

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARCADIO CABILAO, ACCUSED-APPELLANT.

*G.R. No. 62999. June 25, 1992*

Ponente: DAVIDE, JR., J.

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### DAVIDE, JR., J.:

Accused-appellant was charged with the crime of rape in a sworn criminal complaint[1] filed on 13 April 1976 by the offended party, Erlinda V. Rafon, with the then Court of First Instance (now Regional Trial Court) of Davao which reads as follows:

"The undersigned, ERLINDA RAFON y VILLANUEVA, after having been duly sworn to (sic) according to law, accuses the above-named accused of the crime of Rape, under Article 335, Par. 1, of the Revised Penal Code, as amended by Republic Act Nos. 2632 and 4111, committed as follows:

That on or about January 22, 1976, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and violence, did then and there wilfully, unlawfully, and feloniously have carnal knowledge with the undersigned complainant, who is thirteen (13) years of age, against her will.

Contrary to Law."

The complaint was docketed as Criminal Case No. 2430 and was raffled to Branch III of the said court.

The accused entered a plea of not guilty during his arraignment on 20 July 1976.[2]

After trial on the merits, judgment[3] was rendered by the court below on 11 November 1982 finding the accused guilty as charged and sentencing him to:

"x x x suffer the penalty of reclusion perpetua; to indemnify the complainant Erlinda V. Rafon in the amount of TEN THOUSAND (P10,000.00) PESOS without subsidiary imprisonment in case of insolvency; and to pay costs."

On 1 December 1982, accused filed a Notice of Appeal wherein he manifested that he is appealing the abovesited decision to the Court of Appeals.[4] However, the trial court, pursuant to Section 17 of the Judiciary Act of 1948, as amended by R.A. Nos. 2613 and 5440, directed the Clerk of Court to forward the records of the case to this Court instead of the Court of Appeals.

In his Brief,[5] mailed on 29 November 1986 and received by this Court on 3 December 1986, accused-appellant submits the following assignment of errors:

## "I

THAT THE LOWER COURT ERRED IN DECLARING THAT THE COMPLAINANT DID NOT VOLUNTARILY SUBMIT TO THE SEXUAL DESIRES OF THE ACCUSED.

## II

THAT THE LOWER COURT LIKEWISE ERRED IN NOT CONSIDERING IN ITS DECISION THE TESTIMONIES OF THE WITNESSES FOR THE DEFENSE."

As in most rape cases appealed to this Court, the principal issue raised relates to the appreciation of the evidence of both the prosecution and defense.

The evidence for the prosecution is faithfully summarized by the People in the Appellee's Brief[6] as follows:

"Erlinda Rafon, the complainant, was at the time of the incident in question on January 22, 1976, a budding young girl of thirteen (13) years having been born on May 16, 1962 while the accused, Arcadio Cabilao, was seventy four (74) years old. The complainant and the accused were neighbors at Biao Tienda, Davao City (pp. 81, 82, tsn, Oct. 10, 1977).

Culled from the testimony of the complainant Erlinda Rafon, it appears that about (sic) 4:30 o'clock in the afternoon while Erlinda was walking from Biao Tienda, on her way to Mintal, Davao City to spend the night at her elder (sic) sister's she met the accused Arcadio Cabilao (pp. 83, 84, tsn, Aug. 10, 1977). Suddenly, without any warning, the accused grabbed and dragged the complainant to the cornfield nearby threatening to kill her with the bolo he was holding should she shout or make noise (pp. 83-84, 85, 86, tsn, id.). Upon reaching a coconut tree within the cornfield, the accused hacked the coconut tree with his bolo, then hugged and kissed the complainant who cried in fear (p. 86, tsn, id.). The accused then made her sit down while waiting for nightful (sic) (p. 87, tsn, id.).

At dusk, the accused brought the complainant to his house and dragged her to the second floor where he quickly undressed her. At the time, nobody was in the house. The accused then ordered the complainant to lie down on the bed. The complainant resisted but the accused warned her that he would hack her with his bolo if she did not obey his order. Because the complainant was frightened, she did as she was told (pp. 88, 89, tsn, id.). The accused then took off his clothes, hugged and kissed the complainant on the face and other parts of her body, placed himself on top of the complainant and succeeded in having carnal knowledge with the complainant. The complainant cried. She felt pain in her private parts (pp. 91, 92, tsn, id.). After he had satisfied his lust, the accused asked the complainant, who was crying, if she was hungry, to which she replied that she was not, even if she was hungry.

