

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO DELA TORRE ALIAS RICO, GLOWEN PAIGMA AND ERNIE MANZANO, ACCUSED-APPELLANTS.

*G.R. No. 83326. May 27, 1997*

Ponente: HERMOSISIMA, JR., J.

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### HERMOSISIMA, JR., J.:

For a better perspective, we quote the original charge against accused Federico "Rico" dela Torre, Glowen Paigma, and Ernie Manzano for the crime of Forcible Abduction with Rape before Branch 49 of the Regional Trial Court of Palawan and Puerto Princesa City:

"That on or about the 27th day of December, 1981, in the evening in the Poblacion, Municipality of Narra, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another and with the employment of force, threats and intimidation upon the person, did then and there willfully, unlawfully and feloniously abducted by carrying away at knife point the person of one Rebecca Victorino against her will and consent; that in the occasion of the said abduction, the above-named accused, in feloniously have carnal knowledge with the said Rebecca Victorino against her will and without her consent to her damage and prejudice.

CONTRARY TO LAW in violation of Article 342 in relation to Article 335 of the Revised Penal Code and committed with aggravating circumstances of nighttime and of taking advantage of superior strength."

Rebecca Victorino, the complainant, a 33 year old widow and the mother of five children, has been a resident of San Pedro, Puerto Princesa City, Palawan, for around 30 years. She worked as a waitress and had been a hospitality girl at the Rendezvous Restaurant.

It appears that, at about 11:00 o'clock in the evening of December 27, 1981, while the complainant was on her way home from work, three men, who were unknown to her but were later identified as Federico dela Torre, Glowen Paigma and Ernie Manzano, waylaid and accosted her near the house of a certain Tallan. They had knives which were pointed at her. They held both her hands, threatened to kill her if she made any noise, and began to drag her.[1] She shouted for help but, since it was already very late at night, nobody responded. Although she tried to resist, the three men forcibly brought her to the stage at the town plaza, about half a kilometer away.

At the stage, Federico dela Torre forcibly embraced and kissed her. She struggled and was able to free herself from Dela Torre's hold. Dela Torre chased her, and, poking a knife at her, was able to bring her back to the stage. Dela Torre then said: "Come on baby, baby come on, baby, do you want to be liked in the Palawan High? Do you know that I am a maniac killer?" The complainant knew that he was referring to the incident at the Palawan High School where a woman was raped and killed.

Rebecca was then forced to lie down on the wooden floorboards of the stage. Dela Torre's two companions then held and spread her legs while Dela Torre laid on top of her.[2] She tried to free herself, but Dela Torre boxed her stomach, pulled up her blouse, then forcibly removed her brassiere and her black pants (Exh. C), destroying its

zipper (Exh. C-1). He likewise pulled her panties (Exh. D) until it was torn. When he finished undressing her, he raped her. She tried shouting for help again but she was warned by the accused-appellant to keep quiet, otherwise she would be killed. When Dela Torre was through abusing her, he instructed his two companions to follow, but they declined. She shouted for help again, but Dela Torre once more threatened her with his knife. His two companions left.

Rebecca, believing that Dela Torre would kill her, begged for mercy. Dela Torre conceded, allowing her to go home, although he accompanied her all the way to her house while poking his knife at her side, threatening to kill her if she sought help from drivers of oncoming vehicles. When they reached her house, Dela Torre ran away.

As soon as Rebecca was safely inside her house, she began to cry hysterically, waking up her brother who was then sound asleep. She narrated to her brother her ordeal at the hands of the three men. Upon hearing her story, her brother immediately accompanied her to the police station. During the investigation, she was able to give the police only a description of her attackers since at the time of the rape she did not know their names. Based on her description, the police picked up Federico 'Rico' dela Torre, and brought him to the Police Station. There, Rebecca, without any hesitation, identified him as one of those who forcibly abducted and raped her.

Afterwards, she was brought to Dr. Dominador Hubo for physical examination. The examination yielded the following findings:

"Preliminary findings:

30 years old, well developed female, breast conical in shape and slightly pendulous, with nipple protruding, surrounded by a pinkish brown areola. Contusion with abrasion oval in shape at the inner lower quadrant of the left breast and lower left side of the neck. Multiple contusion with abrasion at the back left mandibular and epigastric area.

Internal findings:

Mons veneris triangular in shape with scanty pubic hair. Labia majora and minora well coaptated. Vagina admits 2 fingers with slight resistance. Vagina rougousitis still intact. Old hymenal laceration at 6, 12 and 3 o'clock corresponding to the face of the watch. Presence of yellowish sticky fluid at the posterior fornix of the cervix, positive for spermatozoa.

