

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARCISO ISIP, JR. ALIAS 'KULAPO', ACCUSED-APPELLANT.

G.R. No. 70568. August 20, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

Maria Eva Sarah C. Suing instituted a criminal complaint for rape against Narciso Isip, Jr. which read as follows:

"That on or about the 16th of March, 1984, in barangay San Nicolas, municipality of Masantol, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused NARCISO ISIP, JR. alias 'Kulapo', armed with a knife, with lewd designs, by means of force, threats and intimidation, did then and there wilfully, unlawfully, feloniously and maliciously have carnal knowledge with the under-signed complainant, Maria Eva Sarah C. Suing, against her will and without her consent.

All contrary to law."[1]

After trial, the court a quo found the accused Narciso Isip, Jr. guilty. The dispositive portion of the judgment of conviction dated 13 February 1985 provides:

"WHEREFORE, in view of all the foregoing, this Court finds the accused, Narciso Isip, Jr. alias 'Kulapo', guilty beyond reasonable doubt of the crime of Rape as charged in the Criminal Complaint and as defined and penalized under Article 335 of the Revised Penal Code. The accused did not prove or establish any mitigating circumstances, and based on the established evidence of the case, the accused should be punished with the supreme penalty of death. However, on account of the age of the accused, the Court, in the exercise of its discretion, opted to impose the lesser penalty of life imprisonment. Accordingly, the said accused is hereby sentenced to suffer reclusion perpetua with all the accessory penalties provided for by law, to indemnify the offended party, Maria Eva Sarah C. Suing, the amount of P50,000.00, Philippine Currency, in moral damages and to pay costs."[2]

The evidence of the prosecution tended to establish the following facts:

In the afternoon of 16 March 1984, Maria Eva, who was fifteen (15) years old, single and a third-year high school student at the Pampanga Colleges, Macabebe, visited a number of her friends residing in the Municipalities of Macabebe and Masantol, Province of Pampanga, to invite them to her birthday party scheduled for 18 March 1984. Around 6:00 o'clock in the evening while waiting for a tricycle ride at Sta. Lucia, Masantol, Pampanga, Maria Eva saw Cristina Tuquero, who lived near their house. Cristina asked Maria Eva to accompany her across the bridge of Sta. Lucia, Masantol, and Maria Eva agreed. After they had crossed the bridge, someone whistled at them and they stopped. A man, who turned out to be the accused Narciso Isip, Jr. approached and asked Cristina Tuquero, whom he evidently knew, to introduce him to Maria Eva. After the introduction, the accused handed Cristina Tuquero a small plastic package containing marijuana. The accused also brought out a stick of marijuana which he lighted up and pressed Maria Eva to smoke the same. Maria Eva did so and promptly felt dizzy, that being the first time she had ever smoked marijuana. The accused and Cristina then invited Maria Eva inside a

house, which turned out to be the Barangay Tanod Headquarters. Inside the house, they found a male companion of the accused, one Wilfredo Bonifacio. There, the accused opened a bottle of White Castle Whiskey and pressed Maria Eva to drink of the same. After the bottle of whiskey was finished, the accused then produced a bottle of Hylorin cough syrup. Once more, Maria Eva was pressed to drink of the cough syrup. She refused, but Cristina advised her to do so for otherwise Narciso Isip, Jr. would get very angry. Finally, Maria Eva took some of the cough syrup. The mixture of marijuana, hard liquor and cough syrup proved a very potent one, and Maria Eva passed out.

When she regained her senses, she found herself lying naked beside the accused who was also naked, inside a room of the Central Elementary School of Masantol, Pampanga. Maria Eva's description of the events which followed forthwith is as follows:

"Q: What was your feeling when you regained consciousness, naked, besides Narciso Isip, Jr. likewise naked?

A: My hypogastric region (puson) was painful, sir, and my whole body was likewise painful.

Q: What else transpired inside that room at Masantol Elementary School when you regained your consciousness, naked, together with Narciso Isip, Jr.?

A: He pointed to me a bladed weapon, sir. (Patalim)

Q: Did Narciso Isip, Jr. tell you anything after he pointed to you that bladed weapon.

A: Yes, sir.

Q: What did he tell you?

A: That I should not shout otherwise I would be killed, sir.

Q: What did you feel when he uttered those threatening remarks against you?

A: I was frightened, sir.

Q: Then what did Narciso Isip, Jr. do after he pointed to you that bladed weapon?

A: He placed his body on top of my body, sir.

Q: When he placed his body on top of yours, what did he do?

A: He placed his penis inside my vagina, sir.

Q: How was he able to insert his sexual organ inside your vagina?

A: He compelled me and I was trying to close my knees but he was opening the same, sir.

Q: Did you not try to kick him?

