

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONDE RAPISORA Y ESTRADA, ACCUSED-APPELLANT.

G.R. No. 138086. January 25, 2001

Ponente: VITUG, J.

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VITUG, J.:

Before this Court, by way of automatic review, is the decision of the Regional Trial Court of Mandaluyong City, Branch 214,[1] convicting Conde E. Rapisora of the complex crime of "Forcible Abduction with Rape" and sentencing him to suffer the supreme penalty of death.

Rapisora was indicted in an information that read:

"That on or about the 5th day of August, 1997, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, while armed with a knife, and pretending to be a relative of the private complainant and against the will of Irene Hermo y Cajipe and with lewd design, did, then and there willfully, unlawfully and feloniously abduct and carry away said Irene Hermo y Cajipe, a seventeen year old girl, while she was walking along Shaw Boulevard, this City and thereafter forced her to ride in a taxi and brought her to a Filipinas Walk Inn and while inside, accused with lewd design and at the same time, poking a knife at her, hence, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with said Irene Hermo y Cajipe, a minor, against her will and consent for several times." [2]

The accused entered a plea of "not guilty" to the charge. Evidence was thereupon adduced by, respectively, the prosecution and the defense.

The trial court gave a resumé of the evidence given at the trial, starting with that submitted by the prosecution.

"At about 11:30 a.m. of August 5, 1997, Irene Hermo y Cajipe, a 17 year old household helper of Susana Dy, was walking along the corner of Pinagtipunan St. and Shaw Boulevard, Mandaluyong City after coming from Aling Naty's store where she bought vegetables, when Conde Rapisora y Estrella, the accused in this case, approached and told her 'you're here' (nandito ka pala) to which she replied 'who are you?' Conde Rapisora introduced himself that he is her Tito Andy. He told her that she could not remember him anymore because she was still small when her mother left her to his care. Few minutes later, Conde Rapisora called a taxicab then dragged and forced Irene Hermo to board the same. She did not, however, resist because he poked a knife on her side (pp. 10-11 TSN Jan. 20, 1998).

"They were seated at the rear passenger seat with Conde Rapisora seated on her right side with his knife poked on her right side. He warned her to keep quiet. He also told her that she had grown bigger and his wife, her Ate Karen, would be very happy to see her since they will be going to their place (pp. 11-13 TSN, *ibid*).

"Irene Hermo noticed that they alighted in Sta Mesa near a motel. He instructed her to hold his waist so that his wife Karen will be very happy. He brought her to a house with a green painted gate and a store in front (p. 14 TSN, *ibid*).

"Reaching the store, the accused got the key inside. She waited for the accused and after he had returned they went inside the house. Irene Hermo thought that it was his house. They entered a room, which according to the accused is the room of his wife Karen. While they were about to enter a room, the accused called up the name of Karen, then he opened it and suddenly pushed Irene inside. He poked his knife at her and told her not to shout and resist (pp. 15-16 TSN, *ibid*).

"Accused ordered her to remove her clothes but when she resisted, he undressed her. He also removed his clothes and told her to lie in bed. He ordered her to spread her legs which the victim obeyed. He forced his penis to enter her vagina but it could not get in because she was moving (*malikot*). So he inserted his finger. He ordered the victim to masturbate him and when his penis hardened, the accused rammed it into her vagina (pp. 17-18 TSN, *ibid*).

"She recalled that the accused inserted his penis to her vagina six (6) times. The accused then placed his hardened penis inside her mouth, licked her vagina, sucked her breast and placed her tongue inside her ears. She was shouting but the accused placed a towel on her mouth.

"Thereafter a roomboy knocked on the door and told the accused that it was already time.

"The accused immediately put on his clothes and left the room leaving behind the victim. She put on her clothes too and went out and hurriedly left the place. The accused chased her and told her that she [would] take her home, but she declined his offer. She [ran] and took a passenger jeep (pp. 23-24, TSN, *ibid*)."[3]

Rapisora did not deny that he was with Irene in the morning of 05 August 1997 and that the two proceeded to and stayed awhile at the Filipinas Walk-in Motel. He claimed, however, that private complainant had consented to it all. The trial court summed up Rapisora's version of the case.

