

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

G.R. No. 147855. May 28, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] dated February 9, 2001 of the Regional Trial Court of Manila, Branch 27, in Criminal Case No. 97-161141, finding Conde Rapisora y Estrada guilty beyond reasonable doubt of rape and meting on him the penalty of reclusion perpetua. In addition, he was ordered to pay the victim the amounts of P50,000 as indemnity and P50,000 as moral damages.

Rapisora was charged under an Information which reads:

The undersigned Assistant Prosecutor, upon sworn complaint filed by the offended party, HELEN ROQUE y VICTORIO, a copy of which is hereto attached as Annex “A”, hereby accuses CONDE RAPISORA y ESTRADA, of the crime of Rape, committed as follows:

That on or about June 05, 1997, in the City of Manila, Philippines, the said accused, with lewd designs, and by means of force, violence, and intimidation to wit: by then and there poking a knife against the complainant, forcibly undressing her and thereafter inserting his penis into her vagina, did then and there wilfully, unlawfully and feloniously succeeded in having carnal knowledge with the said complainant, against her will and consent.

Contrary to law.[2]

At his arraignment, Rapisora, with the assistance of counsel, pleaded not guilty. Trial ensued.

The Evidence of the Prosecution[3]

Based mainly on the testimony[4] of the victim, Helen Roque, the prosecution established the following facts:

Helen is a salesclerk of Jag Clothing Company, then assigned at the Shoe Mart (SM) Department Store in Makati City. She is married and has a seven-month-old son.

On June 5, 1997, being her day off from work, Helen went to Pampanga to bring milk for her son who was under the care of her mother-in-law. Helen returned to Manila in the afternoon of the same day. When the bus that she was riding reached Manila, Helen decided to pass by her sister’s house in Mandaluyong City, where she used to reside when she was still single, to get some things that she had left when she moved to Taguig with her husband. It was almost 9:00 p.m.

While walking along Martinez Street in Mandaluyong City, Helen met the accused, Rapisora, who was clad in a white sleeveless shirt (“sando”) and blue pants. Rapisora approached Helen, greeted her and asked why she could not remember him anymore. He claimed they were relatives. Rapisora was hitting his shoulders (as if flagellating himself) with a white face towel while talking to her. Helen, who was less than three feet from Rapisora, suddenly

became dizzy and felt very weak.

Rapisora then hailed a passing taxi and immediately shoved Helen inside. He, likewise, boarded the cab and sat beside her at the backseat. He placed his arms around Helen's shoulder and whispered to her, "huwag kang magkamaling sumigaw, huwag kang maingay." [5] Helen got scared as she noticed that there was a knife bulging at Rapisora's waistline. He took out the knife and placed it inside the pocket of his pants.

They alighted along V. Mapa Street in Sta. Mesa, Manila, in front of what seemed to Helen was a house but was actually the Filipinas Walk-Inn Motel. They entered the "house" with Rapisora never releasing his hold on Helen. As soon as they were inside, Rapisora shoved Helen into a room. He pushed her so hard that she hit the wall. Helen attempted to run to the door, but Rapisora immediately closed and locked it. He then poked the knife at her neck saying, "huwag kang magkamaling magwala dito kung gusto mong makawala ng buhay." [6]

Helen knelt before Rapisora, pleading for mercy and said that she had a husband and a baby. Rapisora, however, was unmoved saying, "pagbigyan mo na lang ako sa gusto ko, makakauwi ka ng buhay". [7] He ordered her to undress. Helen refused. In the meantime, Rapisora discarded his clothes. When he saw that Helen was not undressing herself, he forcibly took off her shirt, pants and even her underwear. Thereafter, he pushed her to the bed.

When Helen was lying prostrate, Rapisora immediately placed himself on top of her. He proceeded to kiss her on the lips and on her breasts. He spread her legs and tried to insert his flaccid organ into hers, but did not initially succeed. Wiping off the blood on his organ, as Helen had her monthly period then, he held Helen's head and forced him to suck his organ. When it hardened, he again inserted it into her vagina. This time, his organ penetrated hers.

After his bestial desires had been satisfied, Rapisora told Helen to put on her clothes. She did as she was told, since she desperately wanted to go home. Rapisora, likewise, got dressed. Before they left the room, Rapisora warned her against making any noise. He placed his arm around her shoulders as they went outside. Upon reaching the street, Rapisora instructed her to cross it. Helen obeyed. When she got to the other side, she looked back and saw that Rapisora was no longer there.

