

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUEL BAWAY Y ALIGAN, ACCUSED-APPELLANT.

G.R. No. 130406. January 22, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For automatic review is the conviction of accused Ruel Baway y Aligan for Rape in a Complaint which alleges that -

That on or about the 19[th] day of April 1994, in Quezon City Philippines, the said accused by means of force and intimidation, to wit: then and there wilfully, unlawfully and feloniously with the use of a bladed weapon ordered the undersigned, RIZZA TOLENTINO Y BUHAYO to undress and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.

Upon arraignment, accused entered a plea of not guilty. Trial on the merits ensued.

After trial, the Regional Trial Court of Quezon City, Branch 94 rendered judgment[1] imposing upon the accused the penalty of death thus:

WHEREFORE, premises considered, this Court finds the accused Ruel Baway y Aligan GUILTY beyond reasonable doubt of qualified rape and thereby sentences him to suffer the supreme penalty of DEATH and to indemnify the private complainant in the sum of P50,000.00 and to pay the costs.

Let the entire records of this case be elevated to the Supreme Court for automatic review in accordance with law.

SO ORDERED.

Accused-appellant assails his conviction on the following grounds:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED EVEN IF SERIOUS DOUBTS EXISTED AND THE REQUIRED MEASURE OF PROOF BEYOND REASONABLE DOUBT HAS NOT BEEN SATISFACTORILY MET.

II

THE LOWER COURT ERRED IN NOT GIVING CREDIT TO THE TESTIMONY OF THE ACCUSED AND IN NOT ACQUITTING HIM OF THE CRIME CHARGED.

III

EVEN ASSUMING ARGUENDO THAT THE ACCUSED IS LIABLE, THE LOWER COURT ERRED IN IMPOSING THE DEATH PENALTY: [A] NOT ONLY BECAUSE THE ATTENDANT

CIRCUMSTANCES DID NOT JUSTIFY THE IMPOSITION OF THE CAPITAL PENALTY, [B] BUT ALSO BECAUSE THE DEATH PENALTY IS UNCONSTITUTIONAL.

The Prosecution's version of the incident is summarized in the People's Brief as follows:

Private complainant Rizza Tolentino was one of the store helpers of Teresita Cua in the latter's Millionaire Commercial located at No. 4-C, Road A, Project 7, Quezon City. At around 7:30 in the evening of April 21, 1994, after doing her marketing at Muñoz Market, Rizza immediately proceeded to the store where she met Cua and Fe Niez, a fellow store helper. Since they were all about to go home, Rizza switched off the lights. However, Cua told Rizza to turn on the lights again because appellant, who was also a storehelper, was still on the second floor of the store. Cua together with Niez and Rizza, went to the second floor of the store. When the women reached the second floor, appellant suddenly appeared and informed Cua that he saw the money which was allegedly stolen by Rizza from their employer on the third floor of the store.[2]

He led them to the room on the third floor but once they were inside, appellant blocked the entrance and ordered the women to search for the stolen Three Thousand Pesos (P3,000.00). They did not follow appellant's instruction. Appellant appeared to be looking for something and suddenly pulled out a kitchen knife and poked it at the neck of Cua. While poking the knife at Cua, appellant grabbed a bottle of Chinese wine. Cua tried to dissuade appellant from what he was doing but he was adamant. He continued threatening the women and ordered them to go down to the second floor but he assured them that he would release them one by one.[3] When the women were at the second floor, he ordered Cua and Niez to remain at the second floor and not to shout or make any noise or he would kill all of them.[4] Then he dragged Rizza down the stairs to the first floor. When they reached the first floor, appellant poked the knife at Rizza and ordered her to undress. Frightened, Rizza removed her shorts and panty. Appellant also removed his pants and brief and pushed her to lie down on the floor[5] while he held Rizza's right hand with his left hand and his right hand held the knife and poked it at her upper left breast which sustained an incised wound. Then he lay on top of Rizza and inserted his penis in her vagina and she felt biting pain. She struggled to prevent his penis from penetrating her and shouted but he covered her mouth with his hand and overpowered her. After one minute, appellant pulled out his penis and Rizza felt hot fluid run down her thighs and she also saw blood.[6] After Rizza had put on her shorts and panty appellant ordered her to go inside the comfort room and to keep quiet, otherwise he would kill her. As Rizza sat cowering in fear on the floor, appellant suddenly hit her with the wine bottle at the back of her head. Because of the intense pain and the sight of the blood oozing from her head, Rizza screamed. This angered the appellant and he struck Rizza again with the bottle hitting the left side of her head causing the bottle to break. The blow knocked her down face up and upon seeing that she was still alive, appellant boxed her in the left eye, the lips and at the back of her head. Rizza feigned dead (sic) and appellant left her and went upstairs.[7]

