

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE SIAO, ACCUSED-APPELLANT.

G.R. No. 126021. March 03, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Accused-appellant Rene Siao together with Reylan Gimena were charged before the Regional Trial Court of the City of Cebu with the crime of rape committed as follows:

"xxx xxx xxx:

That on or about the 27th day of May, 1994, about 3:00 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with deliberate intent and with force and intimidation upon person, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned, Estrella Raymundo, a minor, 14 years old, against the latter's will."[1]

Accused-appellant Rene Siao and Reylan Gimena pleaded "not guilty" to the charge. Hence, trial proceeded in due course. After trial, the Regional Trial Court of the City of Cebu convicted accused-appellant Rene Siao of the crime of rape as principal by induction and acquitted Reylan Gimena. The dispositive portion of the decision rendered on March 29, 1996 reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused Rene Siao GUILTY beyond reasonable doubt as principal by induction in the crime of rape committed against the person of Ester Raymundo and imposes upon him the penalty of RECLUSION PERPETUA. He is, likewise, directed to indemnify private complainant Ester Raymundo the sum of P50,000.00 as and for moral damages.

Accused Reylan Gimena is hereby ACQUITTED because he acted under the impulse of uncontrollable fear of an equal, if not greater injury.

For want of evidence, his cross-claim against Rene Siao should be, as it is hereby ordered, DISMISSED."[2]

Hence, this appeal by Rene Siao.

The Office of the Solicitor General[3] summarized the evidence for the prosecution in this wise:

Joy Raymundo and private complainant Estrella Raymundo are cousins. They worked as house maids of appellant's family. Reylan Gimena was also a helper of appellant's family. Estrella was then a 14-year old "probinsiyana" from Palompon, Leyte (p. 5, TSN, September 16, 1994).

On May 27, 1994, at about 3:00 p.m., in the Siao residence located at 417-A Basak Brotherhood, Cebu City, appellant ordered Reylan Gimena, a houseboy of the Siao family, to pull Estrella to the room of the women. Gimena dragged her toward the women's quarters and once inside, appellant pushed her to the wooden bed (naomog). Appellant pointed a pistol colored white at Gimena and the face of Estrella (pp. 7-8, TSN, September 16, 1994).

Producing a candle and a bottle of sprite, appellant asked Estrella to choose one among a pistol, candle or a bottle of sprite. He also told Gimena "Reylan, birahi si Ester." (Reylan do something to Ester.) Appellant lighted the candle and dropped the melting candle on her chest (p. 7, TSN, September 20, 1994). Estrella chose a bottle of sprite because she was afraid of the pistol. She was made to lie down on her back on the bed with her head hanging over one end. Whereupon, appellant poured sprite into her nostrils as she was made to spread her arms. While appellant dropped the bottle of sprite into her nostrils, he pointed the gun at her face. Estrella felt dizzy and her eyesight became blurred (p. 6, TSN, September 20, 1994). She tried to fold her arms to cover her breasts but appellant ordered Gimena to hold her hands (p. 10-15, TSN, September 16, 1994).

Appellant then tied her feet and hands with an electric cord or wire as she was made to lie face down on the bed. After that, appellant untied her hands and feet but tied her back with the same wire (p. 17, TSN, September 16, 1994).

As appellant pointed his pistol at her, he ordered Estrella to remove her pants and T-shirt, she sat on the bed and did as she was told and when she was naked, appellant commanded her to take the initiative (ikaw ang mauna sa lalaki.) She did not understand what appellant meant. At this point, appellant poked the gun at her temple (pp. 19-20, TSN, September 16, 1994).

Appellant then commanded Gimena to remove his shorts. But Gimena refused. Gimena did not remove his shorts but let his penis out (p. 21, TSN, September 1, 1994; p. 11, TSN, September 20, 1994).

Appellant spread the arms of Estrella and made her lie down spread-eagled (pp. 4-5, TSN, September 29, 1994). She felt dizzy and shouted for help twice. Appellant ordered Gimena to rape Estrella. At first Gimena refused to heed the command of appellant to rape Estrella (birahi) because, according to Gimena, he has a sister. Appellant said that if they would not obey, he would kill both of them (pp. 4-10, TSN, September 20, 1994).

Appellant told Gimena, "Reylan, do something (birahi) to Ester!" Estrella was made to suck the penis of Gimena at gunpoint. She complied with the order of appellant and when the penis of Gimena was inside her mouth, appellant kept looking and pointing his handgun at them (pp. 11-14, TSN, September 20, 1994; pp. 19-20, TSN, September 21, 1994).

Thereafter, Gimena got on top of Estrella (gisakyan) and did the sexual act (kayatan). She felt excruciating pain. Gimena made push-and-pull movements for around 10 minutes. Appellant looked on and said, "why did it take you long to penetrate?" While Gimena was making the push-and-pull movements, appellant held the legs of Estrella to keep them apart (pp. 21-24, TSN, September 20, 1994).

After Gimena had sexual intercourse with Estrella, she sat down. Not long after, appellant said: "You do it again." Gimena said that he could not do it again because he was already very tired. But appellant pointed the pistol at Gimena's temple. Gimena obeyed the order of appellant because the pistol was pointed at him (pp. 25-26, TSN, September 20, 1994). They were made to lay side by side while appellant kept on pointing the pistol at them. Gimena, who was behind Estrella made a push-and-pull movements so that his organ would reach her private part (pp. 27-29, TSN, September 20, 1994).