A: I tried but I was already weak and that I was frightened."[3]

After the accused had satisfied his sexual desires, he told Maria Eva to get dressed and warned her not to tell anyone what had happened, otherwise she and her parents would be killed. The appellant then walked the complainant to the plaza of Masantol, Pampanga, where she took a tricycle which brought her to the plaza of Macabebe, Pampanga. From there, she walked to her parents' home in San Isidro, Macabebe, but finding that her parents were already asleep, she went instead to her grandmother's house in Sta. Rosario, Macabebe, where she spent the night.

Maria Eva did not immediately report to her parents what had befallen her. On the evening of 25 March 1984,

however, complainant's mother noticed her crying and asked her what had happened. Overcoming her reluctance to reveal her ordeal, Maria Eva finally told her mother that she had been raped last 16 March 1984. The next day, 26 March 1984, Maria Eva accompanied by her mother went to the police authorities of Masantol, Pampanga and reported the rape.

Complainant was then medically examined at the Central Luzon General Hospital by Dr. Cynthia Alfonso, a resident physician of the hospital who issued a medical certificate dated 29 March 1984 which read:

"This is to certify that one MARIA EVA SARAH SUING, 15 years of age, female, single, from San Isidro, Macabebe, Pampanga, was physically and internally examined in this hospital last March 28, 1984 with the following findings:

I. Mentality - normal

II. HEENT - no evidence of external physical injury

III. CHEST - no sign of external physical injury

Breast - well developed

Nipple - brownish no milk upon expression

Areola - brownish

IV. Abdomen - no sign of external physical injury

V. Extremities - no sign of external physical injury

VI. Perineum:

Pubic hair - scanty

Labia majora and minora - well coaptated

Hymenal Laceration 1, 5, 6, 7, 10, 11 o'clock (superficial healed laceration)

Deep healed laceration at 3 o'clock

Vagina admits 1 finger with ease; two fingers with difficulty

VII. Pregnancy test - negative

VIII. Smear for spermatozoa - none found."[4]

The appellant's version of the facts is substantially the following. At 5:00 o'clock p.m., on 16 March 1984, the accused saw two (2) ladies crossing the bridge, one an old acquaintance (Cristina Tuquero) and the other he did not know at the time. The accused talked to Cristina who then introduced him to Maria Eva. Cristina was looking for one Wilfredo Bonifacio and the accused, who knew Bonifacio, accompanied the two (2) to the house of Bonifacio, and then returned to his favorite loitering place by the Sta. Lucia bridge. At 9:00 o'clock that evening, while the accused was at the Trinidad Medical Clinic visiting his friend, Remigio Viray, a patient at the clinic, Cristina and Maria Eva arrived at the Clinic. There, according to the accused, Cristina confided to the accused that Maria Eva had a "crush" on him. At 9:30 in the evening, Cristina left the hospital but Maria Eva stayed behind. There, the accused went on, Maria Eva confessed to him that she loved him, and invited him to her birthday party. Maria Eva also invited him to take a walk at the plaza of Masantol and from there, they proceeded to the Masantol Elementary School. They sat for a while on the stairs of the school. Still according to the accused, Maria Eva flirted with him, took off his clothes and started embracing him. When the accused was sufficiently aroused, they

entered one of the rooms of the elementary school. She took off her clothes and had sexual intercourse with him three (3) times before midnight. The complainant asked the accused whether they were going to get married and he gallantly answered "Yes". After midnight, they proceeded to the Trinidad Medical Clinic where the accused and Maria Eva shared a bed that night. At 6:00 o'clock next morning, the accused and his friend Wilfredo Bonifacio departed for Manila and left Maria Eva behind at the hospital.[5]

In his Appellant's Brief, the accused raised the follow-ing assignment of errors:

"I

The lower court erred in overlooking certain facts of substance and value that if considered would affect the result of the case, to wit:

1. The complainant had not lost conscious-ness inside the barangay tanod headquarters at Sta. Lucia, Matua, Masantol, Pampanga.
2. The complainant had sought the appellant at the San Nicolas Medical Clinic in the plaza of Masantol, Pampanga at 9:00 p.m. of March 16, 1984.
3. The complainant had cooperated in the sexual acts.
4. After the sexual acts, the complainant and the appellant returned to the San Nicolas Medical Clinic at midnight of March 16, 1984 and slept therein up to 6:00 a.m. of the following day.
5. The complainant did not suffer any physical injury.
6. The complainant continued to attend her classes regularly in the Pampanga Colleges until the close of the school year.
7. The complainant continued to celebrate her birthday of March 18, 1984 despite her claim that she was raped in the night of March 16, 1984.
8. The complainant failed to report to her parents and grandmother the alleged rape from March 16 to March 25, 1984.

II.