In the meantime, while appellant and Rizza were at the first floor, Cua and Niez opened the window and shouted for help. The neighbors heard their shouts and they alerted the police. Policemen and firemen were dispatched to the store.[8] Neighbors, policemen and firemen gathered outside the store causing a commotion. When Rizza heard the commotion outside the store, she stepped out from the toilet and went to the store area but upon seeing her appellant turned back and stabbed her several times hitting her in her left palm. Appellant became distracted when he saw the policemen trying to push the door open. This gave Rizza the opportunity to run upstairs to the third floor where she hid inside the comfort room of the third floor.[9] Appellant ran after her and tried to push the door but Rizza had already locked it. Realizing that the policemen were trying to break into the building, appellant went to the room where Cua and Fe Niez were. He poked a knife at Cua's neck.[10] The policemen who were still outside the store, could see appellant holding Cua and threatening to kill her. Finally, SPO1 Nick Fontanilla, together with police officers Ferdinand Geli and Danilo Norra, succeeded in breaking the lock. They saw Rizza covered with blood and shouting incoherently. When the police officers reached the third floor, they saw appellant holding Cua hostage. The Police officers asked appellant to surrender, but the latter resisted forcing them to engage appellant in a scuffle and to forcibly arrest

him.[11]

Rizza was brought to the Quezon City General Hospital for treatment. Cua visited Rizza and on that same day Rizza informed her employer that she was raped by appellant.[12]

On April 21, 1994, after her discharge from the hospital, Rizza was accompanied to the Philippine National Police Crime Laboratory at Camp Crame, Quezon City for a medico-legal examination. Dr. Jesusa N. Vergara, the examining medico-legal officer revealed that Rizza sustained abrasions on the forehead, on the left breast, at the coastal (sic) region, on her right leg, abrasion and congestion on [the] labia menora, inner lips, abrasion on the fourchette and a (sic) deep healing hymenal lacerations at 3:00 o'clock and 6:00 o'clock and a shallow healing laceration at 9:00 o'clock.[13] Her findings showed the extent of the injury sustained by Rizza, to wit:

Abrasion, frontal region, measuring 1 cm long, 0.5 cm left of the anterior mid

Contusion, left orbital region, measuring 4.5 x 1 cm, 3 cm from the anterior

Contusion, left infra-orbital region, measuring 4x3 cm, 4 cm from the anterior

Lacerated wound, occipital region, measuring 2.5 cm long, 2 cm

Findings are compatible with recent loss of virginity.

Barring unforeseen implications, it is estimated that the above injuries will require medical attendance for a period of not less than 31 days.

Accused-appellant had a different story to tell. As culled from the transcripts and summed in his brief, he narrates

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That in April 1994 he was then employed as a delivery boy by Teresita Cua. That at about 8:00 p.m. of April 19, 1994, he was then at the store of Teresita Cua. That those who were then at the store aside from Teresita Cua were the accused, Riza Tolentino, Fe Miniez and Danny. That on said night he talked to Teresita Cua because he wanted to leave the employ of Teresita Cua. That Teresita Cua got angry when the accused asked that he be allowed to leave her employ. That because of her angry reaction, accused thought of a way to be able to go to the third floor so he can talk to her so he told her that there was P3,000.00 upstairs.

That there was really no P3,000.00 to be found upstairs because it was only his way of being able to bring her up so he could talk to her. That he, Teresita Cua, Riza Tolentino and Fe Miniez went to the third floor. That at the third floor, the accused asked for the forgiveness of Teresita Cua, but the latter slapped him twice. She then told him that she would have him arrested by the police. He pleaded that she would not report the matter to the police or have him arrested.

Teresita Cua told him that they should talk at the second floor so they went to the second floor. There he again asked Teresita Cua that he be given permission to leave. Teresita Cua told him that she would have first to look for another delivery boy. It was then that Riza Tolentino told them that she would also leave with the accused.

Thereafter both the accused and Riza Tolentino went to the first floor. Again Riza Tolentino told him of her desire to go with him but he disagreed telling her he must first look for another job and promised to visit her every Sunday.

While at the first floor, he went to the kitchen to drink water and then he heard a shout coming from upstairs. He heard Teresita Cua shouting "Saklolo." He left Riza at the kitchen and peeped through the door and he saw a firetruck and policemen. He then instructed Riza to go inside the bathroom.

He went up to the third floor with the intention of talking to Teresita Cua. When he reached the third floor he found the door closed and heard Teresita saying to someone that she would drop the key in order that the door will be opened.

He went down and saw Riza Tolentino coming out of the bathroom and moving towards the door. He prevented her and she squeezed herself near the generator. He told her to get away from the generator because policemen might shoot him and she might get hurt.

Riza then ran towards the kitchen but cans of cooking oil fell on her.

