

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GADFRE TIANSON, ACCUSED-APPELLANT.

G.R. No. 125692. October 24, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Gadsfres Tianson was charged before the Regional Trial Court of Romblon, Romblon, Branch 81, with two (2) counts of rape under two (2) separate Informations filed on August 23, 1991, alleging as follows -

Criminal Case No. 1822

"That on or about the 11th day of February 1991, at around 11:00 o'clock in the evening, in barangay Concepcion Norte, municipality of Santa Maria, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned offended party, against her will and in her own house.

CONTRARY TO LAW, with the aggravating circumstance that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for the offense."[1]

Criminal Case No. 1825

"That on or about the 17th day of July, 1991, at around 2:00 o'clock in the afternoon, in barangay Concepcion Norte, municipality of Santa Maria, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a fan knife, and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned offended party, against her will.

CONTRARY TO LAW."[2]

Upon arraignment on June 10, 1994, accused-appellant, assisted by counsel de oficio, pleaded not guilty. The two (2) cases were consolidated and jointly tried. On November 20, 1995, the Regional Trial Court of Romblon, Romblon, Branch 81 rendered a Decision finding accused-appellant Gadsfres Tianson guilty of rape.[3] The dispositive portion of said Decision provides, as follows -

"WHEREFORE, this Court finds the accused GADFRES TIANSON GUILTY beyond reasonable doubt of the crime of:

- 1. Rape under the Information, dated August 23, 1991, in Criminal Case No. 1822 and is sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties therefor, and to pay P40,000.00 to the victim, Rosalie M. Gapi, as moral damages, without subsidiary imprisonment in case of insolvency. With costs against the accused; and

- Rape under the Information, dated August 23, 1991, in Criminal Case No. 1825 and is sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties therefor, and to pay P40,000.00 to the victim, Rossana M. Manipol, as moral damages, without subsidiary imprisonment in case of insolvency. With costs against the accused.

The period of preventive imprisonment the accused had undergone shall be credited in his favor to its full extent and the penalties herein imposed shall be served successively in accordance with Articles 29 and 70, respectively, of the Revised Penal Code.

SO ORDERED."[4]

Hence, this appeal.

In both cases, the trial court relied on the separate testimonies of the victims, Rosalie M. Gapi and Rosanna M. Manipol, corroborated by the testimony of Dr. Catalino B. Gumban, medical officer of the Romblon District Hospital.

The facts of Criminal Case No. 1822 are as follows:

In the evening of February 11, 1991, the victim, Rosalie M. Gapi, then thirteen (13) years old and a confessed virgin, was left alone in their house in Concepcion Norte, Santa Maria, Romblon. After cooking for herself and eating, Rosalie closed the door and windows of their house, lit a gas lamp in her room and went to bed. At around 11:00 o'clock that night, she woke up and noticed that the gas lamp was off. She was about to go outside her room to get a match for the lamp when she suddenly met the accused-appellant who blocked her and placed a pillow on her face. Accused-appellant then ordered her to lie down on the bed and held both her hands behind her with his left hand. With his right hand, accused-appellant removed his pants and succeeded in removing the shorts and panty of Rosalie. While this was happening, Rosalie smelled an odor that seemed to come from a cigarette, which odor caused her to feel dizzy and eventually made her unconscious. However, before becoming unconscious, Rosalie was aware that accused-appellant laid on top of her and inserted his penis into her vagina. She heard accused-appellant utter the words, "Wow, virgin". During this time, Rosalie felt pain and tried to struggle. When she woke up at around 4:00 o'clock in the morning, accused-appellant was no longer around. Rosalie noticed that she only had her t-shirt on and that her body was painful, particularly her thighs and vagina. She also saw blood on the blanket and mat where she had lain. After crying, she washed the bloodied blanket and mat, afraid that her parents might see these and scold her.

Rosalie further testified that after the rape, accused-appellant even told her on the street that it was he who had sex with her. In her sworn statement, Rosalie likewise stated that accused-appellant was openly narrating what happened to them in public.

