

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO DADO ALIAS “JUN DECOY,” “JUN DACOY,””FEDERICO DADO, JR.” AND RENE DADO ALIAS “KICK,” ACCUSED. FEDERICO DADO, ACCUSED...

G.R. No. 87775. June 01, 1995

Ponente: VITUG J.

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VITUG J.:

Federico Dado[1] appeals from the 18th February 1989 decision,[2] in Criminal Case No. 3931, of the Regional Trial Court of Legazpi City, Branch 2, convicting him of rape and imposing on him the penalty of reclusion perpetua and the payment of an indemnity of twenty thousand pesos (P20,000.00) to the victim Eden Daria.

Accused-appellant was charged with one Rene Dado (at large) in an information that read:

"That on September 7, 1986 about 11:30 o'clock in the evening, at Poblacion, Manito, Albay, Philippines, within the jurisdiction of the Honorable Court, the above-named accused, together with RENE DADO alias 'Kick', whose case in the original complaint is archived and pending preliminary investigation in the MCTC of Sto. Domingo-Manito, Albay, conspiring together and helping one another for a common purpose, by means of force, threat and intimidation, taking advantage of superior strength, nighttime, and use of deadly weapon, did then and there wilfully, unlawfully and feloniously have one sexual intercourse each with EDEN DARIA, a 14-year old girl, against her will, and to her damage and prejudice.

CONTRARY TO LAW."[3]

Federico pleaded not guilty to the accusation. At the trial, the prosecution and the defense presented their respective evidence.

The case for the prosecution, in brief, can be narrated thusly:

On 07 September 1986, Eden Daria, a 14-year old barrio lass from Manito, Albay, along with one Hilga Camacho, attended the "Mr. and Mrs." affair held at the dance hall in the town's poblacion. While the two young girls were on their way back for home from the party at around eleven o'clock in the evening, their path was blocked by Eduardo Arteta, alias "Edy," and one Diosdado Delposo. All at once, Arteta and Delposo dragged Eden to a nearby school building, leaving Hilga by the road. Arteta poked a knife at Eden's breast while Delposo had another knife pointed at her left side. Arteta and Delposo removed Eden's T-shirt, brassiere and gartered pants. Eden's struggles proved to be of no avail. Arteta laid on top of Eden and forced himself into her. Later, Delposo took his turn. After satisfying their lust, the duo left her.

Still reeling from the incident, Eden walked towards the direction of the house of an aunt, one Flordeliza Camacho. Along the way, she was approached by Federico Dado, a.k.a. "Jun Decoy," and Rene Dado, a.k.a. "Kick," both her neighbors, and by Noli Trilles, her distant cousin. Federico and Rene, the latter pointing a knife at the still dazed girl, accosted Eden to a nearby banana plantation in front of Flordeliza's house. Noli was left by

the side of the road. Federico undressed the struggling Eden with the help of Rene. Federico forced Eden to lie on her back, then went on top of her and finally succeeded in entering her. Rene was next to commit the bestial act on the unwilling and frightened victim. Thereafter, Federico and Rene left but not without first threatening Eden with death if she were to reveal the incident to anyone.

Upon reaching her aunt's house, Eden related to her grandmother, Juanita Daria, the ordeal she had just been through. The next morning, she proceeded to her parents' house and recounted the story to her father, Roger Daria, who promptly brought her to the police headquarters in Manito. Roger also had his daughter medically examined at the rural health office in Manito where Dr. Napoleon Se, the municipal health officer, also treated Eden for her injuries. Dr. Se later executed a medical report indicating a thumb-sized hematoma "below the thyroid area bilateral at the side of the bronchial area" and other injuries in Eden's genital area. Eden, per the medical findings, so suffered "genital trauma" as follows.

- "1. Hymen - Laceration found at 3, 6, 9 o'clock.
2. Vulva abrasion with hematoma at the anterior lateral and posterior vestibule around the vaginal orifice.
3. Vagina - mucosal abrasion and laceration on the lateral and posterior wall.
4. Bloody discharge found in the vagina and the vulva."[4]

Two separate criminal cases were filed with the Regional Trial Court of Legaspi City, one against Arteta and Delposo (Branch 9) and the other[5] against Federico Dado and Rene Dado (Branch 2). Federico was apprehended but Rene remained at large.[6]

Federico Dado denied the charge; he submitted the following version:

In the afternoon of 07 September 1986, then 21-year old Federico went to visit his father, an amputee, at the latter's residence near the poblacion of Manito. Federico made arrangements with Mariano Dawal, a 74-year old co-resident at Malanto, Manito, who went to town with Federico, for the latter to fetch Federico at the dance hall so that the two could go home together later in the evening. It was around 11:30 that night when Mariano finally arrived at the dance hall. While heading for home, the two were later joined by Elias Dawal, another resident of Malanto. When they were about a kilometer away from the dance hall, they saw a couple strolling at some distance ahead of them. When Federico noticed that the couple started to head towards a nearby banana plantation, he decided to follow them. Federico came close to about one arm's length away from the couple, whom he recognized to be Noli and Eden, when he was astonished to find them in the act of sexual intercourse. When the lovers noticed the presence of Federico, they immediately dressed up and warned Federico not to tell on them. Federico thus told no one, except his wife, about the incident.

