

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN CASTRO Y GALAPATE, ACCUSED-APPELLANT.

G.R. Nos. 146297-304. August 22, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 163, Pasig City, finding accused-appellant Allan Castro guilty of four counts of rape and sentencing him to suffer the penalty of reclusion perpetua with respect to Criminal Case Nos. 117199-H and 117200-H, an indeterminate penalty of four years, two months, and one day of prision correccional, as minimum, to twelve years of prision mayor, as maximum with respect to Criminal Case No. 117201-H, and an indeterminate penalty of four years, two months, and one day of prision correccional, as minimum, to twelve years of prision mayor, as maximum with regard to Criminal Case No. 117202-H. Accused-appellant was likewise ordered to pay Edith Laminoza P200,000.00 by way of civil indemnity and P100,000.00 as moral damages.

Accused-appellant was originally charged with eight (8) counts of rape for which separate informations were filed in Criminal Case Nos. 117199-H, 117200-H, 117201-H, 117202-H, 117203-H, 117204-H, 117205-H and 117206-H. The informations in the eight cases alleged:

CRIMINAL CASE NO. 117199-H[2]

On or about December 14 to December 15, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously insert his penis into Edith L. Laminoza's vagina while massaging the breasts of Mary Jean O. Balaoro, against her will and consent.

Contrary to law.

CRIMINAL CASE NO. 117200-H[3]

On or about December 14 to December 15, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously insert his penis into the vagina of Edith L. Laminoza, against her will and consent.

Contrary to law.

CRIMINAL CASE No. 117201-H[4]

On or about December 14 to December 15, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously insert his finger into Edith L. Laminoza's vagina, against her will and consent.

Contrary to law.

CRIMINAL CASE NO. 117202-H[5]

On or about December 14 to December 15, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously put his penis into Edith L. Laminoza's mouth, against her will and consent.

Contrary to law.

CRIMINAL CASE NO. 117203-H[6]

On or about December 14 to December 15, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Mary Jean O. Balaoro, 17 years old, by inserting his penis into her vagina after putting her leg over his shoulder, against her will and consent.

Contrary to law.

CRIMINAL CASE NO. 117204-H[7]

On or about December 14 to December 15, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Mary Jean O. Balaoro, 17 years old, against her will and consent.

Contrary to law.

CRIMINAL CASE NO. 117205-H[8]

On or about December 14 to December 15, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Mary Jean O. Balaoro, 17 years old, after putting her two legs over his shoulders, against her will and consent.

Contrary to law.

CRIMINAL CASE NO. 117206-H[9]

On or about December 14 to December 15, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Mary Jean O. Balaoro, 17 years old, against her will and consent.

Contrary to law.

On January 12, 2000, Mary Jean executed an Affidavit of Desistance stating, among others, that:

That after thinking over the matters that resulted in the filing of the above entitled case against Allan Castro y Galapate and after also considering the explanation sincerely given by the accused, I have arrived at the conclusion that the matter that transpired between us was only a matter of misunderstanding and more of communication gap between us;

That in as much as the explanation and reasons given by the above mentioned accused has convinced me that to further prosecute this case against the accused would be totally unfair[.][10]

On March 7, 2000, accused-appellant, assisted by counsel, was arraigned and entered a plea of not guilty to each of the eight informations of rape.

The prosecution presented three witnesses: Edith Laminoza, the remaining complainant, Winston S. Tan, M.D., and PO3 Ranilo Malijan, the arresting officer.

Edith Laminoza, 23 years old, single, is from Nueva Ecija. She arrived in Manila on December 7, 1999 and lived for a while with her friend, Rose Longgo. When she was employed at the Mode Garments, she left her friend's

house and rented a room at No. 26 Bagong Tanyag, Taguig, Metro Manila. The boarding house is owned by Edwin Castro, brother of accused-appellant.