It took Rosalie some time before she was able to narrate the incident to her mother, who accompanied her to file a sworn statement with the police on July 27, 1991. Rosalie then submitted herself to a medical examination on July 29, 1991. A certification was issued by the examining physician, Dr. Jocelyn I. Ilagan, that Rosalie's vulvar opening revealed a mucosal scar or a healed lacerated wound. It was also reported that during her internal examination, her vaginal vault admitted two fingers without pain, and that there was no resistance on internal examination, suggesting a possible hymenal break.[5]

In his defense, accused-appellant testified that he had known Rosalie for a year prior to the incident and had been courting her two (2) weeks prior to such date. Rosalie, however, turned him down because she already had a boyfriend. Yet, he claims that even while he was still courting Rosalie, they already had sex and that at around six o'clock in the evening of that fateful night, Rosalie invited him over to her house to help her with her school

assignment. He also claims that Rosalie left him to look for a companion in the house of one Bogoy Dalisay but that she returned alone. Accused-appellant alleges that he declared he was going home but Rosalie stopped him and asked him to spend the night in her house. At around 12:00 o'clock midnight, Rosalie gave him a pillow and mat and told him he could already sleep. They then started kissing, after which he undressed himself first and then Rosalie and then proceeded to have sex with her. He narrated that while they were having sex, Rosalie even asked him to place a pillow under her buttocks. They had sex again at around 12:30 o'clock and, again, at around 3:00 o'clock in the morning. He left her at around 4:00 o'clock the following morning.

Accused-appellant further alleges that Rosalie was no longer a virgin when they had sex and that her charge of rape against him is a lie as she consented to their sexual acts. He claims that Rosalie was probably afraid of her mother, prompting her to cry rape. Accused-appellant also avers that on July 28, 1991, Rosalie's mother asked him to go to their house where she asked him to wait for Rosalie's father so that they can arrange their marriage. He narrated that he asked the same from Rosalie's mother. He claims that he stayed in their house from 9:00 o'clock in the morning until 4:00 o'clock in the afternoon. However, Rosalie's father failed to arrive.

On cross-examination, accused-appellant admitted leaving for Manila on July 30, 1991, or three (3) days after he learned of the criminal cases filed against him, admittedly to hide. He stayed in Manila for three (3) years and only returned to Romblon in May, 1994.

The facts of Criminal Case No. 1825, are as follows -

In the afternoon of July 17, 1991, Rosanna M. Manipol, then fifteen (15) years old and a confessed virgin, was in the house of one Vicente Ramirez with her brother and classmates, to eat lunch as was their custom during school lunch breaks. Rosanna was not, however, able to return to school that afternoon because she developed a fever and decided to stay in the said house and rest while waiting for a companion to take her home; her own house being two and a half (2 and ½) kilometers away from their school. At around 2:00 o'clock that afternoon, while lying down and resting in the said house, Rosanna felt somebody enter and later saw accused-appellant in front of her, wearing t-shirt and short pants. She was about to scream but was stopped when accused-appellant, armed with a five (5) inch fan knife, warned her not to scream or he would kill her. He also warned Rosanna that if she tells her parents about the incident, he would kill her. Accused-appellant pinned down Rosanna's hands with his right hand and sat on the bed where she was lying. Rosanna then smelled a bad odor coming from the direction of the accused-appellant who had entered the room smoking, which caused her to become dizzy and unconscious. When Rosanna regained consciousness, she felt weak and noticed that she no longer had her skirt nor shorts and panties on. Instead, Rosanna found her skirt and panty beside her on the bed, while her shorts were under the bed. She also noticed blood on her private part and near her buttocks.

Rosanna knew accused-appellant even before the incident when he was briefly introduced to her by one Marissa Ramirez, whom Rosanna knew to be his relative, sometime in December, 1990.

