

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PERCIVAL GECOMO Y OSIT, ACCUSED-APPELLANT.

G.R. Nos. 115035-36. February 23, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

In Criminal Cases Nos. 92-108024 and 92-108025 of the Regional Trial Court, Branch 8, Manila, accused-appellant Percival Gecomo y Osit was charged on August 11, 1992 with two crimes of rape under separate informations filed on the bases of duly amended complaints sworn to by the complainant, Regina Rapuzon y Fuenteblanca, and annexed thereto.

The information in Criminal Case No. 92-108024[1] alleges:

"That on or about June 20, 1992, in the City of Manila, Philippines, the said accused, by means of force, violence, and intimidation, to wit: by then and there poking a knife at one REGINA RAPUZON Y FUENTEBLANCA, removing her dress, and forcing her to lie down and inserting his penis into her private part, and succeeded in having carnal knowledge of the said REGINA RAPUZON Y FUENTEBLANCA, against her will and consent."

while that in Criminal Case No. 92-108025[2] avers:

"That on or about July 3, 1992, in the City of Manila, Philippines, the said accused, by means of force, violence, and intimidation, to wit: by then and there poking a knife at one REGINA RAPUZON Y FUENTEBLANCA, removing her dress, and forcing her to lie down, and inserting his penis into her private part, and succeeded in having carnal knowledge of the said REGINA RAPUZON Y FUENTEBLANCA, against her will and consent."

During the arraignment, appellant entered a plea of not guilty to the offenses charged. The cases having been consolidated, after a joint trial the lower court rendered judgment on March 7, 1994 sentencing appellant to suffer the penalty of reclusion perpetua and to indemnify the victim in the amount of P50,000.00 in each of the two cases.[3]

Hence this appeal from the lower court's decision, with the following assignment of errors[4] allegedly committed by and imputed to the court a quo:

- "1. The trial court seriously erred in giving full credence to the uncorroborated testimony of the private complainant;
2. The trial court failed to scrutinize with care and caution the details of the testimony of the private complainant which is replete with serious inconsistencies and statements not in accordance with the ordinary and natural experience of mankind;
3. The trial court seriously erred in not considering the clear and convincing testimony of the accused as corroborated by the testimony of another disinterested person that he and private complainant are sweethearts

and the sexual intercourse were (sic) consummated with mutual consent;

4. The trial court erred in not considering the memorandum of the accused which laid down in full detail the true factual circumstances established by both prosecution and defense during the trial of this case, and the reasons stated to show that no rape was committed by the accused;

5. The judge who rendered the decision failed to exercise utmost scrutiny in reviewing the testimonial and documentary evidence on record, especially so that he never presided in the trial of this case."

From the records of these cases, it appears that complainant Regina F. Rapuzon and appellant were co-employees, the former working as a waitress and the latter as a "mami" steamer, in Kim Hiong Restaurant located near Gil Puyat Street, Sta. Cruz, Manila. Both worked in the 7:00 P. M. to 5:00 A. M. shift of said restaurant.[5]

At about 6:30 P.M. of June 20, 1992, complainant was walking along the side of the street of the Fair Center Department Store to go to her place of work[6] when appellant suddenly appeared and placed his left arm over her shoulder.[7] Simultaneously, appellant poked a knife concealed under a handkerchief at the side of Regina and told her to go with him or else he would kill her.[8] Feeling weak and nervous, Regina went and walked along with Percival. From the place where she was accosted, Regina was brought to the Mansion Hotel located just in front of Isetann Department Store along Recto Avenue.[9]

After appellant had signed the registry of the hotel, he and complainant were led to the second floor by a room boy who opened the door for them. Inside the room, appellant slapped complainant and ordered her to remove her dress. It was only after appellant threatened to kill her inside the room that Regina submitted and took off her clothes.[10] When she was already naked, appellant pushed her towards the bed, lay on top of her and kissed her whole body. While the accused was on top of her, the former hit the latter twice on her stomach rendering her unconscious.

Awaking from her fainting spell, complainant noticed that there was blood in her vagina. After this, appellant again went on top of Regina and inserted his penis into her organ. While appellant was going through his up and down motions over Regina, she pushed him away. This irked appellant who again slapped her. Pointing the knife again at her, appellant ordered her to put on her clothes and warned her not to tell anyone what he did to her. Appellant sent Regina home at around 6:30 in the morning of June 21, 1992.[11] In the evening of the same day, complainant went to work in the restaurant and there she saw appellant also reporting for work.[12]

