

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOUIE RAMOS Y NICAL @ ATOY, ACCUSED-APPELLANT.

G.R. No. 136398. November 23, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

Accused-appellant Louie Ramos y Nical @Atoy was charged with rape in the Regional Trial Court, Branch 75, Olongapo City. The information alleged ^¾

That on or about the 6th day of November, 1995, at Basobas Compound, Barangay Calapandayan, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, actuated by lust and by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously, have carnal knowledge with one Eufemia Labrador y Dumangas, without her consent and against her will.

CONTRARY TO LAW.

The prosecution evidence consisted of the lone testimony of complainant Eufemia Labrador y Dumangas, a lesbian, then 31 years old, who had no boyfriend. She had a girlfriend named Gemma who was residing in France. Her other friend was Mary Jane Ramos-Strong, the sister of accused-appellant.

Complainant Eufemia testified that at about 5:00 p.m. of November 6, 1995, she was at the house of accused-appellant in Basobas Compound, Calapandayan, Subic, Zambales upon the invitation of accused-appellant's sister, Mary Jane, to attend the birthday party of the latter's laundrywoman, Linda. The party was held in front of Linda's house. Eufemia consumed four glasses of gin mixed with orange juice, which were served to the guests. Feeling drunk, Eufemia asked permission to leave but Mary Jane prevailed upon her to sleep in her house that night. Mary Jane took Eufemia to her house and made the latter sleep in her bedroom. The room had no partition but only had a red curtain to separate it from the rest of the house. At 10:30 p.m., while Eufemia was asleep, she felt someone on top of her and experienced some pain in her private parts, which was bleeding. Realizing that she was being raped, Eufemia shouted and struggled to free herself, but the accused-appellant proved to be too strong for her. Accused-appellant only stopped when they heard some noise outside the room. Accused-appellant put on Eufemia's short pants on her and hurriedly left, leaving his own pants behind. When Mary Jane arrived, Eufemia asked Mary Jane to run after her brother.[1]

The following day, November 7, 1995, Mary Jane accompanied Eufemia to the Olongapo City General Hospital in Olongapo City for medical examination. Dr. Arlene B. Cayetano, who conducted the examination,[2] issued a medical certificate (Exh. B)[3] containing the following findings:

Fresh laceration, right vaginal wall
SKIN: (-) bruises, (-) hematoma
PELVIC EXAM: Normal external genitalia, hymen not intact.

SPECULUM: (+) Blood occupying the vaginal canal

(+) Fresh lacerations about 1.5 cm. - 2 cm. in length on the upper third of vaginal wall, right side.

I.E.: Cervix closed, (-) wriggling, corpus not enlarged.

(-) adnexal tenderness nor mass, (+) bleeding

GRAM STAINING: For spermatozoa NEGATIVE, pus cells

moderate, epithelial cells - few gram negative

bacilli few

Eufemia then went to the barangay hall with Mary Jane and learned that accused-appellant's father had earlier reported that his son, accused-appellant, was making trouble, although the father did not mention the rape incident.[4] Eufemia gave a sworn statement (Exh. A)[5] before SPO3 Lilia Esquivel Guerrero. On November 8, 1995, she filed a criminal complaint (Exh. D)[6] for rape against accused-appellant before the Municipal Trial Court of Subic, Zambales.

As the defense admitted the genuineness and due execution of the medical report, the testimony of Gina Sison, record custodian of the Olongapo City General Hospital, was dispensed with. Dr. Cayetano could not be presented to testify as she was no longer connected with the hospital, but her medical report on the examination of Eufemia was admitted by stipulation of the parties.[7]

On the other hand, the defense presented three witnesses, namely, Mary Jane Ramos-Strong, Esperanza Ramos, and accused-appellant himself.