The trial court, not impressed by accused-appellant's story, rendered, on 18 February 1989, a decision convicting Federico of the crime charged.

The instant appeal questions the trial court's having given full credence to the uncorroborated testimony of Eden.

Unfortunately for appellant, assessing the credibility of witnesses is an area within the almost exclusive province of a trial judge whose findings and conclusions are normally accorded great weight and respect.[7] In determining the credulity of testimony, significant focus is held to lie on the deportment of, as well as the peculiar manner in which the declaration is made by, the witness in open court.[8] Hardly can an appellate court come close to a trial court in making, from a mere reading of the transcript of stenographic notes, that kind of evaluation.

In this case, moreover, we see in Eden's vivid account to the court neither a bridled nor an adulterated, but a plain and straightforward, narration of her traumatic experience. It simply would be unnatural for a young and innocent

girl to concoct a story of defloration, allow an examination of her private parts, and thereafter subject herself to a public trial or ridicule if she has not, in fact, been a victim of rape and deeply motivated by a sincere desire to have the culprit apprehended and punished.[9] Certainly, her story, hereunder reproduced in her own words, could not have been a mere creation of fertile imagination.

"Q

You said you met the accused Federico Dado and Rene Dado while you were on your way home after Eduardo Arteta and Diosdado Del Puso raped you. What happened when you met Federico Dado and Rene Dado?

"A

I was dragged by them.

"Q

Who dragged you?

"A

Federico Dado.

"Q

What about Rene Dado, what did he do to you, if any?

"A

Rene Dado pointed to me the knife.

"Q

Where did he point the knife to you?

"A

On the left side of my body (witness pointing to her left side of her body).

"Q

What about Federico Dado, what did he do to you?

"COURT

Already answered. Federico Dado dragged her.

"Atty. RICAFORT

"Q

Toward what direction Federico Dado dragged you while Rene Dado was pointing to you with his knife on your body?

"A

Toward the banana plantation.

"Q

While at the banana plantation what happened?

"A

I was made by them to lie down.

"COURT

"Q

Did you not shout?

"A

I was not able to shout because they told me they were going to kill me if I shout.

"COURT

Proceed.

"Atty RICAFORT

"Q

Who forced you to lie down?

"A

Federico Dado.

"COURT

"Q

Where was their companion the other man by the name of Nonito Trilles?

"A

He was near the road, Your Honor.

"COURT

Proceed.

"Atty. RICAFORT

"Q

After you were forced to lie down by Federico Dado, what else happened? What did Federico Dado do to you when you were forced to lie down?

"A

He undressed me.

"Q

Who undressed you?

"A

Federico Dado.

"Q

After you were undressed by Federico Dado, what did he do to you next, if any?

"A

He laid on top of me.

"Q

After he laid on top of you what else did he do to you, if any?

"A

He inserted . . . (witness' voice very low)

"Atty BONGON

"We request that the witness be ordered to speak louder so that we can hear.

"INTERPRETER

(To witness) Answer now. Do not be ashamed.

"x x x x x x x x.

"COURT

The Court will ask question.

"Q

You already began your testimony by declaring when you were asked by your lawyer that Federico Dado inserted his. Will you continue with your answer?

"WITNESS

"A

(no answer from the witness)

"Atty BONGON

We would like to make it of record that despite the question by the Honorable Court the witness does not answer. We would like also to manifest that I am sorry I was not able to hear the beginning of the answer of the witness because she was speaking softly.

"COURT

Go to another point.

"Atty RICAFORT

"Q

While Federico Dado was on top of you, what was Rene Dado also doing, if any?

"A

Rene Dado just pointed the knife to me.

"Q

In what part of your body did he pointed the knife?

"A

Here only (witness pointing to her left side of her body).

"Q

While Rene Dado was pointing his knife on your body, what was Federico Dado doing to you while on top of you?

"A

(no answer from the witness)

"x x x x x x x x.

"Atty RICAFORT

"Q

What was that something which Federico Dado was inserting into yours?

"A

Kinabuhay niya (his sex organ).

Q

Did he succeed in inserting his organ into yours?

