

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NEXIEL ORTEGA @ “REX ORTEGA,” ACCUSED-APPELLANT.

G.R. No. 137824. September 17, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated August 5, 1998, of the Regional Trial Court of Pasay City, Branch 114, in Criminal Case No. 96-9500, finding appellant Nexiel Ortega alias “Rex Ortega” guilty of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify private complainant Elisa Oguyan[2] in the amount of P100,000.

The Information against appellant reads:

The undersigned Assistant City Prosecutor, upon a sworn complaint originally filed by complainant Eliza Oguyan y Tolibas, accuses NEXIEL ORTEGA @ REX ORTEGA of the crime of RAPE, committed as follows:

That on or about the 27th day of June, 1996 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Nexiel Ortega @ Rex Ortega, by means of force and intimidation employed upon the person of Eliza Oguyan y Tolibas, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the said complainant against her will and consent.

Contrary to law.[3]

Upon arraignment on February 28, 1997, appellant, assisted by counsel de oficio, pleaded not guilty to the offense charged. He waived pre-trial.[4] Thereafter, trial ensued.

The prosecution’s case was based mainly on the testimony of private complainant, ELISA OGUYAN. She testified that, as evidenced by her Certificate of Live Birth,[5] she was born on June 8, 1981 at Tanauan, Leyte to parents Elpidio Oguyan and Cornelia Tolibas. She only finished Grade III. According to her, on May 28, 1993, when she was 12 years old, she came to Manila to visit her elder sister, Yolly, who was then residing at San Juan St., Pasay City.[6] Sometime in May 1996 at the age of 15, while living with another sister named Emma at Rodriguez St., Malibay, Pasay City, Elisa was employed in a fan factory at Virata St., Pasay City. Her work started from 7:00 A.M. and continued until 9:00 P.M. On June 27, 1996 at around 11:30 P.M., while she was then rendering overtime work, a co-worker named Marlyn requested her help to carry some fan materials to Marlyn’s house located along Virata Street, Pasay City. Marlyn’s house was about half a kilometer away from the fan factory. Elisa acceded to the request of Marlyn who promised to accompany her back to the factory. When they reached the house, Marlyn refused to accompany Elisa back who thus returned to the factory alone on foot.

According to Elisa, while she was walking in front of an ice plant along Virata Street, appellant Nexiel Ortega blocked her way. She did not personally know Nexiel, who was then a security guard at the ice plant. However, she used to see him every time she passed the ice plant coming from her house and going to her place of work. At

the time of the incident, the place was dark and there were no other passersby. Nexiel was wearing a blue uniform with a badge and a firearm tucked on the side of his waist.

Elisa further testified that after blocking her way, Nexiel held her hands behind her back. She protested by asking, “Bakit mo hinahawakan ang kamay ko, wala naman akong kasalanan sa iyo.” When Nexiel answered, “Hindi naman kita gagalawin, huwag kang matakot sa akin,” she did not say anything. Thereafter, Nexiel dragged her inside the ice plant. She tried to free herself from Nexiel’s hold but to no avail. Elisa recalled that another security guard who was on duty at the ice plant saw her being dragged by Nexiel. But she did not ask for help from him, aware that he was a friend of Nexiel as she always saw them together.

Upon reaching the guardhouse of the ice plant, Elisa said that Nexiel ordered her to lie down and he pushed her towards a wooden bed. Elisa could not do anything because she was afraid of the gun which Nexiel placed on a table near the bed. Then, he held Elisa’s hands and laid on top of her. While on top of her and using both of his hands, Nexiel pulled down her pants along with her panty up to the lower portion of her legs. She was then wearing a t-shirt and slacks. Nexiel parted her legs with his knees. At that moment, he started to finger her vagina, which lasted about ten minutes. Elisa said she cried but did not shout, because Nexiel told her nobody could hear her. Thereafter, Nexiel inserted his penis into her vagina, kissing her lips and face.[7] Elisa felt pain. Nexiel’s carnal lust was satisfied in 15 minutes. He stood up and pulled up his pants. Elisa also stood up and Nexiel pulled up her pants. Nexiel warned her not to report the incident to her mother otherwise he would kill her. When Nexiel had his back turned against Elisa, she ran away and proceeded to the factory which was about half a kilometer away.[8] It was around 12:00 midnight of June 28, 1996 when she reached the factory. She stayed there until the following morning. At around 7:00 A.M., Elisa returned to the house of her sister Emma where she rested the whole day.

