# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY FERRER Y MOLINA @ "JERRY RUGBY", ACCUSED-APPELLANT.

*G.R. No. 142662. August 14, 2001*

Ponente: GONZAGA-REYES, J.

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**GONZAGA-REYES, J.:**

An Information[1] for rape was filed with the Regional Trial Court of Makati, Branch 138 charging Jerry Ferrer y Molina alias "Jerry Rugby" as follows:

> "That on or about the 21st day of August, 1998, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant CATHERINE VICENTE Y RANCE, without her consent and against her will."

Upon arraignment, accused Jerry Ferrer, assisted by counsel, pleaded not guilty of the offense charged.[2] At the pre-trial conference on September 22, 1998, the parties stipulated that there was no amorous relationship between the private complainant-victim Catherine Vicente and the accused.[3] Trial ensued.

The prosecution presented the following witnesses: the victim herself, SPO4 Lilia Hogar, Dr. Armie Soreta Umil and SPO2 Rolando Escalante.

Private complainant Catherine Vicente was 22 years old when the unfortunate incident occurred. She had been married for four years already to Christopher Vicente with whom she has two (2) children, aged 3 and 1 ½ years old. She was working as a guest relations officer (GRO) at the Starlight Disco located at Pasig Rotonda. On August 21, 1998 at around 3:00 o'clock in the morning, Catherine went home from her place at work at Pasig to Swan, Taguig. She arrived home at around 3:30 a.m. and looked for her husband Christopher who earlier promised to fetch her. Instead, Catherine saw accused Jerry Ferrer who, having heard she was looking for her husband, told her that her husband was with another woman at his residence at Talipapa, South Pembo, Makati. Since the accused looked familiar, Catherine walked with him to South Pembo to look for her husband.[4] Upon arriving at Talipapa, Catherine asked the accused to look for her husband but instead accused went to the "looban" then came out about 5 minutes later wearing a different set of clothes.[5] When Catherine again asked accused about her husband, accused told her that her husband was actually at Blubus (Lobos) St., Barangay Rizal. Catherine became a little mad but could not do anything as she was only asking him a favor. Thereafter, Catherine and accused boarded a tricycle then proceeded to Blubus (Lobos) St.[6] When they alighted from the tricycle, they walked along C-5 going towards Palar St. Accused pointed to a house on top of a hill and told Catherine that it was his mother's house and that her husband was there with a woman. They climbed the hill and approached the house. Catherine insisted that accused call her husband. Instead, accused suddenly got angry and told her she was "eskandalosa, ang ingay-ingay" and then he wrapped his arm around her neck. Using his right hand, accused poked an ice-pick at her right side. Catherine tried to plead but she could not open her mouth because it was covered by his left hand.[7] Accused dragged Catherine for about half a kilometer to a place where it was dark and grassy ("talahiban") and the soil was wet. She pleaded with him not to rape her but accused, while poking an

ice-pick at her, told Catherine that it would be very easy to kill her for he had been jailed several times before.[8] Catherine wore a white sleeveless T-shirt and brown tights and the accused ordered her to undress and lie down. He poked the ice-pick at her right side but Catherine pleaded that she just had a caesarian operation. Catherine was crying and accused knelt down and pulled down her pants and panty. Accused then stood up and removed his short pants and warned Catherine not to stand up otherwise he would kill her.[9] Despite her pleas, accused again poked the ice-pick at her right side with his left hand, placed himself on top of her, separated her legs and inserted his penis into her vagina. Catherine was crying and pleading as she continued to struggle. About ten (10) to fifteen (15) minutes later, accused stood up.[10] Accused ordered Catherine to put on her clothes. She begged to spare her life because she had children. Accused left Catherine for a while to get something and Catherine found the chance to escape.[11] Her clothes soaked in mud, Catherine fled, going straight to C-5 and turning left at Falcon St. where she saw a man with his wife standing outside their house. She sought their help and the couple led her inside their house, gave her water to drink and let her stay until 7:00 o'clock in the morning. The couple called for the barangay captain who brought Catherine home.[12]

The following day, August 22, 1998, Catherine reported the incident to the police. SPO4 Lilia Hogar of the Women's and Children's Desk Unit of the Makati Police Station investigated the matter and thereafter recommended the filing of the case with the Assistant Prosecutor's Office.[13] A request for NBI Medico Legal Examination was made.[14]

At the NBI, Catherine was examined by Dr. Armie Soreta Umil who made a Medico-Legal Report marked as Exhibit "G",[15] the pertinent portions of which read:

> "GENITAL EXAMINATION:
>
> Pubic hair, fully grown, moderate. Labia majora and minora, gaping. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, reduced to carunculae myrtiformis. Hymenal orifice admits a tube 3.0 cms. in diameter. Vaginal walls, lax. Rugosities, obliterated."
>
> CONCLUSIONS:
>
> 1.) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
> 2.) Hymen, reduced to carunculae, myrtiformis."

