PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO PATRIARCA, ACCUSED-APPELLANT.

G.R. No. 132748. November 24, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

In its decision of 30 June 1997[1] in Criminal Case No. 44548, the Regional Trial Court of Iloilo City, Branch 28, found accused-appellant Rolando Patriarca (hereafter ROLANDO) guilty of the crime of rape and sentenced him "to suffer the penalty of reclusion perpetua; to indemnify complainant, Jihan Bito-on, in the amount of P200,000.00, as moral damages, and to pay the costs."

ROLANDO was charged with rape in a sworn complaint[2] filed on 10 February 1995, viz.:

> That on or about the 21st day of September 1993, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, by means of violence and intimidation, did then and there wilfully, unlawfully and criminally have carnal knowledge with complainant Jihan Asuncion Bito-on against the will of the said complainant.
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> ROLANDO pleaded not guilty upon arraignment.[3]

Jihan Bito-on (hereafter JIHAN) declared that on 13 September 1993, while she was cooking in the kitchen of her boarding house located at Barangay San Nicolas, Lapaz, Iloilo City, ROLANDO came to see her board mate, Joel Silubrico. When the latter arrived, he introduced ROLANDO to JIHAN as "Rolando Sombillo." They met again on 21 September 1993, when ROLANDO visited her at the boarding house at around 4:30 in the afternoon. Salve Salviron, another board mate, called JIHAN from her room and kept ROLANDO company as he waited, but went out after a while, leaving the two alone. He invited her to Salve's room because he apparently had something to tell her. When JIHAN refused, ROLANDO suddenly pulled her by the arm and forced her to go inside the room of Salve. JIHAN resisted by struggling and hitting ROLANDO twice on the shoulder, but ROLANDO was very strong and succeeded in bringing her inside the room. He held her hands, and when she shouted for help, he covered her mouth with one of his hands, threatening to kill her if she continued to shout and resist. When forced to lie on the bed, she kicked him twice, but he managed to straddle her and pin her legs down with his own. JIHAN continued to struggle but ROLANDO gripped her neck and repeated his threats. Her cries for mercy fell on deaf ears as he unbuttoned her blouse and pulled down her shorts and panty. Then JIHAN freed one hand, which she used to hold up her shorts and panty, but ROLANDO was still able to remove them. He raised his shirt, pulled down his shorts and brief to his knees, then pressed JIHAN's breast to keep her on the bed. ROLANDO inserted his finger into her vagina before forcing his manhood into her. JIHAN continued to struggle, and after about two minutes of "push and pull motion," her ordeal was finally over. He then dressed up and, before going out of the room, warned JIHAN not to tell anybody about what had happened or else he would kill her. When she left the room, she noticed that Salve, Joel, and ROLANDO were whispering to one another in the sala. JIHAN silently went to her room upstairs. At around 6:30 p.m. of the same day, she confided to her landlady, defense witness Annabella Lim (hereafter Annabella), that she had been raped by ROLANDO. Annabella responded that

she would take care of the matter.[4]

JIHAN further testified that in the afternoon of 24 September 1993, while she was waiting at her boarding house for her brother Johnson, ROLANDO suddenly arrived from nowhere and pulled her into the room of Joel where he started to undress her. In her struggle, her white long-sleeved blouse was torn. Only the arrival of her board mates dissuaded ROLANDO from repeating his dastardly act; he swiftly left the room. JIHAN fixed herself up, then went upstairs to her room. When Johnson arrived at around 6:00 p.m., she told him that ROLANDO had raped her. Her brother wanted to challenge ROLANDO and the others, but she restrained him because they were much taller and bigger than he. They just decided to go home the following day to Barangay Marita, President Roxas, Capiz.[5]

At home, JIHAN immediately informed her mother Corazon that she had been raped by ROLANDO. Corazon was shocked; she cried and told JIHAN to wait for her father, Dr. Jose Bito-on. When the latter arrived, they decided to file a case against ROLANDO.[6] They reported the incident to the police and to the National Bureau of Investigation. On 28 September 1993, ROLANDO was eventually arrested.[7]

The next morning, JIHAN was examined by NBI Medico-Legal Officer Ricardo Jaboneta, who concluded that the "findings show sexual intercourse/s on or about the alleged date of commission."[8]

Finally, JIHAN declared that she was forced to stop studying because of what ROLANDO had done to her, which caused her and her family so much shame.[9]