After the side by side position, they were made to assume the dog position (patuwad). Appellant commanded her to do it but she refused because she was already tired. Appellant pointed the pistol at her, so she obeyed his order. Gimena said: "I will not do that because I am already tired." At that, appellant pointed the pistol at Gimena. Thus, Gimena copulated with Estrella in the manner dogs perform the sexual intercourse. Gimena shouted for help. Somebody knocked on the door and they heard the voice of Teresita Pañares, the older sister of appellant. Appellant ignored Pañares and kept on pointing the pistol at Estrella and Gimena, as he looked at them with wide-open eyes (siga) (pp. 30-31, TSN, September 20, 1994). Shortly, appellant told them to go to the boy's

room. They complied with his order tearfully, after he followed them laughing all the while. Appellant then warned them: "If you will tell the police, I will kill your mothers." (pp. 33-34, TSN, September 20, 1994).

At around 6:00 o'clock in the evening of the same day, Estrella and Joy Raymundo sought permission to go home. On their way home, they met an old man who saw Estrella crying. The old man took them to his house. After the incident was reported to the police, Senior Police Officer Reynaldo Omaña conducted the investigation and arrested Gimena, who was identified by Esrtrella as the one who raped her on orders of appellant. The police officers looked for appellant to shed light on the reported rape. But they could not locate him (Exhibit "B"; pp. 5-7, TSN, December 13, 1994).[4]

Accused-appellant Rene Siao, anchoring his defense mainly on denial, presents a different version of the case; his story -

"Private complainant Ester or "Estrella" Raymundo, together with her cousin Joy Raymundo, was employed as a maid by the Siao family on May 9, 1994.

In the morning of May 27, 1997, a commotion in the household of Jose Siao awakened Teresita Pañares, a sister of accused-appellant. Ms. Pañares learned that accused Rey lan Gimena, one of the houseboys of the Siao family, was accusing private complainant of stealing his wristwatch. This was not the first time accused Gimena confronted private complainant with the loss of his watch. Earlier in the week, Teresita had also lost money in the amount of P1,300.00, while her daughter Jan Bianca Abellana lost a necklace. It would turn out that the other househelpers of the Siao family had likewise lost personal articles. Marilyn Resujent, a maid, lost a brand new panty and sleeveless blouse. Simeon Siroy Jr., a houseboy, lost two T-shirts. Until the employment of the Raymundo cousins, the household of the Siao family had not fallen victim to thievery.

At around noontime of the same day, upon his return from his morning chores, accused Gimena inquired from Ms. Pañares whether his watch had been found. When informed that his watch had not been recovered, he confronted private complainant, who offered to pay for the value of the watch instead. Joy Raymundo agreed to accompany accused Gimena to the house of an aunt (of Joy and private complainant) for financial assistance. An hour later, accused Gimena and Joy Raymundo returned to the Siao compound and reported to Ms. Pañares that the aunt was unable willing (sic) to help.

In the meantime, private complainant admitted to Ms. Pañares that she stole the P1,300.00 but denied having taken the necklace. Private complainant initially returned the sum of P600.00 to Ms. Pañares. When Ms. Pañares stated that what she lost was P1,300.00, private complainant went to her quarters and returned with an additional P200.00. Private complainant explained that she could no longer produce the remaining money because she had already purchased a number of personal effects (pail, basin, pants, shorts) for herself with it.

A little while after accused Gimena and Joy returned from the house of Joy and Ester's aunt, accused Gimena and private complainant went to the male's quarters. Sometime thereafter, accused Gimena emerged from the male's quarters and announced the recovery of his watch. Private complainant had revealed to accused Gimena the hiding place of his watch, which was under the ironing board.

In the afternoon of May 24, 1994,[5] many people were present in the household of Jose Siao, father of accused-appellant. Ms. Beatriz Baricuatro was in the sala praying the rosary as was were habit. Joy Raymundo was in the kitchen. Ms. Pañares was likewise downstairs going about her daily business. The grandchildren of Jose Siao were running in and out of the house.

At about 3:00 p.m., Ms. Pañares left their residence to seek the assistance of the barangay with respect to the lost necklace of her daughter. (Until this time, private complainant would not admit to stealing the necklace). Within an hour, Ms. Pañares returned to the compound accompanied by Barangay Tanod Arturo Jabines. Private complainant was inside the male's quarters when the two arrived. Accused had earlier reported for work at the retail store owned by Jose Siao. When Barangay Tanod Jabinez introduced himself, private

complainant immediately begged for his forgiveness and promised not to do it again. Barangay Tanod Jabinez instructed the private complainant to address her pleas to her victims and not to him. Before the barangay tanod, private complainant admitted to stealing the necklace.

Dissatisfied with the piece-meal confession of the private complainant, Ms. Pañares decided to bring her to the barangay hall where she could report the theft. On the way to the barangay hall, private complainant confessed to selling the necklace and begged for forgiveness. At the last minute Ms. Pañares relented and decided to give the private complainant a second chance.

