.0 kgs.

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breasts: Fully developed, hemispherical, firm. Areola, light brown, 3.8 cms. in diameter. Nipples, light brown, protruding, 1.0 cm. in diameter.

No extra-genital injuries noted.

Genital Examination:

Pubic hair, growing, sparse. Labia majora and minora, coaptated. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, thick, tall, with healed, deep laceration at 2 and 9 o'clock positions corresponding to the face of the watch. Hymenal orifice, originally annular, admits a tube, 2.75 cms. in diameter. Vaginal walls, tight. Rugosities, prominent.

Conclusions:

1.) No evident signs of extragenital physical injuries noted at the time of examination.

2.) Healed hymenal lacerations, present.

Remarks: Semenology: NEGATIVE FOR SPERMATOZOA

PRESENCE OF FUNGUS, PUS CELLS = +++

Dr. Ledesma opined that the healed lacerations on Jonejeel's hymen were caused by a male reproductive organ, and jibed with the information given him by Jonejeel that she was raped on 8 February 1994. Dr. Ledesma declared that she could have been raped from three weeks to four months prior to the examination.[20]

On the other hand, the version of the accused established the following facts:

Rogelio Antido, a 46 year old, electrician, and a resident of Quezon Boulevard, Davao City, augmented his income by converting his two-storey residential house into a boarding house. On 19 February 1994, a certain Gina Magno, together with her companions, Jonejeel and Janice, became his boarders. One day, on suspicion that Jonejeel and Janice took her personal belongings, Gina drove the two out of the room. Sympathetic to their plight, accused permitted Janice and Jonejeel to stay in his house and provided them food. In return, they performed certain household chores. Once, when Jonejeel was sick, he even bought medicine for her. Although he admonished them to return home, they refused as they felt unwanted and uncared for by their parents. On 18 March 1994, at around noon, he was invited by a neighbor to a birthday party. He stayed at the celebrant's house overnight, he played mahjong and returned home only the following morning. On 20 March 1994, he was invited by Leopoldo Man-wat, a fraternity brother, for a baptismal party. Upon his return, in that afternoon, Mrs. Tessie Jugadora, her husband, and a certain policeman, confronted him about Jonejeel's whereabouts. Accused informed them that Jonejeel was not in his house at that time, although when he left for the baptismal party at noon, she was still around. After Tessie, her husband and the policeman left, accused found a note signed by Jonejeel, requesting him to give a letter she placed under an ashtray to her Caucasian boyfriend. The following day, Tessie returned.

Accused showed her the letter of Jonejeel, then he was arrested and brought to the Sta. Ana Police Station.[21]

Lolita Gumapac, testified that complainant and Janice were boarders of one Mr. Alviar, at Jacinto Extension, Bucana, Davao City until 19 February 1994.[22]

Milagros Acidillo, a neighbor and friend of accused, declared that on 18 March 1994, accused was in her residence to celebrate a birthday party and played mahjong the entire night until the following morning.[23]

Isaac Robillo, Jr. State Prosecutor I, City of Davao City, declared that complainant filed a complaint, docketed as I.S. Nos. 94-2648 and 94-2649, in his office pertaining to the rape incident that happened on 7 (should be 8) and 14 February 1994. But on the basis of complaint, the affidavits of witnesses, record in the police blotter, and the findings of the medico-legal officer; Robillo believed that the two instances of rape could not have been committed and accordingly, handed down a joint resolution dismissing the complaint.[24]

Jovita Alvarez testified that distributed beauty products among the prostitutes of San Pedro Street, in Davao City. She knew that Jonejeel and were prostitutes, had sold them her beauty products and even extended credits to them. At one time, they prodded her to introduce them to prospective customers. Even before the two became boarders of the accused, she had seen them plying the streets on board a white Mazda car in the company of a male Caucasian.[25]

Atty. Reni Dublin testified that sometime in February 1994, he noticed Jonejeel and Janice staying at the house of the accused. In response to Dublin's inquiry about the two, accused told Dublin that they were runaways and were being taken care of by Gina, accused's boarder. Atty. Dublin warned that accused might one day run into trouble with their parents, but accused replied that he had no means of verifying their parents, but accused replied that he had no means of verifying their residences and other personal circumstances. Atty. Dublin noticed that the two would go home at daybreak, delivered by a white Mazda car; and at other times, he would see them late into the night wandering in the alleys.[26]