Conclusion: Physical Virginity lost."

Glowen Paigma was subsequently arrested. Ernie Manzano remained at large.

Dela Torre and Paigma were charged with conspiracy to forcibly abduct and rape Rebecca Victorino. The case was raffled to Branch 49 of the Regional Trial Court of Palawan and Puerto Princesa City, with Judge Felicisimo Garin presiding. During the trial, accused-appellant Dela Torre denied raping the complainant. He testified that on December 27, 1981, after coming from a moviehouse, he, Glowen Paigma, and Ernie Manzano went to the Rendezvous Restaurant at around 11:00 P.M. and each had a bottle of beer. They saw the complainant seated at a table with a man, drinking beer. They then left for home at about 11:10 P.M.

At about 11:30 P.M., while they were passing by the town plaza inside the poblacion of Narra, Palawan, they saw a couple atop the stage, naked and having sexual intercourse. He recognized the woman as Rebecca Victorino but failed to recognize her male lover. Upon sensing their presence, Rebecca shouted for help while the man ran away. Rebecca then scrambled to stand up while putting on her clothes, and in doing so fell and rolled down the steps. She then ran off.

Glowen Paigma corroborated Dela Torre's testimony. He stated that Dela Torre went up the stage but that he and

Manzano left Dela Torre behind. He denied helping Dela Torre rape the complainant. He claimed innocence on the strength of the affidavit of Rebecca Victorino wherein it was tacitly stated that he was not properly identified and that he did not participate in the commission of the crime charged, to wit:

"x x x [P]agkatapos po niya ay tinawag po niya ang kanyang dalawang kasama at sila naman daw po ang sumunod na gumamit sa akin subalit ayaw po ng dalawa niyang kasama. x x x

x x x

05. T — Sino naman ang dalawa niyang kasama, nakikilala mo ba?

05. S — Hindi ko po nakilala dahilan sa iniwas nila ang kanilang mukha at nang ihatid na po ako ni Rico Dela Torre sa bahay ay hindi na po sila sumama."

On October 9, 1986, the trial court rendered a decision<sup>[3]</sup> acquitting Glowen Paigma for insufficiency of evidence, since he had not been clearly identified by the complainant as one of her attackers. However, it convicted accused-appellant Federico Dela Torre, but only for the crime of rape, not the complex crime of forcible abduction with rape as charged. The dispositive portion of the decision reads:

"WHEREFORE, decision is hereby rendered finding the accused Federico dela Torre guilty beyond reasonable doubt as principal [in] the crime of rape, defined and punished under Article 335, sub-paragraph 1 of the Revised Penal Code, and there being no mitigating and aggravating circumstance present, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, with all the accessory penalties provided for by law and to pay the costs. He is further ordered to pay moral damages to Rebecca Victorino in the amount of P30,000.00.

Accused Glowen Paigma is acquitted of the charge against him for insufficiency of evidence. Release the accused unless held for other cause.

Let the record of this case be forwarded to the files of archives as regards the accused Ernie Manzano who is still at large. Let an alias warrant of arrest be issued against him at his last known address.

The bailbond posted by accused is cancelled.

SO ORDERED."

In holding that only the crime of rape had been established, the trial court stated that:

"As defined by Viada, cited in *People vs. Crisostomo* (46 Phil. 780), by abduction is meant the taking away of a woman from her house or the place where she may be for the purpose of carrying her to another place with intent to marry or to corrupt her.

Upon the above set of facts, the purpose of accused in dragging Rebecca Victorino towards the stage is neither to marry or corrupt her but to sexually abuse her.

It was a continuous and uninterrupted design from the time Rebecca was accosted up to the consummation of the unwanted sexual abuse.

Indeed the element of force and intimidation which may constitute a distinct crime of forcible abduction is concomitantly absorbed and whittled as an ordinary element of the crime of rape. Hence, only the crime of rape has been established by the evidence."<sup>[4]</sup>

After the promulgation of the decision, accused-appellant Dela Torre filed a notice of appeal on November 25, 1986. Subsequently, he withdrew the appeal and filed a Motion for New Trial on January 19, 1987 based on newly discovered evidence. This was granted by the trial court and, on January 26, 1987, the decision was set

aside. Trial ensued with Judge Sabas R. Acosta presiding.