"Atty BONGON

Vague, Your Honor.

"Atty RICAFORT

I reform

"Q

You said Federico Dado was inserting his organ. Where did Federico Dado inserted his organ?

"Atty BONGON

Objection, vague. There are many organs, there is the organ of touch, organ of hearing.

"Atty RICAFORT

I reform.

"Q

You said you told the Court that Federico Dado was inserting his sex organ. Where did he insert his sex organ?

"Atty BONGON

We will object. The witness did not say sex organ.

"COURT

She said `kinabuhay niya.' As Bicolanos we understand that. That is colloquial term. Answer.

"WITNESS

"A

(no answer from the witness)

"COURT

(To witness) You answer the question. The Court is reminding you that you are to testify under oath. You answer.

"WITNESS

"A

To my sex organ.

"COURT

The Court will ask.

"Q

What did Federico Dado, the accused, do after he inserted his sex organ into yours?

"A

He left.

"Atty RICAFORT

"Q

What did you feel when Federico Dado inserted his sex organ into yours?

"Atty BONGON

We object. The witness on the witness-stand testified that Federico Dado was inserting his sex organ and then he left. There is no showing that he inserted. He was in the process of inserting, not that he inserted.

"Atty RICAFORT

I reform.

"Q

While Federico Dado was inserting his sex organ into your sex organ, what was Rene Dado doing, if any?

"A

None.

"COURT

The Court will ask.

"Q

Was Federico Dado able to insert his sex organ into yours?

"A

Yes, Your Honor.

"Q

And Federico Dado after inserting his sex organ into yours he did nothing but left, that is what you want the Court to believe?

"A

He just stood up first, Your Honor.

"Atty RICAFORT

"Q

After he stood up, what did you do?

"A

(no answer from the witness)

"COURT

The Court will ask.

"Q

When you said Federico Dado, the accused, was inserting his sex organ into yours, was your legs straight or were they open?

"A

I was made to open my legs.

"Q

How did Federico do it to open your legs?

"A

He pried them with his legs.

"Q

Did you resist or not?

"A

I resisted, Your Honor.

"Q

In what manner did you resist?

"A

I struggled, Your Honor.

"Q

Did you hit the accused or not?

"A

No, Your Honor.

"Q

When you said Federico Dado took off your dress, were you the one who took off your dress or was it Federico Dado?

"A

They undressed me.

"Q

Did you not struggle when they were undressing you?

"A

I was not able to struggle myself because I was being held.

"Q

By whom?

"A

I was being held by Rene Dado.

"Q

There was an incident just a few hours ago with the other two accused, Eduardo Arteta and the other one Diosdado Del Puso. Did you still have a panty when you were abused by the Dados?

"A

Yes, Your Honor.

"Q

Was your panty with garter or tied, if any?

"A

with garter.

"Q

Who removed your panty?

"A

Federico Dado.

"Q

When Federico Dado was removing your panty, did you not turn your legs so that your panty could not be pulled out?

"A

No, Your Honor.

"Q

Why?

"A

(no answer from the witness)

"Q

Did you submit voluntarily to the accused when he took off your panty?

"A

No, Your Honor.

"Q

Were you standing or lying down when Federico Dado removed your underwear?

"A

I was lying down.

"Q

Did you not struggle?

"A

I was not able to struggle myself.

"Q

Why?

"A

I was being held by Rene Dado.

"Q

Were you able to shout?

"A

No, Your Honor.

"Q

Why?

"A

(no answer from the witness)

"Q

While they were stripping your clothes, were they saying anything?

"A

Yes, Your Honor.

"Q

What did they say to you?

"A

According to them if I make noise they are going to kill me.

"Q

Did you not tell them that you know them very well and that you will report them to your parents and to the police authorities?

"A

No, Your Honor.

"Q

Why did you not tell them?

"A

Because I was afraid, Your Honor.

"Q

Why were you afraid?

"A

Because they told me that they were going to kill me.

"x x x x x x x x.

"Q

You said that after Federico Dado inserted his sex organ into yours he stood up. After he stood up what did Rene Dado do, if any?

"A

He also laid on top of me.

"Q

And when Rene Dado laid on top of you what else did he do to you, if any?

"A

The same he also inserted his sex organ in my sex organ.

"Q

What did Federico Dado do while Rene Dado has inserted his sex organ into yours?

"A

He was holding me.

"Q

In what part of your body was Federico Dado holding you while Rene Dado was on top of you and has inserted his sex organ into yours?

"A

My other arm and my other foot.

"Q

Which arm, your left arm or right arm and left foot or right foot?

"A

My right arm and also my right foot were being held by Federico Dado.

"Q

While you were being held by Federico Dado on your right arm and right foot, and Rene Dado was on top of you and has inserted his sex organ into yours, what did you do, if any?