"The accused, who was a member of the Mandaluyong Fire Department since 1995 until August 5, 1997, x x x claimed that he first met the victim in the morning of August 1, 1997 at Market Place Shopping Mall, Mandaluyong City which is in front of Kalentong Fire Station where he was assigned. They chanced upon each other while they were both viewing the still pictures displayed outside the moviehouse of the shopping mall. Allegedly, the victim introduced herself to him as Jocelyn and a cashier in a grocery in Shaw Boulevard. He gave his name as Andy Villanueva. They had a beautiful conversation wherein the victim even kidded him that he looked like actor Andy Poe (pp. 5-12 TSN March 18, 1998).

"They again met on August 3, 1997 at the same shopping mall at about 8:00 o'clock in the morning. It was his day-off and the victim was there to buy something. The only thing they talked about was that they agreed to see each other on August 5, 1997 in front of that shopping mall (pp. 14-16 TSN, *ibid*).

"So, on August 5, 1997 about 10:00 in the morning, the accused was already standing in front of the shopping mall waiting for the victim, who arrived past 10:00 in the morning. The accused noticed that while the victim was approaching him, she was looking for something in her pocket. He asked her what was that she was looking for, and the victim told him that she lost her P300.00 in her pocket. She then suggested that they looked for her money by going back to the route taken by her which was from Kalentong to Shaw Boulevard to see if her money had dropped on the ground. He alleged that while they were walking along Kalentong, the victim was holding his hand and was not also looking for her lost money.

"Later, the victim told him if he can help her pay that missing money but the accused asked her when is she going to pay him. The victim answered, later, and when he asked what time, she merely kept quiet.

"They went back to the shopping mall, took a snack and watched a movie.

"Inside the moviehouse they sat beside each other. She leaned on his chest, kissed and embraced each other. As he inserted his finger on her private parts her legs spread and she embraced him tightly. She then uttered, 'slowly only' (*dahan dahan lang daw*). He then noticed that her hand was going down to his pants until she

got hold of his penis. She unzipped his pants, held his penis and asked him if she could place it in her mouth (pp. 22-30 TSN, *ibid*).

"The accused told him that it could not be because of the chair ('hindi pwede kasi nakaharang and silya') so he invited her to go somewhere else. It was the victim who suggested that they go to a place in Sta. Mesa which is near the place where she previously worked. She asked the accused if he had money and when the latter answered in the affirmative they boarded a taxi and proceeded to Filipinas Walk-in Motel.

"While they were inside the taxicab the victim reminded him of the P300.00 she will borrow from him. So the accused took out his wallet and showed him his money. While he was opening his wallet she saw his I.D. and she immediately grabbed it. It was then that the victim knew his real name (pp. 31-35 TSN, *ibid*).

"They checked-in at the motel at about 1:00 in the afternoon. As soon as they entered the room, the victim immediately took off her clothes because the accused told her to take a bath first. While she was removing her panty the accused saw that she had her menstruation. Since the comfort room was outside the room, the victim did not take a bath anymore. Meanwhile, it was during this moment when the victim revealed her name and worked (pp. 36-39 TSN, *ibid*).

"The accused refused to have sexual intercourse with the victim because of her menstruation. So the victim instead placed herself on top of him, kissed his body, held his penis and placed it inside her mouth. After he reached his climax, he hurriedly went to the comfort room to wash himself (pp. 40-44 TSN, *ibid*).

"Thereafter, the victim put her clothes on and hurriedly left the room leaving the accused behind."[4]

The trial court gave no weight to the narration of the accused, describing it as a "fantastic fallacy"[5] and as having "merely showed his sexual perversity."[6] Convicting the accused, the trial court pronounced a death sentence on him.

"WHEREFORE, this Court finds the accused, CONDE RAPISORA Y ESTRADA guilty beyond reasonable doubt of the crime of forcible abduction with rape, as defined and penalized under Article 335 (as amended by R.A. 7659 and R.A. 8353) and Article 342 in relation to Article 48 of the Revised Penal Code, and hereby imposes upon him the penalty of DEATH, with the accessory penalties of the law, to indemnify the private complainant, IRENE HERMO in the sum of P50,000.00 as civil indemnity.

"Costs against the accused.

"SO ORDERED."[7]

Accused-appellant, praying for an acquittal and a reversal of the judgment rendered by the trial court, came up with the following assignment of errors:

"I.

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND IMPLAUSIBLE TESTIMONY OF IRENE HERMO.

"II.

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF FORCIBLE ABDUCTION WITH RAPE.

"III.

