

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APELLEE, VS. FRANCISCO VILLANOS Y TUMAMANG, ACCUSED-APPELLANT.

G.R. No. 126648. August 01, 2000

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the Judgment[1] of the Regional Trial Court of Makati, finding the accused-appellant guilty beyond reasonable doubt of the crime of rape defined and penalized in Section 11, sub-section 2 of Republic Act No. 7659 which amended Article 335 of the Revised Penal Code. Appellant was sentenced to suffer the penalty of RECLUSION PERPETUA plus all the accessory penalties provided by law and to pay the offended party the sum of P50,000.00 as moral damages without subsidiary imprisonment in case of insolvency.[2]

On April 22, 1996, an Information was filed[3] based on the sworn complaint of Danica Anna Torreno against the appellant Francisco Villanos charging the latter with rape, committed as follows:

"That in (sic) or about the 3rd week of December 1995, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, offered and tendered to said Danica Anna Torreno a laced softdrink which the latter drank and rendered her unconscious and thereafter, the accused did then and there willfully, unlawfully and feloniously have carnal knowledge of Danica Anna Torreno against her will and consent.

Contrary to law."[4]

The appellant pleaded "not guilty" to the crime charged when he was arraigned on May 8, 1996. The pre-trial of the case having been waived by the appellant, trial immediately commenced thereafter.[5]

The following facts are culled from the evidence of the prosecution:

Private complainant Danica is a thirteen year-old,[6] first year high school student[7] when the sexual abuse happened. She knew the appellant because the latter earlier convinced her father to allow him to stay in their house. Appellant started to live with complainant's family in November of 1995.[8]

Sometime in the evening of the third week of December, 1995, complainant together with her eleven-year old brother Dexter and her eighteen-year old sister Dorothy, a retardate, were in the living room of their house watching television.[9] Appellant bought a 500 ml. and a family size bottles of coke. He poured the contents of the family size coke in separate drinking glasses which he then offered to the complainant and the latter's two (2) siblings. After drinking the coke, the three felt dizzy and became sleepy.[10] Complainant went to the bedroom and laid down on the bed. Her siblings slept in the living room. As she laid flat on her back, she felt something heavy press against her body and found the appellant on top of her. She could not resist the appellant due to weakness and loss of consciousness. She was unable to tell what happened next.[11]

Complainant woke up at 10:00 o'clock in the morning of the following day and felt pain in her sexual organ. When she told her mother about the pain, the latter advised her to take a bath believing that it could have been the

effect of heat. After taking a bath, she observed white substance (mucous) in her panty but she thought that she was going to have her menstruation and did not mind it. She saw the appellant in the living room and appellant warned her not to report the matter to her parents or he would kill her brother and sister. From then on, appellant gave her dagger looks and stared at her with a vexatious sneer.[12]

The incident was repeated at about 9:00 o'clock in the evening of January 7, 1996. Appellant bought again a 500 ml. and a family size bottles of coke. Due to her innocence, she again drank the coke offered by the appellant. Her siblings did the same. After drinking the coke, the three (3) of them felt dizzy and they all went up to the bedroom to sleep. Before she lost consciousness, she felt somebody on top of her. She recognized the person to be the appellant but she felt too weak to resist him.[13] When she regained her consciousness at about 10:00 o'clock in the morning of January 8, 1996, she again felt pain in her vagina.[14] She took a bath and stayed at home. She saw her parents on that day but did not reveal the incident of the previous evening as she did not expect appellant to dishonor her. She did not talk to appellant when she saw him cleaning the living room that same morning.[15]

On April 16, 1996, Danica's father PO1 Domingo Torreno accompanied her to the Manila Naval Hospital for medical check-up after she told her parents that she missed her monthly periods since January of that year.[16] Danica's ultra sound examination showed that she was then 4 to 5 months pregnant. She also underwent a pregnancy test[17] at the Multi-Specialty Clinic located at Guadalupe, Makati and the result was positive.[18] Danica cried when she learned that she was pregnant.[19] She knew that the father of the unborn child in her womb is the appellant as he was the only one who abused her.[20] She revealed to her father that appellant raped her in December 1995 and January 7, 1996.[21] Utterly hurt by her daughter's plight, Domingo sought legal assistance from the Naval Judge Advocate General (NJAG).[22] On April 18, 1996, Danica executed a Sinumpaang Salaysay before PO2 Loreto Pila of the Philippine Navy in connection with the incident that happened in December, 1995.[23] She filed another complaint for rape against the appellant concerning the incident of January 7, 1996 at the Women's Desk Section of the Makati Police Station.[24]

