

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AURELIO DELOVINO Y UDAL, ACCUSED-APPELLANT.

G.R. Nos. 116132-33. August 23, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

On 13 November 1992, 17-year old Antonette Modesto filed with the Regional Trial Court (RTC) of Pasay City two complaints for forcible abduction with rape against the accused. They were docketed as Criminal Case No. 92-1845 and Criminal Case No. 92--1846 and assigned to Branch 116 of the said court.

The accusatory portions of the complaints read as follows:

CRIMINAL CASE NO. 92-1845

That on or about the 4th day of November, 1992, in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, AURELIO DELOVINO Y UDAL, by means of force, violence, intimidation, threats and will [sic] lewd designs, did then and there wilfully, unlawfully and feloniously take and carry away complainant Antonette Modesto, a minor 17 years of age and thereafter brought her at Queens Land Motel, this city and again by means of force and intimidation and with the use of deadly weapon, lie and have carnal knowledge with the undersigned complainant, against her will and consent.[1]

CRIMINAL CASE NO. 92-1846

That on or about the 20th day of October, 1992, in Pasay, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Aurelio Delovino y Udal, by means of force, violence, intimidation, threats and will [sic] lewd designs, did then and there wilfully, unlawfully and feloniously take and carry away complainant Antonette Modesto, a minor 17 years of age and thereafter brought her to Cavite and again by means of force and intimidation and with the use of deadly weapon, lie and have carnal knowledge with the undersigned complainant, against her will and consent.[2]

Upon his arraignment on 21 January 1993, the accused pleaded not guilty and waived his right to a pre-trial.[3] The cases were then consolidated and jointly tried.

The prosecution presented complainant Antonette Modesto; her mother, Elsa Modesto; P03 Fernando Pascua; Dr. Ruperto J. Sombilon, Jr., a medico-legal officer of the National Bureau of Investigation (NBI); and Alfredo Batario, Antonette's former teacher. The defense presented Lagrimas Delovino and Ana Pacantara, the wife and the aunt of the accused, respectively; Reynaldo Improgo, a civilian volunteer officer; Dr. Ruperto Sombilon, Jr.; Alicia Abañez; and the accused himself.

The evidence for the prosecution established the following:

Antonette Modesto was a senior high school student of the Arellano University. She and the accused were

neighbors in the reclamation area in Pasay City. At about 12:00 noon of 20 October 1992, while she was waiting for a ride to school at Libertad Street, Pasay City, the accused placed his hand on her shoulder and poked a knife, which was covered with a handkerchief, at her side. He threatened to kill her if she would shout for help or run away. He ordered her to walk towards the corner of F.B. Harrison Street and Libertad Street and to board a passenger jeepney bound for Baclaran. He made her sit between him and the driver in the front seat. The accused held on to his knife. Upon reaching Baclaran, he alighted and ordered her to also disembark.

Thereafter, the accused brought Antonette to Dasmariñas, Cavite, on board another jeepney. Upon reaching Cavite at around 1:00 p.m., he took her to a deserted house, where he started to kiss her. She resisted, but he continued to threaten her with his knife. When she struggled and screamed for help, he boxed her twice at her stomach, thereby weakening her. He then gagged her with a handkerchief and tied her hands from behind. He undressed her and inserted his penis inside her vagina while she remained helpless on the floor. Notwithstanding her struggles, the accused succeeded in his ejaculation.

Not long after, the accused raped Antonette again, and after satisfying his bestial instinct, he allowed her to dress up. He brought her back to Pasay City at around 5:00 p.m.. Before leaving her, he warned her not to tell anyone about the incident or he would kill her and her family. When she reached home, she proceeded to her room and cried. She did not tell anyone of the shame inflicted on her.[4]

Then, at about 10:00 a.m. of 4 November 1992, Antonette left home for school. While aboard a pedicab, the accused joined her and seated himself beside her. He had a knife wrapped in a newspaper, which he poked at her. She was forced to alight with him at Roxas Boulevard, Pasay City, where the accused flagged down a taxi which took them to Queensland Motel, Pasay City. Inside the motel, the accused started kissing her. When she resisted, the accused boxed her twice at the stomach. He undressed her and, with his knife, ripped off her bra. He inserted his penis into her vagina until he reached his climax. Thereafter, he sexually assaulted her again. By late afternoon, they both dressed up. Once more, the accused threatened her to keep quiet about the incident, otherwise he would kill her and her family. They left the motel by taxi, and when they parted at the reclamation area, he reiterated his warning. When she reached home, she went to her room and cried.[5]