On cross-examination, accused admitted that Riza was his girlfriend for about 3 to 4 months and that Danny knows of the relationship. He did not know however that he had been accused of rape and came to know of it only at the police station. He asserts that he does not know who raped Riza Tolentino.

He said that he was at the third floor talking to Teresita Cua when the police came and which prompted him to embrace her, but denies having stabbed Teresita Cua. He said that aside from Danny, the cousin of Riza who was the driver also knew of his relationship with her. The cousin of Riza visited him at the jail who told him Riza was wounded. He was asked by the cousin if he raped Riza but he vehemently denied it. His exact words on the witness stand were:

"Why will I rape her, she was my girlfriend." [14]

Insisting that he is innocent, accused-appellant in the first assigned error seeks to discredit the testimony of the complaining witness arguing at length that -

1.]

The alleged rape is not affirmed by people who were then present and in a position to observe what took place.

2.]

The alleged rape victim did not report the offense at the first opportunity to complain.

3.]

Because she did not make any claims of rape, the police did not even bother to investigate her for rape, and which would explain why all alleged physical evidences showing the alleged crime suspiciously remained in her custody and possession, and would be presented by her for the first time only when she testified in court.

4.]

In fact, the bulk of the evidence shows that force, if any, was employed not before or during the alleged rape, but after, and thus makes the claim that she was forced to submit to sexual intercourse rather incredible.

In reviewing rape cases, the Court will be guided by the principle that an accusation for rape can be made with facility. While the commission of the crime may not be easy to prove, it becomes even more difficult for the person accused, although innocent, to disprove that he did not commit the crime. In view of the intrinsic nature of the crime of rape where only two persons are normally involved, the testimony of the complainant must always be scrutinized with great caution.[15] Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.[16]

The Court has meticulously scrutinized the testimony of complaining witness Rizza Tolentino and ultimately reached the conclusion that the acts charged did in fact occur. Rizza Tolentino's testimony on the act of rape perpetrated against her by the accused-appellant is clear and could have only been narrated by a victim subjected to such a sexual assault. The bestiality committed by accused-appellant is detailed in the following narration of the victim at the witness stand:

Q. And what did he do after that?

A. He dragged me down, sir.

Q. And where were you brought or dragged into?

A. He brought me by the stairs going to the second floor.

Q. What floor was that where Baway was able to drag you?

A. First floor.

Q. And where were your other companions namely: Fe Niez and Teresita Cua?

A. He ordered them to remain on the second floor. He ordered them not to move on the second floor.

Q.

And you said you were dragged on the first floor, particularly, near the stairs going to the second floor, what happened there?

A. He poked the knife at me.

Q. What particular portion of your body did Ruel Baway poke the kitchen knife?

A. Below my right breast.

Q. Were you wounded or injured when he poked the knife?

A. Yes, sir.

INTERPRETER:

There is a small scar below the right breast.

Q. Is the scar still apparent?

A. Yes, sir.

FISCAL ALAMEDA:

May we request that the scar below the right breast ...

COURT:

Witness showing to the Presiding Judge a small scar at her waist below the right breast, which is about one (1) centimeter just below the right breast.

Q.

After poking to you the knife - kitchen knife below your right breast what did Ruel Baway do next, if any?

A. He told me to remove my shorts and panty.

Q. And did you follow the order to undress?

A. Yes because I was very frightened.

Q. And what did Ruel Baway do after you remove[d] your shorts and panty?

A. He removed his pants and brief.

Q. How about your upper wear?

A. I did not remove it sir.

Q. And after Ruel Baway removed also his pants and brief what did Baway do next, if any?

A. He pushed me to lie down.

Q. And did you lie down?

A. Yes, sir.

Q. And when you were on that particular position lying down what did Ruel Baway do next if any?

A. He lay on top of me.

Q.

And after Ruel Baway lay on top of you what did he do next if any?

A.

He held my right hand.

Q. What hand did he [use] to hold your right hand?

A. His left hand.

Q. How about the right hand of Ruel Baway?

A. With his right hand, he was holding a knife and [it] was pointed to my upper left breast.

Q. And did your upper left breast sustain injury?

A. Yes, sir.

x x x x x x x x

Q.

And after accused Ruel Baway thrust or pointed the kitchen knife on your left upper breast what did he do if any?

A. He inserted his penis into my vagina.

Q. What did you feel when Ruel Baway inserted his penis inside your vagina?

A. I feel pain, sir.

Q. Could you describe the pain?

A. Biting pain, sir.

Q.

And could you more or less estimate how long did it take accused Ruel Baway to insert his penis inside your vagina up to the time that he remove[d] the same?