Upon their return to the Siao compound, private complainant and Joy Raymundo sought permission from Ms. Baricuatro to just return to their home in Leyte. Ms. Beatriz gave her consent and even handed them money for boat fare. At about 6:00 p.m., both housemaids left the Siao residence, bringing with them all their personal belongings. An hour later, some people came to the house of Jose Siao looking for private complainant and her cousin.

At this time, accused-appellant Rene Siao remained unaware of the developments that unraveled in the residence of Jose Siao. In the morning of May 24, 1994,[6] accused-appellant made his usual rounds [collecting the obligations of his father's creditors. At noontime, accused-appellant went directly to the retail store of his father where he had lunch with his wife Gina, as was his habit. This was the usual hour of his father's siesta and he would tend to the store in his father's absence, as was his custom.

At about 9:00 p.m. of the same evening, a barangay tanod came to the retail store and invited accused Gimena to the barangay hall. Jose Siao and Ms. Pañares would follow.

At the barangay hall, upon the complaint of a certain Rosalie Sallentes (who claimed to be related to the Raymundo cousins), Barangay Captain George Rama asked accused Gimena of the whereabouts of Ester and Joy Raymundo. Accused Gimena answered that he did not know. During the course of the investigation, and under threat by the Barangay Captain that his head would be broken if he did not tell the truth, accused Gimena confessed to tying up the private complainant to force her to reveal the place where his watch was being kept. He untied her after he recovered his watch from under the ironing board.

The following evening, on May 28, 1994, accused Gimena was picked up by policemen at the retail store of Jose Siao and brought to the Tabo-an Police Station.

Neither the police nor the barangay tanod looked for accused-appellant on the evenings of May 27 and 28, 1994.

Private complainant would file a complaint against accused-appellant and accused Gimena on June 21, 1994.

After the case was filed but before trial commenced, a person who presented himself as the father of private complainant set a meeting with the Siaos. The father of private complainant demanded 1 Million Pesos from the Siaos to drop the rape case."[7]

As stated earlier, the trial court rendered a decision finding accused-appellant Rene Siao guilty of the crime of rape as principal by induction in accordance with Article 17(2) of the Revised Penal Code.[8]

Insisting on his innocence, accused-appellant assigns to the trial court the following alleged errors:

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT SIAO GUILTY BY INDUCEMENT
THE TRIAL COURT ERRED IN CHARACTERIZING THE INCONSISTENCIES AS MINOR AND
IMMATERIAL

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION
WITNESSES"[9]

The Court has carefully reviewed the records of this case and has found accused-appellant's contentions to be without merit. Against the victim's story, accused-appellant urges us to accept his own version. But we cannot do so, for we agree with the trial court's observation that a 14-year old girl from the province, naïve and innocent to the ways of the world, is incapable of concocting serious charges against her employer and fabricating a story of aberrant sexual behavior as can only be told by one who has been subjected to it.

First, accused-appellant's assertion that the failure of the prosecution to present the gun used by him to force and intimidate Ester Raymundo and Reyland Gimena to perform sexual intercourse is fatal to the prosecution's cause is clearly untenable. This Court has held in *People vs. Traverro*, that "[t]he non-presentation of the weapon used in the commission of the rape is not essential to the conviction of the accused. It suffices that the testimony of the rape victim is credible because the established rule is that the sole testimony of the offended party is sufficient to sustain the accused's conviction if it rings the truth or is otherwise credible."^[10]

As to fact that accused-appellant Rene Siao forced and intimidated at gunpoint Ester Raymundo and Reyland Gimena to have carnal knowledge of each other, we are convinced that the same has been adequately proved by the prosecution's evidence. Even as under settled jurisprudence, the evidence for conviction must be clear and convincing to overcome the constitutional presumption of innocence, we find the straightforward, consistent and candid manner in which Ester Raymundo related her harrowing experience in the hands of accused-appellant as bearing all the earmarks of verity. Not only that, the corroborative testimony of Reyland Gimena was consistent in material respects with that of Ester Raymundo.

Ester Raymundo testified as follows:

Q: Now, in your position which you have stated awhile ago, what did Reyland do with his penis?

COURT

"If he did anything?" To avoid any leading question. You can ask, "What happened next?" "What did he do?"
But to ask what did he do with his penis . . .

FISCAL BUENVIAJE

My questions are personal and very . . .

COURT

You can frame your question by just adding a few words "if he did anything."

WITNESS

A: We did the sexual act (kayatan).

FISCAL BUENVIAJE

Q: Was he successful in penetrating you?

A: Yes.

Q: And all the time Rene Siao was holding both of your legs?

ATTY. SENINING

One of the . . .

COURT

Sustained. That is very leading.

Q: Now, what did you feel when Rey lan penetrated you?

A: I felt excruciating pain.

FISCAL BUENVIAJE

Q: So, what did you do because of that pain?

WITNESS

A: I sat down when it was finished.

Q: How many minutes was Rey lan doing the sexual act, the push-and-pull above you?

ATTY. FERNANDEZ

Your Honor, I would suggest, because there is no testimony to the effect that there was a push and pull. There was no establishment, Your Honor, the penetration was established but whether there was a push and pull after the first penetration. Just for justice in this matter it must be established by simple questions.

COURT

Okay, ask simple questions.

