

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT NUBLA, ACCUSED-APPELLANT.

G.R. No. 137164. June 19, 2001

Ponente: VITUG, J.

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VITUG, J.:

Accused-appellant Albert Nubla interposed an appeal to this Court from the decision of the Regional Trial Court, Branch 86, of Quezon City, finding him guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua.

Albert Nubla was charged with the crime of rape in an information that read:

"The undersigned accuses ALBERT NUBLA of the crime of Rape, committed as follows:

"That on or about the 26th day of March, 1996, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously induced complainant to drink a glass of ice tea laced with drugs causing her to loss consciousness, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent."[1]

On 27 September 1996, the accused was arraigned; he pleaded not guilty to the charge.

The factual antecedents depicted by the prosecution were sourced mainly from the testimony of private complainant, Romelita Martinez, a 19-year old student of Industrial Engineering at Polytechnic University of the Philippines.

Sometime in March 1996, Romelita had come to get acquainted with the accused when requested by Teresita Bon, a family friend, to negotiate the purchase of a Toyota Corolla car from Carlinks Phils., Inc. The accused called up Romelita and suggested that the two meet personally. Romelita, accompanied by her friend Pinky de Luna, met the accused at Wendy's Nagtahan. After a few days, the accused again called up Romelita and asked if they could meet so that he could give her the car brochure and price list. Romelita agreed, and they met at about 8:30 in the evening of 26 March 1996, at Wendy's Nagtahan. During the meeting, he asked Romelita if they could discuss their business over dinner in a bar owned by his "compare." Romelita accepted the invitation when the accused gave assurance that, like him, the bar customers were all "professionals." The two boarded a taxicab and proceeded to a bar in Dapitan street. Inside the bar, Romelita ordered a glass of iced tea while the accused ordered a pitcher of beer. Romelita noticed that the accused was rather uneasy, excusing himself every now and then. Shortly after their ordered drinks were served, Romelita sipped about a third of the glass of iced tea. After about ten minutes, she felt dizzy and suffered a headache. Romelita excused herself and went to the comfort room where she stayed for about fifteen minutes. Still feeling dizzy, Romelita pleaded with the accused to bring her home. Minutes passed, and Romelita again begged the accused to bring her home. The latter told her to consume the iced tea and to relax before he brought her home. After she consumed the glass of iced tea, Romelita felt weaker and just about ready to pass out. The accused finished his drink and finally agreed to take her home. When Romelita stood up, she was so weak that she had to be assisted by the accused. Taking a taxicab, the accused instructed the

driver to take them to Sta. Mesa. Alighting from the taxicab, Romelita felt climbing some stairs, and she assumed that the accused had brought her to the house of her friend Pinky. When the accused opened the door, she saw a bed. Feeling very weak, Romelita fell on the bed and lost consciousness. When the accused woke her up at about 5:30 in the morning, she was surprised to see herself naked beside the accused. He was also naked. Romelita promptly tried to dress up, feeling pain on her buttocks and her private part. She had plenty of kissmarks on her breast and on her lap. The accused called a taxicab. She alighted at Wendy's Nagtahan, from where she proceeded home. She was met by her mother who asked her where she had been. Not knowing what to say, Romelita locked herself inside her room for a long time. She then went to her friend Pinky and told her what had happened. Pinky, in turn, narrated the incident to Romelita's mother. Romelita's parents promptly brought her to the National Bureau of Investigation (NBI) for medical examination. When she called up the accused and asked him why "he hit her below the belt," he told her that it would have been stupid had he brought her to an apartelle without touching her. She asked him to explain the incident to her parents but he said he was busy and then banged the telephone on her.

Dr. Armie M. Soreta-Umil of the NBI-Medico Legal Division, submitted her medical findings, thus:

"GENERAL PHYSICAL EXAMINATION:

Height: 156. cms.

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, developed, hemispherical, doughy, Areolae, brown, 3.9 cms. in diameter. Nipples, brown, 0.9 cm. in diameter.

"EXTRAGENITAL PHYSICAL INJURIES:

Contusions, brownish: infraclavicular area, right side, 1.5 x 1.0 cm; intermammary area, 1.0 x 1.0 cm.