A. About one (1) minute, sir.

Q. And what did you do while he lie (sic) on top of you and insert[ed] his penis inside your vagina?

A. I was struggling but he overpowered me. I shout[ed].

Q. Were there somebody (sic) who went to your rescue when you shout[ed]?

A. Nobody heard, nobody helped me as nobody heard because he covered my mouth.

Q.

And you have already identified Ruel Baway as your co-helper earlier, is he the same Ruel Baway also who raped you?

A. Yes, sir.

x x x x x x x x

COURT:

When he inserted his penis then he pulled it out after one (1) minute, your question is what did he do after pulling it out?

A. He stood up and he was happy of what he did.

Q. How about you what was your feeling?

A. I was crying and then I feel hot fluid flowing at my thighs then there was blood.

Q. Before you were raped by Ruel Baway.

A. None yet, sir.

Q. So that was the first time that you ever experienced sexual intercourse?

A. Yes, sir.

Q. Did you enjoy [yourself] while accused Baway's penis was inside your vagina?

A. No, sir.

Q. Why?

A. I hate what he did to me because all of my life I have not experienced such [a] thing, it was the first time.

Q. Do you have any relationship with Ruel Baway?

A. We have no relation.

Q. Is he courting you?

A. No, sir.

Q.

Now, you said that after Ruel Baway raped you, he stood up and felt he was happy and then you said you felt bad, what happened after that?

A. I wiped the blood and put on my panty and shorts.

COURT:

With what?

A. With my shorts.

Q. And what did you do with your shorts and panty?

COURT:

You have the shorts?

FISCAL ALAMEDA:

No. Your Honor.

x x x x x x x x

COURT:

Where is the shorts now?

A. In the house, Your Honor.

FISCAL ALAMEDA:

We are requesting for a postponement of the case - suspension of the proceedings considering that there are material evidence which we are going to present before this Court.[17]

x x x x x x x x

CONTINUATION OF DIRECT EXAMINATION BY FISCAL ALAMEDA:

Q.

Miss Tolentino, in the last hearing held on June 17, 1994, you have identified the accused who was the one who raped you, and according to you after raping you, you felt hot fluid flowing into (sic) your thigh and thereafter you took your shorts and used the same in wiping the blood and the fluid, and in the last hearing you forgot to bring the shorts. Do you now have with you the shorts? Can you show this Honorable Court the shorts?

FISCAL ALAMEDA:

We just like to make of record that witness is now crying. We also would like to request this Honorable Court that the shorts be marked in evidence as Exh. B, and that a tag be placed thereon, and we would like to place on record that the shorts worn by the witness she said she used in wiping the blood are really full of blood, the whole left portion, half of the right portion had bloodstains and also the lower portion of the shorts are stained with blood on the anus portion.

x x x x x x x x

Q.

You also mentioned or testified in the last hearing that after the accused raped you he ordered you to go inside the comfort room of the first floor where you said he raped you, did you go to the comfort room?

A. Yes, sir.

Q. Why did accused order you to go inside the comfort room of the first floor?

A. He told me to keep silent, according to him if I would shout he would kill me.

Q. And did you go inside the comfort room?

A. Yes, sir.

Q. And while inside what did you do inside the comfort room?

A. I sat down.

Q.

And after seating (sic) down inside the comfort room, in what particular place of the comfort room did you sit down?

A. I leaned near the wall at the left side with my head resting on the wall.

Q. And what happened while you were there inside?

A. When I looked up to him suddenly he hit me with a bottle.

INTERPRETER:

Witness pointing to the portion of the body which is at the back of her head.

COURT:

Where?

FISCAL ALAMEDA:

At the back portion of the head.

COURT:

A little bit at the left side.

Q. After accused Baway hit you with a bottle on the back part of the head what happened to you?

A. I shouted because of much pain then I saw much blood oozing from my head.

Q.

And thereafter what happened?

A. When I shouted he again hit me on my left ear.

Q. With what did he hit you on your left ear ?

A. With another bottle.

Q. Were you hit?

A. Yes, sir. In fact, the bottle was broken.

Q. And what happened next?

A. I was knocked down face up and felt dizzy but I was still conscious.

Q. And thereafter what happened?

A.

When he saw that I was still breathing he boxed me at my left eye, lips and right [side of the] head a little at the back.

Q. And thereafter what happened?

A. I feigned dead (sic) so that he would leave me.

Q. And when you feigned dead (sic) did the accused leave you?

A. Yes, sir.

x x x x x x x x

Q. And on your own what did you do?

A.

When I heard some commotion outside I left the comfort room. I left the comfort room when I heard noises outside.

Q. Up to what portion or part of the first floor were you able to reach when you heard [a] commotion?

A. I reached the store on the first floor.

Q. And were you able to know who were causing this commotion?

A. Yes, sir outside.

Q. And after reaching that portion you said of the store, near the store what transpired there?

A.