The accused-appellant, testifying in the new trial, still maintained the same defense of denial. This time, however, he had a different version of what transpired on December 27, 1981. He declared that he had known the complainant for twelve years prior to the incident on December 27, 1981. He claimed to be her lover with whom he had been having sexual relations for 12 years. He contended that he saw her going out with another man and so he wanted to talk things over with her. He invited her to the plaza in the night of December 27, 1981. He claimed that in the course of their talk, they got into such a heated argument that complainant began to pinch, box, and slap him, forcing him to retaliate by boxing and slapping her.[5] The defense presented Isabelo Goloya as witness in the new trial.

The trial court did not find either Dela Torre's or Goloya's testimony worthy of belief. Accordingly, it convicted Dela Torre of raping Rebecca Victorino. The dispositive portion of the decision[6] reads:

"WHEREFORE, premises considered, the Court found and so finds Federico dela Torre guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335, sub-paragraph 1 of the Revised Penal Code, there being no mitigating circumstance present, hereby sentences him to suffer the penalty of Reclusion Perpetua, with all the accessory penalties provided by law and to pay the costs. He is hereby ordered to pay moral damages to Rebecca Victorino in the amount of Thirty Thousand (P30,000.00) Pesos.

Accused Glown Paigma is acquitted of the charges against him for insufficiency of evidence.

Let the case with regard to accused Ernie Manzano who is still at large be archived and an alias warrant of arrest be issued at his last known address.

The bailbond posted by accused Federico dela Torre is hereby cancelled.

SO ORDERED."

Accused-appellant now comes before us by way of appeal, with an assignment of the following errors:

I. THE RTC ERRED IN CONVICTING THE ACCUSED OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.II. THE IDENTITY OF THE ACCUSED AS THE ALLEGED PERPETRATOR OF THE CRIME WAS NOT SUFFICIENTLY ESTABLISHED.

On January 5, 1996, accused-appellant submitted a handwritten letter to the Clerk of Court manifesting his desire to withdraw his appeal on two grounds, namely, 1) that the resolution of this appeal has been delayed and; 2) that some of the documents pertaining to this case were not submitted. The Supreme Court resolved to require the accused-appellant's counsel to comment thereon. In his comment, Atty. Nelson Loyola, counsel for herein accused-appellant, submitted the matter to the discretion of this Court considering the gravity of the offense charge. In view of the fact that the withdrawal of the appeal was made by the accused-appellant without the assistance of his counsel, and as the matter had been left to the discretion of this Court, we deem it proper to resolve the issues presented in the herein appeal.

After a thorough perusal of the facts and records of this case, we find the appeal to be bereft of merit.

It has been a settled doctrine that the defense of denial cannot prevail over the positive identification of the accused.[7] In the case at bench, there is no question that complainant Rebecca Victorino was able to identify Federico dela Torre as the one responsible for the assault on her chastity. Although she did not know his identity at that time, she was able to provide the police with a description which fit the accused-appellant. There is no doubt that the complainant had a good look at the physical features of the accused — during the rape, the

complainant was as close to the accused as is physically possible, for a man and woman cannot be physically closer to each other than during a sexual act.[8] The complainant also had ample opportunity to observe the accused-appellant — while she was being dragged, while she was being raped, and while she was being brought home by him. There is, therefore, no reason to doubt the accuracy of private complainant's visual perception of accused-appellant as the criminal.[9] Moreover, the accused-appellant failed to adduce any reason why the complainant would level such a serious charge against him. Testimony of a rape victim as to who abused her is credible where she had no motive to testify against the accused.[10]

Aside from the fact that the accused-appellant had been positively identified by the complainant, the testimonies of the accused-appellant in both trials contradict each other.

During the first trial, the accused-appellant testified as follows:[11]

"Q: And after leaving the restaurant, where did you and your two companions proceed?

A: We went home, sir.

Q: In relation to the restaurant, where was your house located?

A: Our house is still quite far than [sic] the Narra Pilot School.

Q: When you said you went home, who was your companion if any in going home?

A: Glowen Paigma and Ernie Manzano, sir.

Q: And while on your way home, what happened if any along the way?

A: When we passed by the plaza we saw two persons there.

Q: Where were these two persons located?

A: At the stage.

Q: And what were these two persons doing?

A: They were pucking [sic].

Q: At what distance were you from the plaza stage when you first saw these two people in the stage?

A: About two arms length away.

x x x

COURT:

Q: So with that distance of yours which you said is two dipa in meters, how far were you to these two committing sexual intercourse?

A: About four meters, Your Honor.

Q: What time did you say was this when you saw two people having sexual intercourse?

A: About 11:30 o'clock in the evening.