"GENITAL EXAMINATION:

Pubic hair, fully grown, abundant. Labia majora and minora, coaptated. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, tall, thick with old healed complete laceration at 9:00 o'clock position corresponding to the face of a watch, edges rounded, non-coaptable. Hymenal orifice admits a tube with moderate resistance. Vaginal walls tight. Rugosities, prominent.

"CONCLUSIONS:

1.) The above described extragenital physical injuries were noted on the body of the subject at the time of examination.

2.) Old healed hymenal laceration present."[2]

The defense, in its case, presented accused Albert Nubla, Manuel Cultura, General Manager of Carlinks Phils., Inc., and Ferdinand Garcia, the NBI Agent who took the sworn statement of private complainant. The trial court made a summation of the defense version:

"x x x accused Nubla stated that complainant called him by phone at his office at about 7:00 to 7:30 o'clock in the evening on March 26, 1996. Aines told him she had some problems to discuss and asked him to meet her at Wendy's Nagtahan. He hesitated and told her he had some work to do, but she insisted on meeting him to talk about her personal problems. Coming from his office, he went directly to Wendy's Nagtahan arriving there at about 8:15 o'clock in the evening. Finding that Aines was not around, he decided to go home and proceeded to the road to call a taxi. When he was about to flag a taxi, Aines arrived without any companion. He was then in his barong tagalog with glasses, beeper, phone and organizer. Aines was carrying a cellular phone and a beeper. She suggested that they go to a place where they could talk, Wendy's being at that time crowded. He suggested a place owned partly by a childhood friend. She agreed. They then proceeded to the 'Naked Ears' bar

at Dapitan St., a block away from his residence. The bar was cozy, there were tables designed to accommodate 2 to 3 persons, there was a bar tender, a DJ's booth, lights centered on each table and spotlights. The bar was half-filled to capacity. The time was 9:00 o'clock when they entered the bar. They called the waiter. He ordered a pitcher of beer while Aines ordered a glass of iced tea. He asked her about her problems, but she did not discuss them. She just kept on smiling and telling him that she liked the place. She asked him if he goes there often and he told her not too often, but only when he feels unwinding and needed time to relax. She was so light hearted, jolly and kept on admiring the place.

"As the hours went by he suggested to Aines that she call her parents, brothers or sisters. She said 'it was alright, don't think about it'. She told him, however, that she knew some guys in the bar as friends of his brother and she did not want them to see her in the bar. At about 10:30 o'clock he told her it was getting late and he needed to take a rest. He told her it was time to go out of the bar and he would get a taxi for her. She replied 'hindi mo ba ako pipigilan?'. Her mood then suddenly changed. She became irritated because he insisted on going home. She told him 'I just wanted to be with you'. They then flagged down a taxi. He instructed the driver to bring them to Pandacan. When he told her he would take her home, she insisted she did not want to go home. Then she began to shout. Upon reaching Gov. Forbes, he instructed the driver to bring them to a decent place where they could rest. The taxi brought them to an apartelle along E. Rodriguez St. While in the taxi, they were seated at the back seat. Aines was fully conscious. She knew what was happening. She did not want to go home. They arrived at the apartelle at about 11:00 o'clock P.M. Aines alighted first and proceeded directly to the apartelle. He was left behind to pay the taxi fare. They met a security guard who asked them if they were going to check in. When they said, yes, the guard opened a logbook and he signed a page thereof. They proceeded to a lobby where they were met by a lady who was the cashier of the place. He told her they would stay for only a few hours. He paid P250.00. A roomboy with toiletries and towels led them to their room located in the 2nd and 3rd floor. They used the stairs. The roomboy opened the lights, and put on the air-conditioner and asked them if they needed anything else. He told him the room was good enough and asked him to leave. He then asked Aines if she wanted anything to eat. She said she was still full. He lied on the bed and told Aines she may watch the TV if she wanted to. He asked her to call her parents or anybody to inform them of her whereabouts. She said her phone was running low of battery. He suggested she could use his phone. She declined saying it was 'okey'. He then took off his shoes and put his things on the table. Aines was then seating at the edge of the bed. He finally fell asleep and was in that state for about one hour. He was awakened when he noticed the complainant caressing him and kissing him on the neck. He was at first shocked, but later on being only human, he was carried away. After a while they both undressed. She then approached him and started kissing him again and went on top of him. She started trying to insert his private organ into her private organ. She was pumping her body and leaning her breast towards his face. He was carried away and responded. Afterwards, they took their showers and went to sleep after some conversation. She told him she wished she had a boyfriend like him. He told her she is no longer a virgin. She admitted he was the second or third person to have sex with her. The first man in her life was her boyfriend Angel, Aines told him. A picture of Angel was shown to him. He told her what happened should really not have happened. Aines said there was no problem as they both like it. She assured him that her auntie was really interested in buying a car.