The accused lighted a lamp, went downstairs and got some food to eat. After he had eaten, and cleaned the utensils he used, the accused told the complainant to sleep beside him (p. 94, tsn, id.). Although the complainant obeyed the order of the accused, the complainant could not sleep, while the accused was also restless. At about midnight, the accused again succeeded in having sexual intercourse with the complainant despite her resistance and protest. Having again satisfied his lust, the accused went back to rest. He lied (sic) down again on the same bed with the complainant (p. 96, tsn, id.). The accused rose at dawn at about 3:00 o'clock in the following morning of January 23, 1976 and sexually assaulted the complainant for the third time (p. 96, tsn, id.).

In the morning, the accused ordered the complainant to stay in the house because he would be leaving and not to make any outcry lest he would kill her and her parents. The accused then ordered the complainant to stand on a stool and instructed her to go up the ceiling of the house passing through an opening thereat. While she was inside the ceiling, the complainant sat and cried (p. 98, 99, tsn, id.).

At about 9:30 to 10:00 o'clock that same morning, the complainant peeped thru a hole in the ceiling and saw 'Nang' Andi, the common-law wife of the accused and her son Nador gathering coconuts (p. 99, tsn, id.). At about noontime, the accused returned to the house and after exchanging a few words with his wife, proceeded upstairs to the room where the complainant was being kept inside the ceiling. He warned the complainant not to make any noise, threatening her with death if she should disobey him. The accused then went downstairs and ate lunch with his family. After eating the accused went upstairs again bringing with him a 'puso' (cooked rice wrapped with coconut leaves) which he gave to the complainant in the ceiling to eat.

Late that afternoon, while accused's common-law wife and her son were busy making copra in the yard, the accused released the complainant from the ceiling (sic). The accused gave the complainant P3.00 with instructions not to go home but proceed to Bankerohan public market and to wait for him at Tano's place because he would give her some money so she could go far away. The complainant agreed to the proposal of the accused because of fear for her life (pp. 107-108, tsn, id.). The accused led the complainant to the back door of the house from where she took the path leading to barrio Guianga. From Guianga, the complainant took a passenger jeep for Bankerohan, Davao City where she alighted at the public market. Since the complainant was not familiar with the place, she befriended an old woman called 'Nang' Josefa whom she requested for a place to stay for the night (pp. 107, 110, tsn, id.).

The complainant looked for Tano but when she could not find him she told the old woman that she wanted to look for work as a housemaid. Through the old woman, the complainant was hired as a baby sitter by the family of a certain Rolly Rarama along Claverin Street, Davao City (p. 115, tsn, id.). The complainant did not last a month with the Rarama family because she was seen by one Pamfila Batistil complainant's neighbor, at the Aldevinco shopping center while on an errand for her employer. Pamfila Batistil informed the complainant that her parents were looking for her and offered to take her back home which the complainant declined because she was afraid (p. 117, tsn, id.).

Sometime later, the complainants' (sic) mother arrived at the Rarama residence and fetched her daughter (p. 119, tsn, id.). She related to her parents what had happened. The complainant was then brought to the Davao City department police (sic) for investigation. The investigation was conducted in writing (Exhibit B) on February 16, 1976 (p. 121, tsn, id.).

The complainant submitted herself for medical examination on February 17, 1976 at the Office of the City Health Officer, Davao City (p. 128, tsn, id.).

Juan M. Abear, Jr., the Medico-Legal Officer, Office of the City Health Officer, Davao City testified that he conducted a medical examination on the person of Erlinda Rafon on February 17, 1976 (p. 10, tsn, Oct. 23, 1980). His findings as indicated in the Medical Certificate, Exhibit C, are as follows:

## FINDINGS

BREASTS: Developing, conical in shape.

Areolae light 2.0 cm. in.

Nipples 0.5 cm. in diameter.

GENITALIA: Public (sic) hairs none. Labia majora and minora coaptated. Fourchette tense. Vestibule pinkish. Hymen thin and congested. Hymenal laceration (sic) at 8:30 o'clock in the face of the watch, deep, edges sharp, coaptible, congested. Hymenal lacerations at 2:00 and 4:00 o'clock in the face of the watch, superficial, incomplete, edges sharp, coaptible. Hymenal opening admits a tube of 2.6 cm. in diameter with moderate resistance. Vaginal canal moderately tight. Rugosities present.

CONCLUSION: She would have had sexual intercourse with a man on the alleged date of commission.

He also testified that the laceration had taken place within one to two weeks time (p. 16, tsn, Oct. 23, 1980). He further testified that at the time of the examination he did not find any bruise or injury on the person of the complainant except in the genital organ (p. 18, tsn, id.). His findings support that (sic) the complainant had sexual intercourse with a man (p. 19, tsn, id.)."