The defense presented the appellant as its lone witness. Appellant testified that during the third week of December 1995, he reported for work as a disc jockey at Archie's Restaurant located at Buencamino Street, Zapote, Alabang[25] from 6:00 o'clock p.m. to 2:00 o'clock a.m.[26] He denied having raped the complainant. He contends that Danica herself stated that her scheduled date of delivery is October 11, 1996, hence, it is impossible for him to have raped her in the third week of December 1995, because the period from December 1995 to October 1996 is over nine (9) months.[27] He manifested his willingness to undergo blood test and requested the trial court to wait for Danica to give birth so that the blood type of the child can be compared with his own blood type.[28]

On August 24, 1996, the trial court rendered the judgment of conviction which is now before us on appeal. In his Appeal Brief, appellant raises his lone assigned error that:

"THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY OF RAPE BEYOND REASONABLE DOUBT DESPITE THE FACT THAT THE TESTIMONY OF COMPLAINANT DANICA ANNA TORRENO IS DOUBTFUL AND CONTRARY TO HUMAN EXPERIENCE." [29]

We rule against the appellant.

Under Art. 335 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman who is, inter alia, unconscious. Appellant insists that complainant's testimony that he straddled her is doubtful and contrary to human experience. She allegedly does not know if she was raped and that she failed to identify the alleged culprit because she did not immediately report the matter to her parents the following day. What complainant only reported to her mother is that she felt pain in her sexual organ but not that she was raped by the

appellant.[30]

We do not find appellant's contentions meritorious. We stress the fact that complainant was unconscious when she was raped by the appellant. In that state, she could not describe the details on how she was sexually violated. In the similar case of *People vs. Fabro*,[31] we ruled:

"It is but to be expected that if the sexual assault was committed against the victim while the latter was in a state of unconsciousness, she would not be able to testify on the actual act of sexual intercourse. It is precisely when the sexual intercourse is performed when the victim is unconscious that the act constitutes the statutory offense of rape (e)specially when, as in the instant case, the loss of consciousness was the result of appellant's act of violence."[32]

Nonetheless, in cases where the victim is raped in a state of unconsciousness, the fact of sexual assault and the identity of the assailant can be established from the events preceding or following the victim's loss of consciousness.[33] In the case at bar, the records reveal the following facts which lead to no other conclusion than that the appellant raped the complainant in the evening of December 1995:

1. Complainant was rendered unconscious due to the laced softdrink given to her by the appellant. The pernicious effect of drinking the softdrink was duly corroborated by prosecution witness Dexter Torreno who, together with his other sister Dorothy, likewise fell into a deep slumber after drinking the coke offered to them by the appellant;
2. Before complainant lost consciousness, she saw the appellant on top of her;
3. When complainant woke up the following morning, she felt unusual pain in her sexual organ and saw white substance (mucous) in her panty;
4. When complainant saw the appellant in the living room the day after the crime was committed, appellant warned her not to report the matter to her parents or else he would kill her brother and sister.

The age of Danica[34] when she was raped explains her actuations after that fateful evening. She innocently thought that the unusual pain in her sexual organ was merely due to heat, taking her mother's word for it, and that the white substance in her panty was brought about by the onset of her menstruation period. What transpired in the evening of December 1995 after she became unconscious was initially a blur to her young mind. We should thus view Danica's delayed reaction to the sexual assault on her in the light of two (2) legal principles. One, different people react differently to a given type of situation, there being no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[35] Two, it is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected under the circumstances from mature persons.[36]

Danica's failure to immediately inform her parents about the two (2) incidents was due to her youth and innocence. She thought that appellant would not do a dastardly act on her as her parents trusted him so much.[37] Indeed, she regarded him as a relative since the appellant's stepfather is the uncle of her father.[38] She was also frightened by the appellant's threats on her and her family's lives.[39] Deeply imbedded in our jurisprudence is the rule that the failure of complainant to immediately report the rape to the immediate members of her family or to the police authorities does not detract from her credibility, her hesitation being attributable to her age, moral ascendancy of the accused-appellant and his threats against the former.[40]

There is no question that complainant has positively identified the appellant as the culprit of the crime. Danica testified that in the third week of December 1995, she saw the appellant on top of her before she lost consciousness.[41]

The cases[42] heavily relied upon by the appellant in his brief, which state that failure to report the fact of rape or to file a complaint thereof casts doubt on the validity of the charge, do not apply to the instant case. The factual milieu in those cases are radically different from the case now before us.

