

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NOEL ORTEGA, ACCUSED-APPELLANT.*G.R. No. 135846. June 28, 2001*

Ponente: BELLOSILLO, J.

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VERONICA NARAG, sixteen (16), was a fourth year high school student at the Pangasinan National High School. On 29 August 1995, at around 4:00 o'clock in the afternoon, she stood in front of People's Rural Bank at the Poblacion of Lingayen waiting for a ride home to Barangay Bocboc, Aguilar, Pangasinan. She was wearing her school uniform as she had just come from her classes. After a while, a tricycle stopped in front of her. It was driven by accused Noel Ortega, a neighbor in Barangay Bocboc, with her classmates Brenda Soriano and Geneses Calabitan on board. Brenda and Geneses alighted and persuaded Veronica to go with them to Lingayen Beach for a short stroll, supposedly at the instance of the accused.[1]

All three (3) rode in Noel's tricycle and drove to Lingayen Beach. They parked just behind the Provincial Capitol where they occupied a shed with coconut leaves for its walls. As soon as they settled down, one of Veronica's classmates brought out a bottle of San Miguel gin. In a matter of thirty (30) minutes, the bottle was down. It was consumed by the three (3) girls. Noel simply stayed outside and did not drink.[2]

A little later, the girls became tipsy and tried to sleep off their drowsiness. Brenda and Geneses slept on one (1) concrete bench about 1-[1]/2 feet wide, while Veronica occupied another bench 2-[1]/2 feet wide. Veronica's bench was about 3-[1]/2 to 4 meters away from her classmates.[3] Soon enough Veronica sensed that Ortega was inching his way to her. As he came close she could see his face clearly because of the bright moonlight and the street light that was penetrating through the walls of the shed.[4]

According to Veronica, Ortega suddenly pointed a balisong at the left side of her neck and threatened to kill her if she did not give him what he wanted. She tried to free herself but could not.[5] While pointing the knife at her neck, he removed her shorts which she wore under her uniform.[6] After stripping her of her panties, he inserted his penis into her vagina. He penetrated her twice that night.[7] Her loud cries for help were not heard by her classmates who were asleep.[8]

After satisfying his lust, the accused left.[9] Veronica stayed behind with her classmates who were still in deep slumber,[10] and she did not wake them up. Neither did she tell them what happened to her. They left the beach together at 5:45 the following morning.[11] Veronica had to keep her silence because of Noel's threats on her life should she squeal on him.

Conchitina Aquino-Narag, Veronica's mother, confirmed that Veronica went to school on 29 August 1995 and did not return home that night. She, her husband and a brother-in-law went around town looking for Veronica, particularly calling on the homes of her classmates, but there was no sign of Veronica. They went home at 11:00 o'clock in the evening.

At around 6:00 o' clock in the morning of 30 August 1995 Veronica arrived home. She was accompanied by her classmates one of whom explained that she invited Veronica to her birthday party.[12] Veronica simply kept silent. It was not until November that Conchitina learned through the grapevine that her daughter was raped by Noel. So she took Veronica to a doctor for medical examination.[13]

On 25 November 1995 Dr. Fairlin Caras examined Veronica and found that she was not pregnant nor had she ever been, although her hymen had old lacerations at one, three, six and eight o' clock positions which could have possibly been sustained by her on or about 25 August 1995. Some of the lacerations could be one (1) to two (2) years old.[14] Dr. Caras also explained that the lacerations could have been due to sexual intercourse.[15]

Accused-appellant Noel Ortega invoked the so-called but trite "sweetheart" defense. He claimed that he first met Veronica near the church in Brgy. Bocboc sometime in April 1994 while driving his tricycle. Since then he became enamoured with her. Despite being married and they being neighbors, he courted Veronica just the same. They went to the beach in April 1994 and became sweethearts then and there.[16] Their first sexual encounter happened on 14 February 1995 at the Lingayen Beach behind the Capitol. They became intimate since then and had sexual encounters several times. To show that he had won her, Veronica gave him a picture in the beach in April 1994 with an intimate dedication and a handkerchief.[17]

On 29 August 1995, the day of the incident for which he was charged, there was a typhoon. According to Noel, he went home early as he had no passenger.[18] He found Veronica waiting for him in his house. They left at 5:00 o'clock in the afternoon and stayed at the house of Maria Aquino, Veronica's aunt. They had a rendezvous there as it was raining hard and nobody was in the house.[19] They only left the following morning and went their own separate ways afterwards.