Mary Jane Ramos-Strong, sister of accused-appellant and a friend of complainant Eufemia D. Labrador, testified that at about 3:00 p.m. of November 6, 1995, there was a party at her house, it being the birthday of her laundrywoman Linda. She invited Eufemia to join the party where she served gin and orange juice. Together with Eufemia, Roy, and Teddy, they stayed in front of Linda's house, which is located at the back of her house. At about 8:00 p.m., Eufemia excused herself from the group as she was already drunk. Mary Jane said that instead of taking Eufemia home, she invited Eufemia over to her house. After showing Eufemia her bed, Mary Jane went back to the group and resumed drinking. At about 11:00 p.m., the party broke up, and she went upstairs. She found Eufemia and her brother, accused-appellant, sleeping together in her bed. Mary Jane said she then woke up the two by shouting "gising!" at them. They both had their clothes on and were covered with a blanket. When she confronted Eufemia why the latter was lying in bed with accused-appellant, Eufemia answered, "Hindi ko alam. Akala ko ikaw iyon." Eufemia told Mary Jane that accused-appellant had raped her, but Mary Jane asked why she (Eufemia) did not shout. Eufemia insisted it was because "I really thought it was you."

Although Eufemia is a lesbian and she and Mary Jane often slept together in Mary Jane's bedroom, the two had not been lovers. Mary Jane said Eufemia was wearing a polo shirt and cycling shorts when she saw her in bed.[8] Mary Jane did not notice any bloodstain on the bedsheet nor on the mattress. She also said that there was a brownout that night but the sala area was lighted.[9]

Mary Jane said that at about 12:00 midnight, her father went to the barangay hall to report that accused-appellant created trouble in his house because of a quarrel between Mary Jane and accused-appellant.[10] The following morning, Mary Jane accompanied Eufemia to the hospital for her medical examination and thereafter to the barangay hall to report the rape incident.[11]

Esperanza Ramos, mother of accused-appellant and Mary Jane, testified that Eufemia and her daughter were friends and that, at about 3:00 p.m. of November 6, 1995, Eufemia came for the birthday party of her laundrywoman Linda. There was drinking in front of Linda's house. According to Esperanza, her house had two

bedrooms, one of which was occupied by her married daughter Ofelia Ramos and the other by Mary Jane. Esperanza Ramos and her husband and their other children slept in the sala. Esperanza said they slept at about 9:00 p.m., but were awakened at about 11:00 p.m. when Mary Jane shouted upon seeing Eufemia and accused-appellant sleeping together. Esperanza said she rushed to Mary Jane's bedroom and saw Eufemia and accused-appellant in bed, although they had clothes on. Eufemia was wearing a polo shirt. Both were tucked under a blanket waist down with Eufemia's head resting on the arm of accused-appellant. Esperanza said that when Mary Jane shouted "Hoy, gising!," accused-appellant immediately stood up and left the room. Eufemia did not cry nor complain to her about what happened. Eufemia left the house at noon of the following day. Esperanza Ramos testified that her husband went to the barangay hall because accused-appellant was creating trouble in the house. He was later apprehended by the police and released the following day.[12]

Accused-appellant Louie Ramos y Nical testified that he had known Eufemia, a lesbian, as the friend of his sister Mary Jane. Eufemia was often in their house. On November 6, 1995, accused-appellant was having a drinking session with his friends Jong, Glen, and Johnny in front of his house at the Basobas Compound in Subic, Zambales. Four bottles of "gin bilog" were consumed as they celebrated the birthday of the laundrywoman Linda. His sister Mary Jane was also drinking with Eufemia, Roy, and some other persons in front of Linda's house, about ten meters from where accused-appellant and his group were. After the party was over, accused-appellant said he decided to sleep in Mary Jane's bedroom. There was a brownout that night. He was awakened when Mary Jane slapped him on the buttocks and shouted "Hoy, gising!" Mary Jane was angry and accused her brother of raping Eufemia. Accused-appellant denied he had done anything wrong and he and Mary Jane later had an exchange of words during which he threw a chair on the floor. At that instance, accused-appellant said Eufemia was awakened.[13]

The trial court found accused-appellant guilty of raping Eufemia. In its decision rendered on May 26, 1997, the trial court gave credence to the testimony of Eufemia that, because she was drunk, she fell asleep and accused-appellant was able to molest her. The court took into account two mitigating circumstances in favor of accused-appellant, to wit: drunkenness and voluntary surrender. As there was no aggravating circumstance to offset the mitigating circumstances, the court sentenced accused-appellant as follows:

WHEREFORE, finding the accused LOUIE RAMOS y NICAL GUILTY beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code, as amended, he is hereby sentenced to suffer an indeterminate prison term of twelve (12) years of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum with all the accessory penalties attached thereto; and to indemnify the victim Eufemia Labrador the amount of P50,000.00 as moral damages and P25,000.00 as exemplary damages, plus costs.