She narrated what happened to her to the police authorities only on July 27, 1991, or ten (10) days later, because she was afraid of the threat made by accused-appellant that he would kill her if she told her parents about the incident. It was after she learned that Rosalie Gapi was also raped by accused-appellant that she decided to narrate what happened to her as well. Two (2) days after executing her sworn statement, or on July 29, 1991, Rosanna submitted herself to a medical examination, a certification was issued by the examining physician, Dr. Jocelyn I. Ilagan, that Rosanna's "vaginal vault admits 2 fingers without pain; no resistance on internal examination, possibility of a broken hymen".[6]

Accused-appellant admits having had sex with Rosanna during the incident in question, but claims that the same was with the latter's consent, she being his sweetheart since May, 1991; that he sent her a courtship letter after

being told by Rosanna's friends that she liked him; and that she answered his proposal soon after she received his letter. According to accused-appellant, he had sex with Rosanna for at least seven (7) times, all in the same house where the alleged rape took place. Accused-appellant claims that Rosanna would always invite him over and that sometimes she would miss school in her desire to be with him. He claims that Rosanna's companions ignored their being alone in the room because they knew they were sweethearts.

In convicting the accused-appellant on both charges of rape, the trial court gave credence to the testimonies of the two (2) victims, and rejected the claim of accused-appellant that the sexual act in both instances was done with the respective consent of the two (2) victims. In rejecting accused-appellant's insistence on consensual sex, the trial court ruled that the same was hard to believe. The trial court also took note of the fact that accused-appellant failed to produce the letter he testified to as having been sent to him by Rosanna. Likewise, accused-appellant's flight was taken as indicative of his guilt of the crimes charged against him.

In this Appeal, accused-appellant raises the following assignment of errors -

"I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE EVIDENCE OF THE PROSECUTION THAN THAT OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."[7]

Anent the first assigned error, we reiterate the time-honored rule that the trial court's assessment of the credibility of witnesses is accorded great respect and will not be disturbed on appeal unless a material or substantial fact has been overlooked or misappreciated, which if properly taken into account may alter the outcome of the case.[8] In the instant case, we have painstakingly reviewed the records and transcript of stenographic notes and have not found any reason to overturn the challenged Decision.

Accused-appellant insists that the sexual acts he had with both victims are with their respective consent. While the Court has upheld the defense of consensual sex in some cases on the basis of strong evidence, consisting of letters and the testimonies of witnesses showing that the alleged rape was actually sex by mutual consent,[9] the "sweetheart theory", being raised as an affirmative defense, must be established by convincing proof.[10] The burden of proof is on the accused-appellant that he and the victims are sweethearts. However, accused-appellant failed to establish such fact by convincing evidence.

As regards Criminal Case No. 1822, accused-appellant's testimony that he already had sex with Rosalie even while courting her, is equally hard to believe. We find his bare allegation as incredible, unnatural, unconvincing and so inconsistent with human nature and the course of things as to be totally devoid of credibility. Indeed, we cannot fathom how a fourteen year old barrio girl, barely into her teens, can so wantonly engage in sex with a twenty-four year old man whose courtship she had spurned. Such scenario is made more inconceivable by the fact, that Rosalie had a boyfriend at that time, as admitted by accused-appellant.

Coming now to Criminal Case No. 1825, accused-appellant's referral to a love letter allegedly sent to him by Rosanna cannot be given credence by this Court considering that it was not presented in court or testified to by a disinterested witness.

In both cases, we have two young girls barely in their teens caught by surprise by a twenty-four year old virtual

stranger who brutally forced himself into their juvenile bodies. Physically and mentally, they could do little to resist his strong advances. Under the circumstances, physical resistance need not be established, especially since intimidation was exercised upon the victims and they submitted themselves against their will to accused-appellant's lust because of fear for life and personal safety.[11]