"They woke up at past five o'clock in the morning. He told Aines he needed to go home and change clothes and report back for work. They left the apartelle and flagged down a taxi. He alighted first near his residence. He gave Aines P200.00 for the taxi fare."[3]

Assessing the evidence, the trial court sustained the case for the prosecution that the accused did rape Romelita Martinez as against the defense's version that the sexual intercourse complained of was consensual. The trial court, in its decision of 26 November 1998, concluded:

"WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused Albert G. Nubla guilty beyond reasonable doubt of the crime of rape committed against Romelita T. Martinez and he is

hereby sentenced to suffer the penalty of reclusion perpetua and to pay civil indemnity to the private complainant in the amount of P50,000.00, moral damages in the amount of P50,000.00, and exemplary damages in the amount of P25,000.00, plus cost."[4]

The convicted accused appealed the verdict. The defense counsel submitted an elaborate assignment of errors basically bemoaning the sufficiency of the evidence given by the prosecution; thus:

"First Assignment of Error:

"The Honorable Trial Court seriously erred in concluding that '(t)he Court is convinced with moral certainty that accused took advantage of the complainant when she was not in control of her mental faculties' or when she was 'unconscious' or 'semi-conscious' (Page 12, second paragraph, and page 13, third paragraph, Decision dated November 26, 1998), despite the clear lack of MEDICAL and MATERIAL EVIDENCE to prove such allegation when the same could easily have been secured immediately after the alleged incident.

"Second Assignment of Error:

"The Honorable Trial Court seriously erred in finding and concluding that '(t)he accused found it necessary to use some form of violence'. (Page 12, second par., appealed Decision)

"Third Assignment of Error:

"The Honorable Trial Court seriously erred in convicting the accused despite the testimony of private complainant not being impeccable and true throughout.

"Fourth Assignment of Error:

"The Honorable Trial Court seriously erred in convicting the accused on the ground that the version of the prosecution is more credible than that of the defense.

"Fifth Assignment of Error:

"The Honorable Trial Court seriously erred in convicting the accused and adjudging him to pay the damages stated in the appealed Decision."[5]

The Court affirms the conviction.

By its very nature, the crime of rape is done in seclusion where, normally, it is only the participants who can testify on its occurrence.[6] A conviction or acquittal in cases of this nature depends almost entirely on the credibility of the testimony of the accuser and the accused.

Like before, this Court is mindful of the accepted fact that an accusation for rape is easy to make, hard to prove but harder still for the party accused, although innocent, to disprove. And, as is also usually the case, the testimony of the complainant would be the only evidence available for the prosecution on how that offense is perpetrated. The complainant's plea should thus be regarded with utmost caution,[7] and the party charged with the offense deserves the benefit of doubt unless the victim's testimony is truly convincing.

In this particular instance, complainant Romelita Martinez could not testify on how the actual coitus took place at the apartelle. She was unconscious at the time. Her recollection of the surrounding events that evening of 26 March 1996 was all that she could clearly narrate. She and appellant met at Wendy's Nagtahan at around 8:30 p.m., and proceeded in a taxicab to "Naked Ears" bar in Dapitan Street. There -

"Q

What did you order?

"A

A glass of iced tea because I am not hungry at that time. And for him, he ordered a pitcher of beer.

"Q

What did you do inside that bar?

"A

When we were already inside the bar and our orders were taken, he was very uneasy, he would be standing and excusing himself every now and then.

"Q

What did you do?

"A

When the order was given since I was so thirsty, I was able to sip one third of the glass of iced tea.

"Q

What happened next after that?

"A

After ten minutes approximately, I felt dizzy but not so serious.

"Q

Will you please explain what exactly did you feel when you said you were dizzy?

"A

I felt pain in my head.

"Q

What happened next?

"A

I just thought that I was tired because I have just taken my final examination.

"Q

What transpired next?

"A

I just excused myself and told him that I will go to the comfort room because I had a headache.

"Q

How long did you stay in the comfort room?