It was the version of Noel that the rape charge was only concocted by Conchitina because of her hatred for him as her lover would always stay in his house whenever they quarreled.

Reynaldo de Leon, PAGASA representative, testified that on 29 August 1995 typhoon Gening was in the Northern Luzon area including Pangasinan.[20] The weather report showed that there was light to intermittent rain in the morning and a cloudy evening on 29 August 1995. The skies were overcast in the morning of 30 August 1995.[21] Public storm signal No. 2 was hoisted all over Pangasinan.[22]

On rebuttal, Veronica admitted that the picture presented in evidence was hers but denied having given it to the accused nor having written anything on it. She did not use the name "Vhone1" as found in the picture; neither did she give Noel any handkerchief. She denied any relationship with him although he would go to her house as a friend of her brother to watch television.[23]

On sur-rebuttal, Marlin del Castillo testified that she was three (3) meters away when she saw Veronica write a dedication on her photo and give it to Noel at the balcony of his brother's house,[24] Noel being the cousin of her late husband.[25]

The trial court disbelieved the story of the accused and sustained the testimony instead of the complaining witness. It held the accused guilty of raping Veronica and sentenced him to reclusion perpetua and ordered him to pay her P50,000.00 as moral damages and P20,000.00 as exemplary damages.

Accused-appellant now assigns as error the finding of the trial court that the intercourse between him and Veronica was attended by force and intimidation. He proffers instead his own version as duly supported by testimonial and documentary evidence.

We have repeatedly held that in matters of credibility, the findings of the trial court are of utmost weight.[26]

Absent any showing that certain facts of substance and significance have been plainly overlooked or that the trial court's findings are clearly arbitrary, the conclusions reached by the trial court must be respected.[27] This is because the judges have the firsthand opportunity to verify the truth from the witnesses as culled from the inevitable telltale actions and reactions the latter would make.[28] Such an opportunity is lost to us from the mere reading of the transcripts and records.

However, we do recognize that the crime of rape is enwrapped in peculiar circumstances not found in other crimes. For we acknowledge that an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; in view of the nature of the crime in which only two (2) persons usually are involved, the testimony of the complainant must be scrutinized with extreme caution; and, 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.[29]

The credibility of the rape victim is primordial to the conviction of the accused, who is constitutionally presumed to be innocent of the crime charged.[30] Thus, we should not be precipitate in believing her tale[31] nor should we just relinquish to the trial court the task of calibrating her credibility.

A review of the findings of fact of the court a quo reveals that it viewed the alleged crime to have happened in the following manner - [32]

x x x x (Veronica) and her two classmates boarded the tricycle of the accused and proceeded to the beach at the back of the Lingayen Capitol building; that while in the said place, they proceeded to a shed made of coconut leaves with sidings and which is 3-1/2 and 3-1/2 meters in area; that a moment later, one of her classmates opened up a bottle of gin which she and her classmates, except the accused, drank; that as a consequence thereof, the three (3) of them got dizzy, and thus, laid down on two (2) separate papags with a width of 2-1/2 feet and is four (4) meters away from where her two (2) classmates laid down; that while in that helpless situation, the accused, whom she actually recognized thru his voice and having seen his face due to a light coming from the electric post and the fact that there was moonlight, went near her, pointed a balisong on her lower right neck and at the same time told her that if she will (sic) not give what the accused wanted, the latter will (sic) kill her, for which she felt threatened and intimidated; that as she was being forcibly brought by the accused to the other shed, she tried her best to free herself from the latter; that she even shouted at the top of her voice in order to seek help from her classmates, but unfortunately, she was never assisted as they were fast asleep; that despite the utmost resistance applied by her against the accused, the latter still continued on his bestial desire; that the accused went on top of her, continued pointing his "balisong biente nueve" on her neck; that while in this situation, the other hand of the accused was busy removing her shortpant and panty; that she fought the accused, did her best to move her buttock so as to prevent the penetration of the penis of the accused into her vagina, but all her efforts proved futile as the latter was extremely strong and her body was pulled forcibly by the accused; that for these reasons, accused Noel Ortega successfully inserted his penis twice which penetrated fully into her vagina; that she felt extreme pain all over her body especially on her vagina which likewise bled (sic) because she has (sic) her menstruation at that time of the incident.

