PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO ALFANTA Y ALO, ACCUSED-APPELLANT.

G.R. No. 125633. December 09, 1999

Ponente: VITUG, J.

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VITUG, J.:

Before this Court, by way of automatic review, is the decision, dated 29 July 1996, of the Regional Trial Court of Makati City, Branch 82, convicting[1] accused-appellant Rolando Alfanta y Alo of rape with two aggravating circumstances and sentencing him to suffer the extreme penalty of death.

Rolando Alfanta was charged with the crime of rape in an information that simply read:

> "That on or about the 26th day of August, 1995, in the City of Makati, Philippines 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 have carnal knowledge upon the person of one NITA FERNANDEZ y JOSEFA against her will and consent."[2]

When arraigned on 27 September 1995, accused-appellant entered a plea of not guilty to the crime charged. Trial thereupon ensued.

The evidence of the parties has been recited in good detail by the trial court in its decision under review, thus:

> "The first prosecution witness was Dr. Noel Minay, Medico Legal Officer of the National Bureau of Investigation who testified that on August 27, 1995 at around 5:45 in the afternoon, he performed a physical examination and medico genital examination on one Nita Fernandez for alleged rape. Upon physical examination he found mark swelling on the left lower jaw or on the mandibular area left portion; and, upon examination of the hymen, he found that the labia majora and minora gaping, similar to the appearance of a woman who had just given birth; or a normal appearance as a result of several sexual intercourses that had been performed. He submitted a report on his findings (Exhibit `A').
>
> "The next witness was Nita Fernandez, the offended party alleged in the information who testified that on August 26, 1995 at around 12:00 o'clock midnight, while asleep in the residence of a friend at AFOVAI Fort Bonifacio, Makati city, a man whom she had not seen before suddenly entered the house where she was sleeping, pulled her, boxed her jaw and put his hand on her mouth, and told her that if she will not obey him, he will kill her. She resisted, but could not do anything. Thereafter, she was forced to climb a fence. Because of fear, as the man was holding a bolo, she followed. After climbing the fence, the man instructed her to go to a vacant house. She followed, as instructed. While at the vacant house, she was told to undress, she did because of fear, as the man was holding a bolo. Thereafter, the man embraced and kissed her. Then she was told to lie down and told to separate her legs. The man inserted his penis into her vagina. After inserting the man's penis to her vagina, she was told to lie face down. She complied, thereafter, the man inserted his penis into her anus. After inserting the man's penis into her anus, she was told to turn around face up. All these acts of the man hurt her. After turning around face up, the man inserted his fingers in and out into her private part. After the man had finished inserting his fingers in and out of her private part, she was told to go near him and lie beside him,

and not to dress up as he was going to take a rest and at the same time telling her not to tell what happened to others saying that `lahat ng nirape ko ay pinatay ko dahil sa ayokong may magsumbong.' All the time the man was inserting his penis and fingers into her private part and into her anus, she was shouting: `tulungan po ninyo ako,' but nobody responded. Noticing that the man was already sleeping, she suddenly got the knife at waist of the man and stab the man on his chest. The knife broke. She suddenly grabbed the bolo and hack the man several times. Thereafter, she put on her dress, got hold of the bolo and ran to the signal office of soldiers. When she arrived at the signal office of soldiers, she told the persons she met that she killed a man. The bolo was taken from her by the soldiers. With, soldiers, they went to the place where she was raped. They found the man lying down still alive. The man was brought to the hospital. The man turned out to be accused Rolando Alfanta y Alo. Thereafter, she executed an affidavit (Exh. C), narrating what happened to her to the police; and was brought to the NBI Medico-Legal Officer for examination.

"On cross examination she testified that, from Valle Verde, Pasig City, where she worked as housemaid, she went to her friend's house named Patrick because she brought mongo and because she and Patrick's wife Inday, are friends, arriving in the house of Patrick at 6:30 in the evening of August 26, 1995. She was not able to go back to her place of work at Valle Verde, Pasig because it was already late at night and was told to sleep at Patrick's house. Earlier that evening, at 9:00, she saw accused passed by in front of the house. Aside from her two (2) other persons slept in the house of Patrick, Inday and son. She slept in the sala, while Inday and her son in a room. The door of the house was closed, but was not locked. In entering the house were she slept, one has to reach the sala first. When awakened, she shouted, but nobody heard her because they were sleeping and at the same time the accused placed his hand on her mouth. She was really afraid because she was boxed on her chest and accused was holding a bolo. While outside the house she was boxed. At the garage, which was not lighted, she was told to undress. She followed, because of fear. Accused also undressed himself. While accused was on top of her, holding a bolo, she cried. Accused is not her sweetheart. She even said, why will I hack him if he is my sweetheart.