FISCAL BUENVIAJE

Q: Did Rey lan make a push-and-pull?

ATTY. SENINING

That is leading also.

FISCAL BUENVIAJE

That is natural, that necessarily follows:

COURT

Let the Court ask the question:

Q: What was the body movement of Rey lan when he had a sexual intercourse with you?

A: He kept on push . . .

COURT

"He made a push-and-pull movement."

ATTY. FERNANDEZ

Making pumping action.

FISCAL BUENVIAJE

That is push-and-pull. I object that "pumping." This is not an artesian well.

COURT

You will just Americanize "pumping."

FISCAL BUENVIAJE

Q: For how many minutes was Reylan doing the sexual act of push-and-pull?

WITNESS

A: Ten (10) minutes, more or less.

Q: Now, while Reylan was doing the push-and-pull for about 10 minutes, what was Rene Siao doing all the time?

A: Rene Siao kept on looking and said, "Why did it take long to penetrate?"

Q: Now, what was the position of both of the hands of Rene Siao?

COURT INTERPRETER

Witness demonstrating that Rene Siao held her both legs in order to spread it apart.

FISCAL BUENVIAJE

I would like to add some comments to the interpretation. According to the witness, while Reylan Gimena was doing the sexual act, all the time Rene Siao was holding both her legs. That is precisely the meaning.

Another question.

Q: Did Reylan Gimena reach that climax wherein he was like being electrocuted?

COURT

Sustained; she does not even know what is a climax.

FISCAL BUENVIAJE

Q: Was Gimena able to consummate the act of rape on you?

ATTY. SENINING

That is a matter of law and interpretation.

COURT

Sustained. Anyway, you have the medical certificate. Next question.

FISCAL BUENVIAJE

Q: Now, after that 10 minutes wherein Gimena raped you while Rene Siao was holding both of your legs, what happened next?

ATTY. SENINING

I would just like to correct the word "rape."

ATTY. FERNANDEZ

I would also . .

ATTY. SENINING

I would suggest . . . (not finished)

FISCAL BUENVIAJE

"Sexual act."

ATTY. SENINING

All right.

WITNESS

A: Rene Siao then said that "You do it again."

COURT

Then continue.

WTNESS

A: Then Reylan Gimena answered that he cannot do it because he is already very tired.

FISCAL BUENVIAJE

Q: Did Rene Siao allow Gimena to take a rest?

ATTY. SENINING

Again, Your Honor, please.

COURT

What is your ground?

ATTY. SENINING

Leading.

COURT

Reform.

FISCAL BUENVIAJE

Q: What did Rene Siao do when at first Gimena refused because he was tired?

A: He pointed the handgun to Reylan Gimena.

Q: What portion of the body of Gimena was pointed with a gun by Rene Siao?

A: At the left temple.

Q: So, what did Reylan do when Siao pointed the pistol on his temple?

A: He obeyed the order because he was afraid of the handgun.

FISCAL BUENVIAJE

Q: So, what did Reylan do to you for the second sexual act?

ATTY. FERNANDEZ

Your Honor, please, I would object, I would rather suggest that the question, "What did Reylan do after?"

FISCAL BUENVIAJE:

After the statement.

COURT

Sustained. You already assumed that there was a second.

FISCAL BUENVIAJE

Okay, I will reform.

Q: What did Reyland Gimena do when Siao pointed his gun on his temple?

WITNESS

A: He obeyed the order because he is pointed with a handgun.

Q: What position this time?

A: He was made to lie at my side.

Q: As you were now on your side, what did Reyland Gimena do?

A: Reyland Gimena also laid at his side.

Q: What did Rene Siao do, if any?

A: He kept on pointing the handgun.

Q: To whom?

A: Me.

FISCAL BUENVIAJE

Q: Was Gimena able to successfully penetrate you this second time around?

ATTY. SENINING

May I just request, Your Honor, that the . . . (not finished)

COURT

Reform.

FISCAL BUENVIAJE

Q: You said Gimena also . . . (not finished)

COURT

Just ask, "What happened next?"

WITNESS

A: He kept on push-and-pull toward my private part.

Q: Where did Gimena position himself in relation to you?

COURT INTERPRETER

The witness demonstrated by pointing at her left back.

COURT

Q: Were you face-to-face or was he behind you?

A: He is behind.

FISCAL BUENVIAJE

Q: And what did he do?

ATTY. FERNANDEZ

I think that has been answered that he made push-and-pull.

Q: Was he able to penetrate you the second time?

WITNESS

A: Yes, Sir.

Q: For how many minutes, if you still remember, did Gimena do the push-and-pull action from your behind?

A: Ten (10) minutes.

Q: Was he able to accomplish his act?

ATTY. SENINING

What act?

FISCAL BUENVIAJE

Sexual act.

ATTY. SENINING

Already answered, penetrated.

FISCAL BUENVIAJE

But there is still climax that is why I am asking.

ATTY. FERNANDEZ

I think I have no objection to the question whether Reylan Gimena ejaculated.

ATTY. SENINING

In fact that will be part of my cross-examination.

WITNESS

A: Maybe.

Q: Now, after that 10 minutes, what happened next?

A: After the 10 minutes he let me assume a dog position (patuwad).