Upon the other hand, accused-appellant claims that the offended party was very close to him as she used to come to his house to ask for food and money personally or through her friends or brother; accused-appellant likewise avers that complainant voluntarily submitted to his sexual advances and that there was in fact no sexual intercourse for, "although there was erection (sic) of his private organ, it would not last long and would at once weaken." His version, as summarized in the Appellant's Brief,[7] is as follows:

"That on January 22, 1976, at about 4:30 o'clock in the afternoon, the accused was in the cornfield of Pastora Bardos to meet the complainant; that they in fact met each other and stayed in the cornfield for less than 30 minutes, after which they went home to their respective houses. That while in his house alone and still eating, the accused heard someone knock at the kitchen door, and when he opened the door, he saw the complainant who told him she wanted to talk to him. Meanwhile the complainant asked for food as she was hungry. After she was through eating, the accused asked the complainant why she came, and she answered that if possible she would sleep in his house that night. The accused did not like the idea for obvious reason (sic) and inasmuch as he was alone in the house, his common-law wife being with her son at Bangkal, Davao City. The complainant insisted, so that the accused gave in. (Please see t.s.n., pp. 9-12; hearing of Oct. 20, 1981).

That the complainant and the accused slept together in the latter's bed, and that without the employment of any force and intimidation, the accused 'tried her', and although there was erection (sic) of his private organ it would not last long and would at once weaken; and that for this reason no sexual intercourse between him and the complainant had ever been consummated. The accused also testified that the complainant did not refuse his advances to try to have sexual intercourse with her, as in fact she was the one who undressed herself and removed her drawer (panty). (Please see t.s.n., pp. 12-14; hearing of Oct. 20, 1981).

That in the early morning of January 23, 1976, the complainant still did not leave the house of the accused, so that she was left therein while the accused went to Calinan, Davao City. The complainant even told the accused to buy 'pancit' for her, and upon returning home at about 1:00 o'clock P.M. of same (sic) day, the accused gave to the complainant the 'pancit' she ordered together with the 'puso' (cooked rice wrapped in coconut leaves). That at about same (sic) time his common-law wife and her son arrived from Bangkal, Davao City, but did not see the complainant who left the house without the knowledge of the accused. (Please see t.s.n., pp. 15-18; hearing of Oct. 20, 1981).

That aside from that occasion wherein the complainant slept with the accused in his house in the evening of January 22, 1976, the complainant had been coming to the house of the accused at night, twice before the incident complained of happened, and in the hut of accused's farm, also twice and likewise before the stated incident.

The accused, on cross-examination by the prosecution (through the private prosecutor), testified that he did not have the 'appetite' (to have sexual intercourse) that night of January 22, 1976, because he was afraid and mad due to the refusal of the complainant to go home when told by him. And that he did not report the matter to the complainant's parents because she told him she would commit suicide if he would do so. Further, when questioned by the private prosecutor why, when he went to Calinan, Davao City the following morning of January 23, 1976, the accused locked the main door of the house, he answered that the complainant told him to just lock the main door, anyway, she could go out of the house if she would want to, inasmuch as the other doors could be opened from the inside. (Please see t.s.n., pp. 31-33; hearing of January 14, 1982)."

He presented three (3) witnesses, namely: Crescencio Batistil, Hermogenes Perjes and Elisa Lor. The first declared that he met the offended party during the pendency of the case before the lower court and that she told

him that it was her father, not she, who was interested in prosecuting the case;[8] the accused and the offended party were sweethearts;[9] and he saw, on three (3) occasions, the former giving the latter money and buying her an umbrella and canned food.[10] Perjes testified that the accused and the offended party were sweethearts as he used to read the letters and notes of the latter to the former and interpret the contents of the same as accused could not read.[11] Elisa Lor testified that on one occasion, she, together with the offended party and the accused, went to see a movie in Calinan, Davao City. It was the accused who paid for the admission tickets, transportation fare and snacks, as well as for the cost of the pictures taken of her and the offended party. On another occasion, the offended party requested her to ask money from the accused; the latter gave her P5.00 which she in turn delivered to the offended party.[12] She further testified that in the afternoon of 22 January 1976, she saw both the accused and the offended party in the cornfield of Pastora Bardos at Biao Tienda, Tugbok, Davao City embracing each other; upon being seen, both went to a secluded place. Thereupon, she hurried home and on the way met the complainant's older sister to whom she recounted what she had seen. Elisa Lor did not see any bolo, notice any sign of struggle or hear any cry for help or protest from the complainant.[13]

There is no merit in this appeal.