On June 29, 1996, according to Elisa, she went back to the factory to get her salary. She narrated her harrowing experience to a co-worker named Luz. Afterwards, Luz proceeded to the house of Elisa’s elder sister and reported the incident to Cornelia Oguyan, Elisa’s mother. Moments later, Cornelia arrived at the factory and fetched Elisa. Elisa revealed to her mother what had happened to her. The following day, on June 30, 1996, Elisa, together with her mother and elder sister, Yolly, went to the Pasay Police Station to report the incident.[9]

SPO3 MILAGROS CARRASCO of the Pasay City Police’s Women’s Desk, took the sworn statement of Elisa on the rape committed by Nexiel Ortega. She testified that she told Elisa to proceed to the PNP Crime Laboratory (PNPCL) for medical examination.[10]

DR. JESUSA VERGARA, medico-legal officer at the PNPCL, conducted a genital examination on Elisa. However, as she was unable to take the witness stand, it was DR. DENNIS BELLIN who testified in court. He identified the medical records prepared by Dr. Vergara, but the defense did not admit the findings and the results of the examination that appeared in the medico-legal report.[11]

CORNELIA OGUYAN, Elisa’s mother, testified that her daughter was 15 years old at the time of the incident. She testified that at around 10:30 P.M. of June 29, 1996, a co-worker of her daughter’s named Luz came to their house. Luz told her that Elisa had a problem. Immediately, she fetched Elisa from her work. Elisa recounted to her what had happened. They then reported the incident to police authorities. She further testified that as a result of the incident, she suffered nervous shock, anxiety, emotional pain, and humiliation.[12]

On cross-examination, she admitted that during the first hearing of the case, she asked P100,000 from Nexiel. Her family proceeded to file the case because the family of Nexiel could not produce said amount.[13]

For his part, appellant NEXIEL ORTEGA testified that he is a native of Malaybalay, Bukidnon. He came to

Manila on January 29, 1996 and was employed by the Loren Security Agency. He was assigned to the Pasay City Ice Plant as a stay-in security guard. According to him, he and Elisa were sweethearts. He testified that Elisa became his girlfriend on May 15, 1996. The entire courtship took place in front of the ice plant. On that same day, when she accepted his profession of love, appellant asked for a jacket and a wallet as gifts. Consequently, they both agreed to meet again on June 27, 1996, for Elisa to deliver the jacket and wallet he was asking from her.

Appellant denied raping Elisa. He pointed out that on June 27, 1996 at around 11:45 P.M., Elisa visited him at the ice plant, bringing a khaki jacket and a brown wallet. He was fixing his things inside the guardhouse of the ice plant when he heard somebody knocking at the door. He requested Ronald Sayson, the other security guard on duty, who was seated in front of a table outside the guardhouse, to open the door. Ronald opened the door and appellant heard Elisa say, “Nandiyan ba si Ortega,” Ronald answered yes and let Elisa inside the guardhouse.[14] Upon seeing appellant, Elisa gave him the jacket and wallet. Afterwards, he and Elisa sat on the bed inside the guardhouse. They kissed each other on the cheeks. According to appellant, he did not kiss Elisa on the lips because he was embarrassed. After about five minutes, Ana Liza Lacorte, the other girlfriend of appellant, arrived. She caught Elisa and appellant in the act of kissing each other. Ana Liza quarreled with Elisa and slandered her by saying: “Putang ina mo, ikaw lang pala ang sumusulot sa siyota ko.” Elisa did not say anything. Then, Ana Liza ran away. Appellant caught her at the basketball court and accompanied her home. When he returned to the ice plant, Elisa was no longer there. He continued rendering guard duty until the morning of the next day. He testified that he slept the whole day of June 28, 1996.

On June 30, 1996, appellant claimed that he was on duty when his sister Sisan called up. He was informed that their father, who was residing in Malaybalay, Bukidnon, was sick. Immediately, he went to his sister’s house in Novaliches, Quezon City. Since all his siblings in Manila were married, it was decided that appellant, who was single, be the one to tend the farm of their father in Malaybalay. Appellant testified that he did not collect his salary for the month of June from his employer; neither did he come back for it. He asked his co-worker Ronald to explain to their OIC why he (appellant) had to leave for the province immediately. On the following day, or on July 1, 1996, appellant left for Bukidnon. On January 8, 1997, he was arrested by the provincial police by virtue of a warrant of arrest. On February 13, 1997, he was brought to Manila and was turned over to SPO3 Milagros Carrasco of the Pasay City Police Station.[15]

SISAN ORTEGA OCA and PATRICIA ORTEGA, appellant’s sister and mother, respectively, testified but only for the purpose of establishing appellant’s whereabouts after the alleged rape on June 27, 1996.