With regard to the issue of whether or not the laced softdrink should have been presented in evidence by the prosecution to support complainant's claim that she felt dizzy and unconscious after drinking the same,[43] the ruling of this Court in *People vs. Del Rosario*[44] squarely applies, thus:

"True, there was no test conducted to determine the presence of any sedative or drug in the drinks given to the victims which caused them to lose momentary control of their faculties. But this is of little consequence as the same is not an indispensable element in a prosecution for rape. Under the circumstances, it suffices that the victim was found to have been unconscious at the time the offender had carnal knowledge of her".[45]

The conclusions of the trial court on the credibility of witnesses are generally not disturbed by appellate courts, the former being in a better position to decide the issue, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[46] Viewed in the light of the foregoing, the complainant's testimony should be given credence. We take into account the trial court's observation of the complainant's demeanor, conduct and attitude when she testified in court -

"The Court particularly found private complainant Danica Anna Torreno reliable. Private complainant's answers were frank, responsive to the interrogatories, outspoken and devoid of evasion or semblance of shuffling. There were no hesitations, no labored or confused explanations, no parrying of uncomfortable inquiries, or partial statements of occurrence. The narration of facts contained in her testimony, she being the principal witness for the prosecution, was delivered in a straightforward, natural style, without hesitation or embarrassment, and although upon minor points the principal witness was in error, her version of the story was in no material part falsified or discredited upon cross-examination, and her testimony was sufficient, in connection with the other evidence xxx" [47]

In rendering the guilty verdict, the trial court also considered the numerous occasions wherein the complainant showed her uncontrollable emotions during the trial of the case --- crying unabashedly and shouting invectives to the appellant[48] which can only come from a person truly victimized. The crying of the victim during her testimony is evidence of the truth of the rape charge. This is a matter of judicial cognizance, with the verity born out of human nature and experience.[49]

We likewise note the trial court's observations when it discredited the testimony of the appellant. Thus:

"For his part, the accused testified with his arms criss-crossed and his hands held closed to his chest, inserted deep into his armpits. His legs were also unnaturally criss-crossed. Sometimes, his left leg, spread eagled, would swing widely in lateral motions. The countenance of the accused, the tone of his voice, and his manner of testifying contradict and deny the truth of the words that come from his lips and the law does not require that the court shall believe the testimony of one thus self-impeached. His quibbling, his reluctance, and his hesitation, discredited him and in such case the court is at liberty to refuse to find credence in his testimony. The appearance and manner of the accused indicate that he is crafty, cunning, unfair and unreliable, and lacking in discretion (*I Moore on Facts*, 171). The note of insincerity in the voice of the accused, his frequent yawns in the middle of the morning, the furtive glance of his eyes, and the shrug of his shoulders all the more weakened the value of his already anemic testimony."[50]

We are not persuaded by the appellant's defense of alibi. Appellant alleges that he reported for work from 6:00 p.m. to 2:00 a.m. on the third week of December 1995. First, it failed to satisfy the elementary requirements of alibi, i.e., accused must be able to (a) prove his presence at another place at the time of the perpetration of the offense and (b) demonstrate that it is physically impossible for him to be at the scene of the crime.[51] Second,

appellant's alibi was totally uncorroborated. Third, his alibi was weakened by his own admission that he was at the house of the complainant in the evening of that particular Sunday on the third week of December 1995.[52] This admission makes it highly possible for him to have been at the scene of the crime when it was committed.

Appellant further contends that it is impossible that he raped the complainant considering the time frame between the commission of the rape (December 1995) and the date of delivery of the complainant's child (October 11, 1996) which is over nine (9) months. In one case,[53] this Court ruled that the fact that the victim gave birth more than 10 months after the alleged rape does not discredit her testimony. Pregnancy is not an element of rape.[54] Nonetheless, the facts of this case show that complainant has charged the appellant of raping her on two (2) separate dates- December 1995 and January 1996. Without preempting, however, the ruling of the other branch of the trial court where the second incident of rape is being heard, it is not impossible that it was on the subsequent sexual abuse that complainant was impregnated by the appellant.

As to the award of damages, we have consistently ruled that civil indemnity is mandatory upon the finding of rape. It is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.[55] Appellant should, therefore, be ordered to pay the victim the amount of P50,000.00 as civil indemnity. The trial court correctly awarded the victim the amount of P50,000.00 as moral damages. We further hold that the appellant should pay the victim the amount of P25,000.00 as exemplary damages[56] since the commission of the crime of rape was attended by the generic aggravating circumstance of obvious ungratefulness.[57]

WHEREFORE, premises considered, the judgment of the Regional Trial Court is **AFFIRMED** with the **MODIFICATION** that accused-appellant is further ordered to indemnify the victim in the amount of P50,000.00 and to pay her the amount of P25,000.00 as exemplary damages in addition to the moral damages awarded to her by the trial court.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Dated August 24, 1996 and penned by Branch 58 Judge Escolastico U. Cruz, Jr.; Rollo, pp. 16-44.