On December 14, 1999, at around 10 o'clock in the evening, she went to the house of her friend, Melody Palma, within the same compound to ask for some cooking oil. When she came back to her room, she felt someone pull her hair. The man poked a pointed object at her neck and said, "Putang ina, huwag kang maingay, papatayin kita. Ibigay mo lang ang gusto ko." ("Son of a bitch, don't make a sound or I will kill you. Just give me what I want.") The man then proceeded to pull her pants down to her knees and told her to lie down, after which the man removed his shorts and tried to insert his penis into her vagina. However, the man was not able to fully penetrate her because her pants were lowered only up to her knees. He therefore had her hold his penis instead. Then, pulling shirt up, she mashed and sucked her breast.[11]

While the man was doing this, someone knocked on the door. This made him stop what he was doing. He told Edith to keep quiet, otherwise he would kill her. Then, he took her near the window. Edith noticed someone light a match outside and heard her roommate Mary Jean asking her to open the door. The man ordered Edith to open the door. Upon seeing Edith half naked, Mary Jean apologized for intruding into her privacy, thinking that the man was her lover. As Mary Jean attempted to withdraw from the room, the man pulled Mary Jean inside by her hair.

The two women were herded into a corner of the room. While Edith was lying down, the man mashed her breasts. Edith pleaded with the man to stop mashing her because she was already tired. The man henceforth ordered Mary Jean to remove her clothes and to lie down. The man went on top of Mary Jean and inserted his penis into her vagina, at the same time poking his finger into Edith's vagina. Then, according to Edith, the man made her put his penis into her mouth, which she did out of fear.

All this time, Edith said she was not aware of her attacker's identity. She said she came to know accused-appellant Allan Castro to be the attacker only when he had already left because of the light outside the room as he went out. Edith admitted she did not know Allan Castro personally. In fact, she had been staying in the boarding house for only two days before the rape took place.

Thereafter, Edith reported the incident to the Taguig police. Accused-appellant's mother, sister Liza, and Mary Jean accompanied her thereto. Accused-appellant's mother offered Edith P10,000.00 to keep her from pressing charges against her son, but Edith refused.

On cross-examination, Edith testified that the four rooms on the ground floor of the boarding house were all occupied and these were separated by concrete walls.[12]

Edith Laminoza submitted herself for medical examination.[13] Upon query from the attending physician, she admitted having had sexual intercourse sometime in September 1999.[14]

Winston S. Tan, medico-legal officer of the PNP Crime Laboratory, testified as an expert witness. In his direct examination, he testified that complainant Edith Laminoza sustained four injuries, three ecchymoses, and one abrasion on the extra genital portion. The ecchymoses were found on both breasts and on the left side of the victim's neck. He explained that ecchymoses are minute hemorrhages on the skin caused by forceful sucking during the course of sexual intercourse, or what is called *chikinini* in Tagalog slang. There is also an abrasion on the right side of the neck, measuring 1 x 0.1 cm., caused by skin coming into contact with a hard, blunt, and rough surface. The tip of a knife can produce a linear abrasion.

In the genital area, the examination of the hymen revealed a deep healed laceration at the 6 o'clock position, which means that the complainant was no longer a virgin at the time of the examination. The cause of laceration is

the insertion of a hard blunt object, such as an erect male organ, into the vagina of the victim. A fresh laceration heals in about seven to 10 days. In her case, she was examined less than 24 hours after the alleged incident.

The posterior fourchette, the lower portion of the female genitalia, was abraded and congested, which means that the superficial layer had been sloughed off. There was redness caused by a male erect organ forcibly inserted into the vagina. Dr. Tan explained that when the sexual act is mutual, the insertion of the penis would not cause any abraded and congested posterior fourchette because the female genitalia is lubricated.

On cross examination, however, Dr. Tan further explained that if the posterior fourchette is abraded and congested, it means that there was no lubrication prior to the insertion but it does not necessarily mean that there was force.[15]

The testimony of PO3 Ranilo Malijan was dispensed with because the prosecution and defense stipulated that accused-appellant voluntarily surrendered.[16]

The defense then presented its evidence consisting in the testimony of accused-appellant Allan Castro. Accused-appellant Castro was 30 years old and married at the time of the incident. He testified that, in the morning of December 15, 1999, he was with his wife and children in their house at No. 15 Purok 8, Bagong Tanyag, Taguig, Metro Manila. On the dates in question, he said he did not go to his parents' house at No. 26 Purok 8, Bagong Tanyag, Taguig. He claimed that, on December 14 and 15, 1999, he had not yet known complainants Edith Laminoza and Mary Jean Balaoro. He said he came to know them only at the CID Office in Taguig by reason of their rape charge against him.[17]

At the inquest, accused-appellant said he was asked to read the complaint against him, but for reasons not disclosed in the records he was not able to do so. He was thus not able to know its contents. He denied having raped Edith and Mary Jean four times on December 14 and 15, 1999 from 10 o'clock in the evening up to 1 o'clock in the morning of the following day.