Young though they are, the doctrine still holds that when a woman testifies that she has been raped, she says in effect, all that is necessary to show that rape has been committed, as long as her testimony meets the test of credibility.[12] Courts give credence to the testimony of a young girl who claims to be a victim of sexual assault, because ordinarily, no girl or woman of decent repute would undergo the humiliation of a public trial and testify on the details of her ordeal, unless motivated by a desire to have the offender apprehended and punished.[13] In this case, other than the accused-appellant's allegation of "conspiracy" by the victims' mothers and other relatives, no such motive has been shown as to why Rosalie and Rosanna would accuse him of the heinous crime of rape. Coming now to the award of damages, the trial court's award of P40,000.00 in moral damages should be increased to P50,000.00 in line with recent jurisprudence.[14] In addition to moral damages, civil indemnity should also be awarded to the victims. Under prevailing jurisprudence, civil indemnity of P50,000.00 is automatically awarded to the offended party without need of further evidence other than the fact of the commission of rape.[15] Finally, pursuant to Article 2230 of the Civil Code, the presence of one aggravating circumstance justifies the award of exemplary damages. Accused-appellant should thus pay Rosalie P25,000.00 as exemplary damages since the aggravating circumstance of dwelling was duly proven, the evidence having established that he entered the residence of Rosalie and there perpetuated the sexual attack.[16]

WHEREFORE, the Decision of the Regional Trial Court of Romblon, Romblon, Branch 81, in Criminal Cases Nos. 1822 and 1825 dated November 20, 1995, convicting accused-appellant of rape and sentencing him to suffer the penalty of reclusion perpetua, with all its accessory penalties, in each case, is **AFFIRMED** with the following **MODIFICATIONS**:

- The award of moral damages awarded to both victims is increased to P50,000.00 each;
- Accused-appellant is ordered to pay both victims civil indemnity in the amount of P50,000.00 each; and
- Accused-appellant is ordered to pay Rosalie M. Gapi, complainant in Criminal Case No. 1822, the amount of P25,000.00 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Pardo, JJ., concur.

Kapunan, J., on leave.

[1] Records, Criminal Case No. 1822, p. 1

[2] Records, Criminal Case No. 1825, p. 1.

[3] Records, Criminal Case No. 1822, pp. 68-82; Criminal Case No. 1825, pp. 60-78.

[4] Id., at p. 82 and 78, respectively.

[5] See Exhibit "A", Criminal Case No. 1822; Records, p. 43.

[6] See Exhibit "C", Criminal Case No. 1825; Records, p. 41.

[7] Brief for the Accused-Appellant, p. 1; Rollo, p. 95.

[8] *People v. Paranzo*, G.R. No. 107800, 26 October 1999, citing *People v. Villaza*, 127 SCRA 349 (1984); *People v. Ramos*, 240 SCRA 191 (1995); *People v. Nicolas*, 241 SCRA 67 (1995); *People v. Mariñas*, 248 SCRA 165 (1995); *People v. Ramirez*, 266 SCRA 135 (1997); *People v. Teodoro*, 280 SCRA 384 (1997); and *People v. Jose G. Perez*, G.R. Nos. 124366-67, May 19, 1999.

[9] *People v. Barcelona*, G.R. No. 125341, 9 February 2000, citing *People v. Bayron*, G.R. No. 122732, Sept. 7, 1999.

[10] *Id.*, citing *People v. Monfero*, G.R. No. 126367, June 17, 1999.

[11] See *People v. Pontilar*, G.R. No. 104865, 275 SCRA 338 [1997], citing *People v. Talaboc*, 256 SCRA 441, 450, April 23, 1996; citing *People v. Dusohan*, 227 SCRA 87, October 5, 1993, *People v. Ramos*, 245 SCRA 405, June 27, 1995 and *People v. Angeles*, 222 SCRA 451, May 21, 1993.

[12] *People v. Caratay*, G.R. No. 119418, 119436-37, 5 October 1999, citing *People v. Antido*, 278 SCRA 425, 440 [1997].

[13] *Id.*, citing *People v. Medina*, G.R. No. 126575, December 11, 1998, pp. 7-8; *People v. Pontilar*, 275 SCRA 338 [1997].

[14] See *People v. Prades*, G.R. No. 127569, 293 SCRA 411 [1998].

[15] *People v. Guiwan*, G.R. No. 117324, 27 April 2000, citing *People v. Pili*, G.R. No. 124739, 289 SCRA 118 [1988].

[16] *People v. Garces, Jr.*, G.R. No. 132368, 20 January 2000.

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