When he noticed that I was already at the store the accused went to me and stabbed me many times. The persons outside could not help me.

Q. Why could not the persons outside help you?

A. Because the door was padlocked.

Q.

And according to you earlier, as soon as accused or after accused noticed you in the store he went down and thereafter he stabbed you, what portion of your body was stabbed?

A. My left hand.

INTERPRETER:

There is a scar on the left palm which is about three (3) inches long.

Q. With what instrument [did] accused use in stabbing your left hand?

A. Kitchen knife.[18]

Under rigorous cross-examination, private complainant remained steadfast and never wavered in her assertion that accused-appellant forced her to have sexual intercourse with him.[19] On review, the Court finds that her testimony bears the hallmarks of truth. It is consistent in material points. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.[20]

To discredit the foregoing testimonial declarations of the complaining witness, accused-appellant claims that "the circumstances render rather unbelievable and incredible that one would attempt to commit rape given the attending circumstances of time and place" considering that: 1.] there were other persons present in the same store

when the alleged rape was supposedly committed; 2.] there was no assurance that Teresita Cua and Fe Niez would not come to witness what was allegedly happening to the victim at any moment; 3.] there was no assurance that they would not call for help and in fact they did; 4.] there was no assurance that the accused would not get identified, as he was well known to the other persons who were then present in the said store; it is incredible that the accused would commit what is normally the secret crime of rape, when he knew that there were two witnesses who could identify him any time and could even come to witness the commission of the offense or come to the succor of the victim; 5.] there was no assurance that the accused would get away unidentified or unharmed and in fact he did not know.

The defense fails to persuade.

It is common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby.[21] In *People v. Fernando Watimar*, [22] the Court said that "for rape to be committed, it is not necessary for the place to be ideal or the weather to be fine for rapists bear no respect for locale and time when they carry out their evil deed.[23] Rape may be committed even when the rapist and the victim are not alone, or while the rapist's wife was asleep or even in a small room where other family members also slept"[24] Indeed -

. . . The Court has time and again held that "the evil in man has no conscience. The beast in him bears no respect for time and place, driving him to commit rape anywhere - even in places where people congregate such as parks, along the road side, within school premises, and inside a house where there are other occupants.[25] Rape does not necessarily have to be committed in an isolated place and can in fact be committed in places which to many would appear to be unlikely and high-risk venues for sexual advances.[26] Indeed, no one would think that rape would happen in a public place like the comfort room of a movie house in broad daylight.[27]

Verily, lust is no respecter of time and place.[28]

To further cast doubt on the complaining witness's credibility, accused-appellant claims that the alleged rape victim did not report the offense at the first opportunity to complain.

This contention is likewise unpersuasive.

Jurisprudence has established that delay in revealing the commission of rape is not an indication of a fabricated charge.[29] The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained.[30] It is significant to note that private complainant suffered a traumatic experience. In fact, when responding policemen first saw her at the store, she was covered with blood, running disorientedly and babbling incoherently.[31] Furthermore, it is not unusual for a rape victim immediately following the sexual assault to conceal at least momentarily the incident.[32] Thus it was only when the victim's employer, Teresita Cua, visited the former that she mustered enough courage to narrate the harrowing event. Given the stigma of rape, it is but natural for the private complainant to initially keep the shame of her ravishment to herself. In fact, some victims would prefer to suffer in silence than come out in the open and expose the stain of their defilement to the harsh glare of public scrutiny.[33]

It should also be noted that private complainant promptly went to the Philippine National Police Crime Laboratory for a medical examination after her discharge from the hospital. The medico-legal report disclosed that the victim's hymen had deep healing lacerations at the 3:00 o'clock and 6:00 o'clock positions as well as another shallow healing laceration at 9:00 o'clock.[34] The genital examination of the victim's private parts revealed that her genital injuries were compatible with her recent loss of virginity and the rugosities in her vaginal canal indicates that she had no previous sexual intercourse before the rape,[35] which mutely but convincingly corroborates her assertion that she was ravished by accused-appellant.

At any rate, the private complainant's delay in making public her defilement can not be taken against her given the prevailing facts of the case. Only recently in *People v. Fernando Watimar*[36] which, in turn, cited the case of *People v. Arthur De Leon y Lagmay @ "Joel"*,[37] "[t]his Court has consistently held that delay in reporting rape incidents in the face of physical violence cannot be taken against the victim. A rape victim's action is oftentimes overwhelmed by fear rather than reason. It is fear springing from the initial rape that the perpetrator hopes to build up a climate of extreme psychological terror, which would, he hopes, numb his victim to silence and submissiveness." [38] While indeed the victim may have tarried in reporting her defilement, the hiatus in reporting the crime will not extricate accused-appellant from his predicament. Likewise, in *People v. Conrado Cabana @ Randy*,[39] this Court ruled that -