On September 15, 2000, the trial court rendered its decision, the dispositive portion of which reads -

WHEREFORE, accused Allan Castro y Galapate of No. 26 Purok 8, Barangay Bagong Tanyag, Taguig, Metro Manila is hereby found GUILTY beyond reasonable doubt as principal of the four (4) counts of rape defined and penalized under Article 266-A and 266-B of the Revised Penal Code and sentenced as follows:

- In Criminal Cases Nos. 117199-H and 117200-H, to suffer two penalties of reclusion perpetua;
- In Criminal Case No. 117201-H, applying the Indeterminate Sentence Law and taking into account the aggravating circumstance of dwelling, to suffer an indeterminate penalty of from four (4) years, two (2) months, and one (1) day of prision correccional, as minimum, to twelve (12) years of prision mayor as maximum; and
- In Criminal Case No. 117202-H, applying the Indeterminate Sentence Law and taking into account the aggravating circumstance of dwelling, to suffer an indeterminate penalty of from four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to twelve (12) years of prision mayor as maximum.
- Accused is further ordered to compensate Edith Laminoza in the total amount of Two Hundred Thousand (P200,00.00) pesos as civil indemnity, and the amount of One Hundred Thousand (P100,000.00) pesos as moral damages.
- In Criminal Cases Nos. 117203-H, 117204-H, 117205-H, and 117206-H, accused is hereby ACQUITTED of four (4) counts of rape for failure of the People to prove his guilt beyond reasonable doubt.

SO ORDERED.[18]

Hence this appeal based on the following assignment of errors:

I. THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF COMPLAINANT EDITH L. LAMINOZA THAT SHE HAD RECOGNIZED ACCUSED-APPELLANT WHEN THE LATTER WAS ABOUT TO GO OUT OF THE ROOM.

II. THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT OF FOUR (4) COUNTS OF RAPE ON GROUNDS OF REASONABLE DOUBT.[19]

A rape charge is easy to make, hard to prove, and harder to defend by the party accused, though innocent.[20] Applying this rule to the present case, we hold that the conviction of accused-appellant for four counts of rape allegedly committed on December 14 to December 15, 1999 should be set aside for lack of convincing proof; first, that accused-appellant had been positively identified and second, that he had sexual intercourse with the complainant through force or intimidation.

I.

With respect to the first question concerning the identity of accused-appellant, the trial court held that accused-appellant had been positively identified by Edith Laminoza as the one who raped her by citing the following portion of complainant's testimony:

Q: Were you able to know the identity of the person when you said who inserted his penis into your vagina?

A: At first, no ma'am.

Q: When did you know the identity of this person?

A: When he opened the door, when he was about to go out of the room, there was light.

Q: And who was that person whom you saw?

A: Allan Castro. [21]

Thus, accused-appellant was apparently recognized by Edith as he was going out of the room because of the light coming from the outside. However, complainant's allegation is doubtful as Edith Laminoza admitted that she did not know Allan Castro before the incident.[22] One who commits a crime would normally leave no evidence which may be used against him or traces by which he could be identified by witnesses or by the victim herself. He would at least leave in haste. In the case at bar, however, the way complainant described accused-appellant, the latter left without hurry, enabling complainant allegedly to see accused-appellant's face.

Even if complainant saw the face of accused-appellant, it is doubtful whether she really saw him very well because she did not mention any distinguishing features in the face or physical appearance of her assailant. Indeed, if accused-appellant was a stranger to her, she needs more than just to see him to remember his face. Her testimony that she recognized accused-appellant to be the assailant despite the fact that she did not know the latter is thus of doubtful veracity.