Despite her condition, Helen managed to get home. She broke down when she saw her husband. She narrated to him her ordeal and they both cried. They agreed to report the matter to the authorities. On June 9, 1997, Helen submitted herself to a medico-genital examination with the National Bureau of Investigation (NBI). At that time, she did not know the identity of her assailant. The examination yielded the following conclusions:

- 1.) No evident of extragenital physical injuries noted on the body of the subject at the time of examination;
- 2.) Hymen, reduced to carunculae myrtiformis. [8]

A few months later, on August 21, 1997, while on her way to work, Helen passed by a newsstand. A picture appearing in the tabloid "Abante Tonite" caught her attention. The man on the picture resembled her assailant. The news item, with the title "Biktima pa ng bumperong serial rapist, lumitaw," [9] identified the man as Conde Rapisora. After looking at the picture more closely, Helen became certain that he was her assailant. Bringing the tabloid with her, she went back to the NBI and showed them the news item. She was advised to go to the Western Police District (WPD) where she showed the news item to the police authorities. She was also interviewed by PO2 Dolores Villegas. Thereafter, Helen was brought to a detention cell. There were several men inside, but Helen immediately recognized Rapisora. She pointed to him as the one who raped her.

Thereafter, PO2 Villegas took Helen's sworn statement [10] and prepared the booking sheet and arrest report, [11] police report [12] and referral letter for inquest. [13] When she took the witness stand, Helen again positively

identified Rapisora as her assailant.[14]

Dr. Armie Soreta-Umil, the medico-legal officer of the NBI, explained the results of the medico-genital examination that she conducted on Helen.[15] According to Dr. Soreta-Umil, the absence of laceration in Helen's hymen was due to the fact that it had been reduced to *carunculae myrtiformis* or, in laymen's term, "tug." Normally, the hymen of a woman who had already given birth, as in Helen's case, would no longer suffer any laceration even if she was raped. Dr. Soreta-Umil did not conduct an examination to determine the presence of spermatozoa on Helen's sexual organ because exactly four days had already lapsed since the alleged rape. At most, the spermatozoa's life span in the vaginal canal would only be up to seventy-two hours.

The Evidence of the Accused[16]

For his part, Rapisora[17] vigorously denied raping Helen. He testified that he was a fireman at the Mandaluyong Fire Department. In the morning of May 23, 1997, his day off from work, Rapisora was eating "lugaw" at one of the stores along Boni-EDSA Highway when a lady arrived at the store. She made a phone call using the pay phone. Rapisora noticed that the lady was glancing at him so he invited her to eat "lugaw." She politely declined. Apparently, she was not able to contact the person at the other end because she put down the phone and sat beside Rapisora. She introduced herself as Helen and said that she worked at a department store in Makati. Rapisora also introduced himself and told her that he was a fireman at the Mandaluyong Fire Department. When she asked for his telephone number, Rapisora gave the fire station's number as he practically lived there. Helen, on the other hand, told him that she did not have a telephone. She teased him, saying that his wife might receive the call if she phoned him. Rapisora replied that he was still single and jokingly countered that someone would probably get mad if he invited her out. Helen said that she was already a "graduate" and has a "diploma." He took this to mean that she was already married and had a child.

The following day, he received a phone call from Helen. She claimed that she missed him and confided that she had a problem. They talked briefly. Helen even commented that "okay kang kausap, malakas ang dating mo, tatawagan na lang kita." [18]

On May 25, 1997, Helen again called up Rapisora and after learning that he was not on duty then, set a date with him that same morning. At 8:00 a.m., upon their agreement, they met in a Jollibee restaurant in Cubao. While they were eating, Helen mentioned to Rapisora that she liked him and that he was her "type." He replied that she was his "type," too. Before parting, they agreed to meet again.

At 5:00 p.m. on June 5, 1997, they met along Martinez Street in Mandaluyong. Helen informed him that she just arrived from Pampanga where she delivered her baby's food supply. Upon her insistence that they transfer to a more private place, Rapisora suggested that they go to a motel. Helen offered no objection.

Rapisora flagged down a taxi and they briefly stopped at the convenience store in the corner of Shaw Boulevard and Kalentong to buy some food. They proceeded to the Filipinas Walk-Inn Motel at V. Mapa Street in Sta. Mesa, Manila. After they had checked-in with the receptionist, they entered one of the rooms. Helen confided to him about her problems. She proposed that they rent a room where they could meet at least twice a week. She, likewise, asked if he could give support to her child, and Rapisora replied that he would think about it.