On rebuttal, the prosecution presented private complainant Elisa, who denied having any amorous relationship with appellant. She belied appellant’s claim that she gave him a jacket and a wallet. She said that Ana Liza Lacorte was not present at the time of the incident.

The trial court rendered a decision finding appellant guilty of rape. Its dispositive portion reads:

WHEREFORE, the Court finds the accused NEXIEL ORTEGA @ “REX ORTEGA” GUILTY beyond reasonable doubt, as principal, for the crime of Rape in violation of Article 335 of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua and its accessory penalty. The accused is likewise ordered to indemnify private complainant in the amount of One Hundred Thousand (P100,000.00) Pesos as civil indemnity.

SO ORDERED.[16]

Appellant thus interposed this appeal, raising the following errors allegedly committed by the trial court:

I

THE COURT A QUO ERRED IN ACCORDING WEIGHT AND CREDENCE TO THE UNCORROBORATED TESTIMONY OF THE LONE PROSECUTION WITNESS, ELIZA OGUYAN, DESPITE THE FACT THAT HER TESTIMONY IS PREGNANT WITH MATERIAL FLAWS AND INCONSISTENCIES.

II

THE COURT A QUO LIKEWISE ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE ALTHOUGH THE PROSECUTION PATENTLY FAILED TO ESTABLISH HIS CULPABILITY BEYOND REASONABLE DOUBT.

III

FOR THE SAME REASON, THE COURT A QUO ERRED IN DISREGARDING THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED-APPELLANT.

IV

THE COURT A QUO ALSO ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY INDEMNITY IN THE AMOUNT OF P100,000 TO THE PRIVATE COMPLAINANT, CONTRARY TO STANDING JURISPRUDENCE THAT MANDATES A MAXIMUM AMOUNT OF P75,000 ONLY.[17]

The principal issue for our resolution is whether the trial court erred in giving credence to the testimony of private complainant. Secondly, we shall also consider the propriety of the amount of civil indemnity awarded to private complainant.

Appellant contends that the trial court erred in finding him guilty of rape based on the uncorroborated testimony of private complainant, Elisa Oguyan. He points out inconsistencies and contradictions in the testimony of Elisa that allegedly undermine her credibility. Appellant argues that the testimony of Elisa that she attained “orgasm” while being fingered by him belied her claim that she was raped. Further, appellant claims that Elisa did not exert even the slightest resistance to the sexual advances of appellant, indicating that she consented to the sexual act.[18]

For the appellee, the Office of the Solicitor General (OSG) asserts that the inconsistencies pinpointed by appellant are inconsequential and do not detract from Elisa’s credibility as a witness. According to the OSG, intimidation must be viewed in the light of the victim’s perception and judgment at the time of the commission of the crime. There is no hard and fast rule. It concludes that, except for the modification of the award of civil indemnity, the appeal lacks merit and should be denied.[19]

Well-settled is the rule that when the issue is on the credibility of witnesses, appellate courts will generally not disturb the findings of the trial court on the ground that the trial court had the opportunity to observe the witnesses’ deportment and manner of testifying. Also, in reviewing rape cases we are guided by the following principles: (1) 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; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) 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.[20] After a careful review of the records of this case, we find no basis for overturning the conclusion of the trial court.

Appellant assails Elisa’s testimony for being riddled with inconsistencies and contradictions. To illustrate, Elisa

testified that appellant removed his pants up to his lower legs while lying on top of her.[21] However, she also claimed that appellant completely removed his pants and briefs while he was still standing.[22] Also, Elisa claimed that it was appellant who pulled up her pants after the sexual act.[23] But upon further questioning, she changed her statement and said that she put on her pants herself.[24] Elisa gave inconsistent statements on what happened after June 27, 1996 and the date she informed her mother about the rape.

However, these inconsistencies refer to minor matters. They do not pertain to the essential elements of the crime. Thus, we agree with the OSG that such lapses in her memory do not detract from her credibility. Moreover, flawless recollection of a harrowing incident cannot be expected of a witness especially when she is recounting details of an experience so humiliating and so painful as rape.[25]

In a further attempt to discredit complainant's testimony, appellant contends that it is impossible for any woman like her to experience orgasm while being assaulted by a rapist.[26] It is true that Elisa admitted discharging a "whitish substance" when appellant fingered her for about 10 minutes. However, being a girl of only 15 years, having only reached Grade III, and inexperienced in the ways of the world, we are convinced that she did not fully understand the meaning of "orgasm". To quote her testimony on cross-examination:

Q: Did you ejaculate that time when you were fingered by the accused?