II.

It is alleged that complainant Edith Laminoza had been raped four times, the first one being when she entered her room after coming from a neighbor's house and she was pulled by someone by her hair and was made to lie down. However, it is not clear, from complainant's testimony, whether accused-appellant had then succeeded in inserting his penis into her vagina. Complainant testified on direct examination:

PROS. LEONARDO:

And after you [lay] down, what happened after that?

A: He removed his shorts and forced to insert his private part.

Q: And after that, what happened?

A: I was forced to insert his private part but he was not able to do so because he can not spread my two legs because my pants was up to my knees.

Q: After that, what happened?

A: He removed my pants.

Q: And after that, what happened?

A: When he removed my pants, he was forcing to insert his private part.

Q: What was that thing that that person trying to insert?

A: His private part.

Q: You are referring to a vagina?

A: No, ma'am.

Q: What is that private part that you are referring to?

A: His penis.

....

Q: Where was he trying to insert his penis?

A: Into my vagina.

Q: And what happened after that?

A: When he was forcing to insert his penis to my vagina, he pulled down my pants and asked me to hold his penis.

Q: And did you hold his penis?

A: yes, ma'am.

Q: And after that, what happened?

A: When he can not insert his penis, he pulled my shirt and mashed my breasts.

Q: And after that, what happened?

A: Then somebody knock at the door. [23]

Much later, Edith claimed that accused-appellant was able to penetrate her, although whether that was before or after Mary Jean Balaoro came is also unclear as the following portion of her testimony shows:

PROS. LEONARDO:

When was that insertion of the penis into your vagina, before Mary Jean entered the room or after?

A: Before Mary Jean entered the room.

Q: When Mary Jean was already inside the room, did that person insert his penis into your vagina?

A: Yes, ma'am.[24]

At another time, however, Edith testified that accused-appellant did not insert his penis into her vagina after Mary Jean entered the room, thus:

Q: What else did he insert into your vagina?

A: None, ma'am.

Q: He did not insert his penis?

A: No, ma'am.[25]

To reconcile her seemingly inconsistent statements, complainant said accused-appellant was able to insert his penis partially into her vagina the first time, but that he was not able to do so the second time, because accused-appellant's penis had grown limp, thus:

COURT:

According to you the accused Allan Castro was trying to insert his penis into your vagina but he was not able to do that because your pants had prevented him from inserting his penis, is that correct?

A: He was not able to insert the whole of his penis.

Q: What do you mean by that, what portion of the vagina was penetrated by the penis of the accused?

A: Maybe half of his penis. (Kalahati po siguro).

Q: You testified that after that, the accused ordered you to remove your pants?

A: No sir, it was he who removed my pants.

Q: And according to you, he told you to hold his penis and insert it yourself inside your vagina, is that true?

A: Yes, sir.

COURT:

Were you able to insert his penis into your vagina?

A: When I was asked to insert his penis into my vagina, I was not able to insert it because his penis is no longer [erect].

Q: Did the penis of the accused touch your vagina?

A: At first.

Q: What about the second time?

A: The second time, he was not able to insert it, it was just pointed to my vagina and it was not fully [erect] that is why he only mashed my breasts.[26]

Whether accused-appellant was able to penetrate Edith before Mary Jean came to the room is material because the first and the second convictions of accused-appellant for rape rest on those claims. The trial court stated:

When she returned to her rented room on December 14, 1999 at around 10:00 o'clock in the evening, she noticed that the room had no light and was dark. When she was about to enter the door, a person suddenly held her hair and pulled her inside the room and with a knife poked at her neck, this man who turned out to be accused, Allan Castro, threatened her "putang ina, huwag kang maingay, papatayin kita, ibigay mo lang ang gusto ko." Terrified, Edith could not do or say anything. Accused then pulled down her short pants and underwear up to the knees and forced her to lie down. Accused placed himself on top of Edith and started to insert his penis into her vagina. Because her legs could not be spread, accused's penis could not fully penetrate the inner part of her sexual organ. So, accused removed her pants and again tried to insert his penis into her. Unsuccessful, he told Edith to hold his organ and insert it into her vagina herself. But this time, accused's organ had softened and could not enter her vagina. Not satisfied with his unerect organ, accused pulled up Edith's shirt and mashed her breasts. Momentarily, somebody knocked at the door, Again accused warned Edith to keep quiet and repeated his threat to kill her. It was Mary Jean Balaoro knocking calling her to open the door and let her inside. When Edith finally opened the door, Mary Jean stepped inside but seeing the accused whom she mistook as Edith's boyfriend, she tried to back out but accused grabbed and pulled her inside and then closed the door. The two girls were then forced to a corner where they could not move. Edith was again, told to