The accused shall be credited in full of his preventive imprisonment if he had agreed voluntarily in writing to abide to the same disciplinary rules imposed upon convicted prisoners, otherwise to only four-fifths (4/5) thereof.

SO ORDERED.[14]

On appeal, the Court of Appeals[15] increased the penalty on accused-appellant to reclusion perpetua even as it deleted the award of exemplary damages and, in accordance with Rule 124, §13 of the Rules on Criminal Procedure, certified the case to this Court for review.

Accused-appellant claims that the trial court erred in according credence to the testimony of complainant Eufemia and disregarding the testimonies of the defense witnesses. He points out the improbability of the trial court's finding that he was able to have sexual intercourse with Eufemia while the latter was asleep. He contends that Eufemia's testimony that she tried to resist as accused-appellant was trying to penetrate her implies that she was

fully conscious of what was being allegedly done to her, and that the penetration could not have taken place if, as Eufemia testified, accused-appellant covered her mouth with his one hand while his other hand held her hand. Eufemia could just have closed her legs and moved her lower body continuously to prevent the penetration. Accused-appellant also calls attention to the fact that Eufemia never made an outcry, otherwise she would have alerted the people in the house, considering that only a curtain separated the bedroom from the other parts of the house. Accused-appellant thus insinuates that Eufemia had agreed to have sex with him although she thought it was her friend Mary Jane who was the one on top of her.

These contentions are without merit.

By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that usually only the participants can testify as to its occurrence.

The evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court considering its opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination.[16] After a careful evaluation of the evidence presented by both parties, we find no reason to alter, much less reverse, the finding of the trial court that accused-appellant is guilty beyond reasonable doubt as affirmed by the Court of Appeals.

First. We find the following testimony of complainant Eufemia credible, plain, straightforward, and positive:

Q Now, on 6 November 1995 at around 10:00 o'clock in the evening, do you recall where you were?

A Yes, sir, I was in the room of Mary Jane Ramos.

Q Where is this room of Mary Jane Ramos?

A In their house, sir.

Q What is the address of Mary Jane Ramos?

A Basobas Compound, Calapandayan, Subic, Zambales, sir.

Q Why were you in the room of Mary Jane Ramos on 6 November 1995 at around 10:00 o'clock in the evening?

A To sleep there, sir.

Q And do you know if there was any occasion on that particular day?

A Yes, sir, it was the birthday of her laundrywoman, sir.

Q And do you know what was served in that birthday party of Mary Jane Ramos?

A Yes, sir, only liquor.

Q What kind of liquor?

A Gin and 8 o'clock, sir.

Q And did you drink this gin mixed with 8 o'clock?

A Yes, sir.

Q How many glasses have you drunk?

A Four glasses, sir.

Q After drinking four glasses, of this mixture, what did you feel?

A I felt that I got drunk, sir.

Q So what did you do when you got drunk?

A I asked permission from Mary Jane to go home, sir.

Q Were you allowed by Mary Jane to go home?

A No, sir, she asked me to sleep at their house.

Q And did you sleep in the house of Mary Jane?

A Yes, sir.

Q What part of the house of Mary Jane did you sleep?

A In her room, sir.

Q Could you please describe this room of Mary Jane where you sleep?

A A concrete room, sir.

Q What were the door of the room? What was it made of?

A There was no door, sir. There was only a curtain.

Q What kind of curtain does it have?

A A red colored curtain used in the room, sir.

Q While inside the room of Mary Jane, do you know of any unusual incident that happened to you while alone in that room?

A Yes, sir.

Q Could you please tell us what was that unusual incident that happened to you while you are inside the room of Mary Jane?

A I was sleeping at that time and suddenly something was on top of me, sir.

Q And were you able to recognize that someone on top of you?

A Yes, sir.

Q Who was he?

A Louie Ramos, sir.

Q And what was he doing while on top of you?

A He did something to me and I felt pain in my private part, sir.