"A

Fifteen minutes more or less, sir.

"Q

And when you returned, your iced tea was still on your table?

"A

Yes, sir.

"Q

What happened next?

"A

He was silent that time and he said, so the brochure is now with you and also the price lists. You just relay it to your friend.

"Q

What happened next?

"A

I was really dizzy. I was pleading with him telling him to bring me home.

"Q

What did he do?

"A

He did not listen to me and he said he just ordered another pitcher of beer. According to him, 'sayang'.

"COURT:

"Q

Does he know where your home is?

"A

No, sir.

"Atty. Ulep:

"Q

What happened next?

"A

I could hear that he was telling me many things about himself which is far from the business.

"Q

What did you do after that?

"A

I was again begging him to bring me home because I knew that my family is already worried about me because that was already 9:15.

"Q

Did he listen to your pleas?

"A

He did not, he said that just consume your iced tea and relax, anyway I will bring you home.

"Q

When you said yes, you consumed the whole glasses of iced tea.

"A

Yes, sir.

"Q

What happened next?

"A

After I consumed the glass of iced tea, I felt more dizzy.

"Q

Could you tell us exactly what do you mean by more dizzy?

"A

More dizzy in the sense that I really wanted to sleep and I felt my body is weak.

"Q

What did you do then?

"A

I was already thinking of other reason because I really wanted to go home that time.

"Q

What happened next?

"A

What I did, I told him, 'can't you see those people at the other table, they are already drunk and one of them there is the barkada of my brother and if he sees me and he will tell my brother, I will be scolded'.

"Q

What did he say?

"A

He said, 'is he a friend of your brother and just for a moment, I will just drink this remaining beer and I will bring you home.'

"Q

What happened next after that?

"A

He already asked me to stand and when I stood up, I almost fell but he helped me.

"Q

What transpired next?

"A

When we went out the bar, he called a taxi and he told the driver to bring us to Sta. Mesa.

"Q

What did you say?

"A

I said Pureza and he said yes.

"Q

What happened next?

"A

He said I will bring you home, don't worry just relax.

"Q

What happened next?

"A

When we alighted from the taxi, I really could not take it anymore but he assisted me. I just feel that we are climbing the stairs. I just assumed that maybe he just brought me to the house of my friend Pinky since he had been in that house before because that house of Pinky when you entered it, you will see a stair.

"Q

What was the condition of your body at that time?

"A

Very weak.

"Q

What happened next?

"A

When he opened the door, when I saw the bed, I just directly lie down on the bed.

"Q

After that what happened?

"A

I don't know anymore what he did to me.

"Q

What time was that when you already lie down on the bed, if you know?

"A

I cannot remember anymore.

"Q

What time did you wake up, if you know?

"A

He woke me up, it was already bright, maybe about 5:30 in the morning.

"Q

What did you notice when you woke up?

"A

I was still dizzy.

"Q

What else?

"A

When I looked at my side, I was surprised because he was there on my side.

"Q

What else did you notice?

"A

I was naked, both of us were naked. I had a blanket and I noticed I had no clothes.

"Q

Did you talk to the accused at that time?

"A

Yes, sir.

"Q

What did you tell him?

"A

I asked him why are you here. What did you do to me.

"Q

What did he tell you?

"A

He told me just put on your clothes and I still have some things to attend to. And then he told me, if you want, you can still stay here anyway, this is paid for the whole day.

"Q

What did you tell him?

"A

I did not stay behind even if I still could not do it, I tried to dress up and put on my clothes.

"Q

What did you feel at that time?

"A

While I was dressing up I feel pain on my buttocks.

"Atty. Ulep:

May we make of record that the witness is crying.

"COURT:

Yes.

"Atty Ulep:

"Q

What did you feel or see in your body?

"A

When I face the mirror I noticed that I have plenty of kissmarks on my breast and on my lap.

"Q

What else?

"A

After that he called a taxi, then he told me to alight at Wendy's Nagtahan.

"Q

You said a while ago that you feel pain on your buttocks?

"A

Yes, sir.

"Q

Where else in your body did you feel pain?

"A

On my private organ.

"Q

What happened next after you were brought to Wendy's Nagtahan?

"A

I went home alone and the people were staring at me because I had plenty of kissmarks. I just really wanted to go home.

"Q

Did you in fact go home?

"A

Yes, sir.

"Q

Who met you in your house?