At the rebuttal stage, Jonejeel testified that she was not a prostitute, had no Caucasian boyfriend and did not write the letter alleged by the accused to have been written by her.[27] Tessie, on her part, claimed that Jonejeel was never a prostitute.[28]

In its Judgment[29] of 25 January 1995, the trial court found the accused guilty beyond reasonable doubt of two counts of rape and disposed, as follows:

Accordingly, pursuant to Sec. 11, par. 1 of Republic Act 7659, finding the evidence of the prosecution, sufficient, to prove the guilt of the accused beyond reasonable doubt, accused Rogelio Antido, alias Dodong Antido, without any mitigating nor aggravating circumstances attendant in the commission of the offense charged, is sentenced to suffer the penalty of reclusion perpetua, in [sic] two counts, for rape committed against the complainant Jonejeel Jugadora both on February 8, 1994 and March 18, 1994, together with accessory penalty, [sic], as provided for by law.

Pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, by way of civil liability, on account of the beastly act of the accused, in abusing complainant Jonejeel Jugadora, disregarding her minority and under his custody accused is furthermore ordered, to pay complainant and her parents the amount of P30,000.00 by way of civil indemnity, as well as to pay the cost of the suit.

SO ORDERED.

The trial court gave full faith and credit to the testimony of the offended party, thus:

The court cannot but believe the natural, direct and without hesitation [sic] testimony of complainant, on how she narrated the above-acts of accused, despite her occasional faltering by crying if she remembers [sic] her

ordeals and recalling the details of what happened but in a nutshell, she was outrightly vehement on accused [sic] act of abusing her on February 8, 1994 and March 18, 1994.

Complainant's credibility despite insinuation of accused [sic] lack of truthfulness, deserve [sic] this court's acceptance, finding her orientation as a poor, humble and obedient daughter, there is no way she will [sic] fabricate a false accusation against the accused.

On the other hand, it found unconvincing accused's 'close associates' and whose capacity to tell the truth was "questionable." The RTC considered the dismissal by State Prosecutor Robillo of the two complaints for rape as based "purely on his personal evaluation without a thorough investigation of the complainant herself through questions and answers before him, but merely upon appearances of counsel for the accused."

As to the intimidation consisting of the accused's constant threat to kill or bury her alive should she make known what was done to her, the trial court found it sufficient to justify Jonejeel's actions. As a young and innocent girl with a "fragile mentality," these threats sent a "very heavy message" that if she would not obey, "serious disaster on her life" would follow. The trial court further ruled that the case for the prosecution was made "completely satisfactory" by the testimony of Dr. Ledesma.

Finally, the trial court justified its conviction of the accused for the alleged rape "committed on February 8, 1994," although it was not charged in the information on ground of "waiver" since the accused failed to object to the evidence presented by the prosecution to prove it.[30]

In his Appellant's Brief, accused submitted the following assignment of errors:

1. THE PRESIDING JUDGE SERIOUSLY ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF RAPE IN THE LIGHT OF [THE] PROSECUTION'S WEAK EVIDENCE WHICH ARE MARKED WITH INCREDIBLE AND RIDICULOUS INCONSISTENCIES THAT ARE SUFFICIENT, TO THE MIND OF AN AVERAGE PERSON, TO CAST REASONABLE DOUBT ON ACCUSED'S GUILT, AND WHICH CONVICTION IS A COMPLETE DEPARTURE OF [sic] THE JURISPRUDENCE LAID BY THIS HONORABLE SUPREME COURT WITH RESPECT THE [sic] APPRECIATION OF EVIDENCE IN RAPE CASES.
2. THE PRESIDING JUDGE SERIOUSLY ERRED IN STRETCHING THE EVIDENCE OF THE PROSECUTION AND CONVERSELY IN NOT GIVING WEIGHT TO THE EVIDENCE OF THE ACCUSED IN PROVING HIS INNOCENCE OF THE CHARGE.
3. THE PRESIDING JUDGE GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME NOT CHARGED IN THE INFORMATION ON THE ONE HAND, AND IN ACQUITTING THE ACCUSED OF STILL ANOTHER CRIME NOT CHARGED IN THE INFORMATION WHICH, WHEN TAKEN TOGETHER, WOULD CERTAINLY SHOW THE INCONSISTENCIES OF THE JUDGMENT.