On cross-examination, JIHAN explained why, if she really put up a fight, her blouse, shorts, and panty were undamaged. According to her, her blouse could easily be opened and the garters of her shorts and panty were loose. She also recalled that after ROLANDO raped her on 21 September 1993, she noticed Salve peeping and overheard her telling ROLANDO "Parts,[10] that is enough, the boarders are arriving." She also denied the posture of the defense that she and ROLANDO were sweethearts.[11] Answering queries from the trial judge, JIHAN maintained that after ROLANDO was introduced to her on 13 September 1993, there was never an occasion that she met him on her own initiative, and she never wrote him any letter. Neither did ROLANDO visit or write her.[12]

As earlier intimated, the defense advanced the so-called "sweetheart theory" to debunk JIHAN's accusations.

Annabella testified that JIHAN and her brother Johnson occupied one of the rooms in the upper portion of the two-story dormitory, which she managed. On 22 September 1993, at around 9:00 a.m., she received information from a certain boarder named Gelzar Almira (hereafter Gelzar) that JIHAN and her boyfriend ROLANDO had been inside Salve's room the day before. After some investigation, she determined that Salve had, upon JIHAN's request, allowed the two to use the room. She, therefore, admonished JIHAN not to repeat the act because it violated house rules, but she could not recall if JIHAN told her anything about the alleged rape.[13]

On 24 September 1993, Annabella also learned, this time from two other boarders, Alex Solibio and Gil Gelana, that JIHAN and ROLANDO made love in one of the rooms. Upon confrontation, JIHAN admitted that she and ROLANDO, indeed, made love in Salve's room on 21 September 1993. Annabella told JIHAN to go home and fetch her parents so they could talk about JIHAN's behavior. While JIHAN and Johnson went home, their parents never came.[14]

For his part, ROLANDO denied JIHAN's accusation and maintained they were sweethearts. On the date and time in question, JIHAN allegedly invited him over to her boarding house to talk about their relationship. He wanted to stay in the sala, but JIHAN insisted that they go to a more private place. Salve offered her room. That is where he told JIHAN that he loved her. JIHAN reciprocated by telling him she had a crush on him, although she was still

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very young. Thereafter, one thing led to another, culminating in intimate sexual intercourse as they professed their feelings for one another.[15]

ROLANDO also denied forcing JIHAN to have sex with him. In fact, she took off her own panty. In the afternoon of 24 September 1993, they even made love again in his boarding house, where she had frequently visited him since the beginning of their affair. Apparently, these were their only sexual encounters. After their second tryst, JIHAN invited him to Roxas City to introduce him to her parents. He agreed, but before they could go, NBI agents arrested him for rape. ROLANDO believed that the charge was concocted by her brother Johnson.[16]

Gelzar testified that on 21 September 1993, his nephew, Primitivo Orquiza, who was also a boarder, informed him that JIHAN and ROLANDO were making love in the other room. Gelzar advised Primitivo not to mind the couple for it was not their business. But then, on 22 September 1993, he relayed to Annabella about what his nephew Primitivo had told him. That night, he and Annabella confronted JIHAN, who admitted ROLANDO was her boyfriend and they did make love in Salve's room the day before.[17]

On rebuttal, JIHAN denied ROLANDO was her boyfriend and that she had voluntarily engaged in sexual intercourse with him. What she actually told Annabella was that she was raped by the accused on 21 September 1993. JIHAN likewise disputed Gelzar's testimony, and alluded to her rejection of the latter's invitation for her to join their Boarder's Association as the reason behind his tainted testimony.[18]

As stated at the outset, ROLANDO was found guilty as charged. The court a quo found the evidence of the prosecution credible and sufficient to establish the guilt of ROLANDO for the crime of rape. It was not convinced that a 20-year old girl like JIHAN, "who came from a well-educated and upright family, her father being a Ph.D. holder and her mother, a school teacher," would be capable of doing the acts which ROLANDO and his witnesses had imputed to her.

Moreover, it found the gross disparity in the physical condition of JIHAN (a "petite 20-year old girl," a little more than four feet in height and barely over 100 pounds) and ROLANDO (a "burly hulk" of a man, about 5'6" and 160 pounds) sufficient basis to sustain JIHAN's claim of force and intimidation.

The trial court found incredible ROLANDO's story and disregarded the testimonies of Annabella and Gelzar as equally incredulous, if not hearsay.