Thereafter, Helen went to the bathroom. When she returned, she had already taken off her pants and a towel was wrapped around her waist. She still had her shirt on. She laid down on the bed and they began kissing and caressing each other. Since Helen had her monthly period then, they mutually decided not to consummate the sexual act. They checked out of the motel later in the evening of that day. By then, Helen was worried that her husband might already be looking for her. They both rode the jeepney bound for Crossing. Rapisora noticed during the ride that Helen was trying to cover her face with her hair. When he alighted in Kalentong, Helen told

him that she would call him up again.

The following day, Rapisora reported for work. As she had promised, Helen called him up. She pressed him for his answer to her request for support to her child. She also mentioned that her sister already knew about them, as somebody saw them together in Martinez Street. He flatly told her that he could not accede to her request. She became angry at once and accused him of being a coward. That was the last time that they talked.

The Trial Court's Ruling

After weighing the parties' respective evidence, the trial court rendered the appealed judgment finding Rapisora guilty beyond reasonable doubt of rape. In convicting him, the trial court found Helen to be a credible witness. On the other hand, it characterized Rapisora's testimony to be "replete with inconsistencies and improbabilities" which rendered his uncorroborated testimony "unworthy of belief." [19] The dispositive portion of the decision of the trial court reads:

Wherefore, in view of all the foregoing, the Court finds the accused CONDE RAPISORA y ESTRADA guilty beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of Reclusion Perpetua. Accused is further ordered to pay the complainant the amount of P50,000.00 as indemnity and another P50,000.00 as moral damages. [20]

The Present Appeal

In his appeal brief, Rapisora, now the appellant, assails the judgment of the trial court alleging that:

I

THE LOWER COURT ERRED IN NOT FINDING THAT [THE] COMPLAINING WITNESS HAD CLOSE ACQUAINTANCE WITH THE ACCUSED BEFORE JUNE 5, 1997, AND HAD AGREED TO MEET ON SAID DATE;

II

THE LOWER COURT ERRED IN NOT FINDING THAT [THE] COMPLAINING WITNESS WENT ALONG VOLUNTARILY (sic) WITH [THE] ACCUSED FOR A DATE AT FILIPINAS WALK-IN MOTEL ON JUNE 5, 1997;

III

THE LOWER COURT ERRED IN NOT FINDING THAT [THE] COMPLAINING WITNESS HAD SEX VOLUNTARILY (SIC) WITH [THE] ACCUSED ON JUNE 5, 1997 AT THE SAID MOTEL;

IV

THE LOWER COURT ERRED IN FINDING [THE] COMPLAINING WITNESS AS AN INNOCENT ANGEL, SO TO SPEAK, AND IN GIVING CREDENCE TO HER TESTIMONY; AND

V

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED ON THE BASIS OF HIS DEFENSE AND ON THE GROUND OF REASONABLE DOUBT. [21]

Underlying the foregoing issues is the credibility of the victim, Helen, as the prosecution's principal witness. Thus, in assailing his conviction, the appellant impugns her credibility. According to the appellant, Helen's version of what transpired on June 5, 1997 taxes credulity. It is allegedly difficult to believe that, as Helen had testified, she and the appellant just coincidentally met each other in Martinez Street in Mandaluyong. Rather, the appellant insists that he and Helen had previous close acquaintance and that they agreed to meet each other on the said place and time. And with nary a sign of struggle, she boarded the taxi with him as they proceeded to the motel.

The appellant capitalizes on purported inconsistencies between Helen's sworn statement and her testimony in court. She testified that the appellant was waving a white towel when he approached her. However, Helen omitted to mention this in her sworn statement. Neither was it mentioned therein that the appellant pointed a knife at her on board the taxi. But in her testimony, Helen averred that, at knifepoint during the taxi ride, the appellant warned her uttering, "huwag kang magkamaling sumigaw, huwag kang maingay."

The appellant, likewise, harps on Dr. Soreta-Umil's statement that Helen told her that the appellant "befriended her (Helen) and later on brought her to a motel." Such revelation allegedly negates Helen's claim that he forced her to come along with him to the motel. Further, Dr. Soreta-Umil's finding that there was no laceration in Helen's genitalia debunks her assertion that he had sexual intercourse with her against her will.

Given these alleged flaws in the prosecution's evidence, the appellant contends that the trial court erred in not acquitting him on the ground of reasonable doubt.