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT."[8]

The court a quo has accorded full credit to the testimony of Irene, "a simple and unsophisticated girl," finding it to be a "straightforward, clear and x x x good account" of how she has been "bestly attacked by the accused." [9] The long standing rule, consistently upheld by jurisprudential holdings, is that the assignment of values to the testimony of witnesses must aptly be left to the trial court, it being considered to be in the best position to discharge that function. Invariably, its findings on this issue are given the highest degree of respect and, absent strong cogent reasons to warrant otherwise, will not ordinarily be disturbed on appeal. [10]

Appellant would urge the Court to ignore the testimony of complainant for her alleged failure to call for help. In *People vs. Akhtar*, [11] similarly involving the crime of forcible abduction with rape, the same contention was raised. This Court, rejecting the proposition made by the alleged offender, held that -

"Complainant's failure to ask for help when she was abducted, or to escape from appellant's house during her detention, should not be construed as a manifestation of consent to the acts done by appellant. For her life was on the line. Against the armed threats and physical abuses of appellant, she had no defense. Moreover, at a time of grave peril, to shout could literally be to court disaster. Her silence was born out of fear for her safety, to say the least, not a sign of approval." [12]

Almost exactly could be said in the case at bar. Private complainant, Irene Hermo, testified:

"ATTY. FERRER:

Did you not think to call your employer Susana Dy?

"A I told him that I have to go home because I still have to cook, Sir.

"Q And even if you have an obligation to cook you still went with him?

"A He forced me, Sir.

"Q How did he force you?

"A He hold me and according to him we will go to their house, Sir.

"Q And you did not try to free yourself before you enter the taxi?

"A I was afraid of the knife, Sir.

"Q You did not make an outcry?

"A No, Sir.

"Q And you did not attempt to free yourself before you boarded the taxi?

"A I tried to resist but he drag me inside the taxi, Sir.

"Q How did you resist him before you boarded that taxi?

"A He was holding my arm, Sir.

"Q You did not forcibly free yourself?

"A No, Sir.

"Q Once you were inside the taxi did you not protested to the driver?

"A I was afraid of the knife that was pointed at my side, Sir.

"Q Conde was not saying any word while he was pointing the knife to your side inside the taxi?

"A He told me that once we reach their house Auntie Karen will be happy because I am already big, Sir.

"Q Did you not complain to the driver of the alleged poking?

"A

No, Sir. I was afraid he might harm me."[13]

When the incident happened, Irene, a frail and weak girl, was only sixteen years old and just an elementary graduate. Rapisora, thirty-six years old and a government employee at the Bureau of Fire Protection in Mandaluyong City, was described by the trial judge as being "husky, muscular and stronger (in built) than the complainant." Asked during the cross-examination why she did not try to flee when she was left alone for about two minutes at the entrance of the motel, Irene could only utter, "wala akong maisip." [14]

This Court, in several cases, has observed that behavioral psychology would indicate that most people, confronted by unusual events, react dissimilarly to like situations.[15] Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.[16]

For his second and third assigned errors, Rapisora argued that the complainant "did not offer even the slightest resistance to the bestial desire of the accused-appellant"[17] and, to support this claim, cited the fact that the medical report showed no findings of any external physical injury on her body. The report on the medical examination conducted on the complainant indeed concluded that there was "no evident sign of extragenital physical injury," albeit adding the phrase, "healing hymenal laceration present." [18] The medico-legal officer, Dr. Alvin A. David, who conducted the examination explained that laceration due to sexual intercourse would, under normal circumstances, be apparent only within the first 48 hours immediately following the act. This finding would be consistent with the testimony of Irene that she was raped two days prior to the time that she could undergo the physical examination.

Physical resistance, in any case, need not be established in rape cases when threats and intimidation are employed and the victim ultimately gives up to the unwanted embrace of her rapist.[19] Even when a man lays no hand on a woman, yet if by the array of physical forces he so overpowers her mind that she does not resist or she ceases resistance through fear of greater harm, the consummation of unlawful intercourse by the man would still be nothing less than rape.[20] Rapisora cowed Irene into silence and submission from the time of abduction until the consummation of the rape. While they were in the taxicab, Rapisora was poking a knife at her side. Inside the motel room, accused-appellant once more threatened Irene with the weapon, ordering her neither to resist nor to shout. When Irene made a loud cry because she could no longer stand the pain of her assailant's abuses, Rapisora unmindfully shoved a towel into her mouth to mute her cries.