On July 3, 1992, at about 5:30 in the afternoon, Regina went to the restaurant to inform its owner that she was resigning from her employment.[13] As she was walking towards the place where she usually took her ride home, appellant again intercepted her in the same manner as he did on June 20, 1992. Appellant placed his left arm over her shoulder and at the same time poked a handkerchief-covered knife on the right side of her waist. After Regina was told by appellant to go with him or else he would kill her, they walked towards the house of appellant located near the Central Market at Quezon Boulevard. Appellant brought complainant to the second floor of the house, pushed her into a small room and locked its door.[14]

Inside the room, appellant told Regina to undress but she refused. It was only after appellant threatened to kill her with the knife that she removed her clothes. At this time, appellant was also removing his clothes. After Regina had discarded her clothes, appellant slapped her on the cheek twice causing her to fall on a double-decked bed.[15] Appellant tried to put complainant's legs apart with his hands but she resisted, so appellant warned her that if she did not consent, he would kill her. Reluctantly, she followed his orders. Thereafter, appellant placed himself on top of complainant and had sexual congress with her.

When he was through, appellant tied complainant's hands to the post of the bed and covered her mouth with

masking tape.[16] After resting for several hours, appellant again had sexual intercourse with private complainant, after untying her and removing the tape.[17] Later, appellant told her to go home but warned her not to tell anyone about the incident or else something bad would happen to her ("malilintikan ako.")[18]

Upon arriving home in the morning of the following day, July 4, 1992, complainant's mother noticed her wounded and blackened right cheek and asked her how she got those injuries. It was then that she told her mother everything that happened to her. They then went to the Jose Abad Santos Police Station in Tondo to report the crimes committed by appellant.[19]

National Bureau of Investigation (NBI) medico-legal officer Dr. Louella I. Nario conducted a physical examination of Regina and issued her report in Living Case No. MG-92-570[20] dated July 6, 1992, with the following findings:

"GENERAL PHYSICAL EXAMINATION:

Height: 145.0 cm. Weight: 44.5 lbs.

Normally developed, fairly nourished, conscious, coherent, ambulatory subject.

Breasts, developed, hemispherical, doughy. Areolae, light brown, 3.0 cm. in diameter. Nipples, light brown, protruding, 0.8 cm. in diameter.

EXTRAGENITAL PHYSICAL INJURY:

Abrasion, with brownish scab formation, cheek, right, 4.0 cm. x 6.0 cm.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and minora, congested. Fourchette, tense. Vestibular mucosa, pinkish, smooth. Hymen, moderately wide, moderately thick, with a healing, deep laceration at 9:00 o'clock position corresponding to the face of a watch, edges congested, slightly edematous. Hymenal orifice, originally annular, admits a tube, 2.5 cm. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1. The above-described extragenital physical injury was noted on the body of the subject at the time of examination.
2. Genital findings compatible with sexual intercourse with man on or about the alleged date of commission."

Asked on how one can determine or differentiate if a woman had sexual intercourse through force or violence or with her consent, Dr. Nario explained that force can be deduced if extragenital injuries can be found on the body of the subject. However, the expert witness added that the presence of hymenal laceration in the genitalia of a woman does not necessarily connote force or violence during the sexual act.[21]

For his defense, appellant vehemently denied the charges of rape. He claimed that the complainant was his girlfriend and that the sexual intercourses on June 20 and July 3, 1992 were with the voluntary will of complainant. He added that the second carnal intercourse occurred in the Pension Hotel, and not in his house as alleged by complainant.

Their alleged tryst on June 20, 1992 began with some sight seeing at Fort Santiago.[22] Thereafter, they bought food and proceeded to Pension Apartelle located at Quezon Boulevard in Quiapo at around 9 o'clock in the evening.[23] Inside a room of the hotel, their reciprocating hugs and kisses culminated in a blissful mutual

expression of their love for each other as they had sexual relations three times on that night.[24]

After getting their respective salaries on July 3, 1992 at around 2:00 o'clock in the afternoon, appellant and complainant went to Jollibee at Universal Theater to take their snack.[25] Thereafter, they went to see the movie "Tayong Dalawa" also at Universal Theater.[26] After that, they went to Fort Santiago for a stroll. While in Fort Santiago, appellant asked complainant to go home but as she had just been fired from work and feeling bad about it, she preferred to be with appellant in her supposed time of desperation. From Fort Santiago, they went to Pension Apartelle[27] where, lying side by side in bed, they kissed and embraced each other until they felt the need to release their pent-up passion for each other. They engaged in sexual intercourse four times until 5:00 A.M. of the following day.[28]

Melanie Duran, who worked as a waitress in Kim Hiong Restaurant, testified that she often saw appellant and complainant together in the restaurant, especially during closing hours when the former would lie down on the latter's lap while she fanned his face. She observed that the two would arrive at and leave the restaurant together.[29] In said restaurant, they always ate together and appellant would often offer Regina food which he got from the "mami" section.[30]

