

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONRADO SALADINO Y DINGLE, ACCUSED-APPELLANT.*G.R. Nos. 137481-83 & 138455. March 07, 2001*

Ponente: BELLOSILLO, J.

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CONRADO SALADINO y Dingle was convicted of three (3) counts of rape and one (1) attempted rape and sentenced to death.[1] He is now with us on automatic review.

Lourdes Relevo is the niece of accused-appellant Conrado Saladino. Her mother and Conrado's wife Rosita are sisters. Lourdes calls him Kuya Conrad. The parents of Lourdes live in Balayan, Batangas.

Sometime in 1995 Lourdes, then thirteen (13) years old, was sent by her parents to Manila to live with Conrado and Rosita Saladino in Pasig City because her own parents could not afford to send her to school. Rosita was a factory worker while Conrado was a money-changer in a bus terminal. Rosita, whom Lourdes called Ate Rose, gave the young girl weekly allowance; in turn, she helped out in the household chores.

The Saladinos lived in a small two-storey house in 126-D Pastor Compound, Rosario, Pasig City, along with the spouses Zaldy and Corazon Cedeño and their three (3) children, Estrella, Elizabeth and Evelyn, together with three (3) boarders whom Lourdes only knew as Tita, Liza and Glenda. There were three (3) rooms separated only by curtains. Conrado, Rosita and Lourdes slept in a small cramped room - the couple on a bed and Lourdes on a mattress on the floor.

Sometime in September 1995 at about 10:00 o'clock in the evening while Lourdes was lying on her mattress resting and feeling sick, Conrado woke her up and asked her to transfer to the bed as she might catch cold. Rosita was already dressed up because she was working in the 10:00 o'clock PM to 6:00 o'clock AM shift. Conrado conducted Rosita to the jeepney stop and returned to their room about fifteen (15) minutes later. He laid down beside Lourdes. About twenty-five (25) minutes later, he started fondling her breasts. He poked a kitchen knife at her waist and threatened to kill her if she shouted. He dropped the knife, pinned down Lourdes' hands to her belly, and removed her shorts and panty with his hand that was free. He then removed his own shorts and underwear, went on top of Lourdes, and inserted his penis inside her vagina.[2] Lourdes struggled and Conrado's penis slipped out several times, but he re-inserted it everytime and resumed his bestial movements for about fifty (50) minutes according to Lourdes. When she finally succeeded in pushing him away, he warned her not to tell anyone or else he would kill her.

Lourdes confided the sexual assault to Rosita. But Rosita refused to believe her and even said that her husband was not capable of doing such a dastardly act. Lourdes also told Corazon Cedeño who reacted by asking the Saladinos to leave the house. It took the Saladinos almost a year to find a house.

Meanwhile, Lourdes slept in the room of Corazon and Zaldy. The Saladino couple finally transferred to 101-B Dr. Sixto Antonio Avenue, Rosario, Pasig City, leaving behind Lourdes with the Cedeños. But Lourdes did not tell

her mother, who was in Batangas, about the rape.

After some time, Rosita invited Lourdes to live with them in their new house. Rosita assured her that the incident would not happen again because they had a boarder. Wanting to finish her schooling and in need of money, Lourdes relented and moved in with the Saladinos again.

Despite Rosita's assurances, things did not turn out well for Lourdes. On 17 December 1996 at about 7:00 o'clock in the morning, while Lourdes was sleeping in the living room, Conrado again held her at knifepoint and threatened her into silence. He removed her shorts and panties, then his own shorts and underwear and had forced intercourse with her. Again, she cried and struggled but her efforts were in vain.

Lourdes told Rosita about the new incident but Rosita, as in the past, refused to believe her. She turned to Corazon who advised her to wait for her mother, who was spending Christmas in Manila, before going to the police. When Lourdes and Rosita went to Batangas to fetch Lourdes' mother Elena Relevo, the complaining witness could not summon enough courage to tell her mother about the rape. Elena stayed in Pasig City for eleven (11) days after which, on 28 December 1996, she, Lourdes, Rosita and Conrado went to Batangas to celebrate New Year's Eve.