"The last witness for prosecution was Lilia Hogar of the Women's Desk Unit, Makati Police Station who testified that she came into the possession of the bolo, Exh. D, because Nita Fernandez was brought to Sub-Station A. The bolo, which was brought by Nita Fernandez to the Military Signal Village, was in turn given to the Central Police Desk wherein she is the Investigator. After the bolo was handed to her by the soldiers of the Signal Village, she conducted an investigation. Based on her investigation, she learned from Nita Fernandez that when Nita Fernandez woke up at 12:00 midnight on August 26, 1995, Nita Fernandez saw a man standing beside her. Nita was punched on the left portion of the face and ordered her to go outside, instructed to climb over a fence on the other side of the house. After climbing the fence, Nita Fernandez was told to undress, was boxed on her breast and was told to lie down in a vacant house owned by Captain Pascua, where suspect raped Nita Fernandez. On their way to the hospital on board the Makati Police car, she asked accused why he rape Nita Fernandez. Accused answered that Fernandez was not telling the truth because they were sweethearts.

"Defense presented the accused. Accused testified that on August 26, 1995, while at AFOVAI Village, Municipality of Makati, fixing the fence of the house of General Renato Icarma together with many other laborers, somebody told him that his wife was waiting for him in the house of Captain Pascua. At 10:00 o'clock that evening, he went to the house of Captain Pascua; and upon reaching the house, he knocked, and called Patrick Augusto Ablon, the caretaker of Captain Pascua. Belinda Ablon, the cousin of Patrick Augusto Ablon, opened the door. After opening the door, Nita Fernandez, his live-in partner for almost a year came out, in an angry mood, because she has been waiting for him for long, and asked him why he was late. He explained that he did not expect her to come, as his understanding with Nita Fernandez was, he will call her by phone or write her before she comes. Then Nita Fernandez told him that they talk outside as she was ashamed with the neighbor, and they will disturb the child who was sleeping. After half hour talking, he invited Nita to sleep. He and Nita went to a vacant house, owned by a Colonel passing a fence. When they arrived in the vacant house, it was closed, so they slept in the terrace. He denied doing what Nita Fernandez claimed he did. He claimed that,

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he was surprised why Fernandez hacked him, for he knows of no reason why Nita Fernandez will hack him. He believes that Nita Fernandez concocted the story of rape because of fear that he will file a case against Nita Fernandez for hacking him.

"On cross-examination, accused testified that, he has been staying in the house of General Romeo Icarma (the house where he and 15 other workers were constructing a fence), since 1990. His livelihood was, as a Mason, since 1993. In February 1995, the daughter of Nita Fernandez named, Lucia who is married to Lito introduced him to Nita. He and Nita became sweethearts in February 1995. They have not live together because Nita was working at Valle Verde. They only meet during Nita's day off. He has been at Nita's place of work, but he used to call then at her telephone numbers which are 6326062 and 6356060. They used to see each other at Gen. Icarma's place where he lived. On August 26, 1995, when the incident in questioned happened, Lucia and Lito were no longer residing at Gen. Icarma's place because they were told to leave in April 1993. On August 26, 1995, while in the squatters area, just 100 meters away from the house of Gen. Icarma, Nita came, looking for him. Because Nita does not know the workers in Gen. Icarma's house, Nita left and went to the house of Captain Pascua, just at the back of the house of Gen. Icarma. While at the squatters area, Melchor Rudy Abella told him that Nita was looking for him. He went to the house of Captain Pascua. At Captain Pascua's place, he met Nita. Present in the house of Captain Pascua were Augusto Ablon, his wife Rubylin, Belinda, a cousin and a small child who were all awake, except the child. Although Ablon was very much willing to accommodate him in Ablon's house, he brought Nita to the house of the Air Force Colonel because if it rains, there is a roof to protect them and ashamed to stay at Ablon's house. Even Nita does not like to sleep in Ablon's place, saying that instead of sleeping at Ablon's place, she prefers to go back at Valle Verde. He did not allow Nita to go back at Valle Verde because it was already late at night and if anything happens to her, her daughter who knows his relationship with Nita will blame him. He did not bring Nita to Gen. Icarma's house because it is crowded and the Colonel's house is just 20 meters from Captain Pascua's house. They went to the Colonel's house, climbing the fence. When they climbed the wall, he was carrying `banig, pillow and blanket,' and did not notice that Nita was carrying a knife. Nobody live in the Colonel's house and was closed. They slept in the terrace of the house on a cement flooring. While he was sleeping Nita hacked him with a kitchen knife. When hacked, he just said `aray'. The bolo was not used in hacking him. After stabbing him, Nita left and went to the Military Police leaving the kitchen knife. When the Military Police arrived, he was no longer at the Colonel's house because he went to another house, where he slept. After he was stabbed, he asked the assistance of Ablon. Ablon was the one who called for the Military Police. He did not leave the colonel's house. He just stayed in the premises. Despite his wounds, he was able to sleep and woke up at 5:00 in the morning. When asked why Nita stabbed him, he said that it was because he hurt Nita by holding Nita's hand and pushing her on her chest when Nita insisted in leaving for Valle Verde; and because he hurt Nita, he did not file a complaint against Nita for hacking him."[3]