Q What is that he did something to you?

A I felt that my private part was bleeding and that something went on top of me, sir. And I found out later on that he did something to me, sir.

Q And when for the first time that you feel that your private parts were aching or painful?

A Right after I woke up because I felt he was on top of me, sir.

Q You mean to say you are sleeping at that time?

ATTY. ALINEA

Objection, your honor.

PROS. FLORESTA

Q What were you doing at that time?

A I was sleeping because I got drunk, sir.

Q And what did you do when you observed or noticed that the man [who] was on top of you was Louie Ramos?

A I started to shout but he covered my mouth but I struggled, sir.

COURT

Q How did you struggle?

A I also pushed him away from me, sir.

PROS. FLORESTA

Q And were you able to push him away?

A I was not able to push him away because I was drunk and he was stronger than me, sir.

Q When you were not able to push him away, what did you do next?

A I heard scratching noises and suddenly he released me, sir.

Q And when he released you, what did the accused do?

A He put on the shorts which he took from me, sir.

Q Whose shorts was that?

A My shorts, sir.

COURT

Q By the way, at the time that you slept, what were you wearing?

A Shorts and stretch pants. I was wearing a polo shirt and T-shirt underneath, sir.

Q Were you wearing a bra?

A No, sir.

Q Were you wearing a panty?

A Yes, sir, but he took it.

Q How about the accused, what was he wearing?

A He was wearing pants, sir.

PROS. FLORESTA

Q Now, why did the accused took your short pants?

ATTY. ALINEA

Objection, your Honor.

COURT

Let the witness answer.

WITNESS

A It was because he removed his pants and because he was in a hurry probably, that's the reason why he wore my shorts in a hurry, sir.

PROS. FLORESTA

Q And he left his pants

A Yes, sir.

Q Now, after the accused left the room, what did you do when you have no longer pants to wear on?

A I started to shout, sir.

Q And what happened after your short was worn by the accused?

A His sister suddenly arrived.

COURT

Q You mean Mary Jane?

A Yes, sir.

PROS. FLORESTA

Q And when Mary Jane arrived, what did you do?

A I told her to ran after her brother because he raped me, sir.

Q By the way, were you able to observe if there is any blood that gone out from your private parts?

ATTY. ALINEA

Objection, your Honor.

COURT

Let the witness answer.

A Yes, sir.

. . . .

Q Aside from blood, what else did you feel?

A I was bleeding and it was painful inside, sir.

Q Aside from the blood, did you notice if there was any other liquids inside your private parts?

A Nothing more, sir.[17]

On cross-examination, Eufemia affirmed her allegation that she was raped by accused-appellant while she was asleep because she became drunk after consuming four bottles of "gin bilog" following the "tagay" type of drinking. She was only awakened when she felt accused-appellant on top of her. As she described the incident in her own words:

Q And the drinking session on that particular incident commenced or started at what time?

A 5:00 o'clock in the afternoon, sir.

Q And it end up to early morning or up to what time in the evening?

A 8:30 in the evening, sir.

Q And during that time of celebration, the three of you, you and the two other companions, you have consumed how may bottles of bilog?

A Four, sir.

Q So, it is a ration of about one and one plus of bilog per person, do you agree?

A Yes, sir.

Q And that the drinking style is of the "tagay" type or the bottle would go around from one hand to another or you drink at your own time, do you have your own bottle or a glass?

A Tagay, sir.

Q And you admitted that from 5:00 to 8:00, or for the span of time of more or less three hours consuming four bilog or bottle of bilog, can you candidly tell before this Honorable Court that after consuming that four (4) bottles of bilog, you would still be in your proper mood or decorum or you would be under the comatose stage, kindly tell us?

A I was already drunk, sir.

Q When you said that you were already drunk, is it in the comatose stage or meaning, you were already unconscious?

A Yes, sir. I was not aware anymore of what I was doing at that time.

A But you told the Court when you testified that the sister was preventing you in your going home, but instead, because of the lateness of the night, you have to stay there and sleep with her in one of the rooms?

A Yes sir.

....

Q And you also testified that suddenly, you found the accused on top of you?

A Yes, sir.