[2] RTC Judgment, pp. 28-29; Rollo, pp. 43-44.

[3] By 4th Assistant Prosecutor Hannibal V. Santillan.

[4] Original Records (OR), p. 1.

[5] OR, p. 34.

[6] TSN, May 20, 1996, Direct Examination of Danica Anna Torreno, p. 16.

[7] Ibid., p. 27.

[8] Id., p. 4.

[9] Id., pp. 5-6; TSN, June 3, 1996, Direct Examination of Prosecution Witness Dexter Torreno, p.7.

[10] TSN, May 20, 1996, pp. 6-7; TSN, June 3, 1996, pp. 12 and 25.

[11] TSN, May 20, 1996, p. 9

- [12] Ibid., pp. 10-12.
- [13] Id., pp. 12-15.
- [14] Id., p. 16.
- [15] Id., pp. 17-18.
- [16] Id., p. 80.
- [17] Exhibit "C" for the Prosecution, OR, p. 73-a.
- [18] TSN, June 17, 1996, Direct Examination of Domingo Torreno, pp. 5-9.
- [19] TSN, May 20, 1996, p. 23.
- [20] Ibid., p. 24.
- [21] TSN, June 17, 1996, pp. 11-12; TSN, May 20, 1996, p. 87-88.
- [22] TSN, June 17, 1996, p. 13.
- [23] TSN, May 20, 1996, p. 20.
- [24] Ibid., pp. 30-31.
- [25] TSN, July 30, 1996, p. 14.
- [26] Ibid., p. 8.
- [27] Id., p. 9.
- [28] Id., p. 10-11.
- [29] Brief for the Accused-Appellant, pp. 10-11; Rollo, pp. 77-78.
- [30] Ibid., pp. 12-13; Rollo, pp. 79-80.

[31] 239 SCRA 146 (1994)

- [32] Ibid., at p. 155, citing *People vs. Palapal*, 114 SCRA 783 (1982).
- [33] *People vs. Romua*, 272 SCRA 818 (1997); *People vs. San Pedro*, 218 SCRA 384 (1993)
- [34] She was then thirteen (13) years old.
- [35] *People vs. Palma*, 308 SCRA 466 (1999)
- [36] *People vs. Sta. Ana*, 291 SCRA 188 (1998); *People vs. Tadulan*, 271 SCRA 233 (1997)
- [37] TSN, May 20, 1996, p. 55.
- [38] TSN, June 17, 1996, p. 19.
- [39] TSN, May 20, 1996, pp. 72-73.
- [40] *People vs. Emocling*, 297 SCRA 214 (1998); *People vs. Antipona*, 274 SCRA 328 (1997); *People vs. Abad*, 268 SCRA 246 (1997)
- [41] TSN, May 20, 1996, pp. 9 and 43.

[42] People vs. Ramirez, 69 SCRA 144; People vs. Pimentel, 118 SCRA 695; People vs. Castro, 58 SCRA 473.

[43] Brief for the Accused-Appellant, p. 14; Rollo, p. 81.

[44] 282 SCRA 178 (1997)

[45] Ibid., at p. 185.

[46] People vs. Palma, supra.

[47] RTC Judgment, pp. 20-21; Rollo, pp. 35-36.

[48] RTC Judgment, pp. 21-25; Rollo, pp. 104-108 citing TSN, May 20, 1996, pp. 5, 9, 14-15, 17, 24-26; TSN, May 27, 1996, pp. 9 and 12.

[49] People vs. Ramos, 296 SCRA 559 (1998); People vs. Gecomo, 254 SCRA 82 (1996)

[50] RTC Judgment, pp. 26-27; Rollo. pp. 41-42.

[51] People vs. Aranjuez, 285 SCRA 466 (1998)

[52] TSN, July 30, 1996, p. 15.

[53] People vs. Quitariano, 266 SCRA 373 (1997)

[54] People vs. Lamarroza, 299 SCRA 116 (1998)

[55] People vs. Emocling, supra, People vs. Ignacio, 294 SCRA 542 (1998); People vs. Adora, 275 SCRA 441 (1997)

[56] Pursuant to Article 2230 of the Civil Code.

[57] Under paragraph 4, Article 14 of the Revised Penal Code.

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