It was on 10 November 1992 when her mother, Elsa Modesto, saw her crying in her room that Antonette divulged what had happened to her. She and her parents then immediately proceeded to the police substation to lodge her complaint.[6] There, she narrated her ordeal to PO3 Fernando Pascua, who then recorded her complaint in the police blotter[7] and accompanied her to the house of the accused. As might be expected, the accused denied the charges and was then turned over to the Investigation Division.[8]

The next day, Antonette, accompanied by her mother, went to the NBI for a medical examination.[9] The medico-legal officer who examined her, Dr. Ruperto J. Sombilon, Jr., noticed no external injuries on her but found the presence of an "old-healed hymenal laceration,"[10] which could have been caused by sexual intercourse with a male.[11]

Finally, through the testimony of Antonette, the prosecution proved that the accused offered, through her parents, to pay P40,000.00 to amicably settle these cases, which offer she declined;[12] and that as a consequence of the commission of these crimes, she had been experiencing sleepless nights and was forced to quit her schooling.[13]

According to the contrariant version of the accused, who was 33 years old at the time of the occurrence of the acts complained of and married with four children, Antonette had a special feeling for him and eventually became his sweetheart; yet, he never took undue advantage of such relationship by having sexual union with her.

He first noticed the special feeling of Antonette when he bought various items from her family's sari-sari store and

she handed him more than what he paid for. Taking the cue, he suggested a date with her, which she welcomed.[14]

Their first date was on 2 September 1992 when they discreetly met at Harrison Plaza and watched a movie. Then, they proceeded to Dasmariñas, Cavite, where they had a brief stay in the house of his aunt, Ana Pacantara, to whom he introduced Antonette. Their second and third trips to Cavite were on 29 September and 20 October 1992.[15] On the latter occasion, they slept together for an hour in the house of his aunt. Antonette even borrowed a duster from his aunt, since she was still in her school uniform. While alone together in the room, they kissed each other but did not have sexual intercourse. Thereafter, they played bingo with his aunt before leaving for home.[16]

On 4 November 1992, they went again to Cavite to join an excursion. Since the excursion did not push through, they just stayed and had lunch at his aunt's house. They returned to Pasay in the afternoon. That was the last time they saw each other.[17]

This alleged special relationship with the complainant was corroborated by Ana Pacantara, Lagrimas Delovino, and Reynaldo Improgo.

Ana Pacantara declared that the accused and the complainant had their regular rendezvous in her house in Cavite, particularly on 2 September, 29 September, 20 October, and 4 November 1992. They acted like lovers and rested together in the bedroom, with Antonette even borrowing her duster.[18]

Lagrimas Delovino testified that when she visited Antonette's sister at the San Juan de Dios Hospital on 7 November 1992, Elsa Modesto informed her (Lagrimas) that Antonette and the accused were having an affair and that if the accused would not stop the relationship; "something bad" would happen to him.[19]

Reynaldo Improgo claimed that he is a neighbor of Antonette and the accused in the reclamation area and that he had seen them together on several occasions.[20]

As a witness for the defense, Dr. Sombilon opined that the "old-healed complete laceration"[21] which he had indicated in his report could be around three months old and, therefore, could not have been sustained on 20 October or 4 November 1992. He concluded that Antonette was no longer a virgin at the time of the alleged rapes.[22]

In her rebuttal testimony, Antonette denied having an affair with the accused and having gone to Cavite on 2 September, 29 September, and 4 November 1992. On 2 September and 29 September 1992, she was actually attending her classes in school.[23] Elsa likewise denied having confronted and threatened Lagrimas Delovino.[24]