In the decretal portion of the decision, the court a quo has pronounced judgment, thus:

"WHEREFORE, this court finds accused Rolando Alfanta y Alo guilty beyond reasonable doubt of the crime of rape, penalized by Art. 335 of the Revised Penal Code, as amended, with aggravating circumstances of nighttime and ignominy, he is hereby sentenced to suffer the maximum penalty of death, and indemnify complainant Nita Fernandez the sum of P50,000.00, plus the costs of the suit."[4]

Now before the Court, accused-appellant seeks the reversal of the conviction and the imposition of the death penalty decreed by the trial court; he contends that -

"I. THE TRIAL COURT [HAS] ERRED IN FINDING AND CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE.

"II. THE TRIAL COURT [HAS] ERRED IN TAKING INTO CONSIDERATION THE AGGRAVATING CIRCUMSTANCES OF NIGHTTIME AND IGNOMINY."[5]

The case can be described as not really being too far from the typical rape cases that have been previously reviewed by the Court. It is a case, like the instances before it, of two people, each testifying on the same incident but making a clearly discordant testimony. Since only the participants could directly testify on the sexual congress, here conceded to have taken place, extreme care is observed in evaluating the respective declarations of the complainant and the accused. The doctrinally accepted rule is to accord great respect over the assessment of the trial court on the credibility of the witnesses and, in the usual words of similar import employed by the Court, it would be best not to disturb the findings of the court which has heard the evidence except only when a material or substantial fact has truly been overlooked or misappreciated which if properly taken into account can alter the outcome of the case.[6] Regrettably for accused-appellant, no such exceptive instances of possible oversight are perceived or evident in this case.

Complainant gave a thorough narrative account, so found to be credible by the trial court and by this Court as well, of what had transpired during the late hour of the night in question.

"Prosecutor Manola:

"Q Mrs. Witness will you kindly tell the Honorable Court where you were on August 26, 1995 at around 12:00 o'clock midnight?

"A At Fort Bonifacio.

"Q What city or municipality?

"A I do not know but it must be here sir.

"Q Meaning Makati City?

"A Yes sir.

"Q

Why were you there on that date and time Mrs. Witness?

"A I was sleeping in my friend's residence.

"Court:

"Q What is the address of that friend's residence at Fort Bonifacio?

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"A At AFOVAI Fort Bonifacio Makati sir.

"Q Why were you there at that time?

"A Because I always go there and my son's residence is beside the house of my friend sir.

"Court: Proceed fiscal:

"Pros. Manola:

"Q Now, while you were there on that date and time at the house of your friend in AFOVAI Fort Bonifacio Makati City do you recall of any unusual incident that happened?

"A

There was sir.

"Q Will you kindly tell what that incident was?

"A During that time while I was sleeping in the residence of my friend suddenly there was a man who entered the house where I was sleeping.

"Q So when you saw that man entered the house what did he do if any?

"A I stood up because he was pulling me and then he put his hand in my mouth sir.

"Q What else happened after that?

"A When I was resisting he boxed me and at that time he was holding a bolo and he said if I will not obey him he will be going to kill me sir.

"Q After that what transpired next Mr. Witness?

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"A He forced me to climb the fence and then I saw he was holding a bolo.