lie down while accused was continuing to mash her breasts. Accused then told Mary Jean to remove her clothes and lie down. He placed himself on top of Mary Jean at the same time inserting one of his fingers into the vagina of Edith. There was a time when accused while mashing Edith's breasts would suck her nipples. Also accused ordered Edith to put his penis into her mouth and holding her head would pump his penis in and out of her mouth. Fearing for her life, the poor Laminoza became an unwilling victim of accused's evil and lustful desire. Without her consent and against Edith's will, accused Allan Castro through force and intimidation sexually molested and assaulted her....

The Court, in arriving at the foregoing facts, finds the sole testimony of Edith Laminoza, though uncorroborated, to be convincing and trustworthy. The Court had intently observed her demeanor and deportment while testifying in the witness stand. Her testimony was direct, clear and straightforward and did not leave any sign or trace of falsity in her declaration. She did not conceal anything. She disclosed in open court how the accused had sexually abused her. She even revealed her previous sexual intercourse with her boyfriend when there was no legal necessity to do so. And this she did just to demonstrate and prove that she was telling the truth. And the Court believes her.

....

In the face of private complainant Edith Laminoza's positive identification of accused as the person who sexually abused her, accused's denial and alibi must fail. Alibi carries no weight where accused is positively identified.

In Criminal Cases Nos. 117199-H and 117200-H, accused was charged with two counts of rape for having twice inserted his penis into the vagina of Edith Laminoza through force and intimidation. Rape is defined and penalized under Articles 266-A and 266-B of the Revised Penal code and not Article 335 which has been expressly repealed by Sec. 4 of R.A. 8353 otherwise known as the Anti-Rape Law of 1997, and is penalized by reclusion perpetua. In rape, penetration is not necessary, mere touching of the pudendum by the male organ is enough.

In Criminal Case No. 117201-H, accused was charged with rape for having inserted his finger into the vagina of Edith Laminoza through force and intimidation in violation of paragraph 2 of Article 266-A (not Article 335 which was already repealed) of the Revised Penal code and penalized by prision mayor only, as the circumstance that the rape was committed with the use of a deadly weapon was not alleged in the information.

In Criminal Case No. 117202-H, accused was charged for rape for having put his penis into the mouth of Edith Laminoza by means of force and intimidation in violation of paragraph 2 of Article 266-A (not Article 335) of the Revised Penal Code and likewise penalized by prision mayor only as the circumstance that the act was committed with the use of a deadly weapon was not alleged in the information.[27]

The third conviction of accused-appellant for rape appears to be based on the sexual intercourse which allegedly took place when Mary Jean Balaoro, one of the complainants, was already inside the room. This time, however, complainant's testimony shows that accused-appellant did not insert his penis into her vagina but that it was his finger which he poked into her vagina.

PROS. LEONARDO:

How far is that papag from the corner where you and Mary Jean [were] on that place?

A: Just near us.

Q: So, after that, what happened?

A: When he was on top of Mary Jean, Mary Jean told him that her stomach is aching.

Q: What else did that person do to you other than inserting his finger?

A: After fingering me, he put his hands on my breasts.

Q: Other than that, what else?

A: "Palipat-lipat po". He is mashing my breasts and putting his finger into my vagina.

Q: What else did he insert into your vagina?

A: None, ma'am.

Q: He did not insert his penis?

A: No, ma'am.[28]

III.

Even assuming that accused-appellant had sexual intercourse with complainant Edith Laminoza, it is probable that it was consensual because complainant failed to struggle and shout for help when she had opportunities to do so.