FISCAL BUENVIAJE

Q: Who ordered you to do the dog position?

A: Rene Siao.

Q: What did he do to you?

A: He told me to do it again but I was already tired and he pointed the handgun to me.

Q: Did you assume the dog position upon the order of Rene Siao?

A: Yes, because I was afraid of the handgun.

Q: And what did Reylan do this time, if any?

A: Reylan answered that "I will not do that because I am already very tired."

Q: What did Rene Siao do upon hearing the statement of Reylan that he would not comply?

A: He again pointed his handgun.

Q: Did Reylan comply when Rene Siao pointed the gun to him?

A: Yes, because he was afraid.

Q: And what did Reylan do to you?

A: Reylan made a push-and-pull because I was made by Rene Siao to assume the dog position (patuwad).

Q: Was Reylan able to penetrate you this time?

A: Yes, and I even shouted.

Q: What did you shout?

A: "Tabang!" I asked for help "Tabang!" and then there was somebody who knocked. There was a knock made by my Ate and she asked, "What are you doing there?" And Rene Siao did not listen.

FISCAL BUENVIAJE

Q: According to you Rene Siao did not listen. In effect, did he order you and Reylan to continue the act?

WITNESS

A: Yes, Sir.

Q: While Reylan Gimena was doing the sexual act on you, what was Rene Siao doing all the time?

A: He kept on pointing the handgun and kept on looking with wide eyes (siga).

Q: For about how many minutes was that dog position continued until termination?

A: Five (5) minutes.

Q: After that, what happened next?

A: Then Rene Siao told us to do the act in the room of the boys."^[11]

Corroborating the foregoing, Reylan Gimena testified as follows:

FISCAL BUENVIAJE

Q: After the sucking incident, what happened next?

A: The woman was ordered to lie down.

COURT

The Court would like to ask one question.

Q: When Ester was sucking your penis, did you ejaculate or did you feel warm liquid coming out of your penis?

A: No, Your Honor.

Continue, Fiscal.

FISCAL BUENVIAJE

Q: Now, you said Rene Siao ordered Ester to lie down, did she comply?

A: Yes, because he pointed a firearm to her.

Q: Where did she lie down?

A: On the bed, sir.

Q: What was the position of Ester as she was lying down?

A: She was lying face upward.

Q: What was the position of her legs?

A: Straight, sir.

FISCAL BUENVIAJE

Q: Now, as Ester was already lying down straight upon order of Rene Siao, what happened then?

A: I was told by him to go on top of the woman.

Q: What was the exact word of Rene Siao in ordering you so?

A: He said go on top of the woman so that you can deflower her.

Q: Did you understand what Rene Siao told you?

A: Yes, sir.

Q: What was your understanding?

A: He wants the woman to be raped.

COURT

Q: I think you have not answered the question of the prosecuting fiscal. If you can still recall, what were the words uttered or used by Rene Siao?

A: He said that he wants me to fuck the woman and he wants it fast.

Q: And did you lie on top of the woman of Ester?

ATTY. SENINING

Leading.

COURT

Your just reform.

FISCAL BUENVIAJE

Q: What did you do?

A: I got on top of the woman.

Q: Did you make a push and pull action on the vagina of Ester?

ATTY. SENINING

Leading, Your Honor.

FISCAL BUENVIAJE

Naturally, it follows. In the interest of justice, Your Honor.

COURT

Let the Court ask the question.

Q: Were you able to penetrate or not?

A: I was not able to penetrate yet.

FISCAL BUENVIAJE

Q: When you were not able to penetrate Ester, what was the reaction of Rene?

A: He said, "How is that?" Is it not inserted yet?" And I answered back, "Not yet, Pard, because it is hard." And he said, "If it is hard we will separate her legs."

Q: In effect, did Rene fulfill his words of spreading the legs of Ester?

ATTY. SENINING

Leading, Your Honor, because the word is "we." "We will spread her legs."

COURT

You just reform.

Q: What, if anything, did Rene do?

FISCAL BUENVIAJE

Q: After uttering those words that we will separate her legs?

ATTY. FERNANDEZ

No. He answered "bilangkad," Your Honor.

COURT

No, It's on tape.

ATTY. FERNANDEZ

After he said "kuan, he said "bilangkad."

COURT

Although you put it on record. No.

COURT INTERPRETER

Witness motioning as if he was spreading.

COURT

To satisfy Atty. Fernandez. You rewind.

(The tape was rewinded and played by the stenographer.)

COURT

What is audible is the use of the word "kuan."

You clarify this point.

FISCAL BUENVIAJE

We have the prerogative to ask.

COURT

Never mind. You ask.

FISCAL BUENVIAJE

Please do not refrain us from clarifying.

COURT

Clarify.

FISCAL BUENVIAJE

Because we will clarify what is not clarified.

Q: After uttering those words, what did Rene do, if any?

A: He held the woman and spread her legs.

Q: At this juncture wherein Rene Siao was already holding the legs of Ester in order to spread it, were you able to penetrate Ester?

ATTY. SENINING

Leading again, Your Honor, please.

FISCAL BUENVIAJE

This is cross-examination.

COURT

I will allow.

FISCAL BUENVIAJE

How can we . . .

COURT

Never mind. I will allow.