Under the first assigned error, accused urges us to pay no heed to testimonies of Jonejeel and Janice for, contrary to the virtues heaped upon them by the trial court, they were, in fact, "notorious and ran-aways [sic] lured by the fast life in the cities [sic]." Accused found it difficult to comprehend, granting their story of the buying spree in Davao City to be true, why Jonejeel and Janice could not return to their respective homes in Pantukan, Davao Province, the day after they were furnished lodging for the night of January 12, 1994 by Lita or Gina, a prostitute; and considered it beyond the natural course of events that both stayed with Gina for the next three weeks. Accused then found it more perplexing as to why after Gina was driven out from her boarding house and forced to move to accused's house, Jonejeel and Janice still did not return to their homes and instead chose to go with Gina.

Accused further claimed that nothing was mentioned about rape in the reports made to the police authorities by

Tessie Jugadora and Janice, and recorded in the Record of Events[31] of the Office of the Investigation Division of the Sta. Ana Police Station of the Davao Metropolitan District Command of the Department of Interiors and Local Government; all that was recorded was that Jonejeel “was being held at the house of the accused and sold on [sic] customers for sex every night.”

Accused likewise maintained that the testimonies of Jonejeel and Janice painted a picture where the commission of rape was “incredible and for being against normal human actuations, experience and normal course of events.” For one thing, both slept on the same bed with the accused with Jonejeel always beside the accused. As the later was not Jonejeel’s husband, sleeping beside him was “not only telling of the character of [Jonejeel] but likewise of the impossibility of the commission of rape,” in view of the presence of the third person; “possible prying eyes of an eyewitness and source of help or assistance.” For another, as Jonejeel merely pulled Janice without saying anything, this act could hardly be classified as resistance. Moreover, as stated in the affidavit of Janice[32] and confirmed by her in court, Janice heard the accused and Jonejeel “moaning” when both were naked and accused on top of the other. These sounds would be unusual if the intercourse was forcible.

Finally, accused argued that the actuations of Jonejeel after the alleged rape on 8 February 1994 did not correspond to the normal conduct of reaction of a victim of a heinous crime. After the act was consummated, the accused returned to his bed and slept; Jonejeel first cried, but then also slept, still beside the accused. The following day, Jonejeel routinely performed her chores, then on the succeeding nights, Jonejeel still slept beside the accused.

As to the second assigned error, accused condemned the trial judge for disregarding the uncontroverted testimony of Lolita Gumapac, corroborated by the testimony of accused and his counsel, regarding the love[33] letter left behind by Jonejeel in accused’s house, and the findings of the court commissioner appointed to conduct the ocular inspection of the premises of the accused’s residence.

Anent the third assigned error, accused contended that the trial judge committed “horrible ignorance of the law and the constitution” in convicting him of the rape allegedly committed on 8 February 1994 despite the information charging him with only one rape committed on 18 March 1994, thereby disregarding the ruling of this Court in *People v. Joya*. [34] As to the justification of the trial court that his failure to object to the evidence proving the rape committed on 8 February 1994 amounted to a waiver of his right to be informed of the nature and cause of the accusation, accused invoked this Court’s ruling in *People v. Ignacio* [35] that proof may be submitted of an alleged second rape not charged in the information if necessary to prove credibility. Accused also stressed the fact that the alleged rapes committed of 8 February and 14 February 1994. His conviction then for the rape allegedly committed on 8 February 1994 “is not only a flagrant violation of [his] constitutional right to be informed of the accusation against him but also a blatant violation of the rules that no information cognizable by the Regional Trial Court shall be filed without the proper preliminary investigation conducted.”

In the Brief for the Appellee, the Solicitor General agrees with the findings and conclusions of the trial court, except as to: (1) the conviction of the accused for rape allegedly committed on 8 February 1994, which Appellee submits to be erroneous; [36] and (2) as to the civil indemnity awarded which should be increased to P50,000.00 in keeping with recent case law. [37]

In rape cases, the following guidelines and principles are well-entrenched: (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 it; (2) in view of the intrinsic nature of the crime of rape where 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. [38]

It is likewise doctrinally settled that when a woman says she has been raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[39] Note that to be sufficient for conviction, the victim's testimony must meet the test of credibility. It must be impeccable and ring true throughout, or bear the stamp of absolute truth and candor.[40] And for evidence to be believed, it must not only proceed from the mouth of a credible witness, it must also be credible in itself, such as the common experience and observation of mankind can prove as probable under the circumstances.[41]

The matter of assigning value and weight to the testimony of witnesses and the determination of their credibility are functions of the trial court. This court has consistently adhered to the policy, founded on reason and experience, that it will not generally disturb the findings of the trial court on these matters considering that the trial court is in a 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 substance and value have been plainly overlooked, which, if considered, might affect the result, or that such findings are clearly shown to be arbitrary.[42]