COURT:

Q What time was it when you noticed the accused placed [himself] on top of you?

A 10:30 o'clock, sir.

Q Did you say you went to bed at 8:30?

A Yes, sir.

Q So, there was a span of two hours between the time you slept and when you discovered the accused on top of you?

A Yes, sir.

Q Were you still drunk when you woke up?

A Yes, sir.

Q You were dizzy?

A Yes, sir.

Q How were you able to identify the accused when you were drunk and you were dizzy?

A He introduced himself to me, sir.

Q You mean he told you his name?

A Yes, sir.

Q Was he also drunk at that time?

A Yes, sir.

Q Did he ever court you?

A No, sir.

Q Did you ever see the accused prior to this incident?

A Yes, sir, in that house.

COURT:

Continue, Atty. Alinea.

ATTY. ALINEA:

Thank you, you Honor.

Q Now, when you noticed the accused atop of you, did you not shout?

A I did, sir.

Q And nobody in the household of your best friend came to you to offer assistance or help?

A Nobody, sir.

Q When nobody came to help you, did you not slap him or scratch him with your fingers or fingernails, or you kick his balls or did anything like growl, or you did not do those things and you just laid there and did not do anything?

A I pushed him away, sir.

COURT:

Q Were you able to push him?

A No, sir.

Q Why?

A Because he is stronger than me, sir and I was also so weak at that time.

ATTY. ALINEA:

May I proceed, your Honor.

Q So, when you were unable to push him because he is stronger, that was the time that you claimed before this Court and you testified that because you were unable to push him back, then, he raped you?

A Yes, sir.

COURT:

Q How many minutes or seconds did the accused lie on top of you?

A I cannot say, I only felt that he was on top of me, sir.

Q While he was on top of you, what was he doing?

A He was kissing my body, sir.

Q Is that all he did to you?

A And he used me, sir.

Q What do you mean by he used you?

A He inserted his penis into my private parts, sir.

Q How do you know that when according to you, you were still dizzy and drunk?

A I felt pain on my private parts, sir.

. . . .

Q Now, did you not, when he was trying to insert or "lagay" his "ari" into your "ari", did you not kick or move your body or roll over so that he will be unable to insert his ari into your ari, or you just stayed there lying properly.

A I struggled, sir.

Q Will you propound before this Court how you struggled?

A I was pushing him away from me and he suddenly covered my mouth, sir.

Q Do you want to tell this Court that the accused used both hands to cover your mouth while he was trying to insert his "ari" into your "ari"?

A Just one, sir.

Q And the other hand is holding your other hand so that you cannot struggle or move?

A He was covering my mouth and he was holding my hand, sir.

Q And so, when his hand was holding your mouth and the other one was holding your hand, it was in that instance that he was able to insert his "ari" into your "ari", is that what you mean?

A Yes, sir, because he is strong.[18]

When recalled to the stand, Eufemia reiterated her testimony that she was raped by accused-appellant and that she filed the case because she was disgraced.

DIRECT EXAMINATION ON WITNESS

BY PROS. FLORESTA:

Q The accused in this case Louie Ramos testified that he did not rape you because he only slept beside you in the room of [his] sister Mary Jane. What can you say?

A It is not true, sir.

Q The accused in this case Louie Ramos testified that he did not rape you because he only slept beside you in the room of the sister, Mary Jane. What can you say?

A It is not true, sir.

Q What is the truth?

A The truth is he raped me, sir.

Q The accused and also his sister testified that you filed this case for rape because you were put to shame because you were found sleeping with the accused in the room. What can you say about this testimony of the sister of the accused?

A It is really the truth, sir.

Q What is the truth that you said as your statement rebutting the statement of the accused and his sister?

A I showed to Mary Jane as a matter of evidence that I was bleeding, sir.

Q And where did Mary Jane see this blood?

A On the place where I had laid and also in my underwear, sir.

Q The accused and his sister Mary Jane also testified that what was reported to the police was the trouble created by the accused Louie Ramos inside the house. What can you say to this statement?

A It is not true, sir.

Q What is the truth?

A The reason why I filed a complaint against him because I was raped by him, sir.

PROS. FLORESTA

That will be all for the witness, your Honor.

COURT

Cross-examination?

