

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEDDY ANGGIT AND ARIEL CABILUNA, ACCUSED-APPELLANTS.

G.R. No. 133582. September 27, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For review is the decision[1] of the Regional Trial Court of Cebu City, Branch 18, in Criminal Case No. CBU-41296, convicting accused-appellants Teddy Anggit and Ariel Cabiluna of the crime of rape, sentencing them to suffer the penalty of reclusion perpetua with the inherent accessory penalties, and to pay the victim the amount of P50,000.00 as moral damages and the costs.

The Information against accused-appellants reads:

That on or about the 3rd day of March, 1996, at around 1:00 o'clock early in the morning, more or less, at Camp 2, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with lewd designs and by means of force and intimidation, Teddy Anggit did then and there willfully, unlawfully and feloniously, in the presence of and with the direct cooperation of Ariel Cabiluna, succeed in having carnal knowledge with Edna Cabusas, herein offended party, against her will and consent.

CONTRARY TO LAW.[2]

On arraignment, accused-appellants pleaded not guilty. Thereupon, trial proceeded in due course.

The victim, Edna Cabusas, testified that on March 2, 1996, after she washed the dishes and fed the pigs, she waited for her husband who was playing cards at Boy Anggit's house. After a while, she got bored waiting for him and went to the house of Doring, her husband's uncle, to wait there. While she was outside the house talking to Doring, she was invited to the birthday party of Gaga, the girlfriend of accused-appellant Ariel Cabiluna. Edna went to Gaga's house but stayed in the kitchen because she was not properly dressed. The two accused-appellants were also in the kitchen. Gaga served them beer and chicken barbeque. Edna drank two bottles of beer. Accused-appellants also drank beer.

Then, Edna noticed that accused-appellants were whispering to each other and laughing out loud while looking at her. She asked them what they were whispering and laughing about, but accused-appellants just kept laughing. Edna felt offended, so she left and went to Boy Anggit's house to fetch her husband, Edilberto. She waited for him outside the house, then asked him to go home. Edilberto told her to go ahead. As she started home, she saw accused-appellants Teddy Anggit and Ariel Cabiluna outside Boy Anggit's house.

When Edna arrived home, she fixed the mat in their room then went out to the yard. Suddenly, two persons pulled her and dragged her to the woods. She recognized the two men as the accused-appellants because of the light coming from the kitchen and the moon was full.[3] She was unable to shout out of fear that accused-appellants will kill her.[4] In the woods, accused-appellant Teddy Anggit pushed her to the ground and removed her skirt

and panties. He then undressed himself and lay on top of her. He had sexual intercourse with her while accused-appellant Ariel Cabiluna tightly held her legs apart. Edna cried and tried to extricate herself from him, but in vain.[5] Accused-appellant Teddy Anggit kissed her and even bit her nipple.[6] When he was about to reach orgasm, he withdrew his penis and masturbated before her until he ejaculated on Edna's breast.[7] Accused-appellant Ariel Cabiluna thereafter placed his finger inside Edna's vagina.[8] At this point, Edna passed out.[9] When she regained consciousness, accused-appellants were no longer there. She put on her clothes and walked back home. Her husband was at home when she arrived. She narrated to him what happened to her that night.

Edilberto Cabusas, Edna's husband, testified that he knew accused-appellants Teddy Anggit and Ariel Cabiluna. Teddy is the nephew of their neighbor, Boy Anggit. At 2:00 in the morning of March 3, 1996, his wife fetched him at Boy Anggit's house where he was playing cards. He told her to go ahead and he will just follow. When he arrived home, Edna was not there. He looked for her at Terry-Flor's house but she was likewise not there. After a while, Edna arrived crying. She tearfully narrated to him that she was raped by accused-appellants. He got angry and went to the house of the spouses Memie and Remy, who advised him to inform Edna's parents. Thereafter, they reported the incident to Brgy. Captain Esin Abatayo, who advised them to report the matter to Talisay Police Station. They boarded the service vehicle of the barangay driven by Paping, a barangay police, to go to the Talisay Police Station. Along the way, they saw Teddy Anggit in a cargo truck heading towards Cebu City. Paping stopped the cargo truck and accosted accused-appellant Teddy Anggit, then brought him to Talisay Police Station.[10]

Dra. Marites Paano of the Don Vicente Sotto Memorial Hospital examined Edna on March 3, 1996. She reported the following findings:[11]