...The delay and initial reluctance of a rape victim to make public the assault on her virtue is neither unknown or uncommon.[40] As held in the case of *People v. Malagar*: [41]

Vacillation in the filing of [a] complaint by [a] rape victim is not an uncommon phenomenon. This crime is normally accompanied by the rapist's threat on the victim's life, and the fear can last for quite a while. There is also the natural reluctance of a woman to admit her sullied chastity, accepting thereby all the stigma it leaves and then to expose herself to the morbid curiosity of the public whom she may likely perceive rightly or wrongly, to be more interested in the prurient details of her ravishment than in her vindication and the punishment of the rapist. In *People vs. Coloma*[42] we have considered an 8-year delay in reporting the long history of rape by the victim's father as understandable and so not enough to render incredible the complaint of 13-year old daughter.

Accused-appellant next insists that there was no rape because if ever force or intimidation were committed, they were employed after he had sexual congress with her.

The argument is tenuous.

The knife pressed on the upper left breast of the victim while accused appellant was ravishing her which, in fact, left a small scar eloquently bespeaks of the employment of force or intimidation to facilitate the commission of the crime. Be that as it may, the fact that most of the physical injuries sustained by the victim were inflicted after her ravishment will not negate the fact that she was raped. Indeed, the absence of external signs of physical injuries does not prove that rape was not committed, for proof thereof is not an essential element of rape.[43] It must be pointed out in this regard that when accused-appellant struck the complainant's head with a bottle, it was not to facilitate the commission of the offense because he already succeeded in raping the victim but because he was agitated and angry at the whimpering of the latter. He, in fact, struck her again when she screamed. Accused-appellant's later assault on the victim with a kitchen knife was also not on account of facilitating the commission of the felony but because the victim tried to escape.[44]

Accused-appellant's claim that he and the private complainant are sweethearts deserve scant consideration. Other than his bare assertions, accused-appellant adduced no independent proof that he was the sweetheart of the victim. This defense was neither corroborated by any other witness nor substantiated by any memento, picture or token.[45] This claim is further negated by the behavior of the victim at the time of the commission of the offense where she was found bloodied, disoriented and babbling incoherently by responding policemen.[46] If at all, her conduct and condition spell finis to any pretension that the sexual act was consensual. Further, private complainant denied having any such relationship with accused-appellant[47] and she remained unwavering even under intense grilling by defense counsel.[48]

Even assuming *ex gratia argumenti* that accused-appellant and private complainant were indeed sweethearts as he claims, this fact alone will not extricate him from his predicament. The mere assertion of a 'love relationship' would not necessarily rule out the use of force to consummate the crime.[49] In rape cases, the gravamen of the

offense is sexual intercourse with a woman against her will or without her consent.[50] This Court has consistently held that "[a] sweetheart cannot be forced to have sex against her will. Definitely, a man cannot demand sexual gratification from a fiancée, worse, employ violence upon her on the pretext of love. Love is not a license for lust." [51]

Succinctly stated, in rape the prosecution must rule out the victim's consent to the sexual act.[52] In the case at bar, the testimony of private complainant was clear: she did not consent to penile invasion.[53]

In light of the positive testimony of the victim establishing accused-appellant's criminal accountability, the latter's bare denial must fail. The victim's categorical testimony which rings of truth must prevail over accused-appellant's bare denial. A mere denial like alibi is inherently a weak defense and constitutes self-serving negative evidence which can not be accorded greater evidentiary weight than the declaration of credible witnesses who testify on positive matters.[54]

The evaluation of the credibility of witnesses and their testimonies is a matter that is best undertaken by the trial court because of its unique opportunity to observe the witnesses and their demeanor, conduct and attitude, especially under cross-examination. Appellate courts are bound by the findings of the trial court in this respect, unless it shown that it has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case.[55] The Court finds no reason to disturb the factual findings of the trial court in this case.

While the guilt of accused-appellant was proved beyond reasonable doubt, the Court finds the imposition of the death penalty against him excessive and unwarranted. Under the law,[56] the fact that rape is committed "with the use of a deadly weapon" does not automatically merit the imposition of the death penalty. As the Court stated in *People v. Echegaray*,[57] the imposition of the death penalty in those cases where the law provides for a penalty ranging from reclusion perpetua to death does not give the trial court an unfettered but a guided discretion in the imposition of capital punishment.

This discretion was misapplied by the trial court when it erroneously appreciated the aggravating circumstance of craft in meting out the death penalty to accused-appellant. The attendant facts prevailing in this case clearly show that the alleged ruse used by accused-appellant, which the trial court described as craft, was not used as means to facilitate the rape. The records, in fact, disclose that the ruse was merely an artifice used by accused-appellant in order that he would be able to talk with his employer privately about his desire to leave her employ.[58] Indeed the employer, Teresita Cua herself, admitted as much in her affidavit.[59] In short, the excuse given by accused-appellant was totally unconnected with the rape and it is patently erroneous for the trial court to invoke it as a justification for imposing capital punishment. With the absence of this aggravating circumstance, the proper penalty imposable is reclusion perpetua.