On the other hand, the Office of the Solicitor General (OSG) not only urges this Court to affirm the appellant's conviction but, likewise, to increase the penalty meted on him to death. The OSG avers that the rape was committed with the use of a knife and that this fact was alleged in the information and proved during trial. Moreover, the aggravating circumstance of recidivism should be appreciated against the appellant as he had previously been convicted by final judgment of two counts of rape in G.R. Nos. 140934-35[22] and six counts of rape in G.R. No. 138086.[23]

The Ruling of the Court

The appellant's conviction is affirmed.

Rape is essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from the prying eyes, and the crime usually commences solely upon the word of the offended woman herself and conviction invariably turns upon her credibility, as the prosecution's single witness of the actual occurrence.[24]

As a corollary, a conviction for rape may be made even on the testimony of the victim herself, as long as such testimony is credible. In fact, the victim's testimony is the most important factor to prove that the felony has been committed.[25]

In reviewing rape cases, this Court had always been guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, 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.[26]

In this case, the Court finds no cogent reason to deviate from the trial court's findings regarding Helen's credibility as a witness and the weight and value it gave to her testimony. Although Judge Teresa P. Soriaso, the judge who wrote the appealed decision, was not the judge who heard the testimonies of the witnesses,[27] this fact would not prevent this Court from affirming the trial court's findings of facts on the credibility of witnesses. After all, the judge who did not hear the testimonies personally could always rely on the transcripts of stenographic notes taken during trial.[28]

Indeed, a careful review of the records shows that Helen testified in a candid, straightforward and categorical manner. The following excerpt of her lengthy and graphic testimony supports this conclusion:

Q

You said you are walking along Martinez St., going to the house of your sister to get some things. Now, on that particular time, date and place, do you recall of any unusual incident, Madam Witness?

A

There was, sir.

Q What is that unusual incident?

A

While I was walking along Martinez St., on my way to the house of my sister, I met a man wearing a white sleeveless t-shirt (sando) and blue pajama which clothing materials appeared to be similar to the fabric used in making umbrellas.

Q What happened when you met this person?

A

This man suddenly greeted me and asked me, you don't remember me anymore? And while he was talking with me, he was swinging his towel (hinahampas sa balikat) he was holding in (sic) his both hands alternately in his shoulder.

PUB. PROS. REBAGAY:

Q Will you please describe to us this towel he was holding and alternately swinging in his shoulder?

A White hand towel like Good Morning hand towel.

THE COURT:

Q What is the size? Like this hand towel?

WITNESS:

A Narrower than the towel shown by the Hon. Court.

...

PUB. PROS. REBAGAY:

Q After that, what happened, Madam Witness?

A While he was hitting his shoulder with his hand towel he was holding, I felt weak and dizzy.

Q After that what happened next, Madam Witness?

A After that, a taxi cab passed by and he flagged down the taxi cab and told to go with him so that I can meet my sister Ate Ren-Ren.

THE COURT:

Q Do you have a sister by the name of Ren-Ren?

WITNESS:

A None, Your Honor.

THE COURT:

Q Then, why did you go with him when you have no sister by the name of Ren-Ren?

A No, Your Honor, Ren-Ren, according to him is his sister.

PUB. PROS. REBAGAY:

Q What happened Madam Witness, when he flagged down the taxi cab and told you to meet his sister Ren-Ren?

...

WITNESS:**A**

After telling me to go with him for me to see Ate Ren-Ren, I was then feeling very weak and dizzy. He shoved me inside the taxi cab, then he went also inside the taxi cab and put his arms around my shoulder.

PUB. PROS. REBAGAY:

Q What happened Madam Witness, when you were inside the taxi cab and (sic) put his arms around your shoulder?

A When the taxi cab moved forward, he whispered to me “huwag kang magkamaling sumigaw, huwag kang maingay.”

Q

After that, what did you do Madam Witness, when he whispered to you, not to shout (huwag kang sumigaw), so [that] nothing will happen to you?

A I was afraid because I noticed that there was a knife bulging in his waistline which he took and transferred to the pocket of his pajama.

...

PUB. PROS. REBAGAY:

Q What happened Madam Witness, after the accused transferred the knife from the waistline and then placed it in his pocket?

A His left arm was on my shoulder and he was holding my right hand.

Q Where did you go Madam Witness, while he was holding your shoulder and his right arm were (sic) holding your right arm?

A The taxi stopped in front of what seems to be a house. The man paid for the taxi fare and then we alighted from

the taxi.