A: Yes sir.

Q: What did you feel when you ejaculated, is it nice or pleasurable?

A: No sir.

COURT:

Q: What do you mean by saying that you ejaculated?

A: (Witness did not answer and the Court propounded another question)

Q: What came out of you?

A: Blood, Your Honor.

Q: Before the penis was inserted blood came out?

A: No, Your Honor, I had a whitish discharge when I was fingered.

ATTY. PADILLA:

Q: Blood?

A: No sir.

x x x

ATTY. PADILLA:

Q: But you ejaculated again?

A: Yes sir.

COURT:

Q: You ejaculated ahead of Nexiel?

A: Yes, Your Honor.

Q: You understand the meaning of ejaculated?

A: No, Your Honor.

COURT:

Will you interpret counsel or Fiscal. Be sure that she knows ejaculation.

FISCAL CLEMEÑA, JR:

Your Honor, because this is the first time, she is only fifteen (15) years old.

COURT:

I want you to explain to her to protect the interest of the prosecution.

FISCAL CLEMEÑA, JR:

She must have climaxed but she did not know, Your Honor.

COURT:

I am asking the prosecution to help the Court to explain to the witness the meaning of ejaculation. When explained by the prosecutor as to the meaning of ejaculation she answered she did not feel gratifying feelings but she felt pain. Proceed.[27]

On this score, we agree with the observation of the Solicitor General that the discharge could have been a natural physiological reaction to the insertion and rubbing of appellant's finger on Elisa's vagina or it could have been a natural discharge of fluid akin to menstruation. Such insertion under the present state of the law is already rape.

Also, appellant claims that complainant failed to mention in her Sinumpaang Salaysay dated July 4, 1996, that he was carrying a gun at the time of the rape incident, which is inconsistent with her testimony in court that he had a gun on him. Needless to stress, discrepancies between the statement of an affiant in her affidavit and those made by her on the witness stand will not necessarily discredit her since ex parte affidavits are generally incomplete. Worth noting, however, is that appellant admitted in open court that he was carrying his service firearm, caliber .38, since he was on duty at the ice plant at the time of the incident.[28]

Appellant avers that complainant did not offer any resistance to the assault on her person and honor. According to him, she did not even attempt to shout for help. But as we already ruled, failure to shout or offer tenacious resistance did not make voluntary complainant's submission to the criminal acts of appellant.[29] Moreover, the law does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself because of fear.[30]

Time and again, we have held that intimidation is addressed to the mind of the victim and, therefore, subjective. Its presence cannot be tested by any hard and fast rule but must be viewed in the light of the victim's perception and judgment at the time of the crime.[31] The evidence shows that Elisa was a 15-year-old provinciana with little education, while her defiler was a 22-year-old[32] security guard at the time of the alleged offense. She was alone when she was forcibly dragged inside the guardhouse by appellant, who at that time had a gun in his possession. As pointed out by the trial court, complainant showed justifiable fear of the gun then in possession of appellant. Her complete obedience to his command and her alleged lack of resistance or struggle were all compelled by her genuine fear of appellant.

Appellant further argues that if there was indeed a gun, still he did not use it to threaten complainant. It was

merely placed on top of a table near the bed. She should have shouted as she was in no immediate danger of being shot.[33] This argument is speculative. Complainant's failure to shout was satisfactorily explained when she testified that she was very scared of appellant's gun. Also, appellant might have put down the gun during the sexual act but he placed it on a table near the bed, still easily within his reach. We note that while no gun was actually presented in evidence, appellant himself admitted that at the time of the incident, he had possession of a gun. This would suffice to show that he cowed complainant into submission to his lustful desires. Minors like complainant could be easily intimidated and cowed into silence even by the mildest threat against their lives.[34]

Appellant denies raping Elisa and claims that he and Elisa were sweethearts. He alleges that he merely kissed her and no intercourse happened between them. However, the medico-legal report of Dr. Jesusa Vergara, as presented by Dr. Dennis Bellin, showed that complainant had healed hymenal lacerations at the 2, 4, and 7 o'clock positions, and that she was in a non-virgin state. Although Dr. Vergara did not appear and testify in court, her report was sufficiently identified by Dr. Bellin, another medico-legal officer at the PNPCL. We agree, however, that the medical examination of the victim is not indispensable in a prosecution for rape. The fact that the prosecution did not present the attending physician is, in our view, not an obstacle to a finding of guilt in this case.[35]

No plausible motive or explanation was shown by the defense on why private complainant filed a grave charge against appellant.[36] We find it too superficial on the part of the defense to claim that Elisa filed the charge of rape because she had quarreled with appellant's other girlfriend the night of the incident and because appellant went to the province without Elisa's knowledge. As to the alleged gifts, i.e., a jacket and a wallet, they are self-serving and do not constitute competent proof to show that appellant and Elisa were lovers.[37] In sum, appellant's reliance on the "sweetheart theory" does not inspire belief and could not exculpate him.