On 1 January 1997 Lourdes, Conrado and Rosita returned to Manila. The following day at 7:00 o'clock in the morning Conrado again raped Lourdes at knifepoint. On 3 January 1997 at about the same time the day before, he again poked a knife at her and proceeded to remove her shorts and panties and attempted to insert his penis into her vagina. This time, when Lourdes saw him let go of the knife, she freed herself from his grasp and kicked him. Then she ran to the bathroom and stayed there until he left the house.

Lourdes packed her clothes and went to Corazon Cedeños' house. Finally, she gathered enough strength to tell her mother about the sexual abuses, which prompted Elena to fetch her and take her home to Batangas.

Elena had Lourdes examined by a doctor, who confirmed that Lourdes was no longer a virgin. They then filed a case with the Pasig City Prosecutor's office. Lourdes underwent another physical examination at the PNP Crime Laboratory in Camp Crame. The examination by Dr. Romeo Salen, Medico-Legal Officer, revealed that Lourdes had deep healed lacerations at 3:00 o'clock and 9:00 o'clock positions. Dr. Salen concluded that Lourdes was already in a non-virgin state physically.[3]

Four (4) Informations for rape were filed against Conrado Saladino for the incidents in September 1995, on 17 December 1996, 2 January 1997 and 3 January 1997. All four (4) Informations similarly alleged that on the dates indicated accused-appellant with lewd design and by means of force had sexual intercourse with Lourdes Relevo y Mendoza, against her will and consent.

Testifying in his defense, accused-appellant Conrado Saladino claimed that on the night of the alleged first rape, he was drunk. After taking his wife to the jeepney stop, he went back to his room where he saw Lourdes lying on bed. He then laid beside her. Being in an amorous mood, he started fondling her breasts. According to him, he was not met with any resistance. Emboldened, he proceeded to kiss her lips, breasts and private parts. He then took off both their undergarments and went on top of her. He attempted to insert his penis into her vagina but since he was drunk, he failed to achieve an erection. According to him, Lourdes was fully aware of what was happening yet did not show any reaction.

Conrado also testified that the reason they left the old house was because they did not have any privacy since the rooms were separated only by curtains that were fastened together only by safety pins. Also, Corazon and Rosita had a misunderstanding over Rosita's jewelry that disappeared. After some time, Lourdes and one of the boarders in the old house, Glenda Andrade, followed them to their new house. He tried to avoid any intimate contact with

Lourdes but he noticed that she was seducing him, parang tinutukso niya ako.[4] Unable to resist, he gave in to fondling her at least once a week,[5] then kissed her everyday before going to work. But he did not have sex with her because he was afraid she would get pregnant. He also testified that Lourdes would get angry every time he refused to insert his penis into her vagina.

The trial court found accused-appellant Conrado Saladino guilty of rape in Crim. Cases Nos. 112410-H, 112411-H and 112412-H. Taking into account the qualifying circumstance of the minority of the victim and her relationship to accused-appellant, the lower court meted Conrado Saladino three (3) death penalties pursuant to RA 7659. He was also sentenced to pay the private complainant P150,000.000 as indemnity, and P90,000.00 as moral damages. The trial court also found accused-appellant guilty of attempted rape in Crim. Case No. 112413-H and sentenced him to serve an indeterminate penalty of eight (8) years and one (1) day of prision mayor minimum as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal minimum, as maximum, and to pay the offended party P50,000.00 in civil indemnity and P30,000.00 for moral damages.

The complaining witness and accused-appellant presented conflicting versions. Lourdes Relevo, on one hand, told a harrowing account of a young girl's life utterly destroyed because of the satirical urges of a man who was entrusted with her life and future. Accused-appellant, on the other hand, painted a tale of consensual sex between an unwilling but weak male adult and a young temptress.