The lower court erred in finding the accused-appellant guilty of the crime of rape and sentencing him to suffer reclusion perpetua and to indemnify the complainant Maria Eva Sarah C. Suing in the amount of P50,000.00."[6]

The nature of the crime of rape is such that most often only the victim and the accused can testify as to what had really happened between them. Thus it is, the Court has frequently held that conviction for rape may ensue upon the sole basis of the complainant's testimony, provided such testimony is found to be positive and credible.[7]

In the instant case, the trial court found the testimony of Maria Eva to be straightforward and convincing; at the same time, the Court found the story presented by the accused to be unworthy of belief and indeed "ridiculous" and "absurd".

We have examined the record of this case carefully and we find no basis for overturning the above assessment made by the trial court of the relative credibility of the testimony given by Maria Eva and that of the accused. Like the trial court, we find it very difficult to believe that a 15-year old high school student brought up in the middle class environment offered by the towns of Masantol and Macabebe in Pampanga, would have sought out the accused, a man eleven (11) years older than herself, whom she had met for the first time a few hours ago and

who was obviously a user and also apparently a pusher of prohibited drugs, and in effect offered herself sexually to him.

The accused denied that he forced the complainant to smoke marijuana and to drink whiskey and Hylorin cough syrup. To corroborate this denial, the defense presented Agripino Bonifacio, uncle of the accused, who testified that he was at the Barangay Tanod Headquarters on the evening of 16 March 1984, and that Headquarters had not been used by the accused and his companions for a drinking spree that evening. He further stated that Maria Eva did not lose consciousness at the Barangay Headquarters that evening. These simple denials, however, could not overcome the positive testimony of both Maria Eva and Cristina Tuquero to the contrary. The trial court, which had the opportunity to observe the demeanor of all the three (3) witnesses, found the testimony of Agripino Bonifacio not worthy of belief.[8]

The defense also presented Eugenio Viray, who testified that complainant Maria Eva returned together with the accused to the Trinidad Medical Clinic around 12:00 midnight on 16 March 1984 and spent the rest of the night there. Unfortunately for the accused, the testimony of Eugenio Viray and that of the accused himself, differed in pertinent detail. More importantly, the story of the accused that he and Maria Eva returned to the clinic around midnight and spent the rest of the night there, was seriously weakened, if not totally demolished, by the testimony of one of the accused own witnesses, Dr. Trinidad, owner or one of the owners of the Trinidad Medical Clinic (also known as the San Nicolas Medical Clinic). The trial court said:

"Moreover, the accused claimed that from the Masantol Elementary School, he and the complainant returned to the Trinidad Medical Clinic where they slept in the room of Remigio Viray on the same bed after midnight until 6:00 o'clock in the morning of March 17, 1984. However, his witness, Eugenio Viray, testified before the Court on August 17, 1984 that he and the accused slept on the same bed, whereas complainant slept on another bed. Both testimonies were, however, contradicted by Dr. Trinidad who declared that there are only two rooms in their medical clinic with four beds to accommodate for each room; that at the time the room occupied by Remigio Viray was full which means that all beds were occupied by patients; that after 10:00 o'clock in the evening they never allow visitors in their clinic. This testimony of Dr. Trinidad completely destroyed the claim by the accused that he and the complainant slept in the Trinidad Medical Clinic after midnight until 6:00 o'clock in the morning on March 17, 1984."[9] (Underscoring supplied)

The accused did not deny that he had copulated with the complainant Maria Eva. Indeed, he claimed that he did so three (3) times that evening and that Maria Eva must have enjoyed the sexual intercourse considering that their first embrace lasted for fifteen (15) to twenty (20) minutes. We note that since Maria Eva testified that when she regained consciousness, she was raped once, the claim of the accused that he had sexually embraced Maria Eva three (3) times, could only mean that the first two (2) times were done while she was unconscious from the powerful mixture of marijuana, strong whiskey and narcotic cough syrup. Under Article 335 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman either "by using force or intimidation" or by doing so "when the woman is deprived of reason or otherwise unconscious". Thus, the accused, by his own testimony, committed both forms of rape. The rule, according to *People v. Lintag*,^[10] is that "if the ability to resist is taken away by administering drugs, even though the woman may be conscious, sexual intercourse with her is rape (citation omitted). If the woman's will is affected by the anaesthetic so that the connection is without her consent, though she may be more or less conscious, the act will be rape (citation omitted)."[11]

The accused also stressed the absence of physical injuries on the body of complainant and argues that therefore complainant must be held to have cooperated with him towards the consummation of the sexual acts. Accused, however, cannot take much comfort from the absence of signs of physical injuries. Since the complainant had passed out, no struggle which could have produced tale-tell bruises ensued. When she finally woke up, she was threatened with a knife before the accused inflicted himself for the third and last time upon his victim.