The first time Edith could have shouted was when she saw Mary Jean and accused-appellant's brother just outside the window of the room where she was allegedly being raped.

Q: After that, what happened?

A: When I was brought to the window, there were people in the window. Mary Jean and the [brother] of Allan.[29]

....

ATTY. LIM:

At the time that you were being molested by the accused, after Mary Jean was forcefully pulled inside the room, Edwin's [brother] is at the door?

A: Standing at the door.

Q: And what was his reaction when [he] saw Mary Jean was pulled inside the room?

A: None sir, because she entered the room slowly.

Q: Mary Jean was entering the room very slowly and Edwin Castro was in front of the room?

A: There is a little bit distance, sir.

Q: You said Edwin Castro was in front of the room, in fact, he saw Mary Jean walking slowly inside the room?

A: Yes, sir.[30]

The second time complainant had opportunity to shout for help but did not was when accused-appellant allegedly pulled Mary Jean Balaoro inside the room while Edwin Castro, the owner of the building and brother of accused-appellant, was outside the door with Mary Jean. Complainant's testimony on cross-examination is as follows:

Q: Did you try to shout for help when the door was open and [he held] the hair of Mary Jean?

A: No, sir.

Q: You just kept silent?

A: Yes, sir.

Q: Despite that there was opportunity for you to shout?

A: I got frightened. (Pinangunahan po ako ng takot).

Q: Mary Jean was with somebody when she knocked at the door?

A: Yes, sir.

Q: What was the name of the companion of Mary Jean?

A: Edwin Castro, sir.

ATTY. LIM:

Edwin Castro is the brother of?

A: Allan Castro, sir.[31]

The third opportunity when complainant could have shouted for help but did not was when accused-appellant was allegedly raping Mary Jean. Indeed, at this time, Edith could have extricated herself from accused-appellant's hold:

PROS. LEONARDO:

When that person inserted his finger into your vagina, what was he doing to Mary Jean?

A: He was on top of Mary Jean.

Q: What was he doing on top of Mary Jean?

A: He was inserting his penis to Mary Jean?

Q: Was he able to insert his penis into the vagina of Mary Jean?

A: Yes, ma'am.

Q: And what did you do when he insert his penis into the vagina of Mary Jean?

A: I just [lay] down.

Q: You did not try to free yourself from that person?

A: No ma'am, because there was no enough space, we were in the corner.

Q: You did not try to kick that person while he was on top of Mary Jean?

A: No, ma'am.

Q: You did not try to shout?

A: No, ma'am.

Q: Why?

A: Because we were on the corner and he will kill us.

Q: While he was having sexual intercourse with Mary Jean and at the same time fingering your vagina, where was that pointed object?

A: He placed it on top of the papag.

Q: How far is that papag from the corner where you and Mary Jean [were] on that place?

A: Just near us.[32]

Whether of not accused-appellant really had a pointed object, presumably a knife, is also doubtful:

Q: You mentioned a while ago that a pointed object was pointed on your neck, what portion of your neck?

A: Witness pointing to her left neck.

PROS. LEONARDO:

Were you able to know what was that pointed object that was pointed on your person?

A: No, ma'am.

Q: How did you know that it was a pointed object?

A: When he pointed it in my neck, I have scratches.[33]

As a matter of fact, Edith admitted she did not see this pointed object:

Q: Miss Witness, you merely never saw this alleged pointed object that you are talking [of] because the room was dark?

A: Yes, sir.

Q: You only gave or say that it is [a] pointed object because you sustained scratches in your neck, isn't it?

A: Yes, sir.

ATTY. LIM:

You only obeyed his order, you did not see this pointed object being used by the accused?

A: He was holding something.

Q: But you never saw it?

A: Yes, sir. I only felt it.[34]

The fourth time complainant had an opportunity to escape was when she was allegedly made to perform oral sex on accused-appellant:

Q: He also told you to put his penis into your mouth?

A: Yes.

Q: Did you do it?

A: Yes, sir.

Q: What did you do to his penis?

A; I put it into my mouth (Sinubo po).

Q: After that, what did you do, you just put it in your mouth, nothing else?