Alfredo Batario, Antonette's professor at the Arellano University, corroborated Antonette's claim that on 2 September and 29 September 1992, Antonette had attended his Social Studies class from 3:30 to 4:30 p.m., as shown in his school register.[25] He declared, however, that from 20 October 1992 onwards, Antonette had been absent and considered dropped from the class.[26]

In its decision[27] dated 25 October 1993 but promulgated on 24 November 1993, the trial court found the accused guilty beyond reasonable doubt of rape in each of the two cases and disposed as follows:

WHEREFORE, in Criminal Case No. 92-1845 and in Criminal Case No. 92-1846, accused Aurelio Delovino y Udal is found guilty beyond reasonable doubt of the crime of rape; and he is sentenced, in each of the cases, to suffer the penalty of reclusion perpetua and to pay complainant Antonette Modesto y Duque the sum of P25,000.00 as moral damages.

No pronouncement is made as to costs.

It gave full faith and credit to the testimony of the offended party because her declarations describing how, through force and intimidation, the accused was able to have sexual intercourse with her were positive, clear, and convincing and were made in a spontaneous and straightforward manner, leaving no doubt in the mind of the court that she was telling the truth.

According to the trial court, the force and intimidation in these cases consisted in the accused's boxing the complainant and threatening her with a knife. And, since the knife used is a deadly weapon, the penalty should be reclusion perpetua to death, but because the imposition of the death penalty had been prohibited by the Constitution, the penalty should only be reclusion perpetua.[28]

It refused to believe the accused's claim that the complainant was in love with him and was his sweetheart because, assuming this to be true, she would not have filed these cases. It further found no improper motive on her part to falsely accuse him of the commission of the crimes in question.

The trial court did not, however, convict the accused of the complex crime of abduction with rape as charged because, although he had forcibly abducted the complainant, the prosecution had failed to prove lewd designs.

In this appeal, the accused contends that the trial court gravely erred in (1) convicting him not on the basis of the strength of the prosecution's evidence but rather on the weakness of the evidence for the defense; (2) giving credence to the improbable and inconsistent testimony of the private complainant; and (3) failing to appreciate the testimony of the NBI medico-legal officer in his favor.[29]

The Appellee disagrees with him and prays that we affirm the assailed decision with the modification that the moral damages be increased from P25,000.00 to P30,000.00.

We find no merit in this appeal. On the contrary, as hereinafter discussed, we find the accused guilty in each of the two cases of the complex crime of forcible abduction with rape and not just of rape.

The first assigned error is baseless. The trial court convicted the accused on the basis of proof beyond reasonable doubt which the evidence for the prosecution had established. Its reference to the weak evidence for the accused was evidently made to demonstrate his failure to overcome the strength of the prosecution's evidence.

The second assigned error involves the issue of the credibility of the complainant. It is doctrinally entrenched that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the witness stand and determine if they are telling the truth or not.[30] In *People vs. De Guzman*,[31] this Court aptly stated:

In the resolution of the factual issues, the Court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.

In the first decade of this century, a foreign court likewise observed:

Truth does not always stalk boldly forth naked, but modest withal, in a printed abstract in a court of last resort. She oft hides in nooks and crannies visible only to the mind's eye of the judge who tries the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. The brazen face of the liar, the glibness of the schooled witness in reciting a lesson, or the itching overeagerness of the swift witness, as well as the honest face of the truthful one, are alone seen by him.[32]

The recognized exceptions to the foregoing doctrine are when such evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have affected the result of the case.[33]

The accused has miserably failed to convince us that the exceptions apply to these cases. He has not challenged the unequivocal pronouncement of the trial court that the complainant testified in a "spontaneous and straightforward manner, leaving no doubt in the mind of the court that she was telling the truth," and that her declarations were "positive, clear and convincing." The best that he could do was to suggest the improbability of the commission of the abductions considering that they occurred in a public place and in broad daylight and the complainant could have shouted for help or called the attention of the people around her. The suggestion is not persuasive because it fails to consider the un rebutted testimony of Antonette that he poked a knife on her side and threatened to kill her if she would run away or shout for help. He even forgot to comment on the evidence for the rapes. This studied silence on the rapes amounts to an admission of the sexual congresses.