Areolae: Brownish Nipples: well developed

x x x x x x x x

External Genital Injuries: none

Genitalia: Grossly female

Pubic Hairs: abundant

Labia Majora: gaping

Labia Minora: gaping

Fourchette: V- shaped

Vestible: Pinkish

Hymen: (+) myrtiliform carbuncle(sic)

Orifice: admits 2 fingers with ease

x x x x x x x x

Discharges: mucoid, minimal

Smears: negative

Accused-appellant Teddy Anggit denied the accusation against him. He admitted that at 8:00 p.m. of March 2, 1996, he was invited by Flor Agtong to attend his daughter's birthday.[12] An hour later, Edna, Ariel, Gaga and

Flor arrived and they were served food and beer. According to him, Edna was drunk as she consumed 5-6 bottles of beer grande.[13] She talked incoherently and scolded them for no reason. Although he consumed 7-8 bottles of beer, he claimed that he was not drunk. He recalled that accused-appellant Ariel Cabiluna left the house around 11:00 p.m. and Edna at 12:00 midnight, while the rest continued drinking until 3:30 a.m. He slept together with Leony, Tata and Junior at Flor's house and denied having left the house that night. He was awakened by Boy Cabanada at 7:00 a.m. to tell him that he was being accused of raping Edna Cabusas. He ignored what Boy Cabanada told him, instead, he proceeded to Bulacao, Talisay on board a truck to collect his salary from Wendel, his employer. The truck was stopped and, when he alighted from it, he was mauled by unidentified men.[14]

Buenaflor Agtong corroborated accused-appellant Teddy Anggit's testimony. According to him, Edna Cabusas consumed five bottles of beer grande that night and she was drunk because she laughed without reason and got angry when accused-appellants whispered to each other. He further testified that accused-appellant Ariel Cabiluna left the house at 11:00 p.m. while Edna left at 12:00 a.m., and the rest of the visitors, including accused-appellant Teddy Anggit, continued drinking. He left them and went upstairs to sleep at around 3:00 a.m. When he woke up, he saw accused-appellant Teddy Anggit with other persons still sleeping in their house. Thereafter, he was told by Boy Cabanada that accused-appellants raped Edna Cabusas. But he did not believe him because Teddy was sleeping in his house.[15]

For his defense, accused-appellant Ariel Cabiluna likewise denied the accusation against him. He declared that at 9:00 p.m., he arrived at the house of Gaga, his girlfriend, to attend her birthday celebration.[16] There, he ate and talked with accused-appellant Teddy Anggit and Edna Cabusas, but he did not drink beer.[17] He went home at around 10:00 or 11:00 p.m. because he was not feeling well.[18] The following morning, he went to his sister's house and it was there that he learned he was being accused with accused-appellant Teddy Anggit of raping Edna Cabusas.[19]

On October 30, 1996, the trial court rendered its decision, the dispositive part of which reads:

WHEREFORE, premises considered, the Court finds the two accused TEDDY ANGGIT AND ARIEL CABILUNA, guilty beyond reasonable doubt, as principals, for the crime of RAPE, defined and penalized by Article 335 of the Revised Penal Code, sentences both of them to suffer the penalty of RECLUSION PERPETUA, with the inherent accessory penalties provided by law; to indemnify the victim the sum of P50,000.00 as moral damages and to pay the costs.

SO ORDERED.[20]

Accused-appellants filed separate appeals. Accused-appellant Teddy Anggit raised the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT HAD CARNAL KNOWLEDGE [OF] THE COMPLAINANT AGAINST THE LATTER'S WILL WITH ARIEL CABILUNA AS CO-CONSPIRATOR.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT BOTH ACCUSED WERE GUILTY OF RAPE BEYOND REASONABLE DOUBT.

On the other hand, accused-appellant Ariel Cabiluna assigns the following errors:

I

THE TRIAL COURT ERRED IN CONVICTING APPELLANT CABILUNA DESPITE THE REASONABLE DOUBT ABOUT HIS GUILT CREATED BY THE NUMEROUS INCONSISTENCIES TAINTING THE PROSECUTION'S EVIDENCE.

II

THE TRIAL COURT ERRED IN CONVICTING APPELLANT CABILUNA INSPITE OF THE REASONABLE DOUBT ABOUT HIS GUILT CREATED BY THE IMPROBABILITY OF THE MANNER IN WHICH THE CRIME CHARGED WAS ALLEGEDLY COMMITTED AS WELL AS THE FAILURE OF THE PHYSICAL EVIDENCE TO SUPPORT THE TESTIMONY OF COMPLAINANT CABUSAS.