The Court agrees with the trial court that the evidence for the accused, relying primarily on alibi, is very weak. For alibi to prosper, it is not enough to prove that accused was somewhere else when the crime was committed, he must further demonstrate that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[43] The accused here, asserting that he spent the night at a neighbor's house, has not shown that impossibility. Nevertheless, the weakness of his defense cannot strengthen the prosecution's case since the prosecution must rely solely on the strength of its evidence and not the weakness of that of the defense.[44] The Constitution guarantees to an accused the right to be presumed innocent until the contrary is proved,[45] the burden then is on the prosecution to prove his guilt beyond reasonable doubt.[46] Hence, the prosecution's evidence must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[47]

After the painstaking review of the record in this case and assessment of the evidence for the prosecution, the Court finds such evidence insufficient to establish the guilt of the accused for the crime of rape beyond reasonable doubt. The trial court failed to appreciate material and relevant facts and circumstances which cast much doubt on the story of Jonejeel that she was raped by the accused of 18 March 1994.

Jonejeel claimed that the accused raped her on 18 March 1994 using the same form or manner of intimidation as that used by him for the alleged rape of 8 February 1994, i.e., he would kill her or bury her alive if she shouted. It is therefore vital to determine if, indeed, accused so intimidated her in connection with the incident of 8 February 1994. In her direct testimony, she declared as follows:

Q

While in the house of accused on February 8, 1994, what happened if any?

A

He abused me, sir.

Q

Please tell the court where in what particular place were you abused by the accused

A

In the room.

Q

What time was that if you remember?

A

I cannot recall the time.

Q

Please describe to the court how you were abused?

A

He undressed me, sir.

Q

And since he undressed you what happened?

A

He abused me after undressing me, sir.

Q

In what particular part of the house did he abuse you?

A

Inside the room.

Q

Whose room is that?

A

Room of Dodong Antido.

Q

Why were you in the room of Dodong Antido?

A

Because he brought us inside his room.

Q

You said he brought us, with whom were you with?

A

With Janice at that time.

Q

Where was Janice at that time when the accused abused you?

A

She was beside me at that time.

Q

What did Janice do when you were abused by the accused?

A

She was not able to do anything because Dodong Antido pointed a knife at us, sir.

Q

What kind of knife was that?

A

A double-bladed knife, sir.

Q

Aside from pointing a knife at you and Janice, what else did he do?

A

He warned us to [sic] to say anything, sir.

Q

Now, you said the accused removed your panty or undressed you, please describe to Honorable Court who [sic] the accused did it?

A

He removed my clothings, undressed me.

Q

What were you wearing at that time?

A

I was wearing a pants at that time.

Q

And how many times did the accused abuse you?

ATTY. DUBLIN:

We object, may we know what particular time he is referring to your HONOR?

PROSECUTOR:

We reform.

Q

What did accused tell you when he was abusing you?

A

That if we will create scandal he will kill us.

Q

What did you feel when he abused you?

COURT:

Let her answer the questions clearly tell her to speak clearly.

A

I felt pain, sir.

Q

Now, when Dodong Antido abused you what did you do if any?

A

Nothing, sir.

Q

Why?

A

Actually I wanted to cry for help but he as [sic] holding and pointing the knife at me at that time.

ATTY. DUBLIN:

May we ask witness to speak louder so that we can hear your Honor.

COURT:

You speak louder so that your answer can be heard.

Q

When accused abused you did you like it?

A

No, your Honor.

Q

Did you shout, did you cry, what did you do?

A

I cried, your Honor.

Q

You did not shout for help?

A

No, your Honor because I was afraid he had a knife pointed at me, I cried.

COURT:

Proceed.

PROSECUTION:

Q

If you can recall how many times did the accused abuse you?

A

Three (3) times.

Q

Can you recall the day?

ATTY. DUBLIN:

Misleading premise, what is asked at that time how many times and the answer is 3 times, counsel tends to put in variance in that answer.

PROSECUTOR:

Q

The question is how many times were you abused, we are on follow-up question.

COURT:

He [sic] said 3 times on that night [48]

It is clear from complainant's testimony that she was first undressed, then accused in abusing her because he threatened her and Janice with a double-bladed knife then warned them not to say anything or create a scandal, otherwise he would kill them.