Well-entrenched is the rule that the testimony of a rape victim is credible where she has no motive to testify against the accused.[14] When a woman says that she has been raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[15] Verily, a rape victim would not publicly disclose that she had been raped and undergo the trouble and humiliation of trial if her motive was not to bring to justice the person who had abused her.[16] More specifically, no young Filipina of decent repute would publicly admit that she has been criminally abused and ravished unless it is the truth. It is her natural instinct to protect her honor.[17]

As early as 1973, in *People vs. Molina*,<sup>[18]</sup> this Court, upon a review of past decisions, already remarked:

"x x x Moreover, if there is anything apparent from our past decisions on rape cases, with the offended parties being young and immature girls from the ages of twelve to sixteen, it is that there is considerable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a gruelling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose to them. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control." (citations omitted)

We have carefully examined the records of this case and We are satisfied that the testimony of the offended party has established the guilt of the accused-appellant beyond moral certainty. We find no reason, and the accused-appellant does not even attempt to suggest any, why the offended party should falsely accuse him of the heinous crime of rape. The records do not, as well, disclose that some facts or circumstances of weight and influence were overlooked, misapprehended or misinterpreted by the trial court.

The rule, expressed more than eighty (80) years ago in *United States vs. Ambrosio and Falsario*,<sup>[19]</sup> and reiterated in *People vs. De Otero*,<sup>[20]</sup> thus:

"After everything is said and done, we come back, as we invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence, which has been overlooked or the significance of which has been misinterpreted."

and in a plenitude of cases thereafter, applies squarely in this case.

In the instant case, the offended party, a mere 13-year old, has accurately described beyond any cavil of doubt the

force and intimidation exerted on her by the accused-appellant to accomplish his evil desire. In the afternoon of the day of the crime, accused-appellant grabbed and then dragged her to the cornfield, threatening to kill her with the bolo he was holding should she shout or make any noise; upon reaching a coconut tree, he hacked the same with his bolo and then hugged and kissed her. When dusk came, he brought her to his house and dragged her to the second floor where he quickly undressed her. He ordered her to lie down on the bed; when she resisted, he warned her that he would hack her with his bolo if she did not obey. Frightened, she did as she was told. After removing his own clothes, he hugged and kissed her again and then placed himself on top of her; he eventually succeeded in having carnal knowledge with her. He sexually assaulted her again at about midnight of that day and at about 3:00 o'clock a.m. of the following morning, 23 January 1976. Threatening her with a bolo constituted sufficient intimidation; this Court has ruled that intimidation includes the moral kind such as the fear caused by the threatening of the girl with a knife or pistol.[21]

The prosecution having thus discharged its burden of proving the guilt of the accused-appellant beyond reasonable doubt and overcoming the constitutional presumption of innocence in his favor, the burden was then shifted to the latter to prove otherwise. He failed. The trial court correctly rejected his version which is replete with denials of the use of force and intimidation; the insinuation that the offended party initiated their illicit tryst in the cornfield, pursued him home at dusk and then seduced him at night; and the allegation of the nonconsummation of the act because, although he had an erection, it did not last long as his private organ weakened at once. It likewise correctly rejected the testimonies of his witnesses which sought to establish that he and the offended party were sweethearts and that it was her father who was interested in the prosecution of the case.

In his own direct testimony, when specifically confronted with particular details of the testimony of the offended party and asked what he could say about them, accused-appellant lackadaisically claimed that either it "is a lie" or that, with respect to the threat and use of a bolo, he simply declared that he "did not threaten her nor used (sic) a bolo." [22] Not once did he deny that he had a bolo when they were in the cornfield and in his house. There is absolutely nothing in the records to show that the offended party, then thirteen (13) years old, was a girl of ill-repute or loose morals. Accused-appellant's suggestion then that she initiated their sexual encounter and seduced him is as wholly unacceptable as the belated claim that they were sweethearts. As to the first, he demonstrated a very low regard for young Filipino women. As to the second, he never explicitly claimed that she is his sweetheart, and the records will bear this out. Besides, in the light of the open admission by the accused-appellant that he treated the offended party as his grandchild, this Court cannot believe that such a relationship could exist between them. Filipino culture simply rejects the thought of such a relationship, especially considering the fact that, by reason of her age, the offended party did not entertain the idea of having a suitor and certainly did not have the legal capacity to marry. Moreover, even if such averment is true, it does not necessarily follow that no rape can be committed against one's sweetheart. Such a relationship provides no license to explore and invade that which every virtuous woman holds so dearly and trample upon her honor and dignity. That relationship is held sacred by many because it is the beginning of a lifelong relationship the main purpose of which is the participation in the mystery and beauty of procreation. A sweetheart cannot be forced to engage in sexual intercourse against her will.[23] As a matter of fact, proof even of a prior history of a common-law marital relationship will not prevail over clear and positive evidence of copulation by the use of force or intimidation.[24]