III

THE TRIAL COURT ERRED IN CONVICTING APPELLANT CABILUNA DESPITE THE FAILURE OF THE PROSECUTION TO COMPETENTLY AND CONVINCINGLY ESTABLISH THAT COMPLAINANT CABUSAS OFFERED ANY RESISTANCE PRIOR TO, AND EVEN DURING, HER ALLEGED RAPE.

IV

THE TRIAL COURT ERRED IN CONVICTING APPELLANT CABILUNA AS A PRINCIPAL FOR THE CRIME OF RAPE INSPITE OF THE FACT THAT THERE WAS NO COMPETENT AND CONVINCING EVIDENCE PRESENTED BY THE PROSECUTION SHOWING CONSPIRACY BETWEEN APPELLANT CABILUNA AND HIS CO-ACCUSED, TEDDY ANGGIT.

V

THE TRIAL COURT ERRED IN CONVICTING APPELLANT CABILUNA AFTER RELYING ON THE ALLEGED WEAKNESS OF THE DEFENSE'S EVIDENCE RATHER THAN ON THE DOUBTFUL STRENGTH OF THE PROSECUTION'S EVIDENCE.

VI

THE TRIAL COURT ERRED IN CONVICTING APPELLANT CABILUNA DESPITE THE FACT THAT HE CONVINCINGLY AND COMPETENTLY DENIED ANY PARTICIPATION IN THE ALLEGED RAPE OF COMPLAINANT CABUSAS.

A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant, hence utmost care must be taken in the review of a decision involving conviction for rape.[21] In reviewing rape cases, we are guided with three settled principles, namely: (a) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove the same; (b) In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) The evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[22]

Accused-appellants' contentions hinge on the issue of credibility of the prosecution witnesses. They argued that complainant's testimony conflicts with her sworn statements before Judge Manayon. Furthermore, complainant's failure to shout and call for help and the lack of injuries as a result of physical violence cast reasonable doubt on their guilt, for being contrary to human experience.

More specifically, accused-appellants point to the following inconsistencies in the statements of Edna Cabusas:

First, Edna testified on direct examination that accused-appellant Ariel Cabiluna held her legs apart while accused-appellant Teddy Anggit was raping her, a fact not mentioned in her sworn statement.[23] Second, she categorically stated that she merely followed the accused-appellants without resisting because she was scared that they will kill her, only to change it later on direct examination that she was dragged by accused-appellants each holding one arm.[24] Third, in her sworn statement, she was not sure whether accused-appellant Teddy Anggit ejaculated because she had lost consciousness by then, which is contrary to her testimony in court that accused-appellant Teddy Anggit pulled his penis from her vagina, masturbated in front of her and ejaculated on her breast spreading his semen on her shirt.[25] Fourth, in her sworn statement she stated that accused-appellant Teddy Anggit was dressed, contrary to her testimony that he was totally naked.[26] Finally, Edna stated in her sworn statement that she was dragged and raped by accused-appellants from outside her home at about 1:00 a.m. and she regained consciousness at around 2:00 a.m. On cross-examination, however, she testified that she was dragged by accused-appellants around 2:00 a.m. and after the rape had been consummated she went home. Likewise her testimony conflicts with the testimony of her husband where he stated that Edna went to Boy Anggit's house at 2:00 o'clock in the morning.[27]

In this regard, we may well point out the time-tested doctrine that the evaluation of the testimonies of witnesses is chiefly the function of the trial court. When there is no indication that patent inconsistencies have been overlooked or that the conclusions reached are unsupported by the evidence, the trial court's evaluation of the credibility of witnesses must be accorded the highest respect. This is for no other reason than that the trial court had the opportunity to observe the demeanor of the witnesses while testifying.[28] After careful review of the records of the case, we find no reason to disturb the findings of the trial court.

Moreover, the supposed improbability and inconsistencies cited by the defense are really negligible in character and insufficient to cast doubt on her credibility. This Court has time and again said that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen their credibility because they discount the possibility of their being rehearsed testimony.[29] In any event, inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken ex parte and are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer.[30]

The trial court gave credence to Edna's testimony that she was dragged into the woods, contrary to accused-appellants' insinuation that she merely followed. Accused-appellant Ariel Cabiluna merely cited a portion of the sworn statement which would favor his cause. However, taking the whole context of complainant's sworn statement, we see no real inconsistency between her sworn statement and testimony in open court that she was dragged by accused-appellants. Thus:[31]

x x x x x x x x

PANGUTANA 16. Giunsa man gyud sa maong mga tawo pagdala nimo ngadto sa nahisgutang kakahoyan?