"A

My mother. She asked me where I came from last night.

"Q

What did you tell her?

"A

I do not know what to say.

"Q

What did you do?

"A

I just locked myself inside my room.

"Q

For how long did you lock yourself?

"A

For a long time.

"Q

What did you do after that?

"A

I did not have the courage to open up the matter to my mother about what he did to me.

"Q

What did you do then?

"A

After lunch I went to the house of my friend Pinky.

"Q

What did you tell Pinky, if any?

"A

I told her about what happened to me.

"Q

What did she tell you?

"A

It was Pinky who called my mother and narrated to my mother what happened.

"Q

What happened next?

"A

The following day, my parents fetched me.

"Q

What did they do after that?

"A

They brought me to the NBI.

"Q

What did you do there?

"A

I had myself examined.

"Q

After that what happened next?

"A

I could not believe that after all that I trusted him, `eh, winalanghiya niya ako'.

"Q

When you said him, you are referring to?

"A

Albert Nubla.

"Q

What happened next after that?

"A

I called him after that.

"Q

What did you tell him?

"A

I asked him why he did it to me. He hit me below the belt.

"Q

What do you mean?

"A

He had sexual intercourse with me.

"Q

What did he say?

"A

He said, 'I will be stupid if I will be bringing you to an apartelle without touching you'.

"Q

What do you mean touching you?

"A

Having sex with me.

"Q

What did you tell him after that?

"A

I told him to explain my parents why he did it to me.

"Q

What did he say?

"A

He said, 'I am busy'.

"Q

That's all what he said?

"A

Yes, sir, then he banged the phone.

"Q

What did you do then after that?

"A

I waited for the result of my medico legal examination.

"Q

What did you find out in that medical examination?

"A

It is one hundred percent possible that he touched me."[8]

Appellant admitted having had sex with private complainant but that it was she, he said, who initiated it all. He denied that she was drugged and pointed to the absence of any medical or chemical evidence to support her claim. If truly, he argued, she felt something was wrong when she drank the iced tea, she could have cried for help from the customers in the bar, or from the guard inside the bar, or from the taxicab driver on their way to the apartment, or from the attendants at the apartment itself. In fine, he pictured an aggressive woman desperate for sex.

All things said, this Court, like the trial court below, is not persuaded.

The series of events, testified to by Romelita, would indicate appellant's plan to take sexual advantage of his victim. He set up the second meeting and then invited her to a bar he frequented which was owned by his "compare." Appellant was familiar with the place and its personnel. After their orders were taken, Romelita noticed that appellant became uneasy and would stand and excuse himself every now and then. A few minutes after drinking her iced tea, Romelita started to feel dizzy. Instead of taking her home, appellant insisted that she should first finish her drink. Finding her in no condition to ward for herself, appellant then brought Romelita to an apartment where he succeeded in satisfying his lust. By the time, she gained consciousness the following morning, still feeling dizzy, Romelita saw herself and appellant naked in bed, her breasts and lap planted with kissmarks, and her buttocks and private organ in pain. All that she could be sure of was that she was not physically well and was in a state of shock. She was, in fact, candid in admitting that she only fully realized that she had been raped after receiving the results of her medico-legal examination.

The absence of medical or chemical evidence that Romelita was drugged did not mean that she was not drugged. Romelita, not having even suspected at the time that she was drugged, did not subject herself to a corresponding medical examination. As so aptly observed by the trial court -

"While no chemical analysis was conducted on the blood of the complainant immediately after the incident, the Court believes that the physical manifestations that complainant was drugged consisting of dizziness, bodily weakness and strong desire to sleep were proven during the trial. Although complainant was able to walk to the apartment, she had a hazy memory of what was going on as she remembered only the stairs and no more. It was only in the morning that she realized she was in an apartment. Her hazy recollection of what happened to her explains why she committed minor inconsistencies in her statements, particularly before the NBI."[9]

Appellant would assail the findings of the trial court that he "used some form of violence" because the extra-genital injuries found on her body were just kissmarks. Suffice it to say here that appellant was charged with rape[10] which could be committed, even absent force or intimidation, when the woman was deprived of reason or was otherwise rendered unconscious.[11]

Appellant would fault the trial court for believing the testimony of private complainant despite a number of inconsistencies. He called attention, for instance, to her initial statements with the NBI on 01 April 1996 where she narrated that she was with Pinky when she met appellant at Wendy's Nagtahan on 26 March 1996 and the complaint-affidavit she executed on 15 May 1996 in which she stated that she was alone when she met appellant. Romelita explained that she was not yet in her normal self[12] when she gave her statements to the NBI. Not knowing what appellant really did during her unconscious state at the apartment room, she even called up appellant

by telephone asking him what he did to her and to tell her parents about the incident, a statement that was later corroborated by appellant himself.