"A

None, sir.

"COURT

"Q

Were you crying when Federico Dado was on top of you?

"A

Yes, Your Honor.

"Q

When Rene Dado was on top of you and Federico Dado was holding your right arm and right foot, did you cry?

"A

Yes, Your Honor.

"Q

Why did you cry?

"A

Because I was hurt."[10]

The victim's obvious reluctance to describe in full and in great detail the actual rape itself is certainly understandable. Contrary to what the appellant asserts, Eden's somehow having hedged at times should strengthen rather than destroy her credibility. Even minor lapses in a witness' testimony should be expected when a person would recount details of an experience so humiliating and so painful to recall as rape.[11] If her testimony in court might have some minor variance from her sworn statement, specifically with regard to the presence and role of

Noli during the incident, it should not be forgotten that she executed the sworn statement while she was still in daze[12] and had yet to recover from the tragedy.[13]

The failure of the prosecution to present Noli Trilles does not in any way dent the prosecution's case. Noli's testimony would have served no more than merely and partly corroborate Eden's account. In rape cases, the accused may be convicted solely on the testimony of the complaining witness so long as that testimony is credible, natural, convincing and otherwise consistent with human nature.[14] There is no merit in appellant's claim that he could not have raped Eden in the presence of her cousin, Noli Trilles. Rape has been known to be perpetrated even at places which, to many, would appear to be unlikely and high risk venues for its commission.[15]

The absence of finger grips, contusions, bruises or scratches on the different parts of Eden's body does not negate the commission of rape.[16] It is not necessary that the victim should bear marks of physical violence sustained by reason of the persistence of the sexual attacker, nor is the exertion of irresistible force by the culprit an indispensable element of the offense.[17] Corollarily, Eden's failure to shout or offer tenacious resistance cannot be said to render voluntary her submission to the lustful criminal act of appellant.[18]

The Court, accordingly, affirms the conviction by the trial court of appellant for the rape of Eden Daria. Given the facts and circumstances of the case found to be clearly extant, conspiracy between appellant and Rene Dado attended the commission of the offense. Consequently, appellant should be held responsible not only for his own unlawful act but also for that of Rene Dado for, in conspiracy, the act of one is the act of the other. Appellant must thus be convicted of two (2) crimes of rape.[19] The penalty for each simple rape is reclusion perpetua regardless of the presence or absence of mitigating or aggravating circumstances.[20] Conformably with the prevailing rule announced by this Court in its previous rulings, the indemnity is raised to P50,000.00[21] for each offense.[22]

WHEREFORE, the decision appealed from finding appellant Federico Dado guilty beyond reasonable doubt of the crime of rape is modified in that (a) said appellant should and is thus hereby held liable for two (2) crimes of rape for which he shall suffer two (2) penalties of reclusion perpetua and (b) the indemnity to the victim, Eden Daria, is increased to P50,000.00 for each offense or a total of P100,000.00. Costs against the appellant.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] A.k.a. Federico Dado, Jr., which name he used in signing his sworn statement before Salvador Decano, OIC Municipal Mayor of Manito, Albay (Record, p. 35).

[2] Penned by Judge Angel M. Alegre.

[3] Rollo, p. 38.

[4] Rollo, p. 39.

[5] Criminal Case No. 3931, the case brought up in this appeal.

[6] In its decision, the trial court mentions the "confidentially relayed" information that Rene Dado "had been liquidated by the NPA" (Decision, pp. 2-3).

[7] *People v. Naguita*, 208 SCRA 206.

[8] *People v. Carson*, 204 SCRA 266.

- [9] People v. Yambao, 193 SCRA 571.
- [10] TSN, Eden Daria, 31 August 1987, pp. 8-23.
- [11] People v. Olivar, *supra*.
- [12] People v. Olivar, 215 SCRA 759.
- [13] People v. Mejias, 168 SCRA 33; People v. Dabon, 216 SCRA 656.
- [14] People v. Alvarez, 213 SCRA 722.
- [15] People v. Rafanan, 182 SCRA 811.
- [16] People v. Rabanes, 208 SCRA 768; People v. Generalao, Jr., 213 SCRA 380.
- [17] People v. Rael, 204 SCRA 704.
- [18] People v. Grefiel, 215 SCRA 596.
- [19] People v. Calixtro, 193 SCRA 303, citing People v. Cayago, 158 SCRA 586.
- [20] Article 63, in relation to Article 335, Revised Penal Code.
- [21] People v. Tismo, 204 SCRA 535.
- [22] People v. Sartagoda, 221 SCRA 251; People v. Calixtro, *supra*; People v. Cayago, *supra*.

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