WITNESS

A: Yes, that was the time I penetrated.

COURT

Q: So your penis was stiff?

A: Yes, Your Honor.

Q: Did you like what you do?

A: No, Your Honor.

Next question.

FISCAL BUENVIAJE

Q: Did you ejaculate?

A: Yes, sir.

COURT

Q: What did you feel when you ejaculated?

A: I do not know because that was my first time, Your Honor, with a woman.

FISCAL BUENVIAJE

Q: You said you were able to penetrate Ester while Rene Siao was holding both of her thighs, then spreading it, and you said you ejaculated. After that, what happened next?

A: He told the woman to lie on her side.

Q: Did Ester comply to lie on her side?

A: Yes, because a firearm was pointed at her.

COURT

Q: Did you notice if Ester was bleeding?

A: No, Your Honor.

Q: In her vagina?

A: Yes, Your Honor.

FISCAL BUENVIAJE

Q: At that position wherein Ester was lying on her side, what did Rene do?

A: He ordered another position.

Q: Did you comply to fuck Ester in that position as ordered by Rene

ATTY. SENINING

There is no basis yet.

COURT

There was no question yet. There was no evidence that he was commanded to have sexual intercourse.

ATTY. SENINING

He told

COURT

Not yet. He only testified that Ester was made to lie sideways.

FISCAL BUENVIAJE

Q: After Ester complied to the order of Rene to lie on her side, what more happened?

A: That was the time that mine penetrated.

Q: Was that upon order of Rene?

ATTY. SENINING

Leading again, Your Honor.

COURT

Sustained.

FISCAL BUENVIAJE

Q: You said you were able to penetrate Ester as she was on her side, is that your own volition to fuck her on that position?

ATTY. SENINING

Leading, Your Honor.

FISCAL BUENVIAJE

That is precisely the consequence.

COURT

Let the Court ask the question.

Q: Why did you fuck her on that position?

A: Because it was the order of Rene, Your Honor.

Sometimes it is the way you phrase the question. Okay, continue.

FISCAL BUENVIAJE

Q: After this side position, what happened next?

A: He ordered the woman to assume the doggy position.

COURT

Let's just understand. "Gipatuwad." Let's just assume.

ATTY. FERNANDEZ

Crouching position.

COURT

Crouching.

FISCAL BUENVIAJE

Q:

A: Yes, because a firearm was pointed to her.

COURT

You just put there parenthesis (gipatuwad).

FISCAL BUENVIAJE

Q: As Ester was in a dog position, did Rene utter anything to you?

ATTY. SENINING

Hearsay again, Your Honor. Leading, Your Honor.

COURT

You just reform.

FISCAL BUENVIAJE

Q: After Ester assumed that dog position, what did Rene do, if any?

A: He ordered me.

Q: What was the order?

ATTY. SENINING

I only request that the DSWD at my back, Your Honor, should not be allowed to coach the witness. I have no objection . . .

COURT

I am warning the representative of the DSWD to leave the interpreter alone.

ATTY. SENINING

Are you interested in this case?

COURT

Never mind, Compañero. There is a warning already.

(The last question of Fiscal Buenviaje was interpreted and answered by the witness).

COURT

I understand because he is not used to using obscene words.

FISCAL BUENVIAJE

He is not accustomed.

ATTY. FERNANDEZ

We just would like to manifest that the witness is not familiar in using obscene words.

COURT

We do not know. The understanding of the court is he is hesitant to use obscene words.

ATTY. SENINING

Not because that . . .

ATTY. FERNANDEZ

I would like to manifest that the witness is hesitant to use obscene words.

FISCAL BUENVIAJE

Q: What did you do upon that order of Rene?

A: He ordered me to fuck the woman, sir.

Q: Did you comply with the order to fuck Ester?

A: Yes, because I was afraid as he kept on pointing his firearm to me.

Q: And you were able to penetrate Ester on that position?

A: Yes, sir.

COURT

COURT

Q: By the way, at this juncture your penis was still stiff after the third position?

ATTY. SENINING

Fourth.

ATTY. FERNANDEZ

Third, Your Honor.

COURT

Third. The sexual intercourse. Oral sex first. After the third sexual intercourse.

ATTY. FERNANDEZ

Third penetration, Your Honor.

WITNESS

A: Yes, Your Honor.

COURT

Q: Were you afraid at that juncture or point of time?

A: I was still afraid, Your Honor, because he kept on pointing his firearm to me.

Q: Did you like what did the third time, that is, penetrating Ester in a doggy position?

A: No, Your Honor.

Q: But you insist that your penis was still stiff?

A: Yes, Your Honor.

Q: Did you easily penetrate the vagina of Ester?

A: Not so easy, Your Honor."^[12]

To sum up, Ester Raymundo and Reylan Gimena were forced and intimidated at gunpoint by accused-appellant Rene Siao to have carnal knowledge of each other. Rene Siao called Reylan Gimena inside the women's quarter. After Rene Siao closed the door, he told Reylan, "Reylan, birahi si Ester". Since Reylan was at a loss as to what to do, Rene Siao commanded Ester at gunpoint to "suck (um-um) the penis" of Reylan Gimena.^[13] Both Reylan and Ester performed the sexual act because they were afraid they will be killed. Thereafter, accused-appellant commanded Reylan to rape Ester in three (3) different positions, pointing the handgun at them the whole time.