A: He pulled me up and down while his penis is inside my mouth.

Q: Did you try to bite it so that you could escape or did you try to punch his sex organ so that he would be hurt and you could escape?

A: No, sir.

Q: Was Mary Jean inside the room when he was trying to insert his penis into your mouth?

A: Yes, sir.

Q: So, you did not do anything to escape so that there would be a chance for you to escape?

A: Yes, sir.

Q: How old are you at that time?

A: 22, sir.[35]

Complainant's failure to resist gives rise to the reasonable doubt whether, as she claimed, she was forced to have sexual intercourse with accused-appellant. She

could have shouted for help. She could have kicked accused-appellant or pushed him to prevent him from forcing himself on her. But, she did none of these.

It has been held that the offended party in a rape case must put up some resistance or struggle to protect her chastity, not only at the initial stage of its commission but during all the time that the dastardly act is perpetuated upon her. Indeed, a woman's most precious asset is the purity of her womanhood. She will resist to the last ounce of her strength any attempt to defile it.[36]

It is true that any physical overt act manifesting resistance against the act of rape in any degree from the offended party may be accepted as evidence in the prosecution of the acts punished under Art. 266-A par. 1(a) of the Revised Penal Code.[37] Still, however, this provision requires physical overt act that manifests resistance from the offended party. In the case at bar, there is no such overt act but, if at all, a mere initial reluctance.[38]

On top of that, Edith stated in her affidavit that:

Tapos po ay inutusan niya ako na romansahin ko siya. Dahil sa takot ko ay sinunod ko siya at ginagawa naman niya ay nilalamas niya ang magkabila kong suso. Tapos po ay sinabihan niya ako ng "PUTANG INA MO, HINDI NAMAN AKO NALILIGAYAHAN, IKAW NAMAN ANG NALILIGAYAHAN." Tapos po ay muli kaming nag-usap hanggang sa makuha ko ang loob niya na naniniwala siya sa mga sinasabi ko sa kanya. Tapos po ay muli niya akong inutusan na paligayahin ko siya hanggang sa paupuin niya ako sa kaniyang hita at sinabihan niya ako na tuturuan niya ako na magromansa. Tapos po ay pilit niyang ipinasubo sa akin ang kanyang ari hanggang sabihin ko na ayoko na tapos ay pilit niya akong pinaupong muli sa kaniyang hita at sinabihan na romansahin ko siya. Tapos po ay pinahiga niya ako at pilit niya uli na ipinasok ang ari niya at ng hindi niya ito maipasok ay idinikit niya sa kanyang ari ang dalawang daliri niya at ito ay sabay niyang ipinapasok sa aking ari. At ng hindi niya ito maipasok ay muli niya itong pinasubo sa akin at ng sabihin ko na pagod na ako ay si MARY JEAN NAMAN muli ang kanyang pinagsamantalahan at ng makaraos siya dito ay muli niya akong binalikan at ako ay inutusan niya na maupo sa harap niya habang siya ay nakaupo at pilit niyang ipinapasok ang ari niya sa aking ari at ako ay kanyang niroromansa at paulit-ulit na nilalamas ang aking suso. Tapos po ay inutusan niya ako na kumuha ng polbo. Una ay nag polbo ako tapos ay siya naman tapos ay muli na naman niya akong inutusan na romansahin ko siya tapos po ay nahiga naman kami at pinapwesto naman niya ako sa harap niya at ako ang kanyang pinagagawa subalit hindi pa rin niya napatigas ang kanyang ari kayat ang sinabi ko ay tama na.... Tapos ay bago siya umalis ay tinanong niya ako kung taga saan ako at ng sabihin ko na Nueva Ecija ay sinabihan niya ako ng "PUTANG INA MO EDITH, HUWAG KANG MAINGAY HINDI MO AKO KILALA, UUWI KANG BANGKAY SA NUEVA ECIJA." [39]

Finally, Art. 266-a of the Revised Penal Code provides:

Rape; When and How Committed. - Rape is committed:

1) By a man who has carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In Criminal Case no. 117201-H, accused-appellant was found guilty of rape by inserting his finger into the vagina

of complainant Edith Laminoza. Complainant claims that accused-appellant did this while inserting his penis into the vagina of Mary Jean O. Balaoro. Complainant said:

PROS. LEONARDO:

When that person inserted his finger into your vagina, what was he doing to Mary Jean?