"Q

Did you climb over the fence?

"A I climb sir because he forced me to climb the fence.

"Q Were you able to go over the fence?

"A When I was over the fence already he told me to go to a vacant house.

"Q How about the accused where was he when he ordered you to climb over the fence?

"A He was at my back and he told me to go first and then he followed.

"Q So after you went or cross over the fence what happened next Madam witness?

"A He told me to go to the vacant house and there he himself told me to undress and I took off my clothes he embraced me and kissed me sir.

"Q

Now when this man told you to go to the vacant house did you obey him?

"A I was told to go to the vacant house there he told me to undress.

"Q Did you obey him?

"A He told me to undress and he was holding a bolo.

"Court:

"Q The question of the prosecutor to you was did you obey the instruction of the accused for you to undress?

"A Yes sir.

"Prosecutor Manola:

"Q

Tell the Honorable Court why you do followed the instruction of that Man to go to that vacant house and to undress why did you follow this instruction?

"A I was afraid that he might kill me sir.

"Q Why do you say that he might kill you?

"A He like to rape me sir.

"Court:

"Q You did not answer the question of the prosecutor why were you afraid?

"A Because he was holding a bolo and he was at the same time boxing me sir.

"Prosecutor Manola:

"Q So what happened after according to you you were instructed to undress?

"A He embraced me and kissed me and told me to lie down.

"Q

And did you lie down as instructed by this Man?

"A He forced me to lie down and then he forced me to separate my legs sir.

"Q And what happened when you were forced to open your legs?

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"A He told me not to shout because if I will shout he will kill me and the he inserted his penis to my vagina sir.

"Q After this Man inserted his penis in your vagina or private part what happened next Mrs. Witness?

"A He told me to lie front my face down and he inserted his penis to my anus sir.

"Q After that what happened next Mrs. Witness?

"A Then he told me again to lie down and at the same time he inserted his fingers to my private parts going it and out sir.

"Q After that what happened next Mrs. Witness?

"A He lie down because he was already tired of molesting.

"Q

How about you what were you doing at that time when the accused this person according to you lie down after he put his fingers inside your private part?

"A He asked me to go near him and lie down beside him.

"Q Did you follow his instruction for you to lie near him?

"A Yes sir because he was holding a bolo sir.

"Q So what happened after you lie down beside this person?

"A He told me to put on my dress and at the same time he also told me that he does not want me to tell it to anybody because he have raped many.

"Q Now if this person whom according to you raped you inside the court room would you be able to recognize him?

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"A Yes sir I could recognize him.

"Q Will you kindly look around the court room if you could recognize this person if he is inside?

"Note: Witness pointed to a man who was pointed as the man who raped him and when asked his name answered as Rolando Alfanta.

"Q

Now after this person whom you just pointed to who answered by the name of Rolando Alfanta uttered the words `lahat nang ni rape ko ay pinapatay ko dahil sa ayokong may magsumbong' what happened next Mrs. Witness?

"A I pleaded to him and he said not to put on my dress because he is going to take a rest.

"Q After that what happened next if any Mrs. Witness?

"A I saw him that he was sleeping already and then I suddenly got the knife and stab him in the chest sir.

"Q After you stabbed him on his chest what happened next Mrs. Witness?

"A The knife broke and then I suddenly grabbed the bolo and hack and hack him sir.

"Q After you hacked this person who raped you what happened next Mrs. Witness?

"A I immediately put on my shirt and I got hold of the bolo and I run to the signal where the soldiers were.

"Q

Did you reach this place signal where there are soldiers according to you?

"A Yes sir.

"Q And what did you do when then when you arrived there?

"A I told him that I killed a person therein and give them the bolo.

"Q What happened after that when you informed the solders at signal that according to you you have killed a person what happened next?

"A We went to the person who raped me sir.

"Q And did you see him there?

"A Yes sir.

"Q Who were with you when you went back to the place where you were allegedly raped?

"A The soldiers sir.

"Q

Did you find this person who raped you?

"A Yes sir.

"Q What was he doing?

"A He was lying down sir.

"Q What happened after that?

"A When we arrived there he was still alive and he was brought to the hospital.

"Q Who brought him to the hospital?

"A The ambulance of the soldier.

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"Q Now do you remember having given a statement to the Makati Police in connection with what you have just narrated or told or testified to this afternoon?

"A I could remember.