THE COURT:

Q Who is that man you are referring to?

A The accused, Your Honor.

PUB. PROS. REBAGAY:

Q If you see that person again, will you be able to recognize him, Madam Witness?

A Yes, Sir.

Q Please point to him.

COURT INTERPRETER:

Witness is pointing to a male person inside the courtroom. [W]hen asked his name[,] [he] identified himself as Conde Rapisora.

. . .

PUB. PROS. REBAGAY:

Q What happened Madam Witness, after you alighted from the taxi cab?

A

We entered a house and he was still holding me and he never released me from his hold. He talked to a man and after that, we entered the third room of that house.

Q To complete this picture again, Madam Witness, will you please describe to us that building where you entered?

A

It is like this room, Sir. One-storey building, the door is transparent and there is a receiving room at the left side and there was also a small store. At the right side were the rooms.

Q By the way, Madam Witness, you mentioned that upon entering that building, the accused whispered to a person. Was he the only person there inside?

A Yes, Sir. A male person, Sir.

Q What is the lighting condition of that building when you entered, Madam Witness?

A At the receiving room, it was dark, Sir, but the rooms were lighted with fluorescent lamp.

Q You mentioned that you entered the third room. How did you enter the room?

A He opened the door and after opening the door, he shoved me inside the room.

THE COURT:

Q

You said that while on board the taxi, you felt weak and dizzy. Now, after you alighted from the taxi until you entered the room, were you still weak and dizzy?

WITNESS:

A Yes, Your Honor. I still felt weak and dizzy, as if I am drunk.

THE COURT:

You may proceed, Fiscal.

PUB. PROS. REBAGAY:

Q Will you please tell this Hon. Court why you suddenly become (sic) weak and dizzy after talking with the said accused?

A When he was swinging his towel on his shoulder alternately, that was the time that I felt an unusual feeling, I became weak and dizzy.

...

PUB. PROS. REBAGAY:

Let me go back Madam Witness, while you were inside the taxi cab, where is this towel that he has been holding all the time that he was talking to you at Martinez St.?

A Inside the pocket of his pajama, Sir.

Q You mentioned that you were shoved inside that room. What happened after that, Madam Witness?

A He shoved me so hard that my hips hit the concrete wall of the room.

Q After hitting the wall, what happened?

A

My hips hit the concrete wall and I stumbled such that I was in a kneeling position. I tried to run outside but he blocked my way and locked the door.

Q After that Madam Witness, what happened next?

A After he locked the door, he poked a knife at my neck and told me “huwag kang magkamaling magwala dito kung gusto mong makawala ng buhay.”

Q Will you describe to us this knife, Madam Witness, the one he used in poking to (sic) your neck?

A The handle of the knife is made of plastic and the color is black and silver blade, three inches long while the handle is two inches long.

Q After poking the knife on (sic) you and telling you not to shout, what happened next?

A

After poking the knife at my neck, I closed my eyes and kneel (sic) before him and pleaded to him, telling him, have mercy because I have a family, I have a child, I have a husband and he told me just to give in to my wish (pagbigyan mo na lang ako sa gusto ko, makakauwi ka ng buhay).

PUB. PROS. REBAGAY:

Q At this point in time, Your Honor, we would like to put on record that the witness is shedding tears when she narrated this particular incident.

ATTY. FERRER:

There is (sic) no tears from the eyes of the witness, Your Honor.

PUB. PROS. REBAGAY:

She just shed tears, Your Honor.

ATTY. FERRER:

She is even smiling, Your Honor.

THE COURT:

Anyway, the Court noticed that the witness was sobbing.

PUB. PROS. REBAGAY:

Q What happened Madam Witness, after that?

A While I was on a kneeling position, he held both my hands and raised me up and ordered me to undress.

Q After raising you up and asking you to undress, what happened, Madam Witness?

A I just stood up and did not obey his order and I was shivering in fear with my both arms covering my body.

PUB. PROS. REBAGAY:

Q What happened after that, Madam Witness?

A

He ordered me to undress but I did not obey him because I was in fear. But, he proceeded to undress himself. He was completely naked. When I don't (sic) want to remove my clothes, he raised my t-shirt upward.

Q What happened after he raised your t-shirt?

A My both (sic) arms were still covering my body. So, he kicked me.

Q What part of your body did he kick you (sic)?

A My left leg, Sir.

Q What happened after he kicked you at the left leg?

A As a result of that kick on my left leg, I almost lost my balance and my arms were still covering my body.