For the defense, only the accused testified. The evidence of the accused-appellant consisted of a pure denial. His version is as follows: Accused allegedly first met Catherine at a party on August 15, 1998. On August 21, 1998 at around 4:00 o'clock in the morning, Catherine, together with Loreto de la Cruz, a tricycle driver, and a certain Manny, who were drunk, went to his house on board a tricycle. A niece of the accused, Ellen de Leon, knocked at his door to tell him that somebody was looking for him. Catherine, Loreto and Manny came in and the accused told them not to be noisy. Thereafter, Loreto went out to buy "tapsilog" and burger. After eating, Manny, Catherine and accused sniffed shabu. Accused left Manny and Catherine in his room to fetch water and cook rice. Afterwards, accused brought his nephew and nieces to school. He came back from school between 6:30 or quarter to 7 in the morning. Catherine and Manny were still sleeping in his room. At about 8:00 o'clock, Manny left. Catherine followed at 11:00 o'clock in the morning.[16] In the afternoon, accused went to market and was arrested allegedly for violation of the Dangerous Drugs Law.[17]

After trial, the court rendered judgment on March 14, 2000, convicting the accused of the crime charged, to wit:

> "WHEREFORE, the Court finds the accused Jerry Ferrer alias "Jerry Rugby" guilty beyond reasonable doubt of having committed the crime of rape, in violation of the Anti-Rape Law of 1997 and he is sentenced to suffer the penalty of reclusion perpetua. He is ordered to indemnify the complainant, Catherine Vicente of the amount


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of P50,000.00 as moral damages.

Cost de oficio."

Hence, the present appeal where accused-appellant raises the following assignment of errors:

"I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF THE PRIVATE RESPONDENT.

II

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE."

The assigned errors being interrelated, the same will be discussed jointly.

Accused-appellant contends that the test of moral certainty or standard of proof beyond reasonable doubt required for conviction in criminal cases has not been satisfactorily attained in the case at bar. Accused-appellant argues that the victim's claim that she was dragged a few meters before forcing her to lie in the "talahiban" where she was raped is belied by the medico-legal report of the examining physician which stated that "no evident sign of extra-genital physical injuries were noted on the body of the subject at the time of the examination." Accused-appellant further contends that the medical findings failed to corroborate the victim's assertions that accused-appellant raped her. The victim allegedly narrated that accused-appellant inserted his organ into her vagina and made a back and forth movement thus implying penetration but the medical certificate showed that the "hymen (was) reduced to carunculae, myrtiformis" which means that "no laceration was found on the hymen." Neither was there documentary evidence, such as a positive semenology report, to support the victim's claim that accused-appellant had ejaculated.

We find the appeal unmeritorious.

The main argument of accused-appellant is anchored on the alleged inconsistencies in the prosecution's evidence. It is pointed out that there was no sign of external physical injuries on the body of the victim despite having been allegedly dragged by the accused-appellant for about half a kilometer to the scene of the crime. But as correctly pointed out by plaintiff-appellee, it is not necessary that there be marks of physical violence on the victim's body to prove the commission of rape.[18] Indeed, the absence of external signs of physical injuries does not negate rape.[19] Moreover, the mere dragging will not necessarily produce visible physical injuries particularly where no evidence was adduced with respect to the nature of the path where the victim was dragged and the clothing of the victim. Catherine was fully clothed, and was wearing "brown tights" which could have prevented abrasions or other injury on her body.

The Medico-Legal Report of Dr. Umil stated that "hymen reduced to carunculae, myrtiformis" which in layman's term means that "no laceration was found on the hymen".[20] It is settled that laceration is not an element of the crime of rape.[21] The absence of lacerations does not negate rape.[22] The presence of lacerations in the victim's vagina is not necessary to prove rape; neither is a broken hymen an essential element of the crime.[23] It has been held that prior sexual intercourse which could have resulted in hymenal laceration is irrelevant in rape cases for virginity is not an element of rape.[24] Moreover, hymenal lacerations after sexual congress normally occurs on women who have had no prior sexual experience. The victim is a married woman with a husband and two (2) children. It is doctrinally settled that full penetration of the vaginal orifice is not an essential ingredient nor is the rupture of the hymen necessary; the mere touching of the external genitalia or labia of the female organ

by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge.[25]

