

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EMETERIO RICAMORA Y SUELLO, RESPONDENT.

G.R. No. 168628. December 06, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On review is the May 13, 2005 Decision^[1] of the Court of Appeals in CA-G.R. CR No. 00652 affirming in toto that^[2] of the Regional Trial Court (RTC) of Sta. Cruz, Laguna, Branch 28 in Criminal Case No. SC-6841 which found appellant Emeterio Ricamora guilty of rape.

The information against appellant reads:

That on or about January 21, 1998, in the municipality of Luisianan, province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with MARY ROSE N. ROCREO, against her will and consent, to her damage and prejudice.^[3]

From the evidence for the prosecution consisting of the testimonies of the private complainant Mary Rose Rocreo, her sister Myra Rocreo, the Municipal Health Officer Dr. Martinita Leobrera, and SPO2 Bart Jamito, the following version is gathered:

The private complainant is the eldest of four children who were all living with their mother, Patria Nano (Patria), in Bala St., Luisiana, Laguna.

Sometime in 1993, appellant started cohabiting with the private complainant's mother Patria until February 1995, when she left for Singapore to work as a domestic helper. Before she left, Patria entrusted the care of her children to appellant whom they considered as their stepfather.^[4]

One night in October 1996, when the private complainant's siblings were out of the house, appellant called her to the kitchen, ordering her to do some chores. As the private complainant entered the kitchen, appellant seized her, turned off the light, and forced her to lie down on the floor.^[5] Appellant started undressing her, telling her not to shout or else he would kill her and her siblings.^[6] Out of fear, the private complainant endured the sexual advances of appellant who succeeded in having sexual intercourse with her.^[7]

Appellant thereafter repeatedly abused the private complainant at nighttime while her younger siblings were sleeping in the same room.^[8] Fearing that appellant would make good his threat to kill her and her siblings,^[9] the private complainant suffered in silence.

In the evening of January 21, 1998, as the private complainant and her younger sister Myra alighted from a passenger jeep on reaching their residence, appellant slapped them both and cursed them no end. As the sisters entered their house, appellant took hold of a bolo and swung it hard at Myra who was able to avoid the blow as she ran away and did not return home that night. On that same night, appellant again had sexual intercourse^[10] with the private complainant.

The following day, January 22, 1998, the private complainant, together with her godmother Isabel Merginio and a barangay kagawad, repaired to the police station to file a complaint against appellant, initially for the slapping incident, and buoyed by the encouragement of those to whom she related her ordeal, eventually for rape.[11] As she could no longer remember the exact dates of the previous incidents of rape, only the last, that which occurred on January 21, 1998, was made the basis of her complaint.[12]

Dr. Martinita Leobrera, who conducted on January 22, 1998 a physical examination of the then 20 year old private complainant, noted the presence of old healed hymenal lacerations at 3 o'clock, 6 o'clock, and 9 o'clock positions, indicating positive signs of penetration. She also observed that the private complainant's vaginal canal admitted two examining fingers freely with no resistance, indicating multiple instances of sexual penetration.[13]

The evidence for the defense, consisting of the testimonies of appellant and the parties' neighbors-spouses Norlita and Alfredo Villa, proffers that appellant, a coco-lumber dealer and barangay captain of Barangay San Pedro, Luisiana, Laguna,[14] and the private complainant were live-in partners who were often seen sleeping together in the nude in the wee hours of the morning.[15]

He could not have raped the private complainant on January 21, 1998, appellant contended, as he was engaged in a drinking spree with Alfredo Villa (Villa) from 10:00 p.m. to 4:30 a.m. the following morning, following which he and Villa proceeded to look for coconut trees which they were going to cut in connection with their business; and that thereafter, he repaired home, took a bath, and immediately departed to attend a session in Santa Cruz.[16]

Appellant's tale regarding the drinking spree was corroborated by Villa and his wife Norlita Villa, the latter adding that she was awake the entire night serving "pulutan" to her husband and appellant.[17]

As indicated early on, the trial court convicted appellant[18] of rape. The dispositive portion of the trial court's decision reads:

WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, the Court finds the accused EMETERIO RICAMORA y SUELLO guilty beyond reasonable doubt of CONSUMMATED RAPE, defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to pay the offended party MARY ROSE ROCREO the sum of FIFTY THOUSAND PESOS (P50,000.00) as compensatory damages and the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages and to pay the costs of the instant suit.

The records of the case were originally transmitted to this Court for automatic review. Conformably, however, with *People of the Philippines v. Efren Mateo y Garcia*[19] which modified Sections 3 and 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 of the Revised Rules on Criminal Procedure and any other rule insofar as they provide for direct appeals from the RTCs to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua, or life imprisonment, the case cum records was, by Resolution of September 13, 2004, referred to the Court of Appeals for appropriate action and disposition.