Tubag: Ilang gitabangan ug kopot ang akong mga kamot aron dili ko makaikyas ug gikoroy ko nila paingon sa kakahoyan.

[Translation: Q: How did those persons manage to bring you to the forest area?

A: They held my hands so that I cannot free myself from them and then pulled me towards the forest area.]

PANGUTANA 17. Samtang ila kang gigoroy paingon sa kakahoyan, sa imong bahin unsa man lay imong

gibuhat?

Tubag: Sa akong huna-huna mosyagit unto ko apan tungod sa akong kahadlok mao to nga misunod nalang ko nila.

[Translation: Q: When they pulled you towards the forest area, on your part, what did you do then?

A: I was thinking of shouting but I was so scared so I just followed them.]

On direct examination, she narrated how she was brought to the woods as follows:[32]

Q. When you reached home what did you do?

A. I placed a mat in our room.

Q. And what else did you do?

A. After placing the mat in our room I urinated. Then just after I had urinated there were two persons who pulled me.

Q. Where did you urinate?

A. In our yard.

x x x x x x x x

Q. Where did Ariel Cabiluna and Teddy Anggit bring you?

A. Towards the woods.

On cross examination, she further testified:[33]

Q. And then what happened after urinating?

A. There was somebody held me. The two of them pulled me.

COURT:

Q. What portion of your body was pulled by both of them?

A. My two arms and then dragged me.

To further discredit Edna's credibility, accused-appellants argue that it was improbable for accused-appellant Teddy Anggit to have raped her while accused-appellant Ariel Cabiluna was holding her legs. To our mind, this detail is not so vital or significant as to affect her credibility. What is important is her vivid recollection that she was ravished against her will.

In rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent.[34] In the case at bar, complainant Edna Cabusas testified that she was dragged into the woods, pushed to the ground, her skirt and panties were removed and she was raped by accused-appellants. We note that Edna was in tears while she recounted her harrowing experience.[35] In *People v. De Guzman*,[36] we held that the fact that the victim wept during her testimony bolsters the credibility of the rape charge with the verity born out of human nature and experience.

Accused-appellants claim that complainant's failure to shout and her lack of genuine resistance were absolutely inconsistent with a woman who seeks to protect her honor, if not her life. This argument is untenable.

There is no standard behavioral response when one is confronted by a startling incident like sexual abuse. Some

may shout; some may faint; some may be shocked into insensibility.[37] Not every rape victim can be expected to act conformably to the usual expectations of every one.[38] Complainant had no knowledge that danger would befall her that fateful night. The suddenness of the way she was dragged by accused-appellants cowed her into silence.[39] Moreover, her failure to shout was not because she consented to the deed but because she honestly believed she would be killed if she shouted.[40]

Intimidation in rape cases is not calibrated or governed by hard and fast rules. It is not necessary that the force or intimidation employed be so great or be of such character that it cannot be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose of the accused. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape. It is enough that it produces fear – fear that if the victim does not yield to the bestial demands of the accused, something horrible will happen to her at that moment or thereafter.[41]

Nevertheless, the records show that the victim did not succumb to her attackers desire without putting up resistance. She tried to pull her body away from accused-appellant Teddy Anggit but she could not extricate herself.[42] She also cried and begged them to spare her from their bestial intentions,[43] but her efforts were in vain. We have held that if resistance would be futile, offering none at all does not amount to consent to the sexual assault.[44]

Accused-appellants made much of the medical findings that there were no physical injuries found on complainant's body. According to them, it is inconceivable that the victim did not sustain a single bruise on her body after she was dragged, pushed to the ground and her nipple was bitten. To be sure, the medical examination of the victim is merely corroborative in character and is not an essential element of rape.[45] The absence of external signs of physical injuries does not necessarily negate rape.[46]

Finally, the victim's categorical and consistent positive identification of her attackers, absent any showing of ill motive on her part, prevails over accused-appellants' defense of denial and alibi. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[47]

In the case at bar, the trial court gave credence to complainant's testimony and found that she had no motive to contrive or concoct falsehood against the accused-appellants if it were not for her desire to avenge the wrong committed against her.[48] Likewise, complainant had a good look at her assailants because the light coming from the kitchen and the moonlight shone on their faces. Notably too, accused-appellant Teddy Anggit was her neighbor and accused-appellant Ariel Cabiluna was her nephew.