Q What happened after that, Madam Witness?

A His eyes were “nanglilisik”. He looked very mad and he lifted my arms upward and removed my t-shirt.

Q Just to complete the picture, Madam Witness, what was the lighting condition of the light (sic) at that time, at that particular time?

A The light was open, Sir.

Q What happened when he forced you to undress, Madam Witness?

A When my t-shirt was already removed, he ordered me to put down my panty (sic) and also my underwear, Your Honor, and my bra.

Q What happened when he ordered you to put down your pants and your underwear?

A

I was shivering in fear and I cannot put down my pants, so, he was the one who put down my pants. He was about to cut down my bra and later, he just unhooked my bra. So, what was left was my panty.

Q What happened after that, Madam Witness?

A After that I was only clad in panty. So, he pulled down my panty, so I was already naked.

Q What happened after that, Madam Witness?

A He pushed me to the bed, so, I was already lying on the bed and I was lying face up. Then, he put himself on top of me.

Q What happened after he placed himself on top of you?

A He placed both his arms over my arms and his legs over my legs.

Q What happened after that, Madam Witness?

A

He kissed me and held my breast and he kissed my lips and told me to respond. He cannot kiss my private parts because during that time I have (sic) my monthly period, my menstruation, so, he kissed my lips and my breast only.

Q How long did he kiss you, Madam Witness?

A Fifteen minutes, Sir.

Q After 15 minutes, Madam Witness, what happened next?

A After that, he spread my legs and inserted his penis into my vagina.

Q After that, what did you do next, after he inserted his penis into your vagina, Madam Witness?

A I wanted to shout but I was afraid.

Q Why were you afraid, Madam Witness?

A I was afraid because he had threatened me, Sir, that he will kill me, if I make noise and since my child is still

small, I did not shout.

Q How did he insert his penis into your vagina?

A

When he inserted his penis into my vagina, at that time, it was not very hard yet and he was not satisfied. So, he ordered me to suck his penis, but before that, he wiped off the blood in his penis by using his towel.

Q What did you do after he wiped off the blood in his penis, Madam Witness?

A

He put his penis inside my mouth, because during that time, I was not in my normal self and I was shivering, so, I was not able to do what he wanted me to do. So, he placed my head against his penis.

Q What happened when he placed your face against his penis, Madam Witness?

A After that, he made me lie on the bed and put himself on top of me again. He inserted again his penis into my vagina.

Q Just to complete the picture, Madam Witness, what happened to his penis when you sucked it?

A It hardened, sir.

THE COURT:

Q Did you not bite his penis?

WITNESS:

A Fear overcome (sic) me, Your Honor. What was on my mind during that time, Your Honor, is for me to be able to go home.

THE COURT:

Q How many minutes had lapsed from the time he inserted his penis for the second time into your vagina until he ejaculated?

A 15 minutes, Your Honor.

Q So, what was the accused doing during that 15-minute period until he ejaculated?

A He was making a push and pull movement, Your Honor.

THE COURT:

You may proceed, Fiscal.

PUB. PROS. REBAGAY:

Q While doing that push and pull movement, was that all he was doing, Madam Witness?

A He held my breast and kissed me again.

Q Where did he kiss you again, Madam Witness?

A He kissed my lips, Sir.

Q After that Madam Witness, after he ejaculated, what happened next?

A After he had ejaculated, I again pleaded to him, to let me go because I wanted to go home.

...

Q

Now, let me go back to the place, Madam Witness. After the sexual intercourse, Madam Witness, what happened after that?

A

After the sexual intercourse, he ordered me to dress up. So, I immediately dressed up because I wanted to go home already and to leave that place.

Q Did you dress up, Madam Witness?

A

After I had dressed up, he also dressed up and before we left the room, he threatened me not to make a noise, not to shout.

Q How did you go out from that room, Madam Witness?