The Court of Appeals, by the assailed Decision, affirmed in toto the trial court's decision.

Hence, the present review, appellant assigning a single error:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

Appellant's basic contention is that the court a quo erred in upholding the trial court's giving full faith and credence to the testimony of the private complainant.

This Court has adopted an unrelenting position that when the question arises as to which of the conflicting

versions of the prosecution and defense is worthy of belief, the assessment of the trial court is generally viewed as correct and entitled to great weight, it explaining as follows:

In the resolution of the factual issues, the Court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insistent assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.[20]

Particularly in a rape case, conviction or acquittal more often than not depends entirely on the credibility of the private complainant's testimony, given that it is usually only she who can testify as to its occurrence.

When a woman then testifies that she had been raped, she says in effect all that is necessary to show that rape had been committed, for as long as her testimony meets the test of credibility.[21]

Consider the following testimony on direct examination of the private complainant:

Q:

In the year 1996 in the month of October, do you recall of any incident involving you and the herein accused Ricamora?

A:

Yes, sir.

Q:

What was that incident all about?

A:

That was the night when he first abused me, sir. (Yoon po ang unang gabi ng ako ay kaniyang ginalaw)

x x x x

Q:

Can you tell us how you were first raped by the accused Ricamora?

A:

Yes, sir.

Q:

Tell us.

A:

First, he called me, I was then in our living room. He told all the while that he will order me to do something. The he suddenly held me. He put off the light and he caused me to lay down. The incident happened so fast

(Bigla ang pangyayari, inihiga niya ako)

x x x x

Q:

What happened next?

A:

He removed my short pants and T-shirt including my underwear, sir.

Q:

After removing your underwear, what did he do?

A:

He kissed me on my face, neck and breast, sir.

Q:

After doing those things what else did he do?

A:

He slowly inserted his penis into my vagina, sir.

Q:

Was he able to insert his penis in your vagina?

A:

Yes, sir, in fact it was painful.

Q:

Did he say anything to you?

A:

Yes, sir.

Q:

Please tell us.

A:

He told me not to tell to anybody because he will kill all of us.

COURT

Q:

And you believed the accused at that time?

A:

Yes, Your Honor, because I was afraid of him.

TRIAL PROSECUTOR

Q:

That first incident on October 1996, was it repeated?

A:

Yes, sir.

Q:

When was that?

A:

I don't remember anymore, sir but since that first time which happened he repeatedly did it to me.

COURT

Q:

How often in a week or month?

A:

The least number is three (3) times a week, Your Honor.

Q:

And everytime the penis of the accused was being inserted in your vagina?

A:

Yes, Your Honor.

x x x x

Q

Can you tell us usually in what place in your house he used to insert his penis in your vagina?

A

In the place where we sleep in our living room (higaan), sir.

Q

How was he able to insert his penis when you were sleeping together in the Sala?

A

My brothers and sister were already asleep, sir.

x x x x

Q

When was the last time that you have sexual intercourse with the herein accused?

A

On January 21, 1998, sir.

x x x x

Q

What happened that evening?

A

He forced me to do what he wanted, sir.

COURT

Q

What is that he wanted?

A

To have sex, Your Honor.

Q

Then what happened?

A

I was crying then because he hurt me, Your Honor.

TRIAL PROSECUTOR

Q

While you were crying what did he do to you?

A

He was inserting his penis in my vagina, sir.

Q

Where were you at the time he is inserting his penis?

A

I was lying down (nakahiga), sir.

Q

How about your two younger brothers?

A

They [were] already asleep, sir.

Q

Was he able to insert his penis on that night of January 21, 1998?

A

Yes, sir.

Q

Tell us how he was able to insert his penis?

A

We were beside each other, sir.

Q

When side by side what did he do?

A

He was embracing me. Thereafter he removed my clothes including my underwear and he laid his body on top of me.

Q

When his body was on top of your body what did he do next?

A

Thereafter he was inserting his penis into my vagina, sir, and made upward and downward strokes (taas-baba).

x x x x

Q

What were you doing when his penis was inside your vagina?

A

I was crying, sir.

Q

Why [were] you crying?

A

Because I hated what he was doing to me (nandidiri na ako sa ginagawa niya).

x x x x[22]

And on cross-examination:

Q

The question is: You have had several instances of sex with Ricamora?

A

Yes, sir.

Q

And all those times that according to you, you were forced, you did not show any resistance?

A

I used to resist, sir.

Q

But you did not shout?

A

No, sir.

Q

You did not ask the help of your sister or your brothers who were sleeping together with you in the sala?

A

No, sir.