"Q

If that statement is shown to you would you be able to recognize it?

"A Yes sir.

"Q Now showing you a statement attached to the records of the prosecutor's office consisting of two pages kindly go over it and tell us if you recognize this statement?

"A Yes sir I could recognize this.

"Q Is that your statement"

"A Yes sir.

"xxx xxx xxx.

"Q Now this bolo which according to you surrendered to the soldier at the signal if you see this bolo again would you be able to recognize it again?

"A Yes sir.

"Prosecutor Manola:

We would like to make reservation for this witness to identify this bolo when this bolo is presented by the policeman who is in custody of this bolo.

"Court:

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"Q How about the knife which according to you was seen by you at the waist line of the accused did you bring it also?

"A I did not bring it sir because it was broken sir it was only the bolo that I brought.

"Q Now while you were being raped did you shout for help?

"A Yes sir.

"Q How did you ask for help?

"A I asked for help but they were sleeping they did not hear me sir.

"Q

The question to you was how did you ask for help?

"A I cried and I said tulungan po ninyo ako.

"Q Did anybody respond to your cries for help?

"A None sir.

"Q Now how did you feel while the accused was inserting his private part to your private part?

"A It hurt sir my vagina and my anus, my mouth that he boxed me sir.

"Q Now why did you say that the accused was able to insert his penis into your vagina?

"A He forced that to insert it.

"Q Forced it to where?

"A He forced it to enter my vagina sir.

"Q

Did you feel when the private part of the accused entered to your vagina?

"A Yes sir I feel it sir.

"Q By the way do you know the accused prior to the date that you were awakened?

"A I do not know him.

"Q In short he is a complete stranger to you when he entered the room?

"A I saw him around 7:00 o'clock in the evening that he was passing thru the front of the house of my friends where I was sleeping.

"Q At that time that you were awaken by the accused with whom were you sleeping?

"A Only me sir.

"Prosecutor Manola:

"Q

Now you said that while you and the accused were lying down first you stab him with the knife how many times have you stabbed him with the knife?

"A I was not able to count because I was afraid of him.

"Q You said that after stabbing him with the knife which you broke you got hold of the bolo you hacked him how many times have you hacked him?

"A I failed to count how many times. I hacked him because I was afraid of him he might kill me.

"Prosecutor Manola: That will be all for the witness.

"Court: Cross-examination.

"Atty. Manalo: With the permission of the Honorable Court.

"Court: Proceed.

"Atty. Manalo:

"Q

Now who were with you at the time when you were sleeping at the house of your friend at AFOVAI Fort Bonifacio?

"A One of their children so there were three and I was one.

"Q Were you sleeping in one room?

"A I was sleeping in the sala sir.

"Q Now before you sleep in that house at the sala did you close the door of that house?

"A It was closed but it was not locked.

"xxx xxx xxx.

"Q Now when why were you interested in sleeping in the house of your friend when you could already at the house of your employer?

"A Because I was bringing mongo to my friend because I am indebted to them sir.

"Q

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Now why did you not return to your employer after giving or handing that mongo to your friend?

"A They told me to sleep there because it was already late at night.

"Q By the way what time did you go there?

"A Around 6:00 to 6:30 in the evening.

"Q And what time did you reach your friend at AFOVAI?

"A 6:30 sir.

"Q And Valle Verde is just in Pasig isn't?

"A Yes sir.

"Q It is near where you are employed and it will take you one ride only to reach that place isn't?

"A Three rides sir.

"Q

Now which is first to be reached from the front door of the house where you were sleeping at the time the place where you were sleeping or the place of the room where the owner of the house were sleeping?

"A First it is the sala where he passed.

"Q Now you said that the door was not locked was there any other improvised locked placed in that door like a wood?

"A They did not lock the door because they are in confident.

"Q Now what is the name of the owner of the house where you slept at that time?

"A Patrick sir.

"Q And how are you related to Patrick?

"A His wife is my friend sir.

"Q What is the name of his wife?

"A Inday sir.

"Q

Now when you were awaken while you were sleeping in the sala of the house of your friend Inday did you not shout when you saw a person pulling you holding a bolo?

"A I shouted but they did not hear me because they were sleeping and at the same time he placed his hands on my mouth sir.

"Q Now you said that you were boxed on the chest by the accused how many times were you boxed by the accused on the chest?

"A I do not know how many times I was boxed sir because I was really afraid of him.