Firstly, taking up appellant's fifth assignment of error, it is true that Judge Willelmo C. Fortun decided these cases by virtue of Administrative Order No. 68-92 of this Court, without hearing the case at all, the trial having been presided over by three different judges.[31] Such fact alone, however, does not render his decision erroneous or irregular. It is axiomatic that a judge who did not hear a case may write the decision therein based on the records thereof.[32]

In these cases, the transcripts of the stenographic notes taken during the trial were complete and can be assumed to have been studied and examined by Judge Fortun, before he rendered his decision, under the presumption of regularity in the performance of official functions by public officers. Of course, the well-settled general rule that the trial court's findings as to the credibility of witnesses deserves respect from the appellate courts cannot be unqualifiedly applied.[33] This is because, not having heard the testimonies himself, the judge is in no better position than the appellate courts to make such determination.[34]

After a thorough review and assessment of the entire records of the case, however, we find ourselves in agreement with the findings of Judge Fortun and accord the stamp of credence on complainant's testimony. The story she presented is credible and consistent, contrary to appellant's first assigned error.

Considering the inbred modesty and the consequent revulsion of a Filipina against airing in public things that affect her honor, it is hard to conceive that complainant would reveal and admit the ignominy she had undergone if it were not true. Besides, by so testifying, she made public a painful and humiliating secret which others would have simply kept to themselves forever, jeopardizing her chances of marriage or foreclosing the possibility of a blissful married life as her husband may not fully understand the excruciatingly painful experience which would always haunt her.[35]

Moreover, as oft-repeated by the Court in rape cases, it is difficult to believe that young unmarried women would tell a story of defloration, allow the examination of their private parts and thereafter permit themselves to be the subject of a public trial, if they were not motivated by an honest desire to seek justice.[36] When there is no evidence to show any improper motive on the part of the prosecution witness to testify falsely against an accused or to falsely implicate him in the commission of a crime, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credit.[37]

Testimonies of witnesses who have no motive or reason to falsify or perjure their testimonies should be given

credence. A virtuous woman will not, as rule, admit in public that she had been raped, as she thereby blemishes her honor and compromises her future, unless she is telling the truth. It is her natural instinct to protect her honor.[38]

As in most rape cases, the resolution of the present appeal must turn on the issue of credibility of the witnesses on each side. Appellant claims that complainant's testimony as to the fact of the commission of the crimes is unworthy of belief and is uncorroborated by other evidence. Now, in a prosecution for rape, more often than not, only the offended party can testify as to the act of coerced copulation. Accordingly, this Court has held that conviction for rape may ensue on the sole basis of a complainant's testimony where such testimony is found to be positive and credible.[39]

A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.[40] The candid and straightforward narration by the victim here of how she was raped, as borne out by the records and the transcript of stenographic notes, bears the earmarks of credibility. We are convinced that Regina F. Rapuzon, the complainant, is a credible witness and that her testimony is worthy of judicial acceptance.

We have repeatedly ruled that when the victim says that she has been raped, she says in effect everything that is necessary to show that rape has been committed, and if her testimony meets the test of credibility, the accused may be convicted on the sole basis thereof.[41] Parenthetically, while going over the transcript of stenographic notes, we observe that complainant could not help but cry during her direct[42] and cross[43] examination. The crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.[44]

Under his second assignment of error, appellant questions the veracity of complainant's testimony based on the presence of alleged inconsistencies and factual narrations which defy human behaviour. Said supposed inconsistencies and unbelievable statements were enumerated in appellant's brief and we shall discuss them seriatim.

Appellant posits that under ordinary situations, complainant should have shouted and cried or screamed for help from the time she was accosted in the street up to the time that they checked out from the hotel. The sight of hundreds, if not thousands, of people around them should have given her the strength or courage to shout and scream for help or even attempt to flee from her captor, knowing that those people would surely come to her succor.[45]

The failure of complainant to shout for help at the earliest opportunity can be explained by her testimony[46] that, upon poking the knife on her waistline, appellant told her not to shout. She felt very nervous and was afraid that appellant might really kill her. It was not, therefore, unusual for her to be terrified, considering that appellant was sticking a knife on her side and consequently, fear for her life was her paramount concern. If she did not cry out for help, evidently it was in obedience to appellant's order and the apprehension that greater harm would befall her if she defied him.

People react differently under emotional stress, as we have repeatedly ruled. There is no standard form of behavior when one is confronted by a shocking incident especially if the assailant is physically near. The workings of the human mind when placed under emotional stress are unpredictable. In a given situation, some may shout, some may faint, some may be shocked into insensibility, while others may even welcome the intrusion.[47] Apropos to the cases at bar, we have ruled that the failure of a complainant to run away at the first opportunity she had cannot be construed as a showing of consent to the sexual intercourse,[48] contrary to the theory espoused by appellant.