As regards the testimony of the victim that accused-appellant ejaculated and the absence of any document or report evidencing such claim, it must be pointed out that the absence of spermatozoa in the vagina of the victim does not negate the commission of rape for the simple reason that the mere touching of the labia of the female organ by the penis is already considered as consummated rape.[26] The presence of sperm is not a requisite for rape.[27] For in rape, it is not ejaculation but penetration that consummates the sexual act.[28]

We accordingly reject accused-appellant's arguments which hinge on alleged inconsistencies between the statements made by the private complainant vis-a-vis the medical examination and report. The medical report is by no means controlling. This Court has repeatedly held that a medical examination of the victim is not indispensable in the prosecution for rape, and no law requires a medical examination for the successful prosecution thereof.[29] The medical examination of the victim or the presentation of the medical certificate is not essential to prove the commission of rape as the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime.[30] The medical examination of the victim as well as the medical certificate is merely corroborative in character.[31]

Accused-appellant further averred that the victim asked for assistance from a couple right after the alleged rape incident but this couple, or either one of them, did not give any statement nor testified in court to confirm Catherine's accusations against the accused.

The prosecution has the prerogative to choose the evidence or the witnesses it wishes to present. In rape cases, the prosecution is not bound to present all witnesses other than the victim herself. In this case, what the couple could only testify to is the fact that private complainant sought help from them because she was raped. However, the couple did not witness the fact of rape. At most, their testimony would only have been corroborative.

There is no reason why accused-appellant may not be convicted solely on the testimony of the victim herself.[32] Settled is the rule that when a woman declares that she has been raped, and where her testimony passes the test of credibility, the accused can be convicted on the basis thereof. This is because, from the nature of the offense, the sole evidence that can usually be offered to establish the guilt of the accused is the complainant's testimony.[33] We find no reason to disturb the trial court's determination that the testimony of the victim herself is credible and convincing. A married woman with two (2) children would not have publicly admitted that she had been sexually abused unless that was the truth.[34] Thus, as the Court ruled in the case of People vs. Mostrales, [35] "(N)o married woman would subject herself to public scrutiny and humiliation to foist a false charge of rape. Neither would she take the risk of being alienated from her husband and her family. The fact that the victim resolved to face the ordeal and relate in public what many similarly situated would have kept secret evinces that she did so to obtain justice. Her willingness and courage to face the authorities as well as to submit to medical examination are mute but eloquent confirmation of her sincere resolve." Therefore, in the absence of evidence of improper motive on the part of private complainant to falsely testify against accused-appellant, her testimony deserves great weight and credence.

Although the defense of denial is admittedly a weak defense, accused-appellant submits that the evidence for the prosecution must stand or fall on its own merits and not draw its strength on the weakness of the evidence for the defense. The prosecution having allegedly failed to prove his guilt beyond reasonable doubt, accused-appellant should be acquitted. This argument is untenable. Bare denial of the accused cannot overcome the categorical and credible testimony of the victim that she was raped by the accused.[36] The doctrinally accepted rule is that the trial court's assessment of the credibility of the witnesses is accorded great respect and will not be disturbed on appeal unless a material or substantial fact has been overlooked or misappreciated, which if properly taken into

account may alter the outcome of the case. Factual findings of the trial court are generally sustained on appeal unless clearly arbitrary or baseless.[37] Private complainant's narration of the incident was straightforward and categorical and free from any serious contradictions. We find no compelling reason to disturb or set aside the finding of the trial court giving full credence to the testimony of the private complainant that she was raped by accused-appellant.

Rape is committed by having carnal knowledge of a woman using force, threat or intimidation.[38] There was intimidation, which may be of the moral kind, causing fear by threatening a woman with a knife[39] or in the case at bar, using an ice-pick. An ice-pick is a deadly weapon.[40] Article 266-B of R.A. 8353, otherwise known as the Anti-Rape Law of 1997, states that whenever rape is committed through force, threat or intimidation, the penalty shall be reclusion perpetua. However, whenever the rape is committed with the use of a deadly weapon, an ice-pick as in this case, the penalty shall be reclusion perpetua to death. Accordingly, the Indeterminate Sentence Law does not apply.[41] There being no aggravating nor mitigating circumstance, the trial court was correct in imposing the penalty of reclusion perpetua.[42]

Finally, an appeal in criminal cases throws the whole case wide open for review and the appellate court can correct error, though unassigned, that may be found in the appealed judgment.[43] We note that the trial court awarded only the amount of P50,000.00 as moral damages. The grant of moral damages is automatically made in rape cases without need of proof for it is assumed that the private complainant has sustained mental, physical and psychological sufferings.[44] But moral damages is separate and distinct from the civil indemnity awarded to rape victims and it cannot take the place of the civil indemnity.[45] Pursuant to recent jurisprudence, [46] a civil indemnity in the amount of P50,000.00 must be given to the victim of rape. Civil indemnity is mandatory upon the finding of the fact of rape, and is distinct from and should not be denominated as moral damages which are based on a different jural foundation.