The Court notes that the court a quo, while awarding P50,000.00 as indemnity ex delicto did not award moral damages. Civil indemnity is separate and distinct from the award of moral damages which is automatically granted in rape cases.[60] Moral damages are additionally awarded without need of pleading or proof of the basis thereof.[61] This is because it is recognized that the victim's injury is concomitant with and necessarily resulting from the odiousness of the crime to warrant per se the award of moral damages.[62]

The anguish and the pain a victim had to endure are evident.[63] The Court need not belabor the fact that the offended party in a rape case is a victim many times over. In our culture which puts a premium on the virtue of purity or virginity, rape stigmatizes the victim more than the perpetrator.[64]

Finally, accused-appellant's challenge on the alleged unconstitutionality of R.A. No. 7659 has been laid to rest in

People v. Echegaray.[65] Suffice it to state that the issue on whether or not the death penalty should remain in our penal laws is a question which should be addressed to the Legislature, for the courts are not the proper fora for a protracted debate on the morality and propriety of capital punishment where the law itself provides for specific and well defined criminal acts.[66]

WHEREFORE, the judgment of the Regional Trial Court finding accused-appellant guilty beyond reasonable doubt of rape is AFFIRMED with the following MODIFICATIONS:

- a) Accused-appellant is hereby sentenced to suffer the penalty of Reclusion Perpetua; and
- b) He is ordered to pay the offended party P50,000.00 as moral damages in addition to the civil indemnity in the amount of P50,000.00 already awarded by the trial court; and to pay the costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Criminal Case No. Q-94-56992; penned by Judge Romeo F. Zamora.

[2] TSN, 27 September 1994, pp. 6-9; 17 June 1994, pp. 9-12.

[3] TSN, 27 September 1998, pp. 10-11; 17 June 1994, pp. 15-16.

[4] Ibid., p. 12; Ibid., p. 17.

[5] TSN, 19 July 1994, p. 4.

[6] TSN, 17 June 1994, pp. 20-21.

[7] Ibid., pp. 5-8.

[8] TSN, 27 September 1994, p. 14.

[9] TSN, 15 July 1994, p. 10.

[10] TSN, 27 September 1994, p. 14.

[11] TSN, 19 December 1994, pp. 10-16.

[12] TSN, 27 September 1994, pp. 17-18.

[13] TSN, 22 May 1995, pp. 2-4.

[14] Appellant's Brief, pp. 27-29; Rollo, pp. 72-74.

[15] People v. Jimmy Mijano y Tamora, G.R. No. 129112, 23 July 1999, 311 SCRA 81.

[16] People v. Emil Babera y Rabanera, G.R. No. 130609, 30 May 2000, p. 8, citing People v. Dacoba, 289 SCRA 265 [1998] and People v. Gagto, 253 SCRA 455 [1996].

[17] TSN, 17 June 1994, pp. 17-26.

[18] TSN, 15 July 1994, pp. 2-9.

[19] TSN, 19 July 1994, pp. 3-12, 27-28.

- [20] *People v. Caratay*, G.R. Nos. 119418, 119436-37, 5 October 1999, 316 SCRA 251, citing *People v. Bonghanoy*, 308 SCRA 383 [1999], citing *People v. Perez*, 296 SCRA 17 [1998].
- [21] *People v. Camilo Villanueva*, G.R. No. 135330, 31 August 2000, p. 11; *People v. Joselito Baltazar*, G.R. No. 115990, 31 March 2000.
- [22] G.R. Nos. 121651-52, 16 August 2000, p. 14.
- [23] *People v. Ildefonso Bayona*, G.R. Nos. 133343-44, 2 March 2000.
- [24] *People v. Artech Antonio y Payagan*, G.R. No. 122473, 8 June 2000, p. 8.
- [25] *People v. Agbayani*, 284 SCRA 315 [1998].
- [26] *People v. Wilson Mitra*, G.R. No. 130669, 27 March 2000; *People v. David Silvano y Hayag*, 309 SCRA 362 [1999].
- [27] *People v. Vicente Balora y Delantar*, G.R. No. 124976, 31 May 2000, p. 8.
- [28] *People v. Torio*, G.R. Nos. 132216 & 133479, 17 November 1999, 318 SCRA 345, citing *People v. Agbayani*, 284 SCRA 315 [1998] and *People v. Manuel*, 236 SCRA 345 [1994]; *People v. Ponado*, 311 SCRA 529 [1999], citing *People v. Limon*, 257 SCRA 658 [1996]; *People v. Dones*, 254 SCRA 696 [1996].
- [29] *People v. Cesar Melendres y Bejo*, G.R. Nos. 133999-4001, 31 August 2000, p. 11; *People v. Cabresos*, 244 SCRA 362 [1995].
- [30] *People v. Segundo Cano*, G.R. No. 130631, 30 August 2000, p. 9, citing *People v. Teves*, 246 SCRA 236 [1995].
- [31] TSN, 19 December 1994, pp. 12-14.
- [32] *People v. Abella*, G.R. No. 131847, 22 September 1999, 315 SCRA 36.
- [33] See *People v. Gecomo*, 254 SCRA 82 [1996].
- [34] Exhibit E.
- [35] TSN, 22 May 1995, pp. 5-6; Exhibit E.
- [36] G.R. Nos. 121651-52, 16 August 2000, p. 19.
- [37] G.R. Nos. 124338-41, 12 May 2000, p. 13.
- [38] Citing *People v. Caballero*, G.R. No. 129693, 24 January 2000, citing *People v. Melivo*, 253 SCRA 347 [1996].
- [39] G.R. No. 127124, 9 May 2000, pp. 14-15.
- [40] *People v. Montefalcon*, 243 SCRA 617 [1995].

