

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE OGA Y CALUNOD, APPELLANT.*G.R. No. 152302. June 08, 2004*

Ponente: DAVIDE JR., CJ.

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How would parents react if they catch their teen-aged daughter naked and lying beneath a naked man? Let us follow the travails of similarly situated parents as their domestic drama unfolds in the case at bar.

Inside a makeshift house in a construction site in Navotas, Metro Manila, on the evening of 9 August 1998, Ignacio and his wife were peacefully slumbering, thinking that their 14-year-old daughter Irene was selling cigarettes at the fish pier. At around 2:00 a.m. of the following day, they were suddenly awakened by the loud banging of corrugated GI sheet.[1]

Discovering that the banging came from the barracks of his co-construction worker which was about three meters away, Ignacio and his wife proceeded in haste only to be momentarily rooted to the ground in surprise and dismay by what they beheld inside. Ignacio's co-worker Jose Oga, herein appellant, was naked and in the motion of pumping his seeds into the sexual organ of their daughter Irene. Enraged, Ignacio's wife pushed the appellant and pulled Irene, while Ignacio shouted for the assistance of the guards.[2]

Irene recalled that at around 10:00 p.m. of 9 August 1999, the appellant summoned her to his barracks. Thinking that he had the usual errand for her like buying him cigarettes or liquor, she approached him. Inside his barracks, the appellant, however, suddenly pulled her and laid her on the papag (wooden bed). The appellant then took off her pants and panty, as well as his clothes. Irene resisted the sexual assault, but her efforts proved in vain because the appellant was strong and drunk. He pinned her down with his body, while his right hand pinned her hands above her shoulders and his left hand separated her legs. Then he inserted his penis into her vagina.[3]

It was only at around 2:00 a.m. that Irene was able to finally kick the galvanized iron that enclosed appellant's barracks. This caused much noise that prompted her parents to check appellant's barracks. There, they caught the appellant naked atop her naked body. She denied that the appellant was her boyfriend.[4]

Several hours later, at 10:20 a.m. of 10 August 1998, Irene was examined by Dr. Aurea Villena and was found to have fresh hymenal laceration, with no evident sign of extragenital physical injuries on her body.[5] That same day, at 2:00 p.m., Irene and Ignacio executed before the police sworn statements[6] relative to the events that day. This led to the filing of an information charging the appellant with the crime of rape.

For its part, the defense presented as its lone witness appellant Jose Oga. He did not deny that he had sexual intercourse with Irene but interposed the "sweetheart theory." He claimed that on 10 May 1998, after one week of courtship, Irene reciprocated his love. About three months later, at around 10:30 p.m. of 10 August 1998, while he was asleep, Irene came inside his barracks and awakened him with her embraces. He stood up and ordered her to go out, but she continued embracing him and professing her love for him. Irene stripped and, while naked, laid

down with him on the bed. Since he is a man, he gave in and had sex with her. Satiated, he and Irene both slept.[7]

At around 3:30 a.m. of the following day, Ignacio's wife barged into appellant's barracks. She pulled the mosquito net that was tied to the walls, and shouted to Ignacio: "Ignacio, nandito ang iyong anak (Ignacio, your child is here)." Ignacio arrived. Though outraged, Irene's parents decided that the appellant and Irene should be married. Ignacio, however, proposed to the appellant to sign something first at the maritime police because he might be married to another woman. But after the appellant signed a document, Ignacio told him that he would be charged with rape. The appellant did not know what he signed because he could not read and he only knew how to sign his name.[8]

The Regional Trial Court of Malabon City, Branch 170, to which the case, Criminal Case No. 19766-MN, was assigned, found the version of the prosecution more credible and rejected the defense's sweetheart theory. It noted that the vivid and detailed narration by Irene of the rape incident was corroborated by her father's testimony and the medical findings of Dr. Villena. Hence, in a decision dated 26 December 2001,[9] the trial court convicted the appellant of rape and sentenced him to suffer the penalty of reclusion perpetua and to pay Irene P50,000 by way of civil indemnity and P50,000 as moral damages, plus the costs of suit.

In his Appellant's Brief, the appellant posits that what took place on that fateful night was consensual sex. He points out that for a period of four to five hours from the time Irene was allegedly summoned to his barracks, there was silence therein. No scream escaped from Irene's throat notwithstanding the lack of evidence that something was stuffed into her mouth to stifle her cries. Neither is there evidence that he carried a knife or any deadly weapon to frighten and intimidate her. Her hands were not tied either. Moreover, the testimony of Irene's irate father that he found the appellant and Irene completely naked bolsters the consensual nature of the coition.