Also, appellant holds it against complainant for failing to immediately tell her mother or the police authorities about her ordeal on June 20, 1992. He postulates that the effects of his supposed threats should have ceased to exist after the June 20 incident and said complainant being free from the clutches of her transgressor, no amount of threats could have prevented her from reporting the crime to her mother or to the police authorities thereafter.[49]

The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated.[50] Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.[51]

The failure of herein complainant to report the incident immediately does not discredit her credibility, her hesitation being attributable to the death threats made by appellant, not to speak of the natural reluctance of a woman having to admit in public her having been raped.[52] It is not uncommon for young girls to conceal for some time the assault on their virtue because of the rapist's threat on their lives.[53] Not every victim of a crime can be expected to act reasonably and conformably with the expectation of mankind. One person's spontaneous or unthinking, or even instinctive, response to a horrid and repulsive stimulus may be aggression, while another's may be cold indifference.[54]

The law on prescription of crimes would be meaningless if we were to yield to the proposition that delay in the prosecution of crimes would be fatal to the State and to the offended parties. In fixing the different prescriptive periods on the basis of the gravity of the penalty prescribed therefor, the law takes into account or allows reasonable delays in the prosecution thereof.[55] In a number of cases, we have ruled that a delay of seventeen days,[56] thirty-five days,[57] or even six months,[58] by a victim of rape in reporting the attack on her honor does not detract from the veracity of her charge.

Again, appellant finds it unnatural for complainant to report for work on the following day after June 20, 1992 at the restaurant where he also reported for work on that same day. This action, he claims, is contrary to the ordinary experience of mankind where a rape victim will suffer trauma or even a nervous breakdown, such that it would be further emotionally repugnant to her to even face her assailant. The natural thing for her to do is to show expressions of anger and hatred against the accused.[59]

That complainant went to work the following day does not disprove the fact that she had been raped. Although her conduct may appear unnatural to appellant, it is not difficult to understand or rationalize. Complainant's performance of her assigned tasks at the restaurant, even after she was assaulted by appellant, is easily explained by her fear that he would kill her if she told her family about it. If she had been absent from work, her mother would have become suspicious of her action, and she would then find it difficult to avoid reporting the offenses committed against her.

Appellant, in this present recourse, would like us to believe that the two criminal cases against him were just concocted by complainant and her mother to inflict their revenge on him for deflowering complainant at her young age. He maintains that complainant was only coerced or cajoled by her mother into filing her complaints.[60] However, we rule that appellant failed to establish any ill motive on the part of complainant's part which would have spurred her to accuse him as a rapist.

The desperate imputation that the two rape cases were concocted by complainant and her mother to make appellant pay for depriving complainant of her innocence is utterly unbelievable. No mother would stoop so low

as to subject her daughter to the hardships and shame concomitant to a rape prosecution just to assuage her own hurt feelings.[61] It is unthinkable that a mother would sacrifice her daughter's honor to satisfy a grudge, knowing fully well that such an experience would certainly damage her daughter's psyche and mar her life.[62] A mother would not subject her daughter to a public trial with its accompanying stigma on her as the victim of rape, if said charge is not true.[63]

Appellant also maintains that it was only on July 6, 1992, at 6:35 P.M., that complainant and her mother went to the police and not immediately when the latter noticed the former's swollen face right after the second rape was committed on July 3, 1992. He anchors such contention on the sworn statement of the complainant executed on July 6, 1992 and marked in evidence for the prosecution as Exhibit H.[64]

Aside from the illogical nature of this averment, we find it pointless to pass upon the same by reason of the rule which requires the formal offer of evidence before a court may consider such evidence.[65] While the sworn statement was marked as Exhibit H by the prosecution,[66] it was not formally offered in evidence either by the People or by appellant. The documentary evidence for the prosecution only consist of Exhibits A to G. No mention was made about the sworn statement during the formal offer of evidence by the prosecution[67] or during the presentation of evidence for the defense.[68] The trial court erred in this respect when it discussed said sworn statement of complainant in its decision.[69] The mere fact that a particular document is marked as an exhibit does not mean that it has thereby already been offered as part of the evidence of a party.[70]

It is also not true, according to appellant, that complainant was repeatedly slapped violently before and after the rape due to the absence of swelling. This is allegedly supported by the testimony of Dr. Nario who stated that violent slaps, especially when done repeatedly, will likely cause the face to swell.[71]

The absence of swelling on the face of complainant does not negate her claim that she had been repeatedly slapped by appellant. The expert opinion of Dr. Nario should be taken in the context of this question propounded to her on cross-examination:

"Q And Madam witness if I continue slapping on (sic) your right cheek for five or ten times this injury will be swollen, that will be very painful Madam witness, is it not?