WHEREFORE, the judgment appealed from is hereby AFFIRMED WITH MODIFICATION that accused-appellant Jerry Ferrer @ "Jerry Rugby" is further ordered to pay the private complainant, Catherine Vicente, an additional amount of Fifty Thousand (P50,000.00) Pesos as civil indemnity.

**SO ORDERED.**

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

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[1] p. 1, Record of Criminal Case No. 98-1961.

[2] Order of September 1, 1998, p. 21, Record.

[3] Order of September 22, 1998, p. 34, ibid.

[4] pp. 3-10, TSN, October 12, 1998.

[5] pp. 6-10, TSN, October 12, 1998; pp. 12-19, 23-25, TSN, October 19, 1998.

[6] pp. 10, TSN, October 12, 1998; pp. 26-28, TSN, October 19, 1998.

[7] pp. 11-14, TSN, October 12, 1998; pp. 31-38, TSN, October 19, 1998.

[8] pp. 13-14, TSN, October 12, 1998; pp. 43-45, TSN, October 19, 1998; p. 4, TSN, March 1, 1999.

[9] pp. 15-18, TSN, October 12, 1998; pp. 3-4, TSN, March 1, 1999.

[10] pp. 16-22, TSN, October 12, 1998; p. 8, TSN, March 1, 1999.


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[11] p. 23, TSN, October 12, 1988.

[12] pp. 23-24, TSN, October 12, 1998.

[13] Exhibit “D”, pp. 149-150, Record.

[14] Exhibit “E”, p. 151, ibid.

[15] p. 130, ibid.

[16] pp. 3-15, TSN, June 14, 1999.

[17] p. 17, TSN, June 14, 1999; pp. 2-3, TSN, June 22, 1999.

[18] p. 12, Appellee’s brief, citing People vs. Ulzoron, 286 SCRA 741.

[19] People vs. Managaytay, 305 SCRA 3156; People vs. Luzorata, 286 SCRA 487.

[20] p. 11, TSN, May 10, 1999.

[21] People vs. Garcia, 288 SCRA 382.

[22] People vs. Almacin, 303 SCRA 399; People vs. Bation, 305 SCRA 169.

[23] People vs. Macosta, 320 SCRA 668.

[24] People vs. Cabiles, 284 SCRA 199.

[25] People vs. Primo Campuhan, G.R. No. 129433, March 30, 2000.

[26] People vs. Primo Campuhan, supra.

[27] People vs. Oliver, 303 SCRA 72.

[28] People vs. Yabut, 311 SCRA 590.

[29] People vs. Lacaba, 318 SCRA 301.

[30] People vs. Garigadi, 317 SCRA 399.

[31] People vs. Celis, 317 SCRA 79; People vs. Juntilla, 314 SCRA 568.

[32] People vs. Lusa, 208 SCRA 296; People vs Gementiza, 285 SCRA 478.

[33] People vs. Aloro, G.R. No. 129208, September 14, 2000.

[34] People vs. Mendoza, 292 SCRA 168.

**[35] 294 SCRA 701, 711.**

[36] People vs. Taneo, 284 SCRA 251.

[37] People vs. Perez, 307 SCRA 276.

[38] Article 266-A (1), R.A. 8353.

[39] People vs. Ulzoron, 286 SCRA 741.

[40] People vs. Mendoza, 117 SCRA 340; People vs. Angeles, 222 SCRA 451.

[41] People vs. Lampaza, 319 SCRA 422; People vs. Aquino, 284 SCRA 369.

[42] Article 63 of the Revised Penal Code provides that "x x x 2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied."

[43] People vs. Court of Appeals, 308 SCRA 687; People vs. Calayca, 301 SCRA 192.

[44] People vs. Baygar, 318 SCRA 358; People vs. Alba, 305 SCRA 811.

[45] People vs. De los Santos, 315 SCRA 579; People vs. Bañago, 309 SCRA 417.

[46] People vs. Marabillas, 303 SCRA 352 citing People vs. Prades, 293 SCRA 411.


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