ROLANDO seasonably appealed his conviction, raising in issue the alleged error of the trial court in rejecting his defense and concluding that force and intimidation accompanied the sex act between him and JIHAN.

He argues that JIHAN could not have been raped because her clothes were not damaged, nor did she suffer any physical injury as a result of the supposed rape. As regards intimidation, he points out that no weapon of any kind was presented by the prosecution in support thereof. He also assails the trial court's refusal to give credence to the testimonies of Annabella and Gelzar on the ground that they were incredible, if not hearsay. Finally, ROLANDO points out that the court a quo allegedly turned a blind eye to the conduct of JIHAN after the incident, which is inconsistent with the actions of one who had been raped, thereby casting doubt on the court's impartiality.

We find no merit in this appeal.

Settled is the rule that the force employed in rape need not be irresistible so long as it is present and brings the desired result. All that is necessary is that the force be sufficient to fulfill its evil end, or that it be successfully used; it need not be so great or be of such a character that it could not be repelled.[19]

ROLANDO's claim that there was no force because JIHAN's clothes were not torn and the medical report revealed no signs of contusion on her thighs and neck is not persuasive. 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 the crime of rape.[20] What is imperative is for the prosecution to prove that force or intimidation was actually employed by the accused upon his victim to achieve his end.[21] It is also true that a medical examination is not indispensable for the prosecution of rape, for the victim's testimony alone, if credible, suffices to convict.[22]

There is likewise no merit in ROLANDO's contention that there was no intimidation because of the absence of a weapon. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. It is enough that it produces fear - an uncontrollable fright that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or even thereafter, as when she is threatened with death if she should report the incident.[23] The use of a weapon, therefore, is not necessary. Its use serves only to increase the penalty.[24]

In the instant case, we are in full accord with the findings of the trial court that intimidation existed. At the time of the incident, JIHAN was only 18 years old, petite at 4'11", and barely over 100 pounds. By contrast, ROLANDO was 60 pounds heavier and 7 inches taller. It is too obvious that JIHAN was physically defenseless against ROLANDO and could have easily succumbed to fear after ROLANDO unexpectedly dragged her into Salve's room with a threat to kill her if she should resist.

The final resolution of this case once more hinges on credibility. And when the credibility of witnesses is in issue, appellate courts generally defer to the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. There are some exceptions to this rule, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would affect the result of the case.[25] We have carefully examined the records and reviewed the evidence in this case and found none of these exceptions. Against the victim's story, ROLANDO urges us to accept his own version. But we cannot do so, for we agree with the trial court's observation that a young girl from a decent family is not capable of seducing a man like ROLANDO. He has certainly not shown that JIHAN was a woman of loose morality whose characteristic Filipina modesty was absent.

We cannot also accept Annabella's testimony on what Gelzar had told her for being hearsay. It is not disputed that said testimony referred to an alleged information given to Gelzar by his nephew Primitivo.

Another factor which casts doubt on the veracity of Annabella's statements is her testimony on the alleged sexual encounter of JIHAN and ROLANDO on 24 September at around 5:00 in the afternoon at their boarding house, which ran counter to ROLANDO's claim that it happened at his boarding house.

Moreover, ROLANDO's defense that he and JIHAN were lovers deserves scant consideration. Other than his self-serving averment, he presented no evidence to prove their special relationship, such as details regarding the personal circumstances of JIHAN or even love letters and gifts. If she were indeed the object of his affection, it was critical for ROLANDO to prove some ill-motive on her part for making such a serious accusation.[26] Absent such consideration, as in this case, the victim's testimony should be upheld. Verily, a rape victim would not publicly disclose that she had been raped and undergo the humiliation of trial if her motive was other than justice and retribution. More specifically, it would be unbecoming a young Filipina to publicly admit that she had been criminally abused and ravished unless such is the truth, for it is her natural instinct to protect her honor.[27]

Even granting arguendo that ROLANDO and JIHAN were indeed lovers, this fact, standing alone, does not negate a charge of rape. Certainly, a woman cannot be forced to have sex against her will; from a mere fiancée, a man cannot definitely demand sexual favors, or worse, employ violence upon her, all in the name of love. Love is not a license for lust.[28]

On the alleged questionable behavior of JIHAN after the sexual act, it cannot be overemphasized that rape, being not only a physical but an emotional assault as well on women, places tremendous stress on the human mind. Hence, victims of rape react, even cope, differently from one another - some may shout, others may faint; some may collapse into a trance-like state, and others may lose their sanity. Still, others who are blessed with a sophisticated coping mechanism may only be slightly perturbed by the incident.[29] In the latter case, going on with one's life is no indication that the assault on one's virtue has not produced any scar, for the scar is deep, even as it remains unseen.