ATTY. UNCIANO

Yes, your Honor. With the kind permission of this Honorable Court.

CROSS-EXAMINATION ON WITNESS

BY ATTY. UNCIANO:

Q Madam Witness, you were surprised by Mary Jane sleeping on her bed with the accused Louie Ramos on 6 November 1995 about 10:00 o'clock in the evening?

A That is not true, sir.

Q But you will agree with me that when Mary Jane arrived and entered her room, she created a scene by waking you up together with Louie Ramos?

A Yes, sir.

Q And because of the scene created by Mary Jane, all the other members of the household were roused from their sleep and they gathered in the room where you and Louie Ramos were sleeping?

A No, sir.

Q But you will agree that there was a commotion that followed wherein the accused Louie Ramos sleeping beside you was awoken by Mary Jane, is it not?

COURT:

This witness is being presented as rebuttal.

ATTY. UNCIANO

The brother was not objecting, your Honor, We will submit.

COURT:

You confine yourself to the testimony of this witness as rebuttal.

ATTY. UNCIANO

Q You said that you were bleeding and when you subjected yourself to medical examination, were you still bleeding?

A Yes, sir.

Q Did you show her your underwear which appeared to have blood on it?

A Yes, sir.

Q And did you submit that piece of evidence to the Honorable Court when you testified?

A No, sir, I did not.

Q You did not because there was really no panty that was bloodied, it is not?

A There was, sir, and Dra. Cayetano saw the panty.

Q But you will agree with me definitely by reason of this incident, you felt that you were subjected to shame and you were ridiculed?

A No, sir, it is really my desire to file a complaint.

Q But you will agree with me that while after this incident that you mentioned you still slept in the house of the accused until the following day?

PROS. FLORESTA

Objection, your Honor. We are going further.

COURT

OBJECTION SUSTAINED.[19]

Eufemia's testimony was corroborated by the medical findings of fresh hymenal lacerations, thereby confirming the fact that she was violated. Two days after she had been raped, Eufemia went to the police precinct and gave a sworn statement. The next day, she filed a criminal complaint for rape against accused-appellant.

As against such evidence of the prosecution, the bare denial of accused-appellant, and his later inconsistent insinuation that he had sex with Eufemia with her consent, cannot prevail. Accused-appellant's change of theory, from denial to claim of consent by Eufemia to the sexual intercourse, made apparently after realizing the futility of his earlier defense, is a clear indication that his defense was nothing but a mere concoction.[20]

Second. A meticulous review of the evidence presented leads us to the conclusion that the rape was consummated even before complainant Eufemia was awakened. She testified that after drinking four glasses of gin mixed with orange juice, she got drunk and had to ask Mary Jane for permission to go. However, Mary Jane prevailed on her to sleep in the former's house. She fell asleep until she felt someone on top of her whom she recognized as accused-appellant. She felt pain in her private parts which was bleeding. She tried to shout but accused-appellant covered her mouth. Eufemia tried to push accused-appellant away but he held her hand. Accused-appellant released her only when they heard some noise outside the room. In his hurry, accused-appellant put on Eufemia's pants and left, leaving behind his own pants. Moments later, Mary Jane arrived.

Art. 335 of the Revised Penal Code, as amended by Republic Act No. 7659, states that rape is committed by having carnal knowledge of a woman who is, inter alia, unconscious. This Court has held that carnal knowledge with a woman who is asleep constitutes rape.[21] In *People v. Conde*,[22] the complainant was a 38-year old housewife who was then sleeping when she felt something hard penetrating her private parts. When she opened her eyes, she saw the accused on top of her. The doctor who examined the complainant testified that it is possible for a woman to be raped while asleep and that if she had several childbirths, she may be raped even without being awakened. In *People v. Caballero*,[23] there was a birthday celebration in the house of the complainant. When the party was over at about 1:00 a.m., the accused, who was one of the guests, asked permission to sleep in her house, together with the other members of the household, on the pretext that it was already late. As the house had only one room, everybody slept therein, including the complainant and the accused. Thinking that the accused was her husband, the complainant did nothing to oppose the act until it was consummated. It is evident that the complainant would not have consented to the act had she known that the man was not her husband. In *People v. Corcino*,[24] the accused had earlier left the house of the complainant and returned at about midnight. The complainant's husband was away. While everybody was asleep, the complainant woke up feeling the weight of a man upon her and having sexual intercourse with her. Believing he was her husband, she called him by his name but got no answer. She again called him and the accused answered in a low voice, from which she knew that the man on top of her was not her husband, and she pushed him away. In *People v. Dayo*,[25] the accused knew that the husband of the complainant was away. The complainant was sleeping beside her 13 year-old son when the accused raped her. The boy, upon seeing the accused on top of his mother, tried to wake her up by touching her but she did not wake up nor answer him. After consummating his lewd designs, the accused left.

