

## **THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEVY FRED JAMANDRON AND ERMILANDO BELISARIO, ACCUSED-APPELLANTS.**

*G.R. Nos. 80226-27. October 13, 1989*

Ponente: GANCAYCO, J.

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### **GANCAYCO, J.:**

This is an appeal filed by Levy Fred Jamandron and Ermilando Belisario from a Decision of the Regional Trial Court of Pasig, Branch CLXI, dated December 9, 1986, which found both of them guilty of the crime of rape against the person of Rowena D. Agonoy.

As gathered from the records of the case, the facts are as follows:

At about 1:00 o'clock in the afternoon on November 5, 1981, Rowena Agonoy, then only fourteen years of age and a mere elementary pupil, was lying on her bed, about to take her afternoon nap. At that particular time, she was alone in their house at Sitio Olandes, Marikina, Rizal. Her brother had gone to school while her mother was in the house of her grandmother in Quezon City where she worked as a seamstress to earn a living.

Suddenly, Rowena was aroused by a noise and to her surprise saw five men which included appellants Fred Jamandron and Ermilando Belisario. The two were the first to approach the girl. Jamandron used a balisong to threaten her not to shout. Belisario, on the other hand, pointed an icepick at her chest.

While one of the three unnamed culprits stood as a lookout by the door, herein appellants proceeded to satisfy their lust on Rowena. With the help of the two other unidentified persons who held each of her arms, Jamandron pushed her down on the bed. Upon removing his clothes, Jamandron forced his penis into the vagina of the girl. Belisario, on the other hand, sat on her chest and forced his organ into her mouth by pressing her cheeks. Both appellants made a push-and-pull movement. Rowena screamed in pain but nobody could possibly hear her because the next house was 20 meters away.[1]

After the two succeeded in fulfilling their sexual desires, the other three took turns in abusing the victim. As the fifth person was ravishing her, Rowena could no longer take it physically and emotionally so she passed out.

When Rowena regained consciousness, her whole body was in pain. Though she wanted to, she did not inform her parents because of the warning made by her attackers that everyone in her family would be eliminated if she ever told anyone.

Two days after, or on November 7, 1981, not contented with the outrageous violation of the honor of Rowena they had committed before, the two appellants and another unnamed person went back to Rowena's house early in the afternoon. Rowena was then taking a shower. Upon stepping out of the bathroom, she saw the three, who were all grinning, near the door. Then, she was pushed into one of the rooms.

To stop her from making any resistance and to prevent her from shouting, Belisario pointed a balisong at

Rowena's chest. While his two companions held the girl's arms, Jamandron, already naked, went on top of her and did the push and pull movement. Just like the first time, they did not leave until all of them had violated the girl. When one was in the act of molesting the girl, the other two would assist by holding her arms.

In spite of all the threats, Rowena gathered enough courage to tell her mother about the dastardly acts of appellants and their companions on November 15, 1981. Thus, Rowena's mother immediately informed her grandparents.

At the beginning, the family of the victim did not know the proper course of action to take as they were bothered by the warning made by the appellants that all of them would be liquidated if any one else was informed of the rape.

Finally, upon mustering enough courage to denounce the dastardly offense, Rowena and her mother reported the rape incidents on December 7, 1981 to the Philippine Constabulary-Criminal Investigation Service (PC-CIS) at Camp Crame. In the afternoon of the same day, Rowena was examined by a medico-legal expert of the PC Laboratory who made the following report:

**"FINDINGS:**

**"GENITAL AND EXTRAGENITAL:**

"Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with pale brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and tight. There are no external signs of recent application of any form of trauma.

**"GENITAL**

"There is moderate growth of pubic hair. Labia mejora are full, convex and gaping with the dark brown, hypertrophied labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type hymen with a shallow, healed laceration at 4 and a deep, healed laceration at 7 o'clock. External vaginal orifice offers slight resistance to the introduction of the examining index finger and the virgin sized vaginal canal is wide with prominent rugosities. Cervex is normal in size, color and consistency with abundant amount of whitish secretion.

"Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

**"SPERMS**

"Subject is in non-virgin state physically."[2]

On January 14, 1982, two separate complaints for rape were filed against the two appellants based on an Information prepared by Assistant Fiscal Godofredo Legaspi. The cases were docketed as Criminal Cases Nos. 45523 and 45524.

Said cases were jointly heard. After due trial, the lower court rendered a Decision with the following dispositive portion:

WHEREFORE, premises considered, the Court finds accused Levy Fred Jamandron and Ermilando Belisario guilty beyond reasonable doubt of the crime of rape in Criminal Case No. 45523 and hereby sentences each of them to suffer the penalty of reclusion perpetua, to indemnify jointly and severally Rowena Agonoy, the complaining witness, in the sum of SIXTY THOUSAND (60,000.00) PESOS, and to pay proportionate costs.

In Criminal Case No. 45524, the Court finds accused Levy Fred Jamandron and Ermilando Belisario guilty

beyond reasonable doubt of the crime of rape and hereby sentences each of them to suffer the penalty of two (2) reclusion perpetuas, to indemnify jointly and severally Rowena Agonoy, the complaining witness, in the sum of ONE HUNDRED TWENTY THOUSAND (P120,000.00) PESOS, and to pay proportionate costs.[3]

Appellants present five assignments of error in this appeal as follows:

3.1 THE TRIAL COURT ERRED IN CONVICTING BOTH ACCUSED BASED ON MEDICO LEGAL EVIDENCE ON THE RAPE THAT OCCURRED NOVEMBER 13, 1981.

3.2 THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON VACILLATING AND CONTRADICTING TESTIMONY OF THE COMPLAINING WITNESS, ROWENA AGONUY.

3.3