Considering the weakness brought about by the marijuana, the whiskey and the cough syrup, Maria Eva could not have been expected to put up much resistance. Moreover, there is the rule that force in the crime of rape need not be irresistible force; it is only necessary that the force or intimidation employed did actually bring about the consummation of the rape.[12]

Maria Eva said that she had been "forced" by the accused to smoke the marijuana stick and to drink of the whiskey and the cough syrup, while the accused disclaimed having forced her to do so. Even assuming for purposes of argument merely that the combined pressures exercised by the accused and Cristina Tuquero upon Maria Eva to partake of the whiskey and the cough syrup and to smoke the marijuana stick, did not produce the legal condition of duress which nullified consent, the complainant cannot by that token alone be regarded as having consented to and cooperated with the sexual violations imposed upon her while she lay unconscious and after she had regained her senses.

The accused also stressed that certain acts of the complainant in the days following the night of 16 March 1984, negate the charge of rape. The accused sought to make much of the fact that Maria Eva continued to attend her school classes, that she did not cancel, but instead proceeded with, the celebration of her birthday on 18 March 1984, and that she had failed to report her ordeal to her parents for nine (9) days.

We do not believe that any of the above circumstances necessarily run counter to the testimony of Maria Eva that she had been raped. Her failure to report immediately her having been sexually violated is sufficiently explained by the fear engendered in her by the threat against her life and that of her parents as well. Moreover, our jurisprudence includes many cases where delay in reporting the rape was explained by the tender age of the victim and the intense shame felt by the victim over the outrage inflicted upon her.[13] In *People v. Alcantara*, [14] the Court said:

"COMPLAINANT was an innocent and docile barrio girl of 15 at the time of the incident and was even reluctant to admit the shame that had befallen her. As Dr. Boado, the examining physician had stated, COMPLAINANT initially denied the abuse on her person but that she succeeded in extracting that fact from COMPLAINANT only when there were no longer other people within hearing. (TSN, February 17, 1967, p. 25.)

COMPLAINANT herself testified that she did not right away tell her father what had happened in the presence of other people in the house of Pat. Dacanay but only related the whole incident to him when they left the house of Pat. Dacanay. (TSN, December 6, 1967, p. 21.)"[15]

In *People v. Oydoc*, [16] we find this reminder --

"One should not expect a fourteen-year old girl to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapists' threat on their lives, more so when the rapist is the child's own stepfather living with her." [17]

That Maria Eva continued to go to school and did not cancel her birthday party, did not indicate that she had consented to and cooperated in the acts of copulation that the accused had readily, even boastfully, admitted. They only indicate her efforts to keep her terrible experience to herself and the sense of having been dishonored and violated which she must have felt deeply. We should perhaps add that two (2) days after Maria Eva and her mother had reported the rape to the Masantol Municipal Police, the father of the accused together with some friends of his went to the house of Maria Eva's parents "for the purpose [according to the testimony of Mrs.

Carmelita Suing, Maria Eva's mother] of asking the hand of [Maria Eva] for marriage to the accused as his son had sexually abused [Maria Eva]". Maria Eva's mother testified that she did not accept the proposal for marriage "because her daughter objected and the accused [was] a marijuana pusher".[18]

We conclude that no reversible error on the part of the trial court in convicting the accused has been shown. However, the award of P50,000.00 as moral damages should be reduced to P30,000.00 in line with prevailing jurisprudence on the matter.

WHEREFORE, the Decision of the trial court dated 13 February 1985 is hereby AFFIRMED, except the award of moral damages which is hereby reduced to P30,000.00. Costs against accused-appellant.

SO ORDERED.

Fernan, C.J. (Chairman), Gutierrez, Jr., Bidin, and Cortez, JJ., concur.

[1] Records, p. 1.

[2] Rollo, p. 26.

[3] TSN, 13 June 1984, pp. 38-41.

[4] Rollo, p. 12.

[5] TSN, 20 July 1984, pp. 43-74.

[6] Brief of the Accused-Appellant, p. 1; Rollo, p. 49.

[7] *People v. Taduyo*, 154 SCRA 349 (1987).

[8] Decision, Regional Trial Court, Rollo, pp. 19-20.

[9] Rollo, p. 25.

[10] 126 SCRA 511 (1983).

[11] 126 SCRA at 516.

[12] *People v. Mendoza*, 163 SCRA 568 (1988).

[13] Rollo, p. 21.

[14] 126 SCRA 425 (1983).

[15] 126 SCRA at 437.

[16] 125 SCRA 250 (1983).

[17] 125 SCRA at 256.

[18] Decision, Regional Trial Court, Rollo, p. 15; TSN, 14 June 1984, pp. 112-113.

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