On cross-examination, Jonejeel testified that she and Janice could not "do anything" because accused had already "forewarned" them that if they would make any noise, he would kill or bury them alive, thus:

Q

The accused took of your dress while you were lying down?

A

Yes, sir.

Q

And Janice did not do anything, as you said she woke you?

A

No, she did not do anything because of fear, accused forewarned us already.

Q

How did he forewarn you?

A

That if we will make noise [sic] he will kill us or he will bury us alive.[49]

However, Janice never corroborated Jonejeel's testimony. The former did not testify that accused had a knife, pointed it at them, or threatened to kill them or bury them alive if they would make any noise or create scandal. All that Janice testified on direct examination regarding the incident of 8 February 1994 was the following:

Q

Now, on February 8, where did you stay or sleep of you can still recall?

A

in Dodong Antido's place.

Q

In what part of the house of Dodong Antido were you sleeping on February 8, 1994?

A

In his room.

Q

With whom?

A

Jingjing[50] Jugadora.

Q

And how about the owner of the house, where was he sleeping at that time?

A

The three of us simultaneously entered the room of Dodong Antido.

Q

What time was that when you entered the room of Dodong Antido to sleep, if you recall?

A

I cannot tell what time was that, is was already nighttime.

Q

While there, the room of Dodong Antido, can you tell the Honorable Court what transpired?

A

We slept.

Q

Who was beside you in sleeping?

A

Jingjing Jugadora.

Q

How about Dodong Antido where was he in the relation to the place?

A

He was also beside Jingjing at that time.

Q

What happened that time?

A

He raped her.

Q

Who raped her you are referring to whom?

A

Jingjing was raped by Dodong Antido.

Q

You said, you were sleeping, tell the court, how did you know about that fact?

A

Because at that time, when we were sleeping, I took hold of the skirt of Jingjing and it was pulled away by Dodong Antido.

Q

And when it was pulled by Dodong Antido what happened next?

A

After that, he placed himself on top of Jingjing.

Q

What did Jingjing do if any, when the accused was on top of her?

A

She keep [sic] pulling me.

Q

What did she say if any to you?

A

Nothing, she did not say anything.

Q

By the way, Janice, what was the physical lighting condition at that time?

A

It was darked, [sic] the room was darker sic].

Q

For how long if you can estimate, the accused was on top of Jingjing?

A

Quite a long time.

Q

For the length of time, what did Jingjing Jugadora do?

A

She keeps [sic] as I said pulling me, because he wanted me to face her to help her.

Q

Were you able to exert any help to Jingjing?

A

No, because I was afraid of him.[51]

On cross-examination, Janice candidly admitted that she was awakened by the movements of the accused and Jonejeel and because Jonejeel pulled her; and, confirming her statement in her affidavit, declared that during the intercourse both the accused and Jonejeel were naked and moaning, thus:

Q

When did you first observe that the accused abused your friend whom you said was just lying beside you?

A

Because they were moving, they keep [sic] on moving.

Q

And when you woke up on that night, you saw the accused totally nude?

A

Yes, sir.

Q

And also on that night, when you woke up, you also say, that your friend Jonejeel was also naked, was it not?

A

No.

Q

Why, what was she wearing at that time?

A

She was wearing [a] t-shirt and skirt.

Q

I will refer to you the affidavit marked Exh. "4" here in par. 6, you said that you were shock[ed] to see when I woke up in the middle of the night, Dodong Antido totally nude on top of Jingjing who was also without clothes doing sexual intercourse, do you recall having sign[ed] that affidavit marked Exh. "4".

FISCAL EVANGELIO:

We object, the question is misleading. The reference made by counsel is misplaced because the question has no basis as to the reference of the affidavit.

ATTY. DUBLIN:

My question is did she recall having executed this affidavit marked Exh. "4" which she confirmed earlier this morning, as she did execute, I was only confronting her on that particular.

FISCAL EVANGELIO:

The first question when you woke is it not that the accused is naked what was the appearance of Jonejeel, according to the witness she was wearing something.

COURT:

The appearance of the witness Jonejeel she was wearing the T-shirt and skirt. That is why she was being confronted of [sic] her affidavit. In her affidavit she stated here both are naked.

FISCAL EVANGELIO:

But the affidavit states during the intercourse. He should lay the ba[s]is, that would be misleading during the intercourse at the time when she woke up in the morning.

COURT:

You have to be definite, was it during the intercourse.

ATTY. DUBLIN:

I will reform the question.

Q

In [sic] that nighttime, when you went to sleep on February 8, 1994, you were awaken[ed] in the middle of the night?