Q

After the sex, you did not even bother to wake up your sister or any of your brothers to tell what Ricamora did to you?

A

No, sir, something might happen. There might be trouble.

x x x x[23]

COURT

Q

So you mean to tell us that you were still afraid at the time despite of the fact that you and your brothers and sister were already in Manila?

A

Yes, Your Honor.

Q

And you are afraid of whom?

A

Mr. Emeterio Ricamora, Your Honor.

Q

And why were you afraid of him when he was far away?

A

The things which she (sic) said are already in my mind.

Q

What are those things which are in your mind, then?

A

That he could kill all of us, Your Honor.

Q

And you believe that he is capable of doing that?

A

Yes, Your Honor.

x x x x [24]

Q

Again the act of sex that night was consummated without you shouting for help?

A

I was merely crying.

Q

Did you cry loud or you just cried only for yourself, silently?

A

Not so loud, sir.

Q

Alright, your sister, according to you, was able to get out of the house after the slapping incident, is that correct?

A

Not yet, sir.

Q

After some scolding in the house, she was able to get out of the house?

A

Yes, sir.

Q

And this Mang Iryong or the accused did not bother to look for her?

A

No, sir.

Q

How about you, you have occasion also to escape that night but you did not?

A

No, sir. It is because he was then holding a bolo, how could I run?

Q

But he was no longer holding the bolo when he had sex with you?

A

The bolo was on the seat, sir.

Q

But he was not holding the bolo?

A

No, sir.

Q

After the sex, the accused went to sleep?

A

Yes, sir.

Q

And you know that he went to sleep because you were still then awake?

A

Yes, sir.

Q

And according to you, you were not able to sleep soundly that night?

A

Yes, sir.

Q

That being the case, is it not a fact that you have the opportunity to go out from the house to report the matter to the barangay?

A

I could not leave my younger brothers.

x x x [25] (Emphasis supplied)

From the above-quoted declarations of private complainant, this Court finds the same stamped with simplicity, consistency and candor to merit full faith and credit.[26]

Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, the trial judge's assessment of credibility must be respected.[27]

Appellant contends, however, that the private complainant's failure to report the incidents of rape for a period of one year diminishes her credibility and puts into doubt her claim that threats and intimidation were employed by him.

The filing of complaints for rape months, even years, after their commission[28] may or may not dent the credibility of witness and of testimony, depending on the circumstances attendant thereto. Under the circumstances attendant to the present case, the delay of respondent in reporting the incidents of rape may not be taken against her.

In any event, the subject of the complaint filed on January 22, 1998 by private complainant, which became the basis of the filing of the information, was the last incident of rape, that which occurred on January 21, 1998. Any delay in the report of the previous commissions of rape is thus irrelevant to this case.[29]

Respecting the sufficiency of evidence of force or intimidation as an element of rape, this Court takes note that appellant, as the common-law spouse of the private complainant's mother, exercised moral ascendancy over her which made his threats to her all the more real and effective, particularly since she and her younger siblings were left in his custody. Thus, *People v. Manggasin*[30] teaches:

. . . Accused-appellant contends that, on both occasions when she was raped, complainant did not show a determined resistance. The sexual molestations of complainant started when she was just twelve (12) years of age and lasted until she was seventeen (17). Accused-appellant is the common-law spouse of complainant's mother and the family breadwinner. As already stated, accused-appellant exercised a moral ascendancy over complainant which made the threats he made to her effective. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety. Complainant's complete obedience to accused-appellant's command, her lack of struggle against him, and her silence despite her sufferings were all caused by her fear of accused-appellant. In complainant's mind, she was convinced of the danger to her and her family. As has been aptly said, accused-appellant's moral ascendancy over the victim takes the place of violence and intimidation. (Emphasis supplied; citations omitted)

In the same case, this Court, passing on the nature of the force or intimidation necessary to constitute rape, discoursed:

For rape to exist it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation 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 is therefore enough that it produces fear – fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[31] [Emphasis supplied; citations omitted]

As for appellant's invocation of the "sweetheart theory" as well his defense of alibi, the same fails to inspire belief.

By appellant's claim, after his relationship with the private complainant's mother ended when she left for Singapore in 1995, while he regularly went to the private complainant's house to take care of the livestock he had left there, he never slept there; but on October 7, 1997, however, on private complainant's request, he repaired to her house to cook during which she started kissing him which resulted to a consensual sexual intercourse, and he thereafter started sleeping at the house.[32]

Appellant's neighbors-spouses Villa corroborated appellant's claim that he and private complainant were lovers.

The rule is well-settled that evidence to be believed must not only come from a credible source but must also be credible in itself such as one that the common experience and observation of mankind can approve as probable under the circumstances.[33] The immediately foregoing version of the defense falls short of such standard. It is

difficult to believe that an 18 year-old barrio lass would initiate and consent to having an amorous affair with the common-law spouse of her own mother, under the same roof where she and her younger siblings are staying.

Defense witness-spouses Villa even claim having witnessed the parties' intimate acts. That is too improbable to merit belief. As the trial court observed:

In his attempt with corroboration, the accused presented his neighbor-spouses NORLITA and ALFREDO VILLA. The said spouses both testified in substance that they considered the accused and the complainant to be live-in partners as they were living under the same roof and that on several occasions both have witnessed the complainant and the accused as sleeping together, naked and embracing each other. x x x

The Court however, does not believe the unbelievable and strange story of the neighbor-spouses which not only borders on the improbable but also fantastic. It would be the height of incredulity for live-in partners between a young lady and a middle age man to display for others to see their intimate moments for even married husband and wife will normally seek a place where they are alone together to perform their romantic encounters secure from possible prying eyes.[34](Underscoring supplied)

Finally, appellant's defense of alibi must likewise fail. For, for alibi to prosper, the accused must not only prove that he was somewhere else when the crime was committed. He must also convincingly demonstrate the physical impossibility of his presence at the locus criminis at the time of the incident.[35]

In the case at bar, the house where appellant was alleged to have had a drinking session was admittedly only one meter away from the private complainant's house where the rape was committed.[36] Appellant's presence on the date and place of the commission of the crime has thus not been ruled out.

At all events, even if corroborated, alibi cannot stand in light of the positive identification by the private complainant who was not shown to have any ill motive for testifying falsely against the accused.[37]

WHEREFORE, the challenged Decision of May 13, 2005 of the Court of Appeals is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Remedios A. Salazar-Fernando and Rosmari D. Carandang, CA rollo, pp. 141-164.

[2] Penned by Judge Fernando M. Paclibon, Jr., RTC records, pp. 84-95.

[3] Records, p. 2.

[4] TSN, August 27, 1998, pp. 4-7.

[5] Id. at 7-9.

[6] TSN, September 9, 1998, pp. 4-5.

[7] Supra note 4 at 10.

[8] Id. at 10-12.

[9] Supra note 6 at 13.

[10] Supra note 4 at 11-16.

- [11] Id. at 19-22.
- [12] TSN, November 5, 1998, p. 15.
- [13] TSN, July 21, 1998, pp. 3-5.
- [14] TSN, February 4, 1999, p.4.
- [15] TSN, January 20, 1999, pp. 13-14; TSN December 16, 1998, pp. 3-4.
- [16] Supra note 14 at 9-11.
- [17] TSN, December 16, 1998, pp. 6-8, 11.
- [18] Records, pp. 84-95.
- [19] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [20] People v. Watiwat, G.R. No. 139400, September 3, 2003, 410 SCRA 324, 332, citing People v. De Guzman, G.R. No. 76742, August 7, 1990, 188 SCRA 407; People v. Silvano, G.R. Nos. 141105-11, March 8, 2002, 378 SCRA 672; People v. Estorco, G.R. No. 111941, April 27, 2000, 331 SCRA 38.
- [21] People v. Watiwat, supra, citing People v. Antido, G.R. No. 121098, September 4, 1997, 278 SCRA 425.
- [22] Supra note 4 at 7-16.
- [23] Supra note 6 at 13.
- [24] Id. at 20.
- [25] Supra, note 6 at 28-29.
- [26] People v. Bonghanoy, G.R. No. 124097, June 17, 1999, 308 SCRA 383.
- [27] People v. Corpuz, G.R. No. 168101, February 13, 2006, 482 SCRA 435, citing People v. Malones, supra.
- [28] People v. Dimaano, supra, citing People v. Sandico, 366 Phil. 663, 676 (1999).
- [29] Vide: People v. Dimaano, G.R. No. 168168, September 14, 2005, 469 SCRA 647.
- [30] G.R. Nos. 130599-600, April 21, 1999, 306 SCRA 228.
- [31] People v. Mangasin, supra.
- [32] TSN, February 4, 1999, pp. 3-6.
- [33] People v. Dela Cruz, G.R. Nos. 139626-27, June 26, 2001, 359 SCRA 667, citing People v. Caratay, 316 SCRA 251 (1999) and Cosep v. People, 290 SCRA 378 (1998).
- [34] Records, p. 94.
- [35] People v. Macapagal, Jr., supra, citing People v. Limio, 429 SCRA 597 (1994).
- [36] TSN, December 16, 1998, p. 2; TSN, January 20, 1999, p.3.
- [37] People v. Alajay, G.R. Nos. 133796-97, August 12, 2003, 408 SCRA 629, citing People v. Dulot, 300 SCRA 591 (2001).

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