We cannot affirm the verdict of the trial court that accused-appellant indeed raped Veronica.

Firstly, we notice a material contradiction in her testimony as to where and how she was allegedly abused. In her 1 December 1995 Sworn Statement, Veronica alleged -

x x x x Upon consuming one bottle of San Miguel (Bilog) together with my classmate, we entered a cottage to have (sic) rest because I felt dizzy. My two classmates sleep (sic) at one of the papag made of bamboo while I sleep (sic) also at the separate papag made of bamboo. While I was sleeping, I noticed that Noel Ortega came near me and poked a balisong (biente nueve) on the right side of my neck and told me that he will (sic) kill me if I will (sic) not give of (sic) what he wants (sic). Noel Ortega remove (sic) my short pant and my panty and

go (sic) on top of my body and he insert (sic) his penis to my vagina (poki) doing push and pull movement.[33]

Nowhere in her Sworn Statement did Veronica mention that she was forcibly grabbed by accused-appellant from her bench inside the shed that she and her classmates occupied. Nor did she say that much before MTC Judge Hermogenes C. Fernandez during the preliminary examination.[34] Again, during the 26 March 1996 reinvestigation, Veronica did not allege anything to that effect before Prosecutor Severino Bugarin. Even in her direct examination at the trial, Veronica stated that accused-appellant went near her, pointed a balisong at her neck, uttered threatening remarks, removed her short pants and panty and inserted his penis into her vagina.[35] It was only in the cross examination that Veronica blurted out that she was forcibly and bodily brought out and taken to another shed by accused-appellant.[36]

It is sound policy that self-contradictions in testimonies should be reconciled, if possible, the rule being the same as that which obtains where witnesses apparently contradict each other.[37] These contradictory statements should be considered in light of explanations and attending circumstances, and whether inconsistencies or incongruities result from misconception of an innocent witness or willful and corrupt misrepresentation.[38] Indeed, to get to the truth, complainant's testimony must be considered and measured in its entirety and not by its truncated portions or isolated passages.[39]

When Veronica testified on her being forcibly grabbed and taken to another shed by accused-appellant, it was just at the start of the cross examination conducted about two (2) years after the incident. There was nothing in the manner of the cross examination that could have misled her. She could not have been so tired out, confused and addled by the battering of cross examination. So, her testimonies and allegations could have been reconciled except that the belated allegation of forced copulation at another place puts a whole new perspective in the prosecution's theory.

The allegation that she was at another place not thoroughly described in the trial during the direct examination raises several unanswered questions. Where is that other place? How far was it from the shed where she and her classmates reportedly slept? Just how was accused-appellant able to take her there? How was the intimidation carried out? What were the surroundings like during the rape? Could her shouts be heard by her classmates? How did she get back to the former shed or did she get back to it at all? If true, the allegation would imply a different amount and manner of force and intimidation used on the complainant by accused-appellant. It would connote a different set of expectations that we may have as to the behavioral patterns and reactions of the complainant and her two (2) classmates.

Material as the contradictions may be, the more troubling aspect of the new claim is, to our mind, the fact that the complainant could not recall this alleged fact right after the incident. She did not remember it during the police investigation or during the preliminary investigation, or during the reinvestigation or even during the direct examination in the trial. Indeed it is perplexing why she did not stand by her prior narration during the cross examination. The inconsistency in her narration appears to be a clear manifestation of her prevarication in an effort to evade the truth.[40]

Secondly, Veronica was inconsistent in other details as well. She was confused as to the time of the rape - she actually said during the reinvestigation that she was raped at about 9:00 o'clock in the evening because when Ortega went near her she looked at her watch.[41] It would seem to us that the act of looking at one's watch while someone was approaching is a tad too casual a gesture for someone suspecting an impending rape. Rather, it bespeaks of an assignation with a lover. It does not surprise us then to find out that at cross examination, Veronica could no longer remember the time element.[42]

Then, there are the other details. As to the situs of the crime, Veronica could not be sure if the bench on which she

was allegedly raped was made of concrete[43] or of bamboo.[44] Nor was she sure that the shed in which the rape was committed was with coconut sidings,[45] or even the fact that there were other sheds around.[46]

As to the commission of the rape, Veronica said during the direct examination that the accused pointed a fan knife at the left side of her neck.[47] On cross examination, she said it was pointed at the right side of her neck.[48] One time she recalled that accused-appellant inserted his organ into her vagina twice,[49] then later she said she could not remember anymore.[50]