"Q But you were sure that you were boxed at the chest?

"A Yes sir.

"Note: Witness demonstrating with her hands first pointing on her chest and also on her mouth.

"Q Was it strong?

"A Yes sir it was strong because the following day it has marked.

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"Note: Witness holding on his left chin.

"Q How about on the chest?

"Note: Witness demonstrating it was pointed on her chest.

"A It was not too strong sir.

"Q Did you fall down on your knee when you were hit by the blow?

"A Yes sir.

"Q Where?

"A I fell on the ground down.

"Q Where were you boxed by the accused?

"A Outside sir of the house.

"Q

Now you said that you were ordered to undress and to lie down on the ground is that correct?

"A Yes sir.

"Q And you followed him?

"A He told me to undress in the garage and he also undressed himself and because I was afraid because he was holding a bolo sir.

"Q When he undressed himself was he still holding a bolo?

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"A Yes sir one hand was holding the bolo the other one hand he was undressing himself.

"Q Was it lighted the place?

"A None sir.

"Q How far were you when the accused was undressing himself?

"A Near sir.

"Q

Did you see his private part when he undressed himself?

"A Yes sir.

"Q How big?

"Prosecutor Manola: Immaterial your honor.

"Atty. Manalo: To test the credibility, your honor.

"Court: Answer

"A It was dark and I was able to see and I do not know because I was afraid.

"Atty. Manalo:

"Q And then you lie down?

"A

He told me to lie down and he placed himself on top of me.

"Q Was he still holding the bolo?

"A Yes sir he was holding the bolo on his one hand.

"Q How did you see him?

"A When he was holding the bolo with his one hand while I he was on top of me I cried and he was holding the bolo.

Note: Witness demonstrating the accused holding the bolo upward.

"A When I cried he was on top of me sir.

"Q What was he doing when he was on top of you?

"A He was molesting me sir."

"xxx xxx xxx

"Q

Now what time did you see him passed by the house of your friend according to you?

"A 9:00 o'clock in the evening sir.

"Q Why were you sure that he was the one who passed by the house of your friend?

"A I saw him that he was passing.

"Q Where were you at the time?

"A I was seating by the window sir."[7]

The testimony of the complainant about the incident is straightforward categorical, and relatively free from any

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serious flaw. No compelling reason is advanced to sufficiently persuade the Court to conclude that the trial court has erred in giving due weight and credence to the testimony of the complainant. Neither is evidence adduced to show that the complainant has had any ulterior motive to prevaricate and enmesh accused-appellant in a fabricated charge. The Court repeats the familiar doctrine that when a woman claims that she has been raped, she says in effect all that is necessary to show such a fact so long as her testimony can meet the test of credibility,[8] for it is said that no woman in her right mind will cry rape, allow examination of her private parts, or subject herself and her family to the humiliation concomitant to the prosecution of the case, unless the story were true.[9]

Testifying in his defense, accused-appellant claimed that he and the complainant had been lived-in partner for almost a year, and that while they did sleep together on 26 August 1995 at the porch of the house of a certain Air Force officer, accused-appellant denied any carnal knowledge of the victim that evening. In his appeal brief, accused-appellant sought to negate any possible or likely use of violence or intimidation, considering that: (a) in the house where the victim was sleeping on the night of 26 August 1995, there were at least three persons (the caretaker of the house Patrick Augusto Ablon, his wife Rubylin and the couple's son) who could have responded to any shout for help from the victim; (b) the door of the house was purposely left unlocked in order to enable accused-appellant to come into the house, and (c) when the victim was made to climb a fence followed by the accused, she could have escaped but did not.

The "sweetheart theory" of accused-appellant would appear to be another worn out strategy, often resorted to as a last ditch effort, to exculpate oneself from criminal liability. No documentary evidence of any sort, like a letter or a photograph or any piece of memento, was presented to confirm a romantic liaison between accused-appellant and the complainant. The latter testified:

> "Q
>
> Is it not a fact that you and the accused were sweethearts?
>
> "A No sir.
>
> "Q And that you went to that place AFOVAI just to meet him in that place?
>
> "A No sir he is not my sweetheart. Why will I hack him if he is my sweetheart?
>
> "Q You hacked him with the bolo because of you are too much jealousy is concerned because your sweetheart was then womanizing?
>
> "Prosecutor Manola: Misleading your honor.
>
> "Atty. Manalo: I am on cross-examination your Honor.