In any case, sworn statements are seldom considered to be final repositories of truth.[13] Affidavits or sworn statements are almost always incomplete and inaccurate but they do not necessarily detract from the credibility of a witness.[14] Equally important, inconsistencies which refer only to minor and insignificant details can reinforce rather than weaken the credibility of a witness; in fact, such inaccuracies could suggest that the witness is telling the truth.[15]

Appellant would make much of the fact that Romelita had not immediately shown anger or outrage at him or courage to herself inform her mother about the incident. As the Solicitor General so pointed out -

"Unlike the usual cases wherein the rape victim is forcibly abused by the offender while conscious, Romelita was drugged to sleep and was raped while unconscious. Thus, when she woke up the following morning after the incident she was still dizzy and had no remembrance of what happened or what appellant did to her in the apartelle. Confused and unsure about what really happened, compounded by her shock to find appellant by her side and naked like her, all that Romelita could utter was to ask appellant what he did to her. And because she was still physically and mentally not well, which disabled her from fully comprehending her situation, it is not strange that she did not immediately show outrage at appellant but just wanted to get safely home.

"When she got home, Romelita did not have the courage to open up the matter to her mother when the latter asked her where she had been. Romelita was ashamed and unbelieving that appellant, whom she barely knew, could do such a thing as have sexual intercourse with her. She revealed the matter however on the same day to her friend Pinky de Luna, who in turn informed her parents about it (TSN, 11/13/96, pp. 24-25). After her NBI examination, Romelita called up appellant and asked him why he hit her below the belt or had sexual intercourse with her, but he only replied that it would have been stupid if he brought her to an apartelle without touching her (id., p. 26).

"Indeed, there is no reason to doubt Romelita's version of the incident. If her story had only been contrived, she would not have been so composed and consistent throughout her entire testimony in the face of intense and lengthy interrogation (People vs. Perez, 296 SCRA 17). Notably, she cried as she recounted the morning after the incident when it dawned on her that appellant whom she met only twice but trusted, had most probably abused her sexually. This further bolsters the credibility of the rape charge (People vs. Ramos, 296 SCRA 559). And since there is no showing that she was impelled by any improper motive in making the accusation against appellant, her complaint is entitled to full faith and credit (People vs. Gementiza, 285 SCRA 478)."[16]

The Court finds it improbable for Romelita, a young college student still in her teens, to tell a story that would expose herself to humiliation, allow the examination of her private parts and thereafter undergo the ordeal of a public trial, unless she has indeed been motivated by an honest desire to obtain justice.[17]

Appellant's arguments are really all an attack on the credibility of complainant. It has frequently been said that the evaluation of testimony is addressed to the judgment of, and first hand determination by, the trial court, whose findings deserve weight and respect[18] if not full faith and credit. The conclusions of the court a quo are hardly controvertible -

"Accused sought to convince the Court that the sexual encounter between him and the complainant was her own wish and liking, apparently to compel him to take her as his mistress. Accused would want the Court to believe that complainant was probably a gold digger masquerading under the name 'Aines Salonga' who demanded money from him and asked him to accompany her to go shopping so that she could buy some clothes for herself. She told him she always wanted to be with him to talk about her personal problems. She admitted to him she had sexual intercourse before with her boyfriend Angel. Her former boyfriend, he claimed he was told, took her jewelries and other valuables and pawned them to buy drugs.

"Even granting that some of the alleged derogatory information about the complainant were true and complainant flirted with him, the accused did not have the license to take advantage of her unconsciousness or semi-conscious state of mind and have sexual intercourse with her without her consent. The Court is convinced with moral certainty that accused took advantage of the complainant when she was not in control of her mental faculties. The alleged frequent calls of the complainant, although denied by her, do not destroy her credibility, but tends to buttress her claim that she was the aggrieved party in the incident in question.