A

When we went out of that room, his arms were still on my shoulder. And when we left that house and reached the street, he ordered me to cross the street. And, when I crossed the street, when I looked back, he already disappeared.[29]

Even during the grueling cross-examination, Helen was unequivocal. Her testimony bears the hallmarks of truth, as she remained consistent on material points. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit. [30] Her tears add poignancy and credibility to the rape charge with the verity born out of human nature and experience.[31]

Moreover, the purported discrepancies and inconsistencies between Helen's sworn statement and her testimony in court do not discredit her. The infirmity of affidavits as a species of evidence is a common occurrence in judicial experience.[32] Affidavits are generally not prepared by the affiants themselves but by other persons who used their own language in writing the statements. Being ex parte, they are almost always incomplete and inaccurate, but these factors do not denigrate the credibility of witnesses.[33] As such, affidavits are generally considered to be inferior to testimonies given in court. Also, victims of rape are not expected to have an accurate or errorless recollection of the traumatic experience that was so humiliating and painful, that she might, in fact, be trying to obliterate it from her memory. [34]

Neither could Dr. Soreta-Umil's statement that Helen told her that the appellant "befriended her (Helen) and later on brought her to a motel" negate the fact that he raped Helen. Rather, it is consistent with her testimony that the appellant approached her and even introduced himself to her as a relative. Thereafter, when she felt weak and dizzy, he shoved her into a taxi and brought her to a motel. In short, Helen's purported statement to Dr.

Soreta-Umil does not at all belie the crux of the case, i.e., that the appellant had carnal knowledge of Helen against her will.

That there was no laceration in Helen's hymen is immaterial. As Dr. Soreta-Umil stated, Helen's hymen had been reduced to carunculae myrtiformis, which means that no laceration was found on the hymen. Laceration is not an element of the crime of rape.[35] Simply put, the absence of lacerations does not negate rape. Moreover, hymenal lacerations after sexual congress normally occurs on women who have had no prior sexual experience.[36] Helen is a married woman and had already given birth.

In another futile attempt to discredit Helen, the appellant characterizes her conduct before, during and after the incident as unnatural.[37] The appellant is obviously clutching at straw. Times without number, this Court has held that the workings of the human mind placed under a great deal of emotional and psychological stress (such as during rape) are unpredictable, and different people react differently. [38] There is no standard form of human behavioral response when one is confronted with a strange, startling, frightful or traumatic experience – some may shout, some may faint, and some may be shocked into insensibility.[39]

Helen's failure to shout when she was brought to the motel was due to her genuine fear that the appellant would harm her. As she stated during her cross-examination, she feared for her life because the appellant was armed with a knife.[40] Intimidation in rape cases is not calibrated or governed by hard and fast rules. It is not necessary that the force or intimidation employed be so great or be of such character that it cannot be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose of the accused. Intimidation must be viewed in the light of the victim's perception and judgment at the time of rape. It is enough that it produces fear – fear that if the victim does not yield to the bestial demands of the accused, something horrible will happen to her at that moment or thereafter.[41]

In any case, the records show that Helen did not succumb to the appellant's lustful design without putting up resistance. When they were inside the room, she tried to run to the door but the appellant blocked her path. She refused to undress; thus, the appellant had to do the task for her. She begged and pleaded to him not to proceed with his lewd design, to no avail.

Significantly, the conduct of a woman immediately following the alleged assault is of utmost importance as it tends to establish the truth or falsity of her claim.[42] In the case at bar, Helen broke down as soon as she saw her husband when she got home after the appellant ravished her. She forthwith related to him her ordeal. The first chance that she had, and this was on June 9, 1997 or four days after the incident, she went to the NBI to file a complaint, notwithstanding that she did not know the appellant's identity then, and submitted herself to a medico-genital examination. A few months later, when she saw the appellant's photograph in the tabloid, she lost no time in pursuing the charge against him.

To the Court's mind, the actuation of Helen bolsters her charge of rape. Her willingness, as well as courage, to face interrogation and medical examination could be a mute but eloquent proof of the truth of her claim.[43] Certainly, she would not have implicated a person, who was allegedly her lover, as the perpetrator of an abominable crime and thereby lay open their illicit relationship to public shame and ridicule, not to mention the ire of her husband were it not the truth.[44]

In contrast, the appellant's claim that he and Helen had an amorous relationship is flimsy. The "sweetheart defense" is a much-abused defense that rashly derides the intelligence of the Court and sorely tests its patience.[45] Being an affirmative defense, the allegation of a love affair must be supported by convincing proof.[46] Since the appellant admitted to having had carnal knowledge of the victim, he bears the burden of proving his defense by clear and convincing evidence.[47] The appellant failed to discharge this burden. Other

than his self-serving assertions, there was no support to his claim that he and Helen were lovers. His “sweetheart defense” cannot be given credence in the absence of corroborative proof like love notes, mementos, pictures or tokens, that such romantic relationship really existed.[48] All told, the appellant has miserably failed to destroy the credibility of Helen.