A

Yes, sir.

Q

What was that?

A

The movement and I was pulled by Jingjing

Q

You were pulled by Jingjing?

A

Yes, sir.

Q

Did Jingjing make any sound?

A

None.

Q

And what did you see?

A

I saw Dodong Antido pulled Jingjing's [sic] to make her face him.

Q

And both of them were lying down.

A

Yes, sir.

Q

In the same bed you were also lying?

A

Yes, sir.

Q

And that point in time [sic], you see Dodong Antido already naked?

A

Yes, sir.

Q

And your friend also completely naked?

A

First, at the time I saw them, Jingjing had yet her dress on, but at the time the accused Dodong Antido had intercourse, he already took of Jingjing's dress.

Q

What did the accused took [sic] off from Jingjing?

A

The skirt and the panty.

Q

You did not see the actual taking off his pants, did you?

A

Yes, I saw.

Q

With the light out?

A

Yes, sir.

Q

Was Jingjing saying anything, when the accused was on top of her totally naked?

A

None, but this Jingjing keep [sic] on pulling me.

Q

Did you not hear both of them making a moaning sound?

A

I heard a sound from Dodong Antido, as if they were chewing.

Q

You did not hear both of them moaning?

A

No, sir.

Q

Do you recall having stated in your affidavit that in fact you hear them moaning paragraph 7?

A

Yes, sir.

ATTY DUBLIN:

We pray that this affidavit marked as Exh. "4", paragraph 7 thereof be bracketed and marked as Exh. "4-B".

COURT:

Mark it.

ATTY DUBLIN:

Q

How long was the accused on top of your friend Jingjing?

A

Quite a time up to the time I sleep [sic].[52]

Paragraph 7 of Janice's affidavit[53] reads as follows:

That they were so close that I can hear their moaning and the reaction of GINGGING who I understand tried to get out of the hold of DODONG ANTIDO but is powerless as the man was too big. (Underscoring supplied for emphasis).

The preceeding paragraph in the affidavit reads:

That it was in the month of February 1994, one evening, when GINGGING and myself were sleeping at the room of DODONG ANTIDO, I was shocked to see when I woke up in the middle of the night, DODONG ANTIDO totally nude on top of GINGGING who was also without clothes, doing sexual intercourse.

If indeed accused had a knife and used it to threaten Jonejeel and Janice, Janice could not have missed seeing the knife or hearing the threats and, accordingly, testified thereon.

As earlier observed, Jonejeel's version of the intimidation employed or threat uttered during the 8 February 1994 incident fails to persuade, in light of the testimony of Janice and Jonejeel's admission on cross-examination that accused also had carnal knowledge of her on 14 February 1994, thus:

Q On February 14, is it not that the same thing happened, the 3 of you went into the room of the accused at nighttime, you [and] Janice and the accused?

A Yes, sir.

Q And the same thing happened that you slept on the same bed the 3 of you?

A Yes, sir.

Q After you said the accused abused you on February 14, you continued sleeping on the bed of the accused the 3 of you?

A He will force us to sleep there.

Q Precisely after you said he abused you after he finished abusing you you continued sleeping there, you did not leave the room?

A He required us to sleep again in the room.

Q Until you woke up the next morning, is it not?

A Yes, sir.

Q And when you woke up the next morning February 15, you continued your usual chores, washing the clothes, cleaning the room, cooking, is it not?

A Yes, sir. [54]

Therefore, we are not convinced that the coupling between accused and complainant on 18 March 1994 was without Jonejeel's consent. Moreover, the relationship of the accused and Jonejeel and the latter's conduct after the 8 February and 18 March incidents raise serious doubts as to the commission of rape through intimidation.

It was established that while the accused took care of the daily subsistence needs of Jonejeel and Janice, Jonejeel acted the accused's househelp, doing the cooking and laundry. On cross-examination she testified as follows:

Q Who took care of your daily subsistence?

A Dodong Antido.

Q Since when did Dodong Antido started (sic) doing that?

A I cannot tell when was that.

Q In fact you were also utilized by Dodong Antido to act as his housemaid, is it not?

A Yes, sir.

Q You do [sic] the washing of his clothes and going to market, is it not?

A Only the washing of clothes and cooking.

Q Who does the marketing?

