

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCIS GAVINA Y QUEBEC, ACCUSED-APPELLANT.

*G.R. No. 143237. October 28, 2002*

Ponente: QUISUMBING, J.

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### QUISUMBING, J.:

On appeal is the decision[1] dated April 25, 2000, of the Regional Trial Court of Pasay City, Branch 109, convicting appellant, Francis Gavina y Quebec, of rape in Criminal Case No. 99-0295, and sentencing him to suffer the penalty of reclusion perpetua and to pay the victim P75,000 as indemnity and P50,000 as moral damages.[2]

In an information dated February 22, 1999, appellant was accused of rape, committed as follows:

That on or about the 19th day of January, 1999, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, FRANCIS GAVINA Y QUEBEC, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant, AAA, a minor, 14 years of age, against her will and consent.

Contrary to Law.[3]

When arraigned, appellant pleaded not guilty. Thereafter, trial ensued.

The prosecution presented private complainant AAA,[4] Dr. Mariella Sugue Castillo of the University of the Philippines-Philippine General Hospital (UP-PGH) Child Protection Unit, and Pasay City social worker Delia Camacho as its witnesses.

AAA testified that she hails from San Jose, Digos, Davao del Sur. She claimed to be only 14 years old[5] at the time of the incident. Despite her tender age, she admitted to having been deflowered by a boy friend in the province. At the invitation of one Erlinda Undang, she came to Manila on October 20, 1998, to work as a saleslady, but wound up as a cook in Malate. Unable to take her employer's maltreatment, she fled from her employer on the night of January 18, 1999, with co-employee Susan Yap. They wound up in Luneta Park. They were seated near the Rizal Monument, when appellant approached them. He introduced himself as a National Bureau of Investigation (NBI) agent investigating cases of missing children and offered to help the two distressed girls. Fearing that their employer's security guard might find them, the two girls readily went with him. Appellant brought them to Harrison Street, Manila where his uncle, a policeman, supposedly resided. As the uncle was not there, they went for a stroll at the Philippine International Convention Center (PICC) complex. Appellant then invited her to buy buko. They left Susan behind. She voluntarily went with appellant, as she believed he would not "touch her." They took a cab to Pasay Rotonda, where they had a meal. He then brought her to Baclaran Church where they stayed until 4:00 A.M. When AAA complained she was sleepy, appellant offered her shelter for the night and brought her to Mahal Kita Motel in Pasay City.

Inside the motel room, complainant felt thirsty and asked for a glass of water from appellant. After she drank the

water, she felt dizzy, fell on the bed, and slept. When she came to, she found herself naked on the bed with appellant lying on top of her, his penis inside her vagina. She tried to push him aside but he threatened to kill her if she resisted and shouted for help. Appellant succeeded in having carnal knowledge of her. They stayed in the motel until about 12:00 o'clock noon. She could not leave as appellant sat near the bedroom door.

From the motel, appellant brought AAA to Harrison Plaza where they had lunch. He next brought her to a chapel on the second floor of the mall. He left her at the chapel after telling her he would look for money, but promised to be back for her. After appellant left, she asked for help from one Aldwin Coronel who was also inside the chapel. Aldwin informed her that the man she was with was a pimp. Aldwin accompanied AAA to the office of the mall security force where she revealed that Gavina had raped her. Responding policemen immediately arrested appellant upon his return.[6]

DR. MARIELLA SUGUE CASTILLO, a doctor at the Child Protection Unit of the UP-Philippine General Hospital, conducted the medico-genital examination on AAA. Her findings were summed up as follows:

External genitalia: (+) excoriation of labia majora

Hymen:

estrogenized hymen, (+) fresh laceration at 5 o'clock position with redness of adjacent fossa navicularis, (+) localized redness of fossa navicularis at 7 o'clock, (+) notch with scar tissue at 8 o'clock position.[7]

Dr. Castillo testified that these findings were consistent with complainant's allegations that she had been sexually abused the day before. However, on cross-examination, the doctor admitted that there were no signs of physical abuse on complainant's body, such that the injuries on her genitals could have also been due to consensual sexual intercourse.[8]