"While no chemical analysis was conducted on the blood of the complainant immediately after the incident, the Court believes that the physical manifestations that complainant was drugged consisting of dizziness, bodily weakness and strong desire to sleep were proven during the trial. Although complainant was able to walk to the apartelle, she had a hazy memory of what was going on. She remembered only the stairs and no more. It was only in the morning that she realized she was in an apartelle. Her hazy recollection of what happened to her explains why she committed minor inconsistencies in her statements, particularly before the NBI.

"The accused also sought to convince the Court of his sense of righteousness when he allegedly reminded the complainant of the propriety of calling her mother or brother to inform them of her whereabouts when it was getting late and they were still together. In short, he would want the Court to believe that he was a responsible and caring person. The crucial test of his sense of righteousness, however, was in the taxi after the date at the bar. At this point, if he had no criminal intention, he could have insisted on bringing the complainant home considering that, according to him, she was becoming irritated and she shouted when he told her he would bring her home. The strong probability is that she was really not feeling well and the decision to bring her to an apartelle was entirely his own. Their taxi ride after the date at the bar was in the mind of the Court the last straw in carrying out his criminal design. When he found himself alone in the apartelle with a young woman, it is incredible that he tried to avoid any sexual contact with her considering the series of circumstances which tend to indicate that he masterfully planned his encounter with her on that fateful night. His allegation that he was very tired and fell asleep and was awakened only when complainant started kissing him and pumping her body against his body does not fit well with the fact that their encounter was only their second meeting and there was no evidence to indicate that she was desperate in having sex with him. On the contrary, the contusions which were still visible when she was examined by the NBI Medico Legal officer is indicative of the violence which the complainant was subjected to satisfy the sexual hunger of the accused.

"The offer of money in the amount of P25,000.00 by the wife of the accused indicates a strong consciousness of guilt for no party would offer to 'settle' a criminal case if there was no truth to the accusation. Considering the amount involved, the Court believes that the offer to settle was a family decision made at this instance of the accused. The fact that complainant angrily rejected the offer indicates that her motive of filing the instant case was not to extort money from the accused but to vindicate the injustice done to her."[19]

Simple rape is punished under Article 335 of the Revised Penal Code by the single indivisible penalty of reclusion perpetua which the trial court has correctly imposed on appellant. On the award of damages in favor of complainant, the Court restates the rule that the grant of civil indemnity of P50,000.00 to rape victims is warranted[20] as being in the concept of compensatory damages.[21] A separate award of moral damages of P50,000.00 is likewise justified. Moral damages are based on a different jural foundation which refers to the victim's shame, mental anguish, besmirched reputation, moral shock and social humiliation which rape necessarily brings to the offended party.[22] The award of exemplary damages must be deleted since no aggravating circumstance has been alleged and proved.

WHEREFORE, the decision of the trial court is AFFIRMED with MODIFICATION only insofar as the grant of exemplary damages to private complainant which award is deleted. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Records, p. 1.

[2] Records, p. 9.

[3] Rollo, pp. 26-28.

[4] Rollo, p. 36.

[5] Rollo, pp. 98-99.

[6] People vs. Abuan, 284 SCRA 46.

[7] People vs. Domogoy, 305 SCRA 75.

[8] TSN, 13 November 1996, pp. 16-26.

[9] Rollo, p. 148.

[10] ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

When by reason or on occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by a reason or on the occasion thereof, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
- when the victim is under the custody of the police or military authorities.
- when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
- when the victim is a religious or a child below seven (7) years old.
- when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

- when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

[11] Article 335, Revised Penal Code.

[12] TSN, 11 December 1996, p. 15.

[13] *People vs. Espanola*, 271 SCRA 689.

[14] *People vs. Palomar*, 278 SCRA 114; *Naval vs. Panday*, 275 SCRA 654.

[15] *People vs. Gondora*, 265 SCRA 408.

[16] *Rollo*, pp. 151-152.

[17] *People vs. Diaz*, 262 SCRA 723; *People vs. Cañada*, 253 SCRA 277.

[18] *People vs. Venerable*, 290 SCRA 15; *People vs. Lua*, 256 SCRA 539.

[19] *Rollo*, pp. 32-34.

[20] *People vs. Betonio*, 279 SCRA 532.

[21] *People vs. Fuertes*, 296 SCRA 602.

[22] *People vs. de Guzman*, 265 SCRA 228

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