A Dodong Antido.[55]

This then jibes with accused's testimony on direct examination that he was the one who "provided food" for Jonejeel and Janice, and in return, he asked them "to cook for [him] and do the cooking, and sometimes [the] cleaning [of] the sala and...the washing of [his] clothes." [56]

Then from 8 February 1994 until Janice left the house of the accused, Jonejeel slept in the room of the accused with the latter and Janice, thus:

ATTY. DUBLIN [on cross-examination]:

xxx

Q Is it not a fact that you and Janice Betonio were sleeping [sic] in the room of the accused from February 8, 1994 up to the time Janice Betonio left that residence?

A We did not want to sleep there but it was Dodong Antido who ordered us to sleep there.

xxx

Q You were required by the accused to sleep in that room because Lita refused you or did not allow you to sleep in her room, is it not?

A Yes, sir.

xxx

Q So that on February 9, you were still sleeping at the room of the accused, is it not?

A Yes, sir.

Q And also on the next succeeding days, February 10, 11, etc., is it not?

A Yes, sir.[57]

Even after the 18 March 1994 incident, Jonejeel stayed in the accused's room, and the following day, routinely performed her chores in the house of the accused. On direct examination, she admitted:

PROSECUTOR:

Q After this incident where did you go, if any?

A I stayed in the room, sir.

xxx

PROSECUTOR:

Q After March 18, where were you?

A I was still in the place.

Q What were you doing in that place after you were abused by Antido?

A I did the washing of his clothes and do the cooking for Dodong Antido.[58]

If indeed Jonejeel were raped, she would not have stayed in accused's house after 8 February 1994. The

prosecution proffered no credible evidence that accused prevented Jonejeel from leaving or detained her in his house against her will. Plainly, the threats attributed by Jonejeel to accused were not such magnitude as to have prevented her from escaping from her alleged bondage.

The Court shall now take up the last assigned error which, although rendered academic by the discussion on the first and second assigned errors, must be addressed in view of its significance. We agree with the accused and the Office of the Solicitor General that the trial court erred in likewise convicting the accused for the rape allegedly committed on 8 February 1994. Since the information specifically charges the accused with only one act of rape committed on a specific date, then consistent with the constitutional right of the accused to be informed of the nature and cause of accusation against him,[59] he can not be held liable for other acts of rape. There can only be one conviction of rape if the information charges only one offense, even if the evidence shows that more than one was in fact committed.[60] The right of a person to be informed of the nature and cause of accusation against him cannot be waived for reason of public policy.[61] Complainant's false tale on the alleged rape not charged in the information may be taken only as proof of specific intent or knowledge, plan, system or scheme.[62]

The foregoing notwithstanding, considering the prosecution's evidence, accused could have been prosecuted for qualified seduction under Article 337 of the Revised Penal Code. He cannot in this case be held liable therefor since the information in this case contains no allegations constitutive of qualified seduction. [63] It may be pointed out that if the complaint for rape contains allegations for qualified seduction, the accused can be convicted of the latter if the prosecution fails to prove the use of force by the accused.[64]

WHEREFORE, on ground of reasonable doubt, the instant appeal is GRANTED, and the challenged decision of Branch 17 of the Regional Trial Court (RTC) of Davao City, in Criminal Case No. 33,585-94, is hereby REVERSED. Accused ROGELIO C. ANTIDO is hereby ACQUITTED and ordered release from detention, unless his further confinement is warranted for some other lawful cause or ground, without prejudice to his prosecution for qualified seduction

Costs de officio.

SO ORDERED.

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

[1] Original Record (OR), Criminal Case No. 33,585-94, 217-242; Rollo, 14-39. Per Judge Renato A. Fuentes.

[2] Spelled as Jugadura in the RTC decision and transcript of stenographic notes (TSN) of 12 July 1994, 2.

[3] Exhibit 1; OR, 118; Rollo, 66.

[4] OR, 1.

[5] Id., 2.

[6] It appears that in a Joint Resolution dated 10 June 1992 in I.S. Nos. 94-2648 and 94-2649), State Prosecutor I Isaac Robillo, Jr. recommended the dismissal of the complaints for alleged rapes committed on the other two dates. (OR, 137-140).

[7] OR, 43.

[8] As spelled in the TSN, 12 July 1994, 5.

[9] TSN, 11 July 1994, 20, 32, 33-36 and 40-42; tsn, 12 July 1994, 4, 23 and 26.