The way Irene acted after the incident would show consistency in her story. From the motel, she immediately went to her employer and recounted the incident. Irene also told her aunt, who later arrived, about what the accused had done to her. She, together with her aunt, then went back to the Filipinas Walk-in Motel and inquired from the motel roomboys about the identity of the accused. Irene and her aunt were informed that the man had been frequenting the place. Forthwith, they reported the matter at the Mandaluyong City police station. The following day, they proceeded to the National Bureau of Investigation for the medical examination of Irene but since there was no physician available at the time, she was examined only the following day. Four days later, Irene was informed that a man was arrested and detained at the Western Police District jail for an incident similar to what had befallen her at the Filipinas Walk-in Motel. Accompanied by her uncle, she immediately repaired to the police station and there personally identified the accused to be the person who had abducted and raped her.

The conduct of the woman immediately after an alleged sexual assault can be crucial in establishing the truth or falsity of her charge.[21] For instance, the victim's instant willingness, as well as courage, to face interrogation and medical examination could be a mute but eloquent proof of the truth of her claim.[22]

The Court is satisfied that the trial court has correctly evaluated the evidence and been right in finding the accused guilty beyond reasonable doubt. The crime committed, however, is not the complex crime of "forcible abduction with rape." Forcible abduction is absorbed in the crime of rape if the real objective of the accused is but to rape the victim,[23] a fact that is here clearly evident given the circumstances of the case.

The information against the accused has charged him with multiple rape, at least six times according to the trial court in its findings. Section 3, Rule 120, of the Rules of Court[24] provides that "when two or more offenses are charged in a single complaint or information, and the accused fails to object to it before trial, the court may convict the accused of as many offenses as are charged and proved, and impose on him the penalty for each and every one of them x x x." Rapisora can thus be held responsible for as many rapes as might have been committed by him which are duly proven at the trial.

The rapes have been committed with the use of a deadly weapon, a knife, for which Republic Act 7659 prescribes the penalty of reclusion perpetua to death. There being neither aggravating nor mitigating circumstance shown, appellant should only be sentenced to reclusion perpetua, not death, for each of the six counts of rape.

Conformably with prevailing jurisprudence, an award of P50,000.00 moral damages should be awarded to the victim for each of the offenses established in addition to the P50,000.00 civil indemnity already ordered by the trial court.

WHEREFORE, the Court AFFIRMS the decision of the Regional Trial Court of Mandaluyong City, Branch 214, in Criminal Case No. 115-H-MD finding accused-appellant Conde Rapisora y Estrada guilty beyond reasonable doubt of six counts of rape but MODIFIES the death penalty imposed by it on said accused-appellant by reducing it to reclusion perpetua for each count and to pay the victim, Irene Hermo y Cajipe, the amount of P50,000.00, by way of moral damages, in addition to the P50,000.00 civil indemnity awarded by the trial court, for each count of rape, or a grand total of P600,000.00 damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Judge Edwin D. Sorongon, presiding.

[2] Rollo, p. 6.

[3] Decision, Rollo, pp. 14-15.

[4] Rollo, pp. 16-18.

[5] Rollo, p. 19.

[6] Id.

[7] Rollo, p. 21.

[8] Rollo, p. 44.

[9] Rollo, p. 19.

[10] *People vs. Bihison*, 308 SCRA 510.

[11] 308 SCRA 725.

[12] At pp. 735-736.

[13] TSN, January 20, 1998, pp. 42-44.

[14] TSN, January 20, 1998, p. 46.

[15] *People vs. Mostrales*, 294 SCRA 701; *People vs. Alfeche*, 294 SCRA 352; *People vs. Atuel*, 261 SCRA 339; *People vs. Villanueva*, 254 SCRA 202.

[16] *People vs. Oarga*, 259 SCRA 90.

[17] Rollo, p. 57.

[18] Exhibit B, Records, p. 15.

[19] *People vs. Prades*, 293 SCRA citing *People vs. Rabosa*, 273 SCRA 142; *People vs. Quiamco, et al.*, 268 SCRA 516; *People vs. Salazar*, 258 SCRA 55.

[20] *People vs. Mostrales*, 294 SCRA 701.

[21] *People vs. Dela Torre*, 272 SCRA 615; *People vs. Joya*, 227 SCRA 9; *People vs. Castillon*, 217 SCRA 76.

[22] *People vs. Ramos*, 167 SCRA 476.

[23] *People vs. Akhtar*, 308 SCRA 725; *People vs. Sabredo*, G.R. No. 126114, 11 May 2000; *People vs. Mejorada*, 224 SCRA 837.

[24] Now Section 3, Rule 120, of the Rules on Criminal Procedure, effective as of 01 December 2000.

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