A Yes, sir.[72]

In effect, swelling will only occur if the subject is slapped at least five times but, based on the testimony of complainant,[73] she was only slapped twice during the rape committed on July 3, 1992. It is accordingly not unlikely that no swelling appeared on her face after being slapped by appellant. Besides, it is obvious that the force or strength employed in slapping the victim on a particular occasion must necessarily be proved and taken into account.

Appellant argues that it was impossible for him to rape the complainant on July 3, 1993 and detain her for twelve hours in his house as his family and relatives were also in the house at that time.[74] We are not impressed with the validity of said argument, as we have repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where there are other members of the family who are sleeping. Lust, we now repeat, is no respecter of time and place.[75]

The presence of people in a certain place is no guarantee that rape will not and cannot be committed. In *People vs. Aragona*,[76] we took judicial notice of the crime of rape being committed at Luneta Park or even within school premises where people abound.

Furthermore, if his family and relatives were in the place of the commission of the crime, appellant should have

presented their testimonies in court to corroborate his assertion. Surely, they would not refuse to testify for a family member or relative.

Complainant's claim that there was a "bukol" or a swelling, plus a blackened area and a small wound on her face, after the July 3, 1992 incident is also attacked by appellant as untrue because the only extragenital injury found during the course of the medico-legal examination is an abrasion on the right cheek of complainant.[77]

Again, we went to the transcript of notes and found the following:

"Q When you reached home, what did you do if any?

A When I arrived home my mother asked me why my right cheek was blackened and there was a 'bukol' and with a little wound, sir." [78]

That alleged statement repeated by complainant cannot be taken against her as she was not the one who made it. Complainant merely restated or relayed in her testimony the question that her mother asked her. It was from her mother where the observation on the injuries came and not from complainant. Accordingly, appellant's erroneous interpretation cannot affect the credibility of complainant.

Appellant also avers that there is nothing on record to show that complainant tenaciously resisted the alleged sexual assault and that her total consent and submission to him is being conveniently hidden by her claim that she was overcome with fear.[79]

The argument that the so-called tenacious resistance was absent is unacceptable, for it has been settled that the law does not impose a burden on the rape victim to prove resistance. What needs only to be established is the use of force or intimidation by the accused in having sexual intercourse with the victim.[80] Threatening the victim with a knife is sufficient to coerce the victim and it constitutes an element of rape.[81] This, the prosecution was able to prove in both criminal cases at bar.

A wrong move from Regina could have cost her life. As we have held, the rape victim need not kick, bite, hit, slap or scratch the accused with her fingernails. It is sufficient that the coition took place against her will, explicit or persistent, and that she yielded because of authentic apprehension and real fear of immediate death or great bodily harm.[82] The force or intimidation required in rape cases is relative; when applied, it need not be overpowering or irresistible. It need but be present, and so long as it brings the desired result, all considerations of whether it was more or less irresistible are beside the point.

Intimidation includes the moral kind, as the fear caused by threatening a girl with a knife. When such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to act with equanimity of disposition and with nerves of steel; or to act like an adult or a mature and experienced woman who would know what to do under the circumstances, or to have the courage and intelligence to disregard the threat.[83]

Lastly, appellant capitalizes on what he considers as a peculiar story that complainant was abducted in full public view and taken to the places of the commission of the crimes on foot. He repeatedly claims in his brief that it is unbelievable and impossible for them to walk in the streets in an awkward position, with him pointing a knife on the side of the complainant, without anybody from the thousands of pedestrians in the streets or the personnel of the hotel noticing them or getting suspicious of the actuations of appellant.[84]

There is nothing implausible in the failure of the people in the streets or of the hotel personnel to notice the inauspicious positions of appellant and complainant. As correctly explained by the prosecution,[85] the abduction took place during the rush hour when people are usually unmindful of their surroundings and are primarily

occupied only with getting to their homes as early as possible. There was nothing unusual about appellant's posture as his left arm was simply draped over the shoulder of complainant and his right hand was on the right side of her waistline holding the handkerchief-covered knife.

Indeed, if no one noticed complainant and appellant during those fateful evenings of June 20, 1992 and July 3, 1992, we cannot blame complainant for this fact. Complainant does not have to prove that someone noticed her abduction for the successful prosecution of the two criminal charges. It is not for her to explain why no one became suspicious of appellant's actuations. In fact, she is not competent to give an answer to this question. Appellant could have called to the stand any of the persons or the hotel personnel whom he claimed to have met and brushed elbows with, and directed those questions to them.