Which of the two (2) conflicting narrations of what transpired between the parties deserves greater weight and better entitled to full credence, is the crux of this controversy. Indeed, this matter involves the assessment of credibility, a task best left to the trial court, which had the advantage of observing the witnesses directly, picking up on the subtle nuances of human behavior, and the emphasis, gesture and inflection of voice; and, of testing their credibility by their demeanor on the stand.[6] We have often said that we will not interfere with the judgment of the trial court in determining the credibility of witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.

In giving credence to the testimony of the private complainant, the lower court said -

The testimony of the Private Complainant, Lourdes Relevo, was candid, straightforward and firm. She testified with spontaneity, only interrupted when she was overcome with emotion. She cried when asked to recall details of the incidents when the Accused assaulted her virtue. She remained steadfast and firm in her declarations notwithstanding humiliation and embarrassment, especially when, upon cross examination, she was asked to narrate the lurid details of the sexual acts committed upon her. On the witness stand, she pointed an accusing finger at the Accused, her uncle, and in an avenging tone, reaffirmed her accusations against him.[7]

In contrast, the lower court observed that accused-appellant appeared evasive, answered in a low voice, which was hardly audible. It also pointed out that Conrado appeared uncertain when he admitted that he touched the breasts, kissed the lips and private parts of the private complainant and laid on top of her, insinuating that she consented to this sexual activity. This led the trial court to conclude that accused-appellant "did not have the demeanor of a man unjustly accused of a serious offense."[8]

Such observations do not portend well for accused-appellant. In reviewing with utmost scrutiny the records of this case, we fail to see any reason to disturb the findings of the court a quo. The emotion displayed by private complainant thoroughly convinced the trial court that her testimony was genuine. Even the transcripts of her direct and cross examinations would point to no other conclusion. In her testimony, she revealed sordid details of the assault with such clarity and lucidity that could only come from the victim of the malevolent act. When asked

questions designed to elicit conflicting answers, she stood her ground and answered the questions in the manner of a person with nothing to tell but the truth.

Indeed, it is highly unlikely for a young girl like Lourdes to falsely accuse an uncle of a heinous crime, undergo a medical examination of her private parts, subject herself to the humiliation of a public trial and tarnish her family's honor and reputation, unless motivated by a potent desire to seek justice for the wrong committed against her.[9] In the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.[10]

On the other hand, accused-appellant's perverted version of the "sweetheart theory" is uncorroborated, self-serving and deserves scant consideration from the Court. Save for his own declaration, accused-appellant was unable to present anything else to prove that carnal knowledge between him and Lourdes was consensual. Indeed, this Court finds it unlikely that a young girl like Lourdes would consent to have sexual relations with a person she calls Kuya and more than ten (10) years her senior, and an uncle-in-law in fact. There is no evidence on record that she is a pervert, nymphomaniac, temptress or in any other condition that may justify such a theory.

Contrary to accused appellant's assertions, the long delay in the filing of the charges is not an indication of false accusation, since the delay was satisfactorily explained. After the first incident, Lourdes confided to her aunt Rosita and to Corazon; however they refused to do anything. Faced with two (2) prior rejections, it is understandable for a young girl like Lourdes to remain silent rather than endure the humiliating experience of being rebuffed once again by disbelieving adults.

It has also been held that there is no standard form of behavior when people, particularly young girls, are confronted by shocking and frightful incidents such as rape.[11] A thirteen (13)-year old girl who kept silent about being raped and becoming pregnant as a result thereof, is not necessarily lying. It would not have been easy to speak of such a humiliating occurrence. Besides, Lourdes also feared for her life and that of her family. Her assessment of the threatened risk caused by accused-appellant might have been overestimated, but considering her youth and inexperience, this fact alone does not render her testimony unreliable.

One cannot expect a thirteen (13)-year old girl to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat to her life and complain immediately that she had been forcibly sexually assaulted.[12]

Accused-appellant assails the lower court in concluding that he used force and intimidation. He insists that "the resistance of a woman in rape must be tenacious and manifest. A mere verbal objection unaccompanied by physical resistance may amount to consent." [13] He asserts that since there was no showing that he ever covered the mouth of the victim during the alleged rape, her failure to shout for help to the other house occupants was an indication that the intercourse was consensual. He also posits that if indeed Lourdes was raped, she would not have agreed to transfer to the house of the person who abused her.