Certainly, the inconsistencies relate to matters that the victim of a horrible crime like rape could not be mistaken of regardless of her timidity or modesty. In *U.S. v. Ramos*[51] we observed -

The books disclose too many instances of false charges of rape, attempted rape, and kindred offenses to permit the courts to enter a judgment of conviction of a crime of this nature without having in mind the possibility that the complaining witness may have been actuated by some sinister motive in bringing the charge x x x x These witnesses are usually women who are not always able to give a clear and correct account of the commission of the crime, and not every petty discrepancy or inconsistency in their statements will justify the rejection of their testimony. In such cases the timidity and ignorance of the witnesses must be taken into consideration, or the perpetrators of these heinous offenses will in most instances go unpunished. On the other hand, convictions cannot and should not be sustained when it appears that these witnesses have willfully and knowingly testified falsely as to any matter developed at the trial; or where they are in direct conflict as to any of the circumstances to which they testify, when the conflict arises in regard to a matter about which there could not well be a mistake, despite the timidity or ignorance of the witnesses, unless one or other of the witnesses was knowingly and willfully testifying falsely.

Thirdly, we find that Veronica was far from candid in her narration of the incident. She could not give a clear picture of what really happened to her. What she depicted was that she was raped while accused-appellant laid on top of her, one (1) hand holding a knife which was pointed at her neck, and the other hand holding her shoulder down.[52] Somehow, in this position, accused-appellant was able to undress himself, pull down Veronica's short pants and panty and insert his penis in her vagina, and all she could do was wiggle her buttocks.[53] In *People v. Ladrillo*[54] we defined such manner of rape, wherein the accused used both of his hands to subdue the girl and still managed to undress her and consummate the crime, as defying the common experience of man.

Fourthly, the complaining witness did not appear to have resisted the sexual assault. Veronica gave a general description of her struggles, which was somewhat analogous to the description of the victim in *People v. Dayag*. [55] Veronica simply spoke of resistance or struggle, of her trying to get away but could not,[56] of loud shouts which could not be heard by her sleeping classmates nearby.[57] Such unwillingness to speak out in court when every reason for inhibition and fear had been removed, puts her claim of forced coitus in question.

As we held in *People v. Cueto*, [58] the declaration by a complaining witness, who did not offer any tenacious resistance to the alleged sexual assault, that she was raped and that she struggled and fought back are mere conclusions which are not sufficient to dispel the impression that she tacitly consented to the sexual intercourse.

Such a perception is reinforced by Veronica's actions in the aftermath of the alleged sexual abuse. She did not run away when accused-appellant was already sitting down after the rape - even when her classmates were just a few meters away.[59] In fact, she did not even wake them up but instead stayed through the night on the puerile excuse that the weather was good.[60] She did not wake her classmates up to tell them what happened to her that night, nor did she tell them anything the next day. She did not say anything to her mother the day after the incident nor the days following. It was only after ninety-six (96) days that she broke her silence. She only told her mother after the latter had already heard about the incident from the rumors milling about, and only after her mother noticed her vomiting and always feeling lethargic. Interestingly, at the reinvestigation the prosecutor

noticed her cordial treatment of accused-appellant so much so that he even moved to dismiss the charge.[61] At the very least, her behavior after the alleged rape was not that of a woman who had suffered a shameful and grievous outrage.[62]

The version of the complaining witness not having withstood the rigors of cross examination and her credibility being in tatters, the evidence of the prosecution cannot prove the guilt of accused-appellant beyond reasonable doubt. This, notwithstanding the lack of proof by accused-appellant of his supposed adulterous relations with the complaining witness, or as to her and her mother's questionable motives of accusing him of rape.

We said in *People v. Reyes*:^[63] "x x x accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent upon the prosecution to demonstrate that culpability lies. Their (appellants) freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed."

WHEREFORE, the conviction of accused-appellant NOEL ORTEGA of rape and imposing upon him the penalty of reclusion perpetua, and to pay the complaining witness Veronica Narag moral and exemplary damages is REVERSED and SET ASIDE, and accused-appellant is ACQUITTED of the crime charged.

The Director of Prisons is ordered to facilitate the immediate release of accused-appellant Noel Ortega and to submit a report thereon within five (5) days from notice hereof unless he is being held for some other lawful cause. Costs de oficio.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] *Id.*, pp. 6-8.