Appellant would like to impress upon this Court that he is a master in human behavior and psychology, knowing how people will and shall react in a given situation. He even opined earlier that if complainant had cried for help upon her kidnapping, the people around them would surely have come to her aid. But appellant failed to consider the other side of human personality apathy, cold-heartedness, indifference or insensibility. Maybe someone did notice the audacious taking of complainant but simply opted not to help her as they were too preoccupied or were afraid to do so. Not everyone who passes on the road to Jericho is a clone of the Good Samaritan.

In his assignment of error, appellant asks this Court to accord credence to his "clear and convincing testimony." But, as we have often quoted, evidence to be worthy of credit, must not only proceed from a reliable source, but it must, in addition, be credible in itself. Stated otherwise, it must be natural, reasonable and probable as to make it easy to believe.[86] In trying to prove his alleged relationship with the complainant, appellant presented contradictory testimonies that betrayed his cause.

We have, therefore, carefully reviewed and dissected the following answers of appellant during the direct and cross-examinations:

"Q

You said you know the private complainant, when did you first know her?

A

I came to know her in the middle part of May, 1992, sir."[87]

compared to -

"PROS. SUPNET

Q

Mr. Gecomio on our last hearing you testified that you came to know and met the private complainant during the first week of May 1992. Did you not say that?

A

Yes, sir.

Q

And do you still affirm and confirm your answer that it was during the first week of May 1992 that you first saw and met the private complainant?

A

Yes, sir.

Q

Now, Mr. Gecomio, I am inviting your attention to page 25 up to page 26 of the transcript dated February 18, 1993 particularly the last question by your lawyer Atty. David and I quote:

"Q You said you know the private complainant, when did you first see her?"

"A I came to know her in the middle part of May 1992, sir."

Now Mr. Witness, which now (sic), you came to know the private complainant on the first week of May or on the second week of May, 1992?

A

The first time I saw her was first week of May.

PROS. SUPNET

Q

So you are now saying that your answer to your lawyer when he asked you when for the first time you came to know and met private complainant and you answered: "middle part of May 1992, sir." you (were) not telling the truth. Is that what you want to tell us now?

A

No, sir.

Q

So, you want to tell us that what you answered to your lawyer is also true?

A

Yes, sir.

Q

So what is clear now is that there were two dates when you first saw and met the private complainant, the first on which you affirmed to be true was on the first week of May and on the second time is on the second week

of May, which you have just answered. Is it not?

A

Yes, Sir."[88]

Also, we note these exchanges:

"Q

Mr. Witness, when was the exact date when the private complainant formally answered you?

A

Sometime (o)n May 21, 1992, sir.[89]

in connection with -

"PROS. SUPNET

Q

So, that when you were at Cinerama on May 7, watching a movie which you can no longer recall the title, the private complainant was not yet your girlfriend?

A

She was already my girlfriend on May 7, sir."[90]

On another aspect, he stated as follows:

"Q

How about at Fort Santiago, when did you visit Fort Santiago?

A

June 20, 1992 and July 3, 1992, sir."[91]

However, he subsequently modified the foregoing specifications, thus:

"Q

Now, how many times have (you) been to Fort Santiago?

A

Two times, sir.

Q

Tell us the first time you went to Fort Santiago

A

We were there on June 18, 1992. sir.

Q

So, you went to Fort Santiago for the first time on June 18, 1992, is that right?

A

Yes, sir.

Q

When was the second time you went to Fort Santiago?

A

July 3, sir.

xxx

Q

And are these the only two dates that you were at Fort Santiago?

A

Yes, sir.

xxx

Q

So that what appears now Mr. Witness is that there were three times that you went to Fort Santiago and these were on June 18, and June 20 and July 3. Am I correct?

A

No, sir, only two times. sir.

Q

Before you testified at great length that you went to Fort Santiago on June 18. That's settled. Am I correct?

A

No, sir.

PROS. SUPNET

Q

So all along your answer to my question referring to June 18 which is the date you furnished this Court is not true?

A

Yes, sir.[92]

With the foregoing mercurial and vacillating testimony of appellant, we rule that he failed to meet the test of credibility. He painted a picture with a professed memory for and attention to details, but exposed his fabrication of the events when queried on their particulars. We do not consider his lapses as being on mere minor matters as the significance to him of the occasions, dates and times involved should have etched them in his memory with

such accuracy as to be likewise reflected correctly in his testimony.