On the other hand, the Office of the Solicitor General (OSG) seeks the affirmation of the judgment of conviction. It argues that the absence of an outcry on the part of Irene should not be construed as a manifestation of consent because the appellant employed force and intimidation and that Irene offered resistance. It likewise invites the attention of this Court to the evident disparity between the physical strength of Irene, who was merely a 14-year-old lass, and the appellant, who was 24 years old and in his prime. The physical superiority of the appellant so overwhelmed and intimidated Irene that she succumbed to his carnal desires. Further, Irene's narration of the rape was clear and straightforward. Being a child victim, her testimony should be given full weight, for when a girl says she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

In reviewing rape cases, the Court has established the following principles as guides: (1) an accusation of rape can be made with facility, difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) by reason of the intrinsic nature of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its merits and cannot draw strength from the weakness of the evidence for the defense.[10]

Heeding these principles, we need to first take a look at the information charging the appellant with rape to determine whether the allegations stated therein were proved by the prosecution. It is alleged that the crime of rape was committed with force and intimidation under Article 335, paragraph (1), of the Revised Penal Code, as amended by Republic Act No. 7659.

The force employed in rape cases may be physical and actual or psychological and addressed to the mind of the complainant. Both have the same effect on the rape victim. In the latter case, however, we have consistently held that the force or intimidation must be of such character as to create real apprehension of dangerous consequences

or serious bodily harm that would overpower the mind of the victim and prevent her from offering resistance.[11] The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. It is not necessary, therefore, that the force or intimidation employed be so great or be of such character that it can not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose of the accused.[12] Hence, the victim need not resist unto death or sustain physical injuries in the hands of the rapist.[13]

Intimidation and coercion must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard-and-fast rule. It depends on several factors like difference in age, size, and strength of the parties, and their relationship.[14]

We disagree with the OSG that the evident disparity in the age and physical strength of Irene and the appellant manifests the futility of any resistance. This argument is not borne out by the records. The medical certificate issued by Dr. Villena only indicated Irene's height at 58 ½ cms. and weight at 99 lbs. As for the appellant, aside from the claim that he was 24 years at the time of the alleged rape and he was a construction worker, no other physical statistics were mentioned in the records, like his height, weight, and built. We cannot presume that because the appellant was older and a construction worker, he was of larger built which naturally aided him in the employment of the necessary force and intimidation to completely overwhelm and ultimately rape Irene.

As to whether force and intimidation were indeed employed by the appellant upon Irene, let us examine the evidence of the prosecution, particularly Irene's testimony on the details of the rape, viz.:

Q Why are you stating that he has committed rape?

A

Because on August 9, 1998 at 10:00 o'clock in the evening I was called by Jose Oga in his barracks. Upon arrival there, he suddenly pulled me and laid me on the wooden bed (papag), sir.

Q What happened next after accused forced you to lie down on the wooden bed?

A I resisted, Your Honor.

...

Court

Proceed.

Pros Aliposa (witness)

Q What happened to your resistance?

A Nothing happened, sir.

Q Why?

A Because he was strong and he was drunk at that time, sir.

Q What did you do then?

A I was resisting – I continued resisting when he continued forcing to remove my pants and panty, your Honor.

Q What happened when you continued resisting?

A Nothing happened, Your Honor.

Q After nothing happened to your resistance, what did the accused do if any?

A He pinned me, Your Honor “dinaganan ako.”

Q After that, what happened?

A He took off his clothes and he inserted his organ to my organ, Your Honor.

...

Q After he inserted his organ to your organ, what did you do next?

A He threatened me, sir.

Q What was his threat?

A He told me that I should not be mistaken in resisting, otherwise, he will kill me, sir.

Q When the penis of the accused was inserted into your vagina, where were his hands?

A His hands were holding my hands, sir.

Q Where were your hands being held by the accused, in front of your breast or at the back of your head?

A

He was holding my hands above my shoulder, sir. [15]

After scrutinizing Irene’s testimony, we find that no force or intimidation was employed by the appellant.

No physical force was used to quell Irene’s alleged resistance. Her mouth was not covered nor stuffed with any object. Except for the alleged immobility of her hands held above her shoulders by the right hand of the appellant when he was already on top of her, she was not physically restrained of her movements.

Neither was intimidation employed against her. Even if she was pulled down to the bed, she was not threatened with bodily or physical harm by a knife, bolo, or any object or instrument that the appellant could have employed so as “to create a real apprehension of dangerous consequences or serious bodily harm.” Well-settled is the rule that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist.[16]

The lack of force and intimidation is more evident in Irene’s cross-examination, viz.:

Q How did he spread your legs, what movement did he do?