[41] 238 SCRA 512 [1994].

- [42] 222 SCRA 255 [1993]; see also *People v. Manggasin*, 306 SCRA 228 [1999], citing *People v. Coloma*, *supra*.
- [43] *People v. Patriarca*, G.R. No. 132748, 24 November 1999, 319 SCRA 87, citing *People v. Casipit*, 232 SCRA 638 [1994]; *People v. Arengo*, 181 SCRA 345 [1990]; *People v. Hortillano*, 177 SCRA 729 [1989]; *People v.*

Villaflores, 174 SCRA 70 [1989].

[44] TSN, 15 July 1994, pp. 6-8.

[45] *People v. Lampaza*, G.R. No. 138876, 24 November 1999, 319 SCRA 112, citing *People v. Acabo*, 259 SCRA 75 [1996].

[46] TSN, 19 December 1994, pp. 12-14.

[47] TSN, 17 June 1994, pp. 24-25.

[48] TSN, 19 July 1994, pp. 26-28.

[49] *People v. Betonio*, 279 SCRA 532 [1997].

[50] *People v. Igat*, 291 SCRA 100 [1998].

[51] *People v. Manuel Manahan @ Maning*, G.R. No. 128157, 29 September 1999, p. 6, citing *People v. Tismo*, 204 SCRA 535 [1991]; *People v. Rolando Perez y Espiritu*, G.R. No. 128870, 27 October 1999, citing *People v. Tayaban*, 296 SCRA 497 [1998], in turn citing *People v. Domingo*, 226 SCRA 156 [1993]; see also *People v. Acabo*, 259 SCRA 75 [1996]; *People v. Laray*, 253 SCRA 654 [1996]; *People v. Vallena*, 244 SCRA 685 [1995]; *People v. Tacipit*, 242 SCRA 241 [1995].

[52] *People v. Sta. Ana*, 291 SCRA 188 [1997].

[53] TSN, 17 June 1994, pp. 18-25; 19 July 1994, pp. 3-13, 27-28.

[54] *People v. Camilo Villanueva*, G.R. No. 135330, 31 August 2000, p. 13, citing *People v. Alvero*, G.R. Nos. 134536-38, 5 April 2000.

[55] *People v. Faustino Campos @ Enot*, G.R. Nos. 133373-77, 18 September 2000, p. 5, citing *People v. Bayona*, G.R. Nos. 133343-44, 2 March 2000.

[56] Article 335, Revised Penal Code, as amended by Section 11 of R.A. No. 7659.

[57] 267 SCRA 682 [1997].

[58] TSN, 10 July 1996, pp. 3-4.

[59] Exhibit I.

[60] *People v. Edwin R. Decena*, G.R. No. 131843, 31 May 2000, p. 7.

[61] *People v. Prades*, 293 SCRA 411 [1998]; *People v. Ludigario Candelario and Gerry Legarda*, G.R. No. 125550, 28 July 1999, 311 SCRA 475.

[62] *People v. Rolando Tabanggay*, G.R. 130504, 29 June 2000, p. 30.

[63] *People v. Loriga*, G.R. No. 116009-10, 29 February 2000, p. 13; *People v. Garces, Jr.*, G.R. No. 132368, 20 January 2000, p. 22; *People v. Penaso*, *supra*.

[64] *People v. Felipe Hofileña y Taala*, *supra*, citing *People v. Villamor*, 297 SCRA 262 [1998].

[65] See Note No. 59.

[66] *People v. Echegaray*, *supra*.

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