To support his "sweetheart theory" defense, appellant presented pictures of himself and complainant, and the testimony of one of his co-employees. We agree with the court below and the People that the pictures offered in evidence do not prove the relationship of appellant with complainant as being of the nature which the former asserts. Complainant and appellant appear individually in the pictures presented. Not even one of the pictures showed them together in a manner or deportment indicative of and depicting them as lovers. The pictures of complainant were not even given by her to appellant as a token of her love for him for, as appellant himself admitted on cross-examination, he got hold of the pictures only because he owned the camera used in taking the pictures.[93]

Neither can we extend credence to the testimony of appellant's witness, Melanie Duran, as it cannot stand against the clear and straightforward testimony of complainant which we have declared earlier as worthy of belief. Regina categorically denied that appellant was her boyfriend or that he courted her.[94] She vehemently emphasized in her testimony that she had no relationship with appellant prior to the commission of the crimes, and further added that they did not even go out together.[95]

Even if we were to assume the truth of the testimony of his said witness, appellant still cannot be exculpated in the present appeal. That witness for appellant never testified that the sexual relations between appellant and complainant were consummated with the consent of the latter. All that she testified to was what she considered as an apparent sweetness and tenderness between appellant and complainant in their workplace, an assertion we find dubious and contrived under the circumstance.

It should be borne in mind that love is not a license for carnal intercourse through force or intimidation. Even granting that appellant and complainant were really sweethearts, that fact alone would not negate the commission of rape. A sweetheart cannot be forced to have sex against her will. From a mere fiancée, definitely a man cannot demand sexual submission and, worse, employ violence upon her on a mere justification of love.[96] A man can even be convicted for the rape of his common-law wife.[97]

With the confluence of all the foregoing circumstances indicative of his guilt, we feel that appellant's fourth assignment of error is undeserving of any discussion and that on a holistic appraisal of the case, his appeal must be dismissed.

WHEREFORE, the appealed judgment of the trial court in Criminal Cases Nos. 92-108024 and 92-108025 is hereby **AFFIRMED** in toto, with costs against accused-appellant Percival Gecomio y Osit.

SO ORDERED.

Romero, Puno, and Mendoza, JJ., concur.

[1] Original Record, 2.

[2] Ibid., 10.

[3] Ibid., 218-219.

[4] Appellant's Brief, 3-4; Rollo, 57-58.

[5] TSN, September 1, 1992, 12; February 13, 1993, 27-28.

[6] Ibid., September 1, 1992, 10.

[7] Ibid., Id., 13.

- [8] Ibid., Id., 13-15.
- [9] Ibid., Id., 16.
- [10] Ibid., id., 26-28.
- [11] Ibid., id., 30-37.
- [12] Ibid., September 10, 1992,64.
- [13] Ibid., id., 6.
- [14] Ibid., id., 9-12.
- [15] Ibid., id., 14-15, 19.
- [16] Ibid., Id., 15-19.
- [17] Ibid., Id., 21.
- [18] Ibid., id., 26.
- [19] Ibid., Id., 27-28.
- [20] Exhibit D; Original Record, 86.
- [21] TSN, October 1,1992,8-10.
- [22] Ibid., February 18, 1993, 52; May 13, 1993, 26.
- [23] Ibid., id., 53.
- [24] Ibid., Id., 60-63, 65,68,70-71.
- [25] Ibid., id., 77.
- [26] Ibid., April 16, 1993,4, 7.
- [27] Ibid., Id., 8-11.
- [28] Ibid., id., 16.
- [29] Ibid., August 3, 1993, 6-7.
- [30] Ibid., id., 7, 20, 23.
- [31] Judge Arsenio M. Gonong presided over the hearings on September 1, and 10, October 1, 8 and 13, 1992; Judge Enrico A. Lanzas presided on January 7, February 4 and 18, 1993; and Judge Ed Vincent S. Albano presided on April 16, May 13, June 15, August 3 and September 2, 1993.
- [32] People vs. Jaymalin, G.R. No. 90452, October 19, 1992,214 SCRA 685; People vs. De Paz, G.R. No. 86436, August 4, 1992, 212 SCRA 56; People vs. Collado, et al., G.R. No. 88631, April 30, 1991, 196 SCRA 519.
- [33] People vs. Ablao, G.R. No. 70556, December 26, 1990, 192 SCRA 698; People vs. Gerapusco, et al., L-46072, August 22, 1986, 143 SCRA 614.
- [34] People vs. Rejano, G.R. Nos. 105669-70, October 18, 1994, 237 SCRA 627.
- [35] People vs. Codilla, et al., G.R. Nos. 100720-23, June 30, 1993, 224 SCRA 104.