Appellant's alibi and bare denial cannot overcome the positive and categorical testimony of the victim, especially since said alibi and denial are not substantiated by clear and convincing evidence.[38] Equally significant is appellant's flight which is considered as competent evidence to indicate his guilt.[39] The trial court noted that appellant immediately left for his hometown in Lantapan, Bukidnon on July 1, 1996, where he hid until he was arrested on January 8, 1997. So hurried was his departure that he even failed to collect his salary at the time.

All told, we find no error in the finding of guilt made by the trial court. However, the award of damages must be modified to conform to current jurisprudence. Appellant and the OSG ask for the reduction of the award of P100,000 as civil indemnity to P75,000. However, the recent jurisprudence of P75,000 as indemnification for a rape victim is applicable only if the rape is committed under any of the circumstances in which the death penalty is prescribed by the applicable laws.[40] In simple rape, P50,000 is properly awarded as civil indemnity ex delicto. But another P50,000 should be awarded to the victim as moral damages, without need of further proof, because it is recognized that her injury is concomitant with and necessarily the result of the odious crime.[41]

WHEREFORE, the assailed decision of the Regional Trial Court of Pasay City, Branch 114, in Criminal Case No. 96-9500, finding appellant NEXIEL ORTEGA alias "Rex Ortega" GUILTY of rape and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with MODIFICATION. Appellant must pay to the offended party, Elisa Oguyan, P50,000.00 as civil indemnity and another P50,000.00 as moral damages, together with the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Austria-Martinez, and Callejo, Sr., JJ., concur.

- [1] Records, pp. 504-511.
- [2] Ogoyan in some parts of the records.
- [3] Supra, note 1 at 1.
- [4] Id. at 22, 24.
- [5] Folder of Exhibits, p. 5.
- [6] TSN, April 8, 1997, pp. 3-4.
- [7] TSN, September 16, 1997, pp. 13-16.
- [8] TSN, May 13, 1997, pp. 10-13.
- [9] Id. at 25-30.
- [10] TSN, April 1, 1997, pp. 2-3.
- [11] TSN, May 20, 1997, pp. 4-6.
- [12] TSN, November 13, 1997, pp. 4, 6-8, 9-10.
- [13] Id. at 11-12.
- [14] TSN, January 22, 1998, pp. 5-7, 9-10.
- [15] TSN, February 3, 1998, pp. 17-21, 23-32.
- [16] Supra, note 1 at 511.
- [17] Rollo, pp. 58-59.
- [18] Id. at 68-71, 74-76.
- [19] Id. at 123-140.
- [20] *People vs. Aloro*, 340 SCRA 346, 354 (2000).
- [21] Supra, note 8 at 5-6.
- [22] Supra, note 7 at 3-4.
- [23] Supra, note 8 at 11.
- [24] Supra, note 7 at 30.
- [25] *People vs. Matugas*, G.R. Nos. 139698-726, February 20, 2002, p. 14.
- [26] Citing *People vs. Jervoso*, 124 SCRA 765, 771 (1993).
- [27] Supra, note 7 at 17, 24-25.
- [28] TSN, February 13, 1998, p. 9.
- [29] *People vs. Galisim*, G.R. No. 144401, November 20, 2001, p. 5.
- [30] *People vs. Burgos*, G.R. Nos. 139959-60, November 22, 2001, p. 9.
- [31] *People vs. Abalde*, 329 SCRA 418, 434 (2000).

[32] Supra, note 14 at 2.

[33] Rollo, p. 73.

[34] People vs. Clado, 343 SCRA 729, 740 (2000).

[35] People vs. Bugarin, 273 SCRA 384, 399 (1997).

[36] Supra, note 15 at 35.

[37] Id. at 15-17.

[38] See People vs. Osing, 349 SCRA 310, 319 (2001).

[39] People vs. Villadares, 354 SCRA 86, 98 (2001).

[40] People vs. Baldoz, G.R. No. 140032, November 20, 2001, p. 26.

[41] People vs. Baway, 350 SCRA 29, 53 (2001).

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