In all these cases, the complainant was asleep and, as such, was unconscious when the rape was consummated by the accused. There was absence of consent and voluntariness on the part of the complainant.

In the present case, the medical finding of the absence of bruises and hematoma all the more confirms the fact that the rape happened when Eufemia was asleep and was not in a position to make an outcry or even put up a token resistance to prevent the sexual assault upon her. For that matter, the lack or even absence of resistance is not necessary because the law does not impose upon a rape victim the burden of proving resistance.[26] Moreover,

the medical finding of the absence of spermatozoa does not negate rape.[27] The testimony of Eufemia was in fact supported by the testimonies of defense witnesses Esperanza Ramos, mother of accused-appellant, and Mary Jane Ramos-Strong, his sister. Their testimonies established the fact that they saw accused-appellant and Eufemia lying side by side each other with their clothes on and that both were covered by a blanket. Even accused-appellant admitted that he was sleeping on Mary Jane's bed but denied raping Eufemia as he was surprised to see her lying beside him. Accused-appellant thus concluded that what probably transpired between him and Eufemia was voluntary. To these averments, we reiterate our finding that Eufemia was raped while she was asleep.

Third. The defense has shown no ill motive for Eufemia to testify falsely against accused-appellant. The morning after the rape, Eufemia submitted herself to a medical examination. Later, she went to the barangay hall to report the rape incident. The day after, she went to the police station to report the rape incident. She lodged a criminal complaint for rape against accused-appellant before the Municipal Trial Court of Subic, Zambales barely three days after the rape. Considering the attendant publicity that goes with a rape case, Eufemia would not have gone to the extent of fabricating a story that would expose her to public humiliation if it were not true, especially considering the fact that she is known in the neighborhood to be a lesbian.

More importantly, Mary Jane, the sister of accused-appellant, had been a very close friend of Eufemia since 1985. Eufemia frequented the house of accused-appellant because his sister Mary Jane was her longtime friend. Eufemia would often stay for a few rounds of drinks.[28]

Mary Jane testified that she and Eufemia often slept together in Mary Jane's bed.[29] Even Mary Jane testified that she knew of no reason why Eufemia should accuse her brother of raping her (Eufemia).[30]

On cross-examination, Mary Jane stated that she and Eufemia were like sisters. Her family treated Eufemia as one of them as she was often in their house whenever there was an occasion. Through it all, Mary Jane never convinced Eufemia to desist from pursuing the rape case against her brother. In fact, Mary Jane even accompanied Eufemia to the barangay hall to report the rape incident because she values their friendship.[31] When presented as a sur-rebuttal witness, Mary Jane testified on cross-examination that she also accompanied Eufemia to the Olongapo City General Hospital for the medical examination of Eufemia. Mary Jane even paid for the medical expenses as Eufemia had no money then. She stated that she accompanied Eufemia so that the latter would not think that she was tolerant of her brother.[32]

Fourth. The trial court found accused-appellant guilty of raping Eufemia which warrants the imposition of the penalty of reclusion perpetua pursuant to Art. 335 of the Revised Penal Code, as amended by R.A. No. 7659. However, the trial court appreciated the mitigating circumstances of intoxication and voluntary surrender of the accused-appellant in the absence of any aggravating circumstance and accordingly imposed on her a lower penalty after applying the Indeterminate Sentence Law.