- [36] *People vs. Junio*, G. R. No. 110990, October 28, 1994, 237 SCRA 826; *People vs. Domingo, et al.*, G.R. No. 97921, September 8, 1993, 226 SCRA 156; *People vs. Estebal*, G.R. No. 82768, May 5, 1989, 173 SCRA 209.
- [37] *People vs. Tabao*, G.R. No. 111290, January 30, 1995, 240 SCRA 75%.
- [38] *People vs. Domingo*, supra; *People vs. Ulili*, G.R. No. 103403, August 24, 1993, 225 SCRA 594.
- [39] *People vs. Ching*, G.R. No. 103800, January 19, 1995, 240 SCRA 267; *People vs. Arnan*, G.R. No. 72608, June 30, 1993, 224 SCRA 37; *People vs. Taduyo*, L-37928-29, September 29, 1987, 154 SCRA 349.
- [40] *People vs. Arnan*, supra.
- [41] *People vs. Junio*, supra.
- [42] TSN September 1, 1992, 30, 32, 33; September 10, 1992, 63.
- [43] Ibid., October 13, 1991, 9; January 7, 1993, 5, 9.
- [44] *People vs. Jova, et al.*, G.R. No. 79090, October 1, 1993, 227 SCRA 9.
- [45] Appellant's Brief, 23, 31, 40; Rollo 77, 85, 94.
- [46] TSN, September 1, 1992, 16; September 10, 1992, 60.
- [47] *People vs. Abonada*, G.R. No. 50041, January 27, 1989, 169 SCRA 530.
- [48] *People vs. Adlawan, Jr., et al.*, G.R. Nos. 100917-18, January 25, 1993, 217 SCRA 489.
- [49] Appellant's Brief, 24; Rollo, 78.
- [50] *People vs. Yambao*, G.R. No. 77778, February 6, 1991, 193 SCRA 571.
- [51] *People vs. Ulili*, supra.
- [52] *People vs. Dio*, G.R. No. 106493, September 8, 1993, 226 SCRA 176.
- [53] *People vs. Pamor*, G.R. No. 108599, October 7, 1994, 237 SCRA 462; *People vs. Alib*, G.R. No. 100232, May 24, 1994, 222 SCRA 517.
- [54] *People vs. Dupali*, G.R. No. 97474, February 14, 1994, 230 SCRA 62.
- [55] *People vs. Errojo*, G.R. No. 102077, January 4, 1994, 229 SCRA 49.
- [56] *People vs. Abordo, et al.*, G.R. No. 101187, July 23, 1993, 224 SCRA 725.
- [57] *People vs. Santiago*, G.R. No. 46132, May 28, 1991, 197 SCRA 556.
- [58] *People vs. Pamor*, supra.
- [59] Appellant's Brief, 24-25; Rollo, 78-79.
- [60] Appellant's Brief, 29, 45; Rollo, 83, 99.
- [61] *People vs. Rejano*, supra.
- [62] *People vs. David*, G.R. Nos. 72355-59, September 15, 1989, 177 SCRA 551.
- [63] *People vs. Ylarde*, G.R. No. 100521, July 5, 1993, 224 SCRA 405.
- [64] Appellant's Brief, 33; Rollo, 87.

- [65] Section 34, Rule 132, Rules of Court.
- [66] TSN, February 4, 1993, 19.
- [67] Ibid., February 18, 1993, 3-6.
- [68] Ibid., September 2, 1993, 6-7.
- [69] Rollo, 23.
- [70] Tabuena vs. Court of Appeals, et al., G.R. No. 85423, May 6, 1991, 196 SCRA 650.
- [71] Appellant's Brief, 27; Rollo, 81.
- [72] TSN, October 1, 1992, 18.
- [73] TSN, September 10, 1992, 14.
- [74] Appellant's Brief 35, Rollo, 89.
- [75] People vs. Cura, G.R. No. 112529, January 18, 1995, 240 SCRA 234.
- [76] L-43752, September 19, 1985, 138 SCRA 569.
- [77] Appellant's Brief, 34; Rollo, 88.
- [78] TSN, September 10, 1992, 27.
- [79] Appellant's Brief, 43; Rollo, 97.
- [80] People vs. Segundo, et al., G.R. No. 88751, December 27, 1993, 228 SCRA 691.
- [81] People vs. Adlawan, Jr., supra.
- [82] People vs. Casao, G.R. No. 100913, March 23, 1993, 220 SCRA 362.
- [83] People vs. Codilla, et al., supra.
- [84] Appellant's Brief, 2 1-22, 30, 36; Rollo, 75-76, 84, 90.
- [85] Appellant's Brief, 8; Rollo 140.
- [86] See People vs. Peña, Jr., G.R. No. 72354, June 30, 1987, 151 SCRA 638.
- [87] TSN, February 18, 1993, 25-26.
- [88] Ibid., June 15, 1993, 3-6.
- [89] Ibid., February 18, 1993, 30-31.
- [90] Ibid., May 13, 1993, 34.
- [91] Ibid., May 13, 1993, 26.
- [92] Ibid., June 15, 1993, 9, 10-11, 23-24
- [93] Ibid., May 13, 1993, 42.
- [94] Ibid., September 10, 1992, 33.
- [95] Ibid., id., 42.

[96] People vs. Domingo, supra.

[97] See People vs. Tadyo, supra.

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