We do not agree. According to Lourdes, accused-appellant poked a knife at her waist while threatening to kill her and her aunt if she resisted. That act of accused-appellant was more than sufficient to subdue the victim and cow her into silence, because of the imminent danger not only to her life but to her aunt as well. Under the circumstances, her failure to shout or offer tenacious resistance did not make voluntary her submission to the criminal acts of the accused-appellant.[14] Also, we have held in *People v. Grefiel*[15] that "(i)ntimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is therefore enough that it produces fear -- fear that if the victim does not yield to the bestial demands of the accused something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident."

It might be that to the depraved mind of accused-appellant, the lack of resistance or shouting on the part of his poor victim was a sign of consent, nay, even enjoyment. But in the crime of rape, what is given paramount consideration is the state of mind of the victim and not that of the perpetrator. From the point of view of the victim, the knife aimed at her waist was a real threat to her life. Her failure to shout or offer resistance was not because she consented to the deed but because she honestly believed she would be killed if she shouted or resisted. Such threat is sufficient intimidation as contemplated by our jurisprudence on rape. And be that as it may, if resistance would nevertheless be futile because of a continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary.[16]

Lourdes' transferring to the new residence of accused-appellant despite the rape does not affect her credibility. It was established that she depended on accused-appellant and his wife Rosita for support. Her return to the house of Conrado after she was raped was out of necessity. If she did not do so, she would not have been able to continue her schooling in Manila. Besides, she was assured by accused-appellant's wife, her very own aunt, that the incident would not happen again.

In an attempt to discredit the private complainant, accused-appellant pointed out supposed "inconsistencies" in her testimony, to wit: (a) Every time Lourdes testified she always brought with her a copy of her complaint-affidavit; (b) Her claim in her complaint-affidavit that accused-appellant removed her panties is inconsistent with her claim at the witness stand, where she said that accused-appellant removed her shorts; (c) Her claim that accused-appellant held her two (2) nipples while he was holding a knife is a physical impossibility; (d) Her testimony that accused-appellant told her to be quiet or he would kill her and Rosita is contrary to what she alleged in her complaint-affidavit that he would kill her Ate Rosita only; (e) Her statement that accused-appellant held her two (2) hands with one hand while his other hand was removing her shorts and panties is a physical impossibility; (f) Her claim that when she was first raped the private parts of accused-appellant pumped her for more than fifty (50) minutes is physically impossible; and, (g) Her testimony that in the first rape accused-appellant attempted to kiss her on the lips and her cheeks but he failed is another impossibility considering that he was on top of her and could have easily kissed her on the lips and cheeks.[17]

The crux of Lourdes' testimony was that accused-appellant had copulated with her, and the act was accomplished through intimidation. The alleged "inconsistencies" raised by accused-appellant are of minor significance and do not impinge upon her assertion that she was raped. Errorless testimonies cannot be expected especially when a witness is recounting details of a harrowing experience.[18] A witness who is telling the truth is not always expected to give a perfectly concise testimony, considering the lapse of time and the treachery of human memory. Thus, we have followed the rule in accord with human nature and experience that honest inconsistencies on minor and trivial matters serve to strengthen, rather than destroy, the credibility of a witness, especially of witnesses to crimes shocking to the conscience and numbing to the senses.[19]

However, the lower court erred in imposing the death penalty. In *People v. Ramos*[20] the concurrence of the minority of the victim and her relationship to the offender, being special qualifying circumstances should be alleged in the information, otherwise, the death penalty cannot be imposed. In the case at bar, although the prosecution did prove complainant's minority and relationship to accused-appellant, it failed to implead both minority and relationship in the four (4) Informations filed against accused-appellant. It is not enough that the relationship was subsequently proved during the trial. Both relationship and minority must be alleged in the Information to qualify the crime as punishable by death. To hold otherwise would deny accused-appellant's constitutional right to be informed of the nature and the cause of the accusation against him.[21] Thus, he can only be convicted of simple rape, punishable by reclusion perpetua.