Our own evaluation of the evidence not only fully supports the finding of the trial court that the accused had carnal knowledge of the complainant through force and intimidation on 20 October 1992 and 4 November 1992, but discloses, as well, proof beyond reasonable doubt of the commission of forcible abduction as a means for the commission of the rapes.

The testimony of the complainant, although uncorroborated, is credible and convinces us with moral certainty of the accused's guilt. No improper or ulterior motive was shown why she would falsely testify against the accused, who was her neighbor. The latter categorically admitted on cross-examination that he knew no reason why the complainant would charge him of rape and publicly make known that fact.[34] It is settled that where there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that the said witness was not so actuated and his testimony is entitled to full faith and credit.[35]

The complainant's conduct in these cases further convinces us that she told the truth and filed these cases solely to obtain justice. She reported the commission of the crime to the police authorities, allowed an examination of her private parts, and thereafter suffered the ordeal of a public trial. It is difficult to believe that an unmarried woman, like her, would tell a story of defloration, allow the examination of her private parts, and thereafter permit herself to be the subject of a public trial unless she were motivated by an honest desire to seek justice. No young decent Filipina would publicly admit that she had been criminally abused and ravished unless that is the truth; it is her natural instinct to protect her honor.[36]

The accused's denial of sexual intercourse does not deserve even a passing glance. Denial is an inherently weak defense and cannot prevail over the positive and credible testimony of the complainant.[37]

Moreover, the accused failed to deny the testimony of Antonette that he had offered to pay P40,000.00 to amicably settle these cases. Such an offer was an implied admission of guilt[38] pursuant to the second paragraph of Section 27, Rule 130 of the Revised Rules of Court, which reads in part as follows:

In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.

In his third assigned error, the accused faults the trial court for its failure to consider the testimony of Dr. Sombilon that the "old-healed complete laceration" in Antonette's hymen was already three months old when he conducted the examination on 11 November 1992. He then asseverates that inasmuch as the laceration was inflicted long before 20 October 1992 and 4 November 1992 when the crimes in question were committed, he could not have caused it.

We disagree. That the laceration was three months old does not prove that the accused had no carnal knowledge of Antonette on 20 October and 4 November 1992. Antonette established with moral certainty that the accused had raped her on those dates. Any prior sexual intercourse which could have resulted in the hymenal laceration is irrelevant in these cases, for virginity is not an element of rape under Article 335 of the Revised Penal Code.[39]

Moreover, the prosecution cannot be said to have relied on the old-healed hymenal laceration as evidence of rape. It primarily relied on the testimony of the complainant which, standing alone and even without the medical examination, was sufficient to convict.

A medical examination is not indispensable in a prosecution for rape. Otherwise, grave and irreparable injustice would be inflicted upon hapless victims if the crime were committed in remote areas where no doctor could conduct a medical examination. So too, if the victim would not submit to it because what immediately pre-occupied her mind after the traumatic experience was not necessarily the filing of a complaint but rather the fear of what the assailant would further inflict upon her should she reveal his criminal act, or the embarrassment and humiliation accompanying a public disclosure of the ignominy and dishonor she had suffered in the hands of her tormentor.[40]

We cannot sustain the finding of the trial court that although the complainant was brought against her will to the Queensland Motel in the first case and to Cavite in the second case, the prosecution failed to prove the element of lewd designs. Lewd design means unchaste design.[41] We find that in both cases the principal purpose of the accused was to rape the complainant and that her abduction was only a means to commit the rape. Rape, under any clime and civilization, will always be unchaste.[42] Thus, the abduction of the complainant was obviously with lewd designs.

Accordingly, the accused should be held liable for the complex crime of forcible abduction with rape defined and penalized under Article 342 (forcible abduction) and Article 335 (rape) of the Revised Penal Code. Pursuant to Article 48 of the said Code, the penalty for the more serious crime, which is rape, shall be imposed in its maximum period. Since the two rapes were committed with a deadly weapon, the penalty is reclusion perpetua to death pursuant to the third paragraph of Article 335, to be imposed in its maximum period -- death. But since these cases were committed when the imposition of the death penalty was still prohibited under the Constitution,[43] only reclusion perpetua may be imposed.