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"Court: Answer.

"A Why will I get jealous I have nothing to do with him. I do not know him sir.

"Atty. Manalo:

"Q Really?

"A I do not know him. I really do not know him sir."[10]

It would be rather strange an occurrence for a love-partner, if true, to stab her beloved for petty reasons. The trial court was not out of line when it made this evaluation; viz:

> "This Court cannot accept the claim of accused that he and complainant Nita Fernandez were sweethearts, for such a claim defies rationality, let alone common sense, because if they were sweethearts, she will not hack him. Not only that, the manner on which she stabbed and hacked him, first with a knife, then with a bolo, shows a complete anger to vindicate the outrage on her. If they were sweethearts, she would not have acted in the manner she did in stabbing and hacking him. At least, if they have some relationship, she would not show anger the way she did."[11]

Neither would the presence of at least three persons on the night of 26 August 1995 in the house where victim was sleeping necessarily disprove the sexual assault. It was already close to midnight when the incident occurred, and the other occupants of the house were by then apparently all sound asleep. The evidence is to the effect that accused-appellant immediately after getting into the house hit her on the jaw, put his hand on her mouth and threatened to kill her if she dared refuse to yield to his demands. Understandably, the victim was shocked, gripped by fear and then cowed into submission. Intimidation should be viewed in the light of the perception and judgment of the victim at the time of the commission of the offense and not by any kind of hard and fast rule. It would be unreasonable to expect the victim to act with equanimity of disposition and to have the courage and intelligence to disregard the threat made by accused-appellant.[12]

The claim that the unlocked door of the house was a sign that the complainant wanted accused-appellant to have a chance to see her during the late evening indeed should deserve scant consideration. The so-called love angle was properly ruled out by the trial court for lack of concrete evidence to establish any such relationship.

Anent the failure of the complainant to escape when accused-appellant ordered her to climb a fence, it should be enough to state she did not appear to have had any real opportunity to flee from the clutches of the intruder who was, in fact, just behind her. After scaling the fence and while inside the abandoned and enclosed house, she could not have done any much better since she was all the time within striking distance of the bolo-wielding malefactor.

And now on the propriety of an appreciation of the aggravating circumstances of nighttime and ignominy.

Nighttime is said to be that period of darkness beginning at the end of dusk and ending at dawn.[13] The law defines nights as being from sunset to sunrise.[14] By and of itself, nighttime would not be an aggravating circumstance unless it is specially sought by the offender, or it is specially taken advantage of by him, or it facilitates the commission of the crime by insuring the offender's immunity from capture.[15] As an ordinary aggravating circumstance, nighttime can be so considered provided it is duly proved although not alleged in the

information.[16] The Court entertains no doubt that appellant has specially taken advantage of the cover of darkness to facilitate the commission of the crime without being recognized. Accused-appellant has abducted his victim, brought her to an abandoned and unlit house and then unleashed his carnal desire on her, assured of the stillness of a sleeping world.[17] The Court has long held that this aggravating circumstance can be considered when an accused takes advantage of the silence and darkness of the night to ensure impunity from his illegal act.[18]

With respect to ignominy, the victim testified that after appellant had inserted his penis into her vagina, appellant ordered her to lie face down and while in that position had his penis into her anus. Thereafter, he ordered her to lie down again and this time he inserted his finger inside her. The Solicitor General correctly invoked the case of People vs. Saylan,[19] where this Court said:

> "The trial court held that there was ignominy because the appellant used not only the missionary position, i.e. male superior, female inferior, but also `the same position as dogs do' i.e., entry from behind. The appellant claims there was no ignominy because `The studies of many experts in the matter have shown that this `position' is not novel and has repeatedly and often been resorted to by couples in the act of copulation.' (Brief, p. 24.) This may well be if the sexual act is performed by consenting partners but not otherwise."[20]

Article 14, paragraph 17, of the Revised Penal Code considers to be an aggravating circumstance any means employed or circumstance brought about which add ignominy to the natural effects of the act. The circumstance, it is said,[21] "pertains to the moral order [and] adds disagree and obloquy to the material injury caused by the crime."