[2] Reinvestigation by Prosecutor Severino Bugarin; Records, pp. 57-58.

[3] TSN, 4 December 1996, pp. 37-40.

[4] TSN, 17 March 1997, pp. 14, 23-24.

[5] TSN, 4 December 1996, p. 13.

[6] *Id.*, pp. 13-14.

[7] *Id.*, pp. 15-16.

[8] TSN, 17 March 1997, pp. 5-6.

[9] Preliminary Examination of Veronica Narag by MTC Judge H.C. Fernandez; Records, pp. 3-4.

[10] TSN, 17 March 1997, p. 15.

[11] TSN, 26 March 1996, Reinvestigation; Records, p. 61.

[12] TSN, 7 July 1997, pp. 3-6.

[13] *Id.*, pp. 7-8.

[14] TSN, 9 October 1996, pp. 5-8.

[15] *Id.*, p. 9.

- [16] TSN, 20 August 1997, pp. 4-8.
- [17] TSN, 29 September 1997, p. 30.
- [18] Id., p. 24.
- [19] Id., pp. 26-27.
- [20] TSN, 7 July 1997, p. 17.
- [21] Id., p. 19.
- [22] Id., p. 23.
- [23] TSN, 2 March 1998, pp. 3-4.
- [24] TSN, 16 March 1998, pp. 3-4, 10.
- [25] Id., p. 2.
- [26] People v. Uldarico Honrado, G.R. Nos. 136012-16, 26 September 2000; Also People v. Lito Rosales, G.R. No. 126402, 13 September 2000.
- [27] People v. Liberato Sarmiento, G.R. No. 131806, 20 October 2000.
- [28] People v. Julio Lopez, G.R. No. 136252, 20 October 2000.
- [29] People v. Eleuterio Dimapilis, G.R. No. 129573, 18 October 2000.
- [30] People v. Tomas Tundag, G.R. Nos. 135695-96, 12 October 2000.
- [31] People v. Mendiguarin, No. L-49616, 20 August 1979, 92 SCRA 679.
- [32] Rollo, pp. 24-25.
- [33] Exh. "C," Folder of Exhibits for the Prosecution.
- [34] Records, pp. 3-4.
- [35] TSN, 4 December 1996, pp. 9-16.
- [36] TSN, 17 March 1997, pp. 3-14.
- [37] Francisco, V., Evidence, Revised Rules of Court, Vol. VII, Part II, 1973 Edition, p. 613, citing Fullam v. Rose, 160 Pa. St. 47, 28 Atl. Rep. 497.
- [38] Id., citing 98 C.J.S. 341-343.
- [39] People v. Gaorana, G.R. Nos. 109138-39, 27 April 1998, 289 SCRA 652.
- [40] See People v. Roberto San Juan, G.R. No. 130969, 29 February 2000.
- [41] TSN, 26 March 1996, p. 6.
- [42] TSN, 17 March 1997, p. 4.
- [43] TSN, 4 December 1996, p. 37.
- [44] 4 December 1995 Preliminary Examination and 1 December 1995 Sworn Statement of Veronica Narag, Records, pp. 3-4.

- [45] TSN, 4 December 1996, p. 37; Also TSN, 17 March 1997, p. 15.
- [46] TSN, 17 March 1997, pp. 15 and 17.
- [47] TSN, 4 December 1996, p. 13.
- [48] TSN, 14 March 1997, p. 6.
- [49] TSN, 17 March 1997, p. 11.
- [50] Id., p. 9.
- [51] 35 Phil. 671 (1916).
- [52] TSN, 17 March 1997, pp. 7-10.
- [53] Id, p. 10.
- [54] G.R. No. 124342, 8 December 1999, 320 SCRA 61.
- [55] No. L-30619, 29 March 1974, 56 SCRA 439.
- [56] TSN, 4 December 1996, p. 13.
- [57] Id., p. 22; Also TSN, 17 March 1997, pp. 5-6.
- [58] No. L-46697, 25 August 1978, 84 SCRA 774.
- [59] TSN, 26 March 1996, p. 8.
- [60] TSN, 17 March 1997, pp. 14-15.
- [61] 29 April 1996 Resolution of Prosecutor Severino B. Bugarin; Records, pp. 42-45.
- [62] See Note 34.
- [63] Nos. L-36874-76, 30 September 1974, 60 SCRA 126.

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