A: He was on top of Mary Jean.

Q: What was he doing on top of Mary Jean?

A: He was inserting his penis to Mary Jean?

Q: Was he able to insert his penis into the vagina of Mary Jean?

A: Yes, ma'am.

Q: And what did you do when he insert his penis into the vagina of Mary Jean?

A: I just [lay] down.[40]

It is inconceivable how accused-appellant could be inserting his penis into the vagina of Mary Jean while at the same time inserting his finger into the vagina of complainant Edith Laminoza if these woman had not consented to it.

For the foregoing reasons, we hold that the trial court erred in convicting accused-appellant of the crime charged in Criminal Case Nos. 117199-H, 117200-H, 117201-H, and 117202-H because the prosecution's evidence against him is insufficient to establish his guilt beyond reasonable doubt. While the finding of the trial court on the credibility of witnesses are given weight, this rule must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt.[41] Doubts should be resolved in favor of the accused. Accused-appellant should, therefore, be acquitted of the crime charged in Criminal Case Nos. 117119-H, 117200-H, 117201-H, and 117202-H.

WHEREFORE, the decision of the Regional Trial Court, Branch 163, Pasig City, finding accused-appellant guilty of four counts of rape, is REVERSED and accused-appellant is hereby ACQUITTED.

The Director of Prisons is hereby directed to forthwith cause the release of accused-appellant unless the latter is being lawfully held for another cause and to inform the Court accordingly within ten (10) days from notice.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing and Corona, JJ., concur.

[1] Per Judge Librado S. Correa.

[2] Records, p. 1 (Criminal Case No. 117199-H).

[3] Records, p. 1 (Criminal Case No. 117200-H).

[4] Records, p. 1 (Criminal Case No. 117201-H).

[5] Record, p. 1 (Criminal Case No. 117202-H).

[6] Records, p. 1 (Criminal Case No. 117203-H).

[7] Records, p. 1 (Criminal Case No. 117204-H).

[8] Records, p. 1 (Criminal Case No. 117205-H).

[9] Records, p. 1 (Criminal Case No. 117206-H).

[10] Exh. 1; TSN, June 13, 2000, pp. 6-10; Records (Criminal Case No. 117199-H), p. 100.

[11] TSN, March 28, 2000, pp. 4-8.

- [12] *Id.*, pp. 2-33.
- [13] Exh. F.
- [14] TSN, March 28, 2000, pp. 2-33.
- [15] TSN, May 2, 2000, pp. 2-22.
- [16] TSN, April 18, 2000, pp. 2-5.
- [17] TSN, June 13, 2000, pp. 3-5.
- [18] Records (Criminal Case No. 117199-H), p. 117.
- [19] Rollo, p. 48.
- [20] *People v. Geneveza*, 169 SCRA 153 (1989).
- [21] TSN, March 28, 2000, p. 15.
- [22] *Id.*
- [23] *Id.*, pp. 7-8.
- [24] *Id.*, p. 14.
- [25] TSN, March 28, 2000, p. 13.
- [26] *Id.*, pp. 32-33.
- [27] Records (Criminal Case No. 117199-H), pp. 113-116.
- [28] *Id.*, p. 13.
- [29] *Id.*, p. 9.
- [30] *Id.*, p. 30.
- [31] *Id.*, pp. 27-28.
- [32] *Id.*, pp. 12-13.
- [33] *Id.*, pp. 19-20.
- [34] *Id.*, pp. 30-31.
- [35] *Id.*, p. 29.
- [36] *People v. Tapao*, 108 SCRA 351 (1981).
- [37] REVISED PENAL CODE, ART. 266-D.
- [38] F.D. REGALADO, CRIMINAL LAW CONSPECTUS 479 (2000).
- [39] Records (Criminal Case No. 117199-H), p. 75.
- [40] TSN, March 28, 2000, p. 12.
- [41] *People v. Quima*, 159 SCRA 613 (1988)

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