The crime of 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 or is demented.
>
> "The crime of rape shall be punished by reclusion perpetua.
>
> "Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death."[22]

In the case at bar, it remained uncontroverted that accused-appellant was armed with a bolo to realize his criminal objective. Nonetheless, the use of a deadly weapon could not be considered as a qualifying circumstance in the crime of rape[23] for not having been correspondingly alleged in the information as to make the offense fall under the jurisprudentially referred "qualified rape" punishable by reclusion perpetua to death. In People vs. Garcia,[24] the Court declared:

> "One further observation. Article 335 originally provided only for simple rape punishable by reclusion perpetua, but Republic Act No. 4111 introduced amendments thereto by providing for qualified forms of rape carrying the death penalty, that is, when committed with the use of a deadly weapon or by two or more persons, when by reason or on the occasion of the rape the victim becomes insane, or, under the same circumstances, a homicide is committed. The homicide in the last two instances in effect created a special complex crime of rape with homicide. The first two attendant circumstances are considered as equivalent to qualifying circumstances since they increase the penalties by degrees, and not merely as aggravating circumstances which affect only the period of the penalty but do not increase it to a higher degree. The original provisions of Article 335 and the amendments of Republic Act No. 4111 are still maintained.

> "xxx xxx xxx.
>
> "Now, it has long been the rule that qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances, (People vs. Collado, 60 Phil. 610 [1934]; People vs. Jovellano, et al., L-32421, March 27, 1974, 56 SCRA 156; People vs. Fuertes, G.R. No. 104067, January 17, 1994, 229 SCRA 289; People vs. Rodico, et al., G.R. No. 107101, October 16, 1995, 249 SCRA 309.) since the latter admit of proof even if not pleaded. (U.S. vs. Campo, 23 Phil. 368 [1912]; People vs. Domondon, 60 Phil. 729 [1934]; People vs. De Guzman, G.R. No. 73464, August 1988, 164 SCRA 215.) Indeed, it would be a denial of the right of the accused to be informed of the charges against him and, consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form punishable with death, although the attendant circumstance qualifying the offense and resulting in capital punishment was not alleged in the indictment on which he was arraigned."[25]

Simple rape is punishable by a single indivisible penalty of reclusion perpetua. Thus, even if there were aggravating circumstances of nighttime and ignominy in attendance the appropriate penalty would still be reclusion perpetua under the law. Article 63 of the Revised Penal Code provides that in "all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

WHEREFORE, the decision of the trial court finding accused-appellant Rolando Alfanta guilty beyond reasonable doubt of the crime of rape is AFFIRMED WITH MODIFICATION by hereby lowering the penalty therein imposed from death to reclusion perpetua. An award of P50,000.00 for moral damages is likewise ordered to be paid by accused-appellant Rolando Alfanta to the victim Nita Hernandez in addition to the sum of P50,000.00 by way of indemnity ex delictu granted by the trial court.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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[1] Per Judge Roberto C. Diokno

[2] Original Records, p. 1

[3] Ibid., pp. 149-156.

[4] Ibid., p. 156.

[5] Brief for Plaintiff-Appellee, p. 2.

[6] People vs. Teodoro, 280 SCRA 384.

[7] TSN, Nita Fernandez, 09 October 1995, pp. 10-22.

[8] People vs. Roncal, 272 SCRA 242; People vs. Quitoriano, 266 SCRA 373.

[9] People vs. Mamalayan, 280 SCRA 748.

[10] TSN, 09 October 1995, p. 22.

[11] Rollo, p. 19.

[12] See People vs. Matrimonio, 215 SCRA 613; People vs. Codilla, 224 SCRA 104.

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[13] Cited in Luis B. Reyes, Revised Penal Code, Vol. I, Thirteenth Edition, p. 356.

[14] Article 13, Civil Code.

[15] People vs. Cayabyab, 274 SCRA 387; People vs. Narciso, 262 SCRA 1.

[16] See People vs. Gelera, 277 SCRA 450; People vs. Raquinio, 17 SCRA 914.

[17] See People vs. Grefiel, 215 SCRA 596.

[18] Ibid.

[19] 130 SCRA 159.

[20] At. P. 167.

[21] Revised Penal Code, Chief Justice Ramon C. Aquino and Justice Carolina C. Griño-Aquino, Vol. 1, 1997 Edition, p. 444.

[22] Sec. 11, Art. 335, R.A. 7659.

[23] People vs. Codilla, 224 SCRA 104; People vs. Lemberte, 142 SCRA 685; People vs. Garcia, 105 SCRA 6; People vs. Entes, 103 SCRA 162.

[24] 281 SCRA 463.

[25] At pp. 488-489.

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