JIHAN's testimony reveals that ROLANDO continuously threatened to kill her from the time he dragged her into Salve's room, to the moment he took liberties upon her to satisfy his bestial desire, and even after the fact, to prevent her from squealing on him. Ignoring her personal well-being, JIHAN still managed to tell someone, her landlady Annabella, who, on account of her being a town mate of ROLANDO, totally ignored her duty as surrogate mother to JIHAN and even testified for the defense. JIHAN also informed her brother Johnson about the assault; yet, she had the presence of mind to seek their parents' counsel and let the authorities adopt their cause, instead of allowing Johnson to recklessly vindicate her honor.

Finally, the Court notes that the trial court failed to award any indemnity to JIHAN, an amount which, according to current case law, is pegged at P50,000. The award of moral damages should, however, be reduced to P100,000.

WHEREFORE, the instant appeal is DISMISSED, and the challenged decision of Branch 28 of the Regional Trial Court of Iloilo City in Criminal Case No. 44548, finding accused-appellant Rolando Patriarca, alias Rolando Sombillo, guilty beyond reasonable doubt of the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code, is hereby AFFIRMED, subject to the MODIFICATION that the award of moral damages is reduced from P200,000 to P100,000, and accused-appellant is further ordered to pay the offended party, Jihan Bito-on, the sum of P50,000 as civil indemnity.

Costs against accused-appellant.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Original Record (OR), 162-185; Rollo, 17-40. Per Judge Edgar D. Gustilo.

[2] Exhibit "B"; Rollo, 7.

[3] OR, 21.

[4] TSN, 21 September 1995, 4-14.

[5] Id., 15-19.

[6] TSN, 26 October 1995, 2-4.

[7] Id., 4-7.

[8] Living Case No. 93-MG-27; Exhibit "A"; OR, 100.

[9] TSN, 21 September 1995, 20.

[10] This should be "Pards," a corruption of either "Partner" or "Pare," which, in turn, is short for "Kumpare" (the godfather of one's child).

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[11] TSN 21 September 1995, 34-36.

[12] Id., 38.

[13] TSN, 10 July 1996, 2-9.

[14] TSN, 10 July 1996, 10-12.

[15] TSN, 1 August 1996, 2-4.

[16] Id., 6.

[17] TSN, 17 October 1996, 3-7.

[18] TSN, 27 February 1997, 2-3.

[19] People v. Antonio, 233 SCRA 283 [1994]; People v. Matrimonio, 215 SCRA 613 [1992]; People v. Grefiel, 215 SCRA 596 [1992]; People v. Saldivia, 203 SCRA 461 [1991].

[20] People v. Caisipit, 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].

[21] People v. Sabido, 233 SCRA 196 [1996].

[22] People v. Venerable, 290 SCRA 17 [1998].

[23] People v. Pamor, 237 SCRA 462 [1994]; People v. Tayco, 235 SCRA 610 [1994]; People v. Antonio, 233 SCRA 283 [1994]; People v. Matrimonio, 215 SCRA 613 [1992].

[24] People v. Baculi, 246 SCRA 756 [1995]; People v. Barcelona, 191 SCRA 100 [1990].

[25] People v. Leoterio, 264 SCRA 608, 617 [1996]; People v. Excija, 258 SCRA 424, 439 [1996]; People v. Cristobal, 252 SCRA 507, 515-516 [1996]; People v. Lao, 249 SCRA 137, 146 [1995]; People v. Malunes, 247 SCRA 317, 324 [1995].

[26] People v. Bantisil, 249 SCRA 378 [1995]; People v. Tismo, 204 SCRA 535 [1991].

[27] People v. Cabilao, 210 SCRA 327 [1992].

[28] Id., citing People v. Tismo, 204 SCRA 535 [1991].

[29] People v. Sagucio, 277 SCRA 183 [1997]; People v. Rabosa, 273 SCRA 142 [1997]; People v. Malabago, 271 SCRA 464 [1997]; People v. Oarga, 259 SCRA 90 [1996].

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