Also, pursuant to the current policy of this Court, moral damages should be awarded in each case and increased from P25,000.00 to P40,000.00.

WHEREFORE, the instant appeal is DISMISSED, and the decision of Branch 116 of the Regional Trial Court of Pasay City in Criminal Cases Nos. 92-1845 and 92-1846 is modified as above indicated. As modified, accused AURELIO DELOVINO is hereby found guilty beyond reasonable doubt of the complex crime of forcible abduction with rape, as defined and penalized under Article 342 and Article 335, respectively, of the Revised

Penal Code, in each of the said cases, and pursuant to Article 48 thereof, he is in each case hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify complainant Antonette Modesto the sum of P40,000.00 as moral damages.

Costs against the accused.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Exhibit "C"; Original Records (OR), 2.

[2] Exhibit "D"; OR, 14.

[3] OR, 21.

[4] TSN, 14 April 1993, 4-16.

[5] TSN, 21 April 1993, 2-8.

[6] TSN, 27 May 1993, 5-9.

[7] Exhibit "F"; OR, 82.

[8] TSN, 18 May 1993, 3-11.

[9] TSN, 21 April 1993, 10; TSN, 27 May 1993, 15-16.

[10] Exhibit "A"; OR, 77.

[11] TSN, 11 May 1993, 5.

[12] TSN, 22 April 1993, 9.

[13] TSN, 21 April 1993, 10-11.

[14] TSN, 8 July 1993, 10-11.

[15] TSN, 8 July 1993, 11-13.

[16] Id. (p.m.), 3-4.

[17] Id., 5-6; 8-9.

[18] TSN, 7 July 1993, 3-11. Surrebuttal witness Alicia Abañez, a neighbor of Ana, corroborated the latter's testimony that the accused and Antonette were in Ana's house on the said dates (TSN, 14 July 1993, 15-16).

[19] TSN, 8 July 1993, 3-6.

[20] TSN, 17 June 1993, 3-6; TSN, 23 June 1993, 3-6.

[21] Exhibit "A."

[22] TSN, 15 June 1993, 4-5.

[23] TSN, 12 July 1993, 3-6.

[24] TSN, 13 July 1993, 2-3.

[25] Exhibit "H"; OR, 107.

[26] TSN, 14 July 1993, 2-6.

[27] OR, 129-133; Rollo, 28-32. Per Judge Alfredo J. Gustilo.

[28] R.A. No. 7659, which took effect on 31 December 1993, reimposed the death penalty in the cases therein specified.

[29] Rollo, 49-50.

[30] *People vs. Garcia*, 209 SCRA 164 [1992].

[31] 188 SCRA 407, 410-411 [1990]. See also *People vs. De Leon*, G.R. No. 110558, 3 July 1995.

[32] *Creamer vs. Bivert*, 214 MO 473, 474 [1908], cited in M. FRANCES MCNAMARA, 2000 Famous Legal Quotations [1967], 548.

[33] *People vs. dela Cruz*, 229 SCRA 754 [1994]; *People vs. Co*, G.R. No. 112046, 11 July 1995.

[34] TSN, 8 July 1993, 9.

[35] *People vs. Simon*, 209 SCRA 148 [1992]; *People vs. Corpuz*, 222 SCRA 842 [1993].

[36] *People vs. Patilan*, 197 SCRA 354 [1991].

[37] *People vs. Macam*, 238 SCRA 306 [1994]; *People vs. Cobre*, 239 SCRA 159 [1994].

[38] *People vs. Manuel*, 198 SCRA 818 [1991]; *People vs. Flores*, 239 SCRA 83 [1994].

[39] *People vs. Samillano*, 207 SCRA 50 [1992]; *People vs. Ferolino*, 221 SCRA 604 [1993].

[40] See *People vs. Saldivia*, 203 SCRA 461 [1991].

[41] RAMON C. AQUINO, *The Revised Penal Code*, vol. 3 [1988], 440.

[42] *People vs. Corpuz*, *supra* note 35.

[43] Section 19(1), Article III. The death penalty was reimposed in certain crimes by R.A. No. 7659, which took effect on 31 December 1993.

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