A He was pinning me, Your Honor.

Q Is that pinning or spreading your legs?

A Yes, Your Honor because one of his hands was on my legs.

Q And he used his hand in separating your legs?

A Yes, Your Honor.

...

Q What hand did he use in separating your legs?

A Left, sir.

Q How about his right hand, where was his right hand?

A His right hand was pinning me sir.

Q And your both hands were free at that time?

A No, Sir.

Q Why?

A My hands were pinned, sir.

Q Both hands?

A Yes sir?

Q At your back?

A Yes, Sir.

Q When he removed your pants, where you lying down or standing?

A Lying down, sir.

Q After that he removed your pants?

A He was wearing shorts at that time, sir.

Q With upper clothing?

A Yes, sir.

Q When he removed his upper clothing and his pants, how did he remove them?

A He did not remove his shirt, he only removed his shorts, sir.

Q When he removed his shorts, was he standing or lying?

A He was kneeling, sir.[17]

Clear likewise in Irene's testimony were her chances of escape; yet, she did not try to. Quite telling was her placidity when the appellant was removing his shorts in preparation for the consummation of the sexual act. She was not restrained of her movements then. Her hands were not held by the appellant. She could have screamed, ran towards the exit, and kicked or pushed him. But she stayed lying down on the "papag," content in watching his next move and waiting for the inevitable. Her failure to even attempt to escape from her supposed assailant or at least to shout for help despite opportunities to do so casts doubt on her credibility and renders her claim of lack of voluntariness and consent difficult to believe.[18]

Corollary is the issue of Irene's credibility. Case law often underscores the great weight and respect accorded to the factual findings of the trial court, especially on the credibility of witnesses, which are not disturbed on appeal. The rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts.[19]

This case is an exception. The test for determining the credibility of a witness' testimony is whether the testimony is in conformity with common knowledge and consistent with the experience of mankind and that whatever is

repugnant to these standards becomes incredible and lies outside of judicial cognizance.[20] We find that Irene's testimony failed to pass that test.

Irene's overall deportment during her ordeal defies comprehension and the reasonable standard of human conduct when faced with a similar situation. She was sitting outside her house at 10:00 p.m., while her parents were already sleeping. When the appellant summoned her, she immediately acceded, thinking that the former had an errand for her. Curiously, why would she be at his beck and call even at that late night when the appellant, according to Irene herself, was nothing more than her father's co-worker and drinking partner.[21] While we could attribute to her naïveté and trusting nature her immediate compliance to the command of an older person, we cannot ascribe to her innocence her failure to scream or shout when the appellant suddenly pulled her and laid her down on the wooden bed. Her parents were just in another barracks about three meters away from appellant's barracks.[22] They could have easily heard her cry of help as they readily heard the banging of the galvanized GI sheet at 2:00 a.m. Her parents could have quickly assisted her as they were so prompt in inspecting the loud banging.

Irene claimed that she resisted the sexual molestation, but a careful reading of her testimony failed to reveal the kind of resistance she did under the circumstances. While it is true that a rape victim is not expected to resist until death, it is contrary to human experience that Irene did not even make an outcry or use her hands which must have been free most of the time to ward off the lustful advances of appellant.[23] Further, the findings of Dr. Villena, who examined Irene only several hours after the alleged rape, showed no sign of extragenital injuries on her body. Not a piece of Irene's apparel was torn or damaged as would evince a struggle on her part. These circumstances additionally belie Irene's claim that the appellant had sexual intercourse with her without her consent.[24]

That Irene was allegedly threatened with death is of no moment. The threat came after the consummation of the sexual act and, as we have already observed, it was not accompanied by overt acts such as slaps, punches, kicks, and beatings or the employment of a knife, gun, or any weapon. Absent any logical explanation or justification, only a willing victim would passively allow herself to be ravished and her honor tarnished simply by reason of a verbal threat of an unarmed rapist.[25]

Significantly, Irene remained inside appellant's barracks for about four hours from 10:00 p.m. to 2:00 a.m. It is simply incredible that the appellant would take his sweet time in raping Irene, knowing that her father was just three meters away. We ask again here the question we posed in *People v. Relorcasa*: [26] "Does a rapist have the luxury of time unless there is an active cooperation on the part of the victim?"

Indeed, Irene's demeanor was simply inconsistent with that of an ordinary Filipina whose instinct dictates that she summon every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity. True, women react differently in similar situations, but it is unnatural for an intended rape victim, as in the case at bar, not to make even a feeble attempt to free herself despite a myriad of opportunities to do so.[27] This constrained us to entertain a reasonable doubt on the guilt of the appellant. In fact, the testimony of Irene's father that he surprised Irene and appellant completely naked further increases our suspicion that what took place that fateful night, over and above the consternation of Irene's outraged and enraged parents, was consensual sex.