The testimony of Ester and Reylan were assessed by the trial court to be credible. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they are lying.^[14] We find no reason to deviate from the findings of the trial court. If their story had only been contrived, Ester and Reylan would not have been composed and consistent in the face of such intense and lengthy interrogation.

Second, accused-appellant faults the trial court for giving credence to the testimonies of Ester Raymundo and Reylan Gimena despite being fraught with substantial inconsistencies with regard to the following points: 1. Ester testified that Reylan pulled her to the women's quarter, while Reylan testified that when he entered the room Ester was already tied up in the bed; 2. Ester testified that she was lying "face down" on the bed, while Reylan testified that she was lying "face upward"; 3. Ester testified that before being made to undress, accused-appellant Rene Siao wound electrical wire around her neck and Gimena made no mention of this; 4. Ester testified that Gimena ejaculated while performing the sexual acts while Gimena testified that he did not ejaculate; and lastly, 5. Ester testified that she had sought help from her cousin Joy Raymundo on the way out from the women's quarter while Reylan testified that she just walked slowly towards the men's quarters as ordered by accused-appellant.

It can readily be seen that the alleged inconsistencies are inconsequential considering that they refer to trivial matters which have nothing to do with the essential fact of the commission of rape, that is carnal knowledge through force and intimidation. This Court has consistently adhered to the rule that inconsistencies on minor details of the testimonies of witnesses serve to strengthen their credibility as they are badges of truth rather than an indicia of falsehood.^[15] If at all, they serve as proof that the witnesses were not coached and rehearsed.

Third, accused-appellant contends that the testimonies of the prosecution witnesses do not conform to common experience due to the following reasons: Reylan Gimena ejaculated three times in a span of less than 30 minutes; the rape took place within earshot and near the presence of other people; Ester and Reylan did not make a dash for freedom during the ten minutes it took Rene Siao to follow them from the women's quarter to the male's quarter where the latter wanted them to resume their copulation; a barangay tanod was present at the place of the alleged rape at about 4:00 p.m.; the private complainant reported the incident to an old man she chanced upon on her way

home.

Again, the points raised by accused-appellant are trite and of no consequence. First of all, the important consideration in rape is not the emission of semen but the penetration of the female genitalia by the male organ.[16] Well-settled is the rule that penetration, however slight, and not ejaculation, is what constitutes rape.[17] Thus, this factor could not affect the case for the prosecution. Second, accused-appellant's argument that it is impossible to commit a rape in house where there are many occupants is untenable. We have held in a number of cases that lust is no respecter of time and place.[18] It is not impossible to perpetrate a rape even in a small room. Rape can be committed in a house where there are many other occupants.[19] Third, Ester and Reylan could not be expected to flee or even to attempt to flee under the circumstances. Undoubtedly, considering that Ester was only fourteen-years old and a newly employed housemaid, while Reylan Gimena a seventeen-year old houseboy, they were easily intimidated and cowed into submission by accused-appellant, who aside from being their "amo" or employer, was menacingly threatening to kill them or their family with a gun if they did not do as he commanded them to do. Thus, it was not improbable for them not to attempt to escape when as accused-appellant perceived they had an opportunity to do so. Moreover, while most victims will immediately flee from their aggressors, others become virtually catatonic because of the mental shock they experience.[20] It was also not improbable for them to report the incident to an old man they met on the road as there was no one else to turn to.

In a bid to exculpate himself, accused-appellant presents a totally different version of the story. Accused-appellant sought to establish by his story that since Ester was caught stealing money and the personal belongings of the people in the household she had motive to implicate accused-appellant in such a serious charge. We cannot see how a 14-year old girl from the rural area could fabricate such charges borne out of a desire for revenge. We agree with the following explanation by the trial court:

"The court cannot believe that a 14-year-old girl who is a stranger in the city will vent her ire on Rene Siao. If Rene Siao were to be believed that he did not confront Ester about the latter's act of committing the crime of theft, why would Ester take revenge on Rene Siao? The court cannot believe that this 14-year-old probinsyana will concoct a story so as to do damage against business men like Jose Siao, Beatriz Baricuatro and Rene Siao. As a matter of fact, filing a case in court would mean untold misery and inconvenience. It will expose her to shame. She mustered enough courage if only to make the truth prevail. She ventured to assume the role of David against Goliath." [21]

On the contrary, this theory of accused-appellant backfires on him because it appears that due to the thefts allegedly committed by Ester, Rene Siao decided to vent his ire by subjecting her to a perverted form of punishment and using Reylan as an instrument thereof. As to the charge of accused-appellant that the father of Ester tried to extort a huge sum of money from the accused-appellant's family so that the case against him will be dropped, we agree with the trial court that this contention is largely self-serving as it is uncorroborated.

All told, we agree with the trial court that the testimony of Ester Raymundo as well as the testimony of Reylan Gimena corroborating the same support the prosecution's version of the fateful incident.