DELIA CAMACHO, a social worker with the Child and Youth Protection Unit, Department of Social Welfare & Development (DSWD), Pasay City, testified that on the evening of January 19, 1999, she received a phone call about a complaint for rape being lodged at the Pasay City Police Station. She immediately went to the police station where complainant was introduced to her. She listened as AAA gave her sworn statement to the police. She read the written statement to the victim who thereafter signed it. She also witnessed the victim pointing to appellant as her ravisher. Camacho then brought AAA to the Serra Center for girls. On January 20, 1999, she accompanied complainant to UP-PGH for medico-genital examination. She confirmed the victim's admission that she had a prior sexual experience with her boy friend in the province.[9]

Appellant FRANCIS GAVINA was the sole witness for the defense. He testified that around 9:00 P.M. of January 18, 1999, he was walking in Luneta when he saw complainant and Susan Yap. The two girls smiled at him. Moments later, a security guard chased the girls who promptly hid among the bushes. When the guard left, the girls came out of their hiding place. They told him that they had run away from their employer who maltreated them and his guard was looking for them. He offered them shelter at a friend's house in Malate. They went to Malate but his friend was not around. From there, they proceeded to the PICC site where they had snacks until it began to rain. They took shelter at a nearby building where he sat beside complainant. The latter whispered that she wanted to leave Susan as she was bad company. On the pretext of looking for buko, they left Susan and took a cab to Pasay Rotonda where they again ate. AAA changed attire and put her soiled clothes in appellant's bag. She then invited him to go to Baclaran Church. At the church, complainant fell asleep. He woke her up and they went out for coffee. AAA complained that she was sleepy, so he offered to bring her to Mahal Kita Motel. She agreed. According to appellant, complainant knew that the place they were going to was a motel.

It was already 4:00 A.M. when they reached the motel. Once inside, AAA took a shower and asked appellant to hang her freshly washed underwear. With only a towel wrapped around her, she lay down on the bed with appellant. They began to kiss and proceeded to have sex for four consecutive times, according to appellant. Thereafter, they slept until noon of January 19, 1999, when AAA woke him up. They then went to Harrison Plaza to eat and visit the mall chapel. After praying, appellant told AAA to wait for him at the chapel while he called up his brother. He wanted her to stay at his brother's house. Unable to reach his brother, he went back to the chapel as promised. To his surprise, the Harrison Plaza security guards apprehended him and brought him, together with AAA, to their office. He was subsequently brought to the Pasay City Police Station. Appellant insisted that AAA went with him freely and voluntarily and that they had consensual sex. He claimed that AAA charged him with rape only because she was influenced by the guards to do so, after Aldwin Coronel informed her that he was a pimp.

The lower court found the prosecution version credible, convicted appellant of the charge, and sentenced him as follows:

The Court opines that the prosecution [has] proven the guilt of the accused Francis Gavina y Quebec for rape and hereby [sentences] him to an imprisonment of reclusion perpetua and to pay the victim indemnity of P75,000.00 and P50,000.00 for moral damages.

SO ORDERED.[10]

Appellant now comes to this Court and seeks reversal of his conviction. He assigns to the trial court the following errors:

I

THE TRIAL COURT ERRED IN DECLARING THAT FORCE AND INTIMIDATION HAD ATTENDED THE SEXUAL ENCOUNTER BETWEEN THE VICTIM AND THE ACCUSED.

II

THE TRIAL COURT ERRED IN DECLARING THAT THE CRIME OF RAPE HAD BEEN PROVEN BEYOND REASONABLE DOUBT.[11]

The issue for resolution is whether or not the guilt of appellant, as charged, has been proven beyond reasonable doubt. To this end, we must inquire also into the credibility of witnesses and their respective testimonies.

Appellant insists that complainant's testimony is neither credible nor believable as the sexual congress between him and complainant was consensual.

For the appellee, the Office of the Solicitor General (OSG) asserts that the trial court committed no reversible error in giving credence to complainant's testimony as it was given in a positive, categorical, straightforward, and spontaneous manner. The OSG also stresses that appellant failed to substantiate his imputation of ill motive against complainant.