Though the "sweetheart theory" does not often gain approval, we will not hesitate to set aside a judgment of conviction where, as in the present case, the guilt of the accused has not been proved beyond reasonable doubt. Our minds cannot rest easy on the certainty of appellant's guilt. Hence, we cannot sustain his conviction for the crime of rape through force or intimidation under Article 335, paragraph (1), of the Revised Penal Code, as amended by R.A. No. 7659.

WHEREFORE, in view of all the foregoing, the appealed decision of the Regional Trial Court of Malabon City,

Branch 170, dated 26 December 2001 in Criminal Case No. 19766-MN convicting appellant JOSE OGA y CALUNOD of simple rape under Article 335, paragraph (1), of the Revised Penal Code, as amended by R.A. No. 7659, is hereby REVERSED. The appellant is ACQUITTED and is ordered to be released from confinement unless his further detention is warranted by any other lawful cause. The Director of the Bureau of Corrections is directed to submit a report of such release within five (5) days from notice hereof.

Costs de oficio.

SO ORDERED.

Panganiban, Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] TSN, 23 September 1999, 2-3.

[2] TSN, 23 September 1999, 3-6.

[3] TSN, 3 May 1999, 1-5, 14.

[4] TSN, 9 May 1999, 2-16.

[5] Exhibit "C," Original Record (OR), 50.

[6] Exh. "B," OR, 49; Exh. "D," OR, 51.

[7] TSN, 10 April 2000, 3, 5.

[8] Id., 4-12.

[9] Per Judge Benjamin T. Aquino. OR, 144-147; Rollo, 51-54.

[10] *People v. Rafales*, G.R. No. 133477, 21 January 2000, 323 SCRA 13 citing *People v. Lucas*, G.R. Nos. 108172-73, 25 May 1994, 232 SCRA 537; *People v. Excija*, G.R. No. 119069, 5 July 1996, 258 SCRA 424; *People v. De Guzman*, 333 Phil. 50 (1996).

[11] *People v. Gan*, G.R. No. L-33446, 18 August 1972, 46 SCRA 667.

[12] *People v. Delos Santos*, G.R. No. 137968, 6 November 2001, 368 SCRA 475; *People v. Bertulfo*, G. R. No. 143790, 7 May 2002, 381 SCRA 762.

[13] *People v. Dreu*, G.R. No. 126282, 20 June 2000, 334 SCRA 63.

[14] *People v. Dumanon*, G.R. No. 123096, 18 December 2000, 348 SCRA 461; *People v. Ardon*, G.R. Nos. 137753-56, 16 March 2001, 354 SCRA 609.

[15] TSN, 3 May 1999, 3-5.

[16] *People v. Ferrer*, G.R. No. 142662, 14 August 2001, 362 SCRA 778; *People v. Aguero, Jr.*, G.R. No. 139410, 20 September 2001, 365 SCRA 503; *People v. Bation*, G.R. Nos. 134769-71, 12 October 2001, 367 SCRA 211; *People v. Añonuevo*, G.R. No. 137843, 12 October 2001, 367 SCRA 237; *People v. Cristobal*, G.R. No. 144161, 12 March 2002, 379 SCRA 221.

[17] TSN, 3 May 1999, 14-15.

[18] *People v. Malbog*, G.R. No. 106634, 12 October 2000, 342 SCRA 620; *People v. De la Cruz*, G.R. No. 137967, 19 April 2001, 356 SCRA 704.

[19] *People v. Quejada*, G.R. Nos. 97309-10, 3 June 1993, 223 SCRA 77; *People v. Abella*, G.R. No. 127803, 28 August 2000, 339 SCRA 129; *People v. Nelson*, G.R. Nos. 139217-24, 27 June 2003.

[20] *People v. Subido*, G.R. No. 115004, 5 February 1996, 253 SCRA 196; *People v. Clemente*, G.R. No. 130202, 13 October 1999, 316 SCRA 789.

[21] TSN, 3 May 1999, 3-9.

[22] TSN, 23 September 1999, 6.

[23] *People v. Ollamina*, G.R. No. 133185, 6 February 2002, 376 SCRA 337.

[24] *People v. Peligro*, G.R. No. 148899, 28 October 2002, 391 SCRA 309.

[25] *People v. Ollamina*, *supra* note 23.

[26] G.R. No. 102725, 3 August 1993, 225 SCRA 59.

[27] *People v. Claudio*, G. R. No. 133694, 29 February 2000, 326 SCRA 813.

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