The Court of Appeals ruled that the trial court erred in applying the Indeterminate Sentence Law, because rape is punishable by reclusion perpetua, a single indivisible penalty which, under Art. 63 of the Revised Penal Code, must be applied regardless of any mitigating or aggravating circumstances. The Court of Appeals thus increased the penalty to reclusion perpetua and deleted the award of exemplary damages by reason of the absence of any aggravating circumstance.

The decision of the Court of Appeals must be affirmed.

Under Art. 63 of the Revised Penal Code, since the crime of rape is punishable by reclusion perpetua, a single indivisible penalty, the penalty should be applied by the trial court regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. Therefore, the penalty in the present case

remains to be reclusion perpetua.

As to the award of exemplary damages, the Court of Appeals is correct in deleting the same under Art. 2230 of the Civil Code in the absence of any aggravating circumstance present in the commission of the rape. However, we observe that the trial court merely awarded P50,000.00 as moral damages to complainant Eufemia. The current rule is that the complainant shall be awarded a civil indemnity of P50,000.00, with an additional award of P50,000.00 as moral damages.[33] This award is to be given even if there is neither allegation nor evidence presented as basis therefor.[34] The conventional requirement of "allegata et probata" in civil procedure and for essentially civil cases is dispensed with in prosecutions for rape with the civil aspect included therein since no appropriate pleadings may be filed wherein such allegations can be made.[35]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with the MODIFICATION that, in addition to the amount of P50,000.00 awarded as moral damages, accused-appellant is ORDERED to pay complainant Eufemia Labrador y Dumangas the amount of P50,000.00 as civil indemnity.
SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] TSN, pp. 2-12, May 8, 1996.

[2] TSN, pp. 14-16, May 8, 1996.

[3] RTC Records, p. 45.

[4] TSN, pp. 12-13, May 8, 1996.

[5] RTC Records, pp. 43-44.

[6] RTC Records, p. 47.

[7] Orders dated June 4, 1996 and June 5, 1996, RTC Records, pp. 30-A, 37.

[8] TSN, pp. 2-11, June 10, 1996.

[9] TSN, pp. 2-3, Oct. 2, 1996.

[10] TSN, p. 10, June 13, 1996.

[11] TSN, pp. 4-5, June 13, 1996; TSN, pp. 3-4, Oct. 2, 1996.

[12] TSN, pp. 2-13, July 2, 1996.

[13] TSN, pp. 2-9, July 9, 1996; TSN, pp. 2-3, July 11, 1996.

[14] Rollo, p. 29.

[15] Per Justice Minerva P. Gonzaga-Reyes, Chairman, Fourth Division, (now Associate Justice of the Supreme Court) and concurred in by Justices Hector L. Hofileña and Omar U. Amin.

[16] *People v. Maglente*, 306 SCRA 546 (1999); *People v. Dela Paz*, 299 SCRA 86 (1998).

[17] TSN, pp. 4-11, 12, May 8, 1996.

[18] TSN, 8-11, 12-17, 19-21, May 29, 1996.

[19] TSN, pp 2-5, Aug. 29, 1996.

[20] *People v. Pambid*, G.R. No. 124453, March 15, 2000.

[21] *People v. Conde*, 252 SCRA 681 (1996) citing *People v. Caballero*, 61 Phil. 900 (1935), *People v. Corcino*, 53 Phil. 234 (1929), *People v. Dayo*, 51 Phil. 102 (1927).

[22] *Supra*.

[23] *Supra*.

[24] *Supra*.

[25] *Supra*.

[26] *People v. Sancha*, G.R. No. 131818-19, February 2, 2000; *People v. Cantos*, 305 SCRA 786 (1999).

[27] *People v. Soriano*, 272 SCRA 760 (1997).

[28] TSN, pp. 5-6, May 29, 1996.

[29] TSN, p. 8, June 10, 1996.

[30] *Id.*, p. 11.

[31] TSN, p. 3, 7-8, June 13, 1996.

[32] TSN, pp. 3-4, Oct. 2, 1996.

[33] E.g. *People v. Napiot*, 311 SCRA 772 (1999); *People v. Gementiza*, 285 SCRA 478 (1998).

[34] *People v. Prades*, 293 SCRA 411 (1998).

[35] *People v. Napiot*, *supra*; *People v. Bañago*, 309 SCRA 417 (1999); *People v. Prades*, *supra*.

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