Generally, an appellate court will not disturb the assessment of the trial court on matters of credibility. This is because the trial court is in a better position to determine such matters, having heard the witnesses and observed their deportment as well as their manner of testifying during the trial.[12] However, this Court is not oblivious to instances when a review of the trial court's findings is necessary, such as where the assessment is tainted with arbitrariness or where some significant fact or circumstance had been overlooked, necessitating departure from the trial court's factual conclusions.[13]

In this case, we find that the trial court indeed has overlooked certain factual circumstances that could lead to a

different result.

First, note that the information charges rape allegedly committed by means of force or intimidation. Yet, the only finding made by the trial court concerning the element of force and intimidation is a perfunctory sentence that “she pushed him but accused threatened her.”[14] We have minutely scrutinized complainant’s testimony but nowhere could we find any credible showing that appellant used force to secure her favors. Nor do we find any proof that appellant so threatened her as to engender a belief that she would suffer harm if she did not succumb to appellant’s lust. A man may lay 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 rape.[15] Here, we find no showing of such compelling fear. Note again that complainant, at the time of the incident, was a 14-year-old lass who was brave enough to leave her hometown in Mindanao without her parents’ knowledge[16] to work in Manila. She was taking French leave from her employer who had engaged her services as a cook and not as a sales girl, to her dismay. She was ready to come even with a complete stranger, the appellant, who feigned to be NBI agent.

Appellant had no weapon with him and used none in the commission of the alleged crime. Nowhere in complainant’s testimony do we find such degree of intimidation as to cause her to believe that appellant was at that time capable of harming her or killing her had she refused him. We find absent here the element of force or intimidation to support a charge for rape. Where the accused raises doubt as to any material element, but the prosecution is unable to overcome such doubt, we must find that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the accused, now appellant, must be acquitted.[17]

In rape committed by force or intimidation, it is imperative that the prosecution should establish that voluntariness on the part of the offended party was absolutely lacking.[18] In the present case, complainant’s conduct before, during, and after the alleged rape, as gleaned from her testimony, tells a different story. It is noteworthy that before the incident, complainant freely and voluntarily went with appellant to several places before they ultimately ended up in a motel. Before tagging along with him, she was with her friend and co-worker whom she had known far longer than appellant. Yet, she chose to leave this companion behind to go with a stranger whom she met only that night. Surprisingly, she developed instant trust and confidence in a man whom she hardly knew at all. It is not inconceivable therefore that, to use the trial court’s language, appellant had “sweet-talked” her into going with him to the motel and having sexual relations with him. However, “sweet-talking” a girl into sex is not rape. It could be some other offense. But here, the charge is not for pimping or trafficking in women, much less child abuse, but rape. We are constrained to remain within the parameters of the charge. And the burden of proof, that the crime of rape as charged had been committed, lies squarely upon the prosecution.

The record shows that after she was allegedly raped, complainant willingly went with appellant on board a cab to Harrison Plaza, had a long lunch with him, and thereafter, even went to the chapel with him.[19] In this instance, they were in a crowded shopping mall, appellant was unarmed, and she had every opportunity to flee from her supposed rapist, and ask for help. Yet she did not. Complainant waited for appellant’s return after he had left her on the pretext that he was going to get money.[20] It appears rather unusual and contrary to human experience for a rape victim, if indeed she was, to wait for her ravisher to return. Thus, seen in its totality, complainant’s conduct sows the seeds of grave doubt concerning her credibility.

Second, in convicting appellant, the trial court relied upon a finding that complainant was unconscious when the appellant had carnal knowledge of her. This contradicts the allegation in the information. Appellant was charged with rape committed by means of force or intimidation. Otherwise put, his offense fell under Article 266-A (1) (a) of the Revised Penal Code.[21] But in convicting him of rape committed while his victim was supposedly unconscious, the trial court applied Article 266-A (1) (b) of said Code.[22] The element of unconsciousness on

the victim's part was not alleged much less specified in the information. It cannot be made the basis of conviction, without violating appellant's right to due process, in particular to be informed of the nature of the accusation against him. (See Rules of Court, Rule 110, Secs. 8 and 9.)