Q: Did you recognize the man?

A: No, Your Honor.

Q: Did you recognize the girl?

A: Yes, Your Honor.

Q: How long have you known this girl at that time?

A: Since my boyhood.

x x x

Q: What is the name of the girl?

A: Vicky Victorino.

x x x

Q: After noticing that the two were making love what did you and your companions do if any?

A: I tried to look at them in order to recognize them.

Q: In recognizing them what steps did you do if any?

A: I went up the stage.

Q: And when you went up the stage what happened?

A: The man ran away.

Q: And this man that you said ran away what relation is this man you saw together with Vicky Victorino earlier?

A: I do not know.

Q: Is he the same man or not?

A: Yes sir, he was the one.

Q: When you ascended the stage where was [sic] your two companion?

A: In the street.

Q: What else happened when this man ran away upon your ascending the stage?

A: This Vicky Victorino was shouting for help.

Q: How many times were she shouting for help?

A: Many times.

x x x

Q: After the man ran and that Vicky Victorino was shouting for assistance, what else happened?

A: He [sic] was shouting for assistance and running to the stairs and while on the stairs she fell down and she rolled down.

Q: You said the girl was shouting for assistance, what was the volume of her voice?

A: Loud sir.

Q: What else happened when she rolled down the stairs running?

A: She fell down again and her chest hitting the ground.

Q: While the girl was running do you know if her clothes were on or not?

A: She was about to wear her pants without the upper clothes.

Q: How about your two companions, at the time the girl was running, where were they?

A: They were no longer there, I did not see them anymore.

Q: What happened next after that?

A: I went home sir."

In his testimony during the new trial,[12] however, accused-appellant's new version materially deviated from his earlier narration:

"Q: Now during that long stay in Narra, Palawan, have you ever come to know a certain person by the name of Rebecca Victorino?

A: Yes, sir.

Q: How long have you come to know Rebecca Victorino before December 27, 1981?

A: Twelve years already, sir.

x x x

Q: Now, when you said you have a relationship to [sic] Rebecca Victorino, other than by blood or affinity, will you tell this Honorable Court in what consists [sic] that relationship?

A: He [sic] is my former sweetheart, sir.

Q: You said that you are related to her by relationship or so-called sweetheart, in the course of that relationship, did you have any carnal relationship with her?

A: Yes, sir.

x x x

Q: Now, in the course of that relationship that you have had with Rebecca Victorino, do you know what happened to that relationship?

A: Something went wrong, sir.

Q: Will you kindly tell the Honorable Court why something went wrong with that relationship?

A: She is my former sweetheart and I saw her going with other man [sic], sir.

x x x

Q: Upon seeing her going out with another man, other than yourself, what did you do?

A: I tried to talk to her, sir.

Q: And when you said you tried to talk to her, was it sometime on December 27, 1981?

A: Yes, sir.

Q: Where did you invite her to talk things [over]?

A: At the plaza, sir.

Q: When you said plaza, do you refer to the plaza located at the Narra Central School?

A: Yes, sir.

Q: Now, were you able to talk to her in that plaza?

A: Yes, sir.

Q: While talking to her in that plaza, will you be able to tell this Honorable Court what transpired between you and Rebecca Victorino?

A: He [sic] pinched me, he [sic] boxed me and slapped me.

Q: What did you do?

A: I retaliated by boxing her.

Q: What else?

A: Slapped her, sir."

The contradiction in these two testimonies is glaring. Such inconsistencies can only lead to the conclusion that the defense of the accused-appellant is purely a fabrication, concocted out of thin air, with subsequent versions modified according to what he hopes would be plausible and acceptable to the court. These testimonies were not given any credence by the trial court, and rightly so, for through his convoluted story-telling, the base nature of the accused-appellant is made apparent. It shows him to be without any compunction, not only in forcing Rebecca to submit to his bestial desires, but also in twisting the facts, though he be under sacred oath, to suit his purpose.

As if to add insult to Rebecca's injury, accused-appellant presented a witness, one Isabelo Goloya, who in his affidavit would have us believe that Rebecca is a woman of such loose morals that she would consent to have sex with him, a married man, in a public place. Prior to his testimony, Goloya's affidavit was submitted by the accused-appellant to support his motion for a new trial. In that affidavit, Goloya alleged that he was the man who was with the complainant at the stage in the evening of December 27, 1981. He also alleged therein that he and the complainant were lovers and that they had sexual intercourse in the plaza that night. He stated in his "Malaya at Sinumpaang Salaysay"[13] that:

"x x x

2. Na ang ibig kong sabihin sa ugnayan ay nakipagtalik ako kay Rebecca dahil noon gabing iyon ay nanggaling kaming dalawa sa Rendezvous Restaurant at pauwi na at papunta kaming dalawa sa may stage ng Plaza sa Poblacion ng Narra;

3. Na dahil sa kaming dalawa ni Rebecca ay may relasyon na ay doon ko siya dinala sa nasabing stage kung saan ay nagtalik kaming dalawa;

x x x."