The imposition of an indeterminate penalty of eight (8) years and one (1) day of prision mayor minimum as

minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal minimum as maximum, in attempted rape is also erroneous. The proper penalty for rape in the attempted stage should be two (2) degrees lower than the penalty for consummated rape,[22] or prision mayor. Applying the Indeterminate Sentence Law, the maximum imposable penalty should be taken from prision mayor in its medium period and the minimum from prision correccional.

In the three (3) cases of simple rape, the award of P50,000.00 as civil indemnity for each count is upheld, consistent with current jurisprudence.[23] The award of P30,000.00 as moral damages for each count of rape is increased to P50,000.00 also consistent with jurisprudence.[24] In addition, an award of P30,000.00 in exemplary damages is also imposed, the relationship between the sex offender and his victim being aggravating.[25] In the case of attempted rape the P30,000.00 award as moral damages is reduced to P15,000.00.[26] The award of P50,000.00 as civil indemnity is removed, there being no legal basis therefor.

WHEREFORE, the Decision of the trial court is MODIFIED as follows:

- In Crim. Cases Nos. 112410-H (G.R. No. 137481), 112411-H (G.R. No. 137482) and 112412-H (G.R. No. 137483) accused-appellant Conrado Saladino y Dingle is found guilty of three (3) counts of Simple Rape and sentenced to suffer the penalty of reclusion perpetua for each count. He is also ordered to pay private complainant Lourdes Relevo P50,000.00 for civil indemnity, another P50,000.00 for moral damages and P30,000.00 for exemplary damages, for each count of rape.

- In Crim. Case No. 112413-H (G.R. No. 138455), accused-appellant Conrado Saladino y Dingle is found guilty of Attempted Rape and is sentenced to ten (10) months and twenty (20) days of prision correccional minimum as minimum, to eight (8) years, four (4) months and ten (10) days of prision mayor medium as maximum. The accused-appellant is further ordered to pay private complainant Lourdes Relevo moral damages of P15,000.00.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Crim. Cases Nos. 112410-H, 112411-H, 112412-H and 112413-H. Joint decision penned by Judge Edwin A. Villazor, RTC-Br. 265, Pasig City.

[2] TSN, 21 August 1998, p. 13.

[3] Medico-Legal Report No. M-468-97, 4 February 1997; Original Records, p. 7.

[4] TSN, 21 October 1998, p. 16.

[5] Id., p. 17.

[6] People v. Malunes, G.R. No. 114692, 14 August 1995, 247 SCRA 317.

[7] RTC Decision; Rollo, p. 121.

[8] Ibid.

[9] People v. Reynaldo, G.R. No. 116305, 2 July 1998, 291 SCRA 701.

[10] People v. Escala, G.R. No. 120281, 8 July 1998, 292 SCRA 48.

- [11] People v. Plaza, G.R. No. 87235, 27 March 1995, 242 SCRA 724.
- [12] See Note 6.
- [13] Appellant's Brief; Rollo, p. 90.
- [14] People v. Dupali, G.R. No. 97474, 14 February 1994, 230 SCRA 62.
- [15] G.R. No. 77228, 13 November 1992, 215 SCRA 596.
- [16] Ibid.
- [17] Appellant's Brief; Rollo, p. 79.
- [18] People v. Ibay, G.R. No. 101631, 8 June 1994, 233 SCRA 15.
- [19] People v. Paule, G.R. Nos. 118168-70, 11 September 1996, 261 SCRA 649.
- [20] G.R. No. 129439, 25 September 1998, 296 SCRA 559.
- [21] People v. Narido, G.R. No. 132058, 1 October 1999, 316 SCRA 131.
- [22] Art. 51, The Revised Penal Code.
- [23] People v. Campos, G.R. Nos 133373-77, 18 September 2000.
- [24] Ibid.
- [25] People v. Tabion, G.R. No. 132715, 20 October 1999, 317 SCRA 126.
- [26] People v. Tabarangao, G.R. Nos. 116535-36, 25 February 1999, 303 SCRA 623.

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