The Court agrees with the OSG that the rape was committed with the use of a deadly weapon, a knife, for which Republic Act No. 7659 prescribes the penalty of reclusion perpetua to death. However, contrary to the stance taken by the OSG, the Court cannot appreciate the appellant’s recidivism as an aggravating circumstance. Article 14(9) of the Revised Penal Code defines a recidivist as “one who, at the time of his trial for one crime shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.” To prove recidivism, it is necessary to allege the same in the Information and to attach thereto certified copies of the sentences rendered against the accused. [49] Nonetheless, the trial court may still give such aggravating circumstance credence if the accused does not object to the presentation of evidence on the fact of recidivism.[50]

In this case, the appellant’s recidivism was not alleged in the Information nor even proved during trial. The prosecution failed to present during trial certified copies of the judgments convicting the appellant of rape in the other cases filed against him. Since neither aggravating nor mitigating circumstance attended the commission of the crime, the penalty of reclusion perpetua was properly meted on the appellant.

As to the award of damages, a modification is in order. While the trial court was correct in awarding the amounts of P50,000 as civil indemnity and P50,000 as moral damages to Helen, conformably to prevailing jurisprudence,[51] the amount of P25,000 should be additionally awarded as exemplary damages considering that the use of a deadly weapon attended the commission of the crime.[52]

WHEREFORE, the appealed Decision dated February 9, 2001 of the Regional Trial Court of Manila, Branch 27, in Criminal Case No. 97-161141, finding Conde Rapisora y Estrada GUILTY beyond reasonable doubt of rape under Article 335 of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with MODIFICATION. In addition to the amounts of P50,000 as civil indemnity and P50,000 as moral damages, the appellant is hereby ORDERED to pay the victim, Helen Roque, the amount of P25,000 as exemplary damages.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Penned by Judge Teresa P. Soriaso.

[2] Records, p. 1.

[3] Aside from the victim, the prosecution likewise presented as witnesses Dr. Armie Soreta-Umil and PO2 Dolores Villegas.

[4] TSN, 28 September 1998.

[5] Id. at 10.

[6] Id. at 19.

[7] Id. at 19-20.

- [8] Exhibit "A", Records, p. 46.
- [9] Exhibit "G".
- [10] Exhibit "C.", Records, p. 10.
- [11] Exhibit "D.", Id. at 20.
- [12] Exhibit "E.", Id. at 15
- [13] Exhibit "F.", Id. at 4.
- [14] TSN, September 28, 1998, p. 13.
- [15] TSN, September 15, 1998, pp. 1-49.
- [16] The accused, Conde Rapisora, was the sole witness for the defense.
- [17] TSN, February 8, 1999.
- [18] Id. at 14.
- [19] RTC Decision, p. 11; Rollo, p. 28.
- [20] Id. at 12; Id. at 29.
- [21] Rollo, pp. 44-45.

[22] 368 SCRA 170 (2001).

[23] 350 SCRA 299 (2001).

- [24] People v. Molleda, G.R. No. 153219, December 1, 2003.
- [25] People v. Antonio, 399 SCRA 585 (2003).
- [26] People v. Novio, G.R. No. 139332, June 30, 2003.
- [27] It was Judge Edgardo P. Cruz (now an Associate Justice of the Court of Appeals) who heard the witnesses.
- [28] People v. Buayaban, 400 SCRA 48 (2003).
- [29] TSN, 28 September 1998, pp. 6-30.
- [30] People v. Manallo, 400 SCRA 129 (2003).
- [31] Ibid.
- [32] People v. Almanzor, 384 SCRA 311 (2002).
- [33] Ibid.
- [34] People v. Masapol, G.R. No. 121997, December 10, 2003.
- [35] People v. Ferrer, 362 SCRA 778 (2001).
- [36] Ibid.
- [37] Rollo, p. 62.

[38] *People v. Dagami*, G.R. No. 136397, November 11, 2003.

[39] *Ibid.*

[40] TSN, October 26, 1998, p. 31.

[41] *People v. Anggit*, 390 SCRA 46 (2002).

[42] *Supra* at note 36.

[43] *People v. Dizon*, G.R. No. 144053, December 11, 2003.

[44] *People v. Dagami*, *supra*.

[45] *Ibid.*

[46] *Id.*

[47] *Id.*

[48] *People v. Manallo*, *supra*.

[49] *People v. Molina*, 336 SCRA 400 (2000).

[50] *Ibid.*

[51] *People v. Dizon*, *supra*.

[52] *Ibid.*

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