However, during Goloya's testimony in the new trial, he made no mention that he and the complainant were sexual partners on the night of December 27, 1981. Instead, he merely stated that, when he went out that night to look for his daughter, he saw a man and a woman having a fight and hurting each other.[14] He recognized the man as Rico dela Torre and the woman as Victoria, alias "Vicky". He watched and listened to them for a while. When they separated, he also went on his way.[15]

These inconsistencies detract from the overall credibility of the accused-appellant's defense. Consequently, his defense cannot but fail to exculpate him.

It has been held that the conduct of the victim immediately following the alleged sexual assault is of utmost importance as tending to establish the truth or falsity of the charge of rape.[16] Thus, further strengthening this Court's conviction that accused-appellant is guilty of raping Rebecca Victorino is the fact that the latter wasted no time in reporting her ordeal to the authorities. As we have held in the case of *People vs. Grefiel*: [17]

"Despite the outrage and the shame, she lost no time in reporting the incident to the barangay captain. In less than twelve (12) hours from the commission of the crime, she narrated the sordid details of her horrifying and harrowing experience in a statement given to the police authorities, submitted to a medical examination and signed a criminal, complaint for forcible abduction with rape against the accused-appellant. Not only did these acts demonstrate courage of the highest order, they also enhance the complainant's credibility. It has repeatedly been said by this Court that when a woman admits that she has been raped, she says in effect all that is necessary to show that rape has been committed; if her testimony meets the test of credibility, the accused may be convicted on the basis thereof."

Thus, the veracity of Rebecca's testimony cannot be doubted. In *People vs. Jaca*,[18] we said:

"The credibility of the victim is further strengthened by the spontaneity of her act immediately after the incident. We note her courage in reporting the rape, unmindful of what the incident could do on her reputation in the barrio. We fully concur with the opinion of the lower court, viz: 'The fact that, the offended party, after the beastly attack, immediately left her house to report the molestation against her honor, is a clear manifestation that she was indeed raped. Accused's claim of being a lover is but a devise to extricate himself from the consequence of his dastardly lust. His defense is a concocted one, easily made, to escape criminal liability. x x x Her immediate response (reporting the incident) carries the stamp of truth. This is a natural reaction of a virtuous woman who had just undergone sexual molestation against her will.' (emphasis ours)

We find, however, that the moral damages of P30,000.00 awarded to the complainant to be inadequate, considering the bestiality of the attack on her virtue. For Rebecca, the trauma of being threatened with a deadly weapon and being abused without pity justifies the increase of the award of moral damages to P50,000.00, in line with recent jurisprudence.[19]

WHEREFORE, the appealed decision in Criminal Case No. 4141 is hereby AFFIRMED, with the modification that the indemnity awarded by the trial court is hereby increased from P30,000.00 to P50,000.00.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.

Padilla, (Chairman), J., on leave.

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[1] TSN, p. 5, September 23, 1983.

[2] TSN, p. 8, September 23, 1983.

[3] Crim. Case No. 4141 penned by Judge Felicisimo Garin.

[4] Ibid.

[5] TSN, pp. 4-5, May 28, 1987.

[6] Decision penned on December 18, 1987, by Judge Sabas R. Acosta.

[7] People vs. Guamos, 241 SCRA 528 (1995).

[8] People vs. Castañeda, 252 SCRA 247 (1996).

[9] Ibid.

[10] People vs. Joya, 227 SCRA 9 (1993).

[11] TSN, April 23, 1985; pp. 6-11.

[12] TSN, May 28, 1987, pp. 3-5.

[13] Dated November 23, 1986; Original Records, p. 388.

[14] TSN, p. 3, June 24, 1987.

[15] Ibid., p. 4.

[16] People vs. Castillon, 217 SCRA 76 (1993); People vs. Domingo, 226 SCRA 156 (1993); People vs. Joya, 227 SCRA 9 (1993).

**[17] 215 SCRA 596 (1992).**

**[18] 229 SCRA 332 (1994).**

[19] People vs. Grefiel, supra.

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