The rape was committed on May 27, 1994 or after the effectivity of R.A. 7659 on December 31, 1993.[22] The governing law, Article 335 of the Revised Penal Code as amended by R.A. No 7659 imposes the penalty of reclusion perpetua to death, if committed with the use of a deadly weapon. It reads:

"When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;

- When the woman is deprived of reason or otherwise unconscious; and
- 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, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
- when the victim is under the custody of the police or military authorities.
- when the rape is committed in full view of the husband, parent, any of the children or other relative within the third degree of consanguinity.
- when the victim is a religious or child below seven (7) years old.
- when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

Accused-appellant was held guilty of rape with the use of a deadly weapon, which is punishable by reclusion perpetua to death.[23] But the trial court overlooked and did not take into account the aggravating circumstance of ignominy and sentenced accused-appellant to the single indivisible penalty of reclusion perpetua. It has been held that where the accused in committing the rape used not only the missionary position, i.e. male superior, female inferior but also the dog position as dogs do, i.e. entry from behind, as was proven like the crime itself in the instant case, the aggravating circumstance of ignominy attended the commission thereof.[24]

However, the use of a weapon serves to increase the penalty.[25] Since the use of a deadly weapon increases the penalty as opposed to a generic aggravating circumstance which only affects the period of the penalty, said fact should be alleged in the information, because of the accused's right to be informed of the nature and cause of the accusation against him.[26] Considering that the complaint (which was later converted into the Information) failed to allege the use of a deadly weapon, specifically, that herein accused-appellant was armed with a gun, the penalty to be reckoned with in determining the penalty for rape would be reclusion perpetua, the penalty prescribed for simple rape under Article 335, as amended by R.A. No. 7659. Simple rape is punishable by the single indivisible penalty of reclusion perpetua, which must be applied regardless of any mitigating or aggravating circumstance which may have attended the commission of the deed.[27] Hence, the penalty of reclusion perpetua imposed by the trial court is correct.

As a final matter, the trial court erred in ordering accused-appellant Rene Siao to pay the complainant only the civil liability arising from the offense in the amount of P50,000.00. In addition, it should have ordered accused-appellant to pay the offended party moral damages, which is automatically granted in rape cases without need of any proof.[28] Currently, the amount of moral damages for rape is fixed at P50,000.00.[29] Moreover, the presence of one aggravating circumstance justifies the award of exemplary damages pursuant to Article 2230 of the Civil Code of the Philippines[30] We find the amount of P20,000.00 as exemplary damages reasonable on account of the fact that the aggravating circumstance of ignominy attended the commission of the crime of rape.

WHEREFORE, the decision of the Regional Trial Court, Branch 13, Cebu City, is hereby AFFIRMED with the MODIFICATION that accused-appellant Rene Siao is ordered to pay P50,000.00 to Ester Raymundo by way of moral damages, and P20,000.00 by way of exemplary damages in addition to the amount of P50,000.00 which the trial court ordered him to pay as indemnity.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Criminal Complaint, Original Records, p. 1.

[2] Rollo, p. 104.

[3] The Brief for the Appellee was signed by Asst. Sol. Gen. Mariano M. Martinez, Asst. Sol. Gen. Nestor J. Ballacillo and Assoc. Sol. Grace Gliceria F. De Vera.

[4] Appellee's Brief, pp. 4-10; Rollo, pp. 279-285.

[5] Should be May 27, 1994.

[6] Should be May 27, 1994.

[7] Accused-Appellant's brief, pp. 4-8; Rollo, pp. 244-248.

[8] ART. 17. Principals – The following are considered principals:

- xxx xxx xxx.

- Those who directly force or induce others to commit it;

- xxx xxx xxx.

[9] Rollo, p. 145.

[10] 276 SCRA 301 (1997).

[11] TSN dated Sept. 20, 1994, pp. 22-31.

[12] TSN dated December 14, 1994, pp. 20-30.

[13] TSN dated Sept. 20, 1994, pp. 13-14.

[14] People vs. Capillo, et al., G.R. No. 123059, Nov. 25, 1999.

[15] People vs. Jimenez, 235 SCRA 322 (1994).

[16] People vs. Galleno, 291 SCRA 761 (1998).

[17] People vs. Dela Paz, Jr., 299 SCRA 86 (1998).

[18] People vs. Torio, G.R. Nos. 132216 & 133479, November 17, 1999.

[19] People vs. Escobar, 281 SCRA 498 (1997).

[20] People vs. Corea, 269 SCRA 76 (1997).

[21] Rollo, p. 331.

[22] People vs. Godoy, 250 SCRA 676 (1995).

[23] REVISED PENAL CODE, ART. 335, as amended by R.A. No. 7659.

[24] People vs. Saylan, 130 SCRA 159 (1984).

[25] People vs. Barcelona, 191 SCRA 100 (1990); People vs. Baculi, 246 SCRA 756 (1995); People vs. Patriarca, G.R. No. 132748, November 24, 1999.

[26] People vs. Ilao, G.R. No. 129529, Sept. 29, 1998; People v. Ramos, G.R. No. 129439, Sept. 25, 1998; People vs. Garcia, 281 SCRA 463 (1997).

[27] REVISED PENAL CODE, Art. 63.

[28] People vs. Prades, G.R.No. 127569, July 30, 1998.

[29] People vs. Padilla, G.R. No. 126124, Jan. 20, 1999.

[30] People vs. Marcos, G.R. 128892, June 21, 1999.

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