- [10] TSN, 11 July 1994, 37,
- [11] TSN, 27 June 1994, 21-23; TSN, 11 July 1994, 42-44.
- [12] She did not testify on this incident during direct examination.
- [13] TSN, 11 July 1994, 45.
- [14] TSN, 27 June 1994, 27.
- [15] Id, 28.
- [16] TSN, 12 July 1994, 13-15.
- [17] Id, 53.
- [18] TSN, 12 July 1994, 7-11.
- [19] Exhibit 5, OR, 136.
- [20] TSN, 2 August 1994, 4-7.
- [21] TSN, 10 November 1994, 46-58 and 68-69.
- [22] TSN, 14 October 1994, 4-8.
- [23] Id., 12-15.
- [24] TSN, 8 November 1994, 8-12.
- [25] TSN, 10 November 1994, 4-6; 10-11; 20-21.
- [26] TSN, 10 November 1994; 28-30; 38-39.
- [27] TSN, 15 December 1994, 3-4.
- [28] Id., 12-13.

[29] OR, 217-242.

- [30] Citing Sections 3 and 4, Rule 120, Rules of Court; *People v. Abiera*, 222 SCRA 378 [1993]; *Anciro v. People*, 228 SCRA 629 [1993]; *People v. Lucas*, G.R. No. 108172-73, 25 May 1994; *People v. Calixto*, 193 SCRA 303 [1991]; *People v. Anabon*, Ca-G.R. No. 577-7, 28 April 1951.
- [31] Exhibit “A” and “B,” OR, 74-75.
- [32] Exhibit “4,” OR, 4.
- [33] Exhibit “9,” OR, 144.

[34] 227 SCRA 9 [1993].

[35] 221 SCRA [1992].

- [36] Citing *People v. Vitor*, 245 SCRA 392 [1995].
- [37] Citing *People v. Vitor*, *supra*, note 36; and *People v. Ramos*, 245 SCRA 405 [1995].
- [38] *People v. De los Reyes*, 203 SCRA 707, 727 [1991]; *Peopled v Tismo*, 204 SCRA 535, 552 [1991]; *Peopled*

v Casinillo, 213 SCRA 777, 788-789 [1992]; People v. Matrimonio, 215 SCRA 613, 627 [1992]; People v. Lucas, 232 SCRA 537, 546 [1994].

[39] People v. Cabilao, 210 SCRA 326, 334 [1992]; People v. Grefiel, 215 SCRA 596, 609 [1992]; People v. Lascuna, 225 SCRA 386, 399 [1993]; Anciro v. People, 228 SCRA 629 642 [1993];

[40] People v. Matrimonio, supra note 38, at 628.

[41] People v. Pidia, 249 SCRA 687, 701 [1995].

[42] People v. Quijada, 223 SCRA 77, 86 [1993].

[43] People v. Penillos, 205 SCRA 546, 560 [1992], People v. Buka, 205 SCRA 567, 584 [1992]; People v. Florida, 214 SCRA 227, 239 [1992].

[44] People v. Garcia, 215 SCRA 349, 362 [1992].

[45] Section 14(2), Article III.

[46] Section 2, Rule 133, Rules of Court.

[47] People v. Bormeo, 220 SCRA 557, 567 [1993].

[48] TSN, 27 June 1994, 21-23.

[49] TSN, 11 July 1994, 43.

[50] Nickname of Jonejeel (TSN, 11 July 1994, 31).

[51] TSN, 12 July 1994, 28-29.

[52] TSN, 12 July 1994, 48-51.

[53] Exh. 4-B, OR, 135.

[54] TSN, 11 July 1994, 45.

[55] TSN, 11 July 1994, 41.

[56] TSN, 10 November 1994, 51.

[57] TSN, 11 July 1994, 41-42.

[58] TSN, 27 June 1994, 24.

[59] Section 14(2), Article III, Constitution; Section 1, Rule 115, Rules of Court.

[60] People v. Joya, supra note 34, at 28; People v. Vitor, supra note 36; People v. Ramos, supra note 37, at 414; People v. Namayan, 246 SCRA 646, 656 [1995]; People v. De Guzman, G.R. No. 117217, 2 December 1996, at 9.

[61] RICARDO J FRANCISCO, CRIMINAL PROCEJURE, 270-271 (Second Edition, 1994).

[62] Rules of Court, Section 34, Rule 130.

[63] 2 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 696 (3rd ed. 1984), citing People v. Castro, L-33175, August 19, 1974, 58 SCRA 473. See also People v. Ramirez, 69 SCRA 144, 152 [1976].

[64] Ibid, citing People v. Samillano, L-31375, 22 April 1974; People v. Alvarez, L-34644, 17 January 1974.

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