Therefore, the trial court was correct in convicting accused-appellants of the crime of Rape and sentencing them to suffer the penalty of reclusion perpetua. Under Article 335 (now Article 266-B) of the Revised Penal Code, as amended by Republic Act No. 7659, whenever the rape is committed by two or more persons, the penalty shall be reclusion perpetua to death. There being no modifying circumstance, the lesser of the two indivisible penalties shall be imposed.[49]

With regard to the award of damages, we note that the trial court awarded P50,000.00 in the concept of moral damages but failed to award the same amount as civil indemnity. Civil indemnity is mandatory upon the finding of the fact 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.[50] Thus, another award of P50,000.00 as civil indemnity is in accord with prevailing case law.[51] All of the foregoing civil liabilities shall be borne by the two accused-appellants solidarily, pursuant to Article 110 of the Revised Penal Code.

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Cebu City, Branch 18, in

Criminal Case No. CBU-41296, convicting accused-appellants Teddy Anggit and Ariel Cabiluna of the crime of rape and sentencing them to suffer the penalty of reclusion perpetua with the inherent accessory penalties, is **AFFIRMED** with the **MODIFICATION** that they are ordered to pay Edna Cabusas, jointly and severally, the amount of P50,000.00 as moral damages and the additional amount of P50,000.00 as civil indemnity. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

[1] Penned by Judge Galicano C. Arriesgado.

[2] Rollo, p. 7.

[3] TSN, July 30, 1996, p. 2.

[4] TSN, July 23, 1996, p. 15.

[5] Ibid., pp. 16-17.

[6] TSN, July 29, 1996, p. 17.

[7] TSN, July 23, 1996, p. 17.

[8] Ibid.

[9] Id., p. 18.

[10] TSN, July 19, 1996, pp. 5-11.

[11] Records, Exhibit A, p. 11.

[12] TSN, August 29, 1996, p. 5.

[13] TSN, September 2, 1996, p. 6.

[14] Ibid., pp. 7-13.

[15] TSN, August 22, 1996, pp. 5-13.

[16] TSN, August 21, 1996, p. 4.

[17] Ibid., pp. 5-6.

[18] Id., pp. 7-8.

[19] Id., p. 9.

[20] Rollo, pp. 37-38.

[21] People v. Somodio, G.R. Nos. 134139-40, February 15, 2002.

[22] People v. Ollamina, G.R. No. 133185, February 6, 2002.

- [23] Rollo, p. 188.
- [24] Ibid.
- [25] Id., pp. 188-189.
- [26] Id., p. 80.
- [27] Id., p. 190.
- [28] *People v. Galo*, 349 SCRA 161, 169 [2001] .
- [29] *People v. Givera*, 349 SCRA 513, 530 [2001] .
- [30] *People v. Villadares*, G.R. No. 137649, March 8, 2001.
- [31] Records, p. 7.
- [32] TSN, July 23, 1996, pp. 14-15.
- [33] TSN, July 24, 1996, p. 22.
- [34] *People v. Portugal*, G.R. No. 143030, March 12, 2002, citing *People v. Igat*, 291 SCRA 100 [1998] .
- [35] TSN, July 23, 1996, p. 17.

[36] 343 SCRA 267, 274 [2000] .

- [37] *People v. Baylen*, G.R. No. 135242, April 19, 2002.
- [38] *People v. Silvano*, 309 SCRA 362 [1999] .
- [39] TSN, July 29, 1996, p. 13.
- [40] TSN, July 25, 1996, p. 4.
- [41] *People v. Bertulfo*, G.R. No. 143790, May 7, 2002.
- [42] TSN, July 23, 1996, p. 17.
- [43] TSN, July 24, 1996, p. 24.
- [44] *People v. Las Piñas, Jr.*, G.R. No. 133444, February 20, 2002.
- [45] *People v. Velasquez*, G.R. Nos. 142561-62, February 15, 2002.
- [46] *People v. Manrique*, G.R. No. 139314, June 6, 2002.
- [47] *People v. Lachica*, G.R. No. 143677, May 9, 2002.
- [48] Rollo, p. 96.
- [49] Revised Penal Code, Art. 63 (2).
- [50] *People v. Padrigone*, G.R. No. 137664, May 9, 2002.
- [51] *People v. Daramay*, G.R. Nos. 140235 & 142748, May 9, 2002.

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