While we understand the trial court's dilemma, when faced with a morally odious situation, we cannot allow a ready but uncritical acceptance of the complainant's testimony. As often said, there appears to be no particular reason why a barrio lass of 14 should charge appellant with rape, allow her private parts to be examined, and go through the harrowing and humiliating experience of a public trial, if not to vindicate her honor and see her despoiler punished. Furthermore, appellant failed to substantiate his imputation of ill motive on complainant's part to falsely accuse him. However, the factual circumstances that attended the alleged rape, particularly complainant's conduct before, during, and after coitus, in the light of the medical evidence and testimony of the UP-PGH doctor, could lend themselves to different interpretations, including one indicating consensual copulation. This conclusion is not far-fetched: complaining witness was, despite her tender years, no dewy-eyed innocent but admittedly sexually experienced. She appeared knowledgeable in the ways of city life.

The trial court, in holding for conviction, relied on the presumption hominis that a woman who cries rape says all that need to be said, and no young Filipina would cry rape if it were not true. However, its decision totally disregarded the more paramount constitutional presumption that an accused is deemed innocent until proven otherwise. When two or more conflicting presumptions are involved, one tending to show the guilt of the accused and the other to sustain his innocence, it is necessary to examine the basis for each presumption and determine which should logically prevail. A presumption indicating guilt does not by itself destroy the presumption of innocence unless the inculcating presumption, together with all the evidence adduced, suffices to overcome the presumption of innocence by proof of guilt beyond reasonable doubt. Until the appellant's guilt is shown in this manner, the presumption of innocence continues and must prevail.[23]

WHEREFORE, the decision of the Regional Trial Court of Pasay City, Branch 109 in Criminal Case No. 99-0295 is REVERSED and SET ASIDE. Appellant FRANCIS GAVINA Y QUEBEC is ACQUITTED of rape on the ground of reasonable doubt. He is ordered RELEASED forthwith from confinement, unless held for another valid cause. The Director of the Bureau of Corrections is further ordered to report to this Court, within five days from notice, compliance with this decision.

**SO ORDERED.**

Bellosillo, Acting Chief Justice, (Chairman), Mendoza, and Callejo, Sr., JJ., concur.  
Austria-Martinez, J., on leave.

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[1] Rollo, pp. 24-34.

[2] Id. at 34.

[3] Records, p. 2.

[4] Complainant's real name is AAA. See TSN, April 15, 1999, p. 10.

[5] Complainant admitted during the trial that her true date of birth was July 7, 1983 and not July 7, 1984 as initially claimed by her. See TSN, April 15, 1999, p. 10.

[6] TSN, March 29, 1999, pp. 2-11.

[7] Records, p. 9.

- [8] TSN, April 6, 1999, pp. 2-9.
- [9] TSN, April 20, 1999, pp. 2-4.
- [10] Records, p. 222.
- [11] Rollo, p. 57.
- [12] People vs. Celis et al., 317 SCRA 79, 91 (1999).
- [13] People vs. Garcia, 341 SCRA 502, 509-510 (2000).
- [14] Rollo, p. 32.
- [15] People vs. Mostrales, 294 SCRA 701, 710-711 (1998).
- [16] TSN, March 29, 1999, p. 17.
- [17] People vs. Godoy, 250 SCRA 676, 702 (1995), citing 1 WHARTON, CRIMINAL EVIDENCE (12[th] ed.), Sec. 14, pp. 41-42.
- [18] People vs. Moreno, 321 SCRA 334, 348 (1999).
- [19] TSN, April 15, 1999, pp. 6-7.
- [20] TSN, March 29, 1999, pp. 9-10.
- [21] ART. 266-A. Rape, When and How Committed. – Rape is committed.
- (1) By a man having carnal knowledge of a woman under any of the following circumstances:
- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- x x x x x x x x
- [22] Ibid.
- [23] Supra, note 17 at 726-727, citing 1 WHARTON, CRIMINAL EVIDENCE (12[th] ed.), Sec. 89, pp. 173-174.

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