As to Batistil's testimony, the offended party categorically declared in her rebuttal testimony that she never had any conversation with him during the pendency of the case.[25]

Accused-appellant's claim that no sexual intercourse was consummated because, although he had an erection, his organ weakened at once, cannot be believed for, as was correctly found by the trial court, it "is controverted by

the findings of Dr. Juan M. Abear, Jr., Medico-Legal Officer, who positively testified that the multiple hymenal lacerations found on the private parts (sic) of the complainant were caused by the penetration of a penis or a round object, and not by any other activity such as biking. (T.S.N., p. 20, October 23, 1980, Cossid.)."[26] It must be stressed here that the accused-appellant did not attribute this alleged condition to his age; instead, he recited several reasons during his cross-examination:

"A I did not have the appetite that night, because I was tired, I was hungry, I was afraid and I was mad, because of her refusal to go home."[27]

We thus affirm the decision appealed from with the modification that the indemnity awarded to the offended party be, consistent with recent case law,[28] increased from P10,000.00 to P30,000.00. We do so with a heavy heart because, as stated in the Compliance[29] of his counsel received by this Court on 19 May 1992, accused-appellant is now ninety (90) years old and is bed-ridden. Justice must, nevertheless, be served, and that is a duty We cannot evade.

WHEREFORE, judgment is hereby rendered AFFIRMING the decision appealed from except as to the indemnity which is hereby increased from P10,000.00 to P30,000.00.

Costs against accused-appellant.

**SO ORDERED.**

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

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[1] Original Records, 3.

[2] Original Records, 18.

[3] Id., 249-260; per then Judge, now Justice of the Court of Appeals, Pacita Cañizares-Nye.

[4] Id., 261.

[5] Rollo, 226-246.

[6] Rollo, 259, et seq.

[7] Rollo, 226-246.

[8] TSN, hearing of 12 February 1981, 5-7.

[9] Id., 31-32.

[10] Id., 7-10.

[11] TSN, hearing of 23 July 1981, 2-11.

[12] TSN, hearing of 21 September 1981, 5-8.

[13] TSN, hearing of 21 September 1981, 8-13; 21.

[14] People vs. Rosario, 159 SCRA 192 [1988]; People vs. Nunag, 173 SCRA 274 [1989]; People vs. Borja, 191 SCRA 120 [1990]; People vs. Fabro, 191 SCRA 386 [1990]; People vs. Lutañez, 192 SCRA 588 [1990].

[15] People vs. Averro, 165 SCRA 130 [1988]; People vs. Poculan, 167 SCRA 176 [1988]; People vs. Cariño, Sr., 167 SCRA 285 [1988]; People vs. Abonada, 169 SCRA 530 [1989]; People vs. Rosell, 181 SCRA 679 [1990];

People vs. Barcelona, 191 SCRA 100 [1990].

[16] People vs. Robles, 170 SCRA 557 [1989].

[17] People vs. Ramilo, 146 SCRA 258 [1986], citing People vs. Alcantara, 126 SCRA 425 [1983]; People vs. Gamez, 124 SCRA 260 [1983]; People vs. Taño, 109 Phil. 912 [1960]; and People vs. Gan, 46 SCRA 667 [1972].

**[18] 53 SCRA 495, 500 [1973].**

[19] 17 Phil. 295 [1910].

[20] 51 Phil. 201, 209 [1927].

[21] People vs. Garcines, 57 SCRA 653 [1974].

[22] TSN, hearing of 20 October 1981, 13-14.

[23] People vs. Timbang, 189 SCRA 279 [1990].

[24] People vs. Villaflores, 174 SCRA 70 [1989].

[25] TSN, hearing of 23 March 1982, 191.

[26] Rollo, 24.

[27] TSN, hearing of 14 January 1982, 31.

[28] People vs. Jun (John) Aquino, 197 SCRA 578 [1991]; People vs. Dalinog, 183 SCRA 88 [1990]; People vs. Dinola, 183 SCRA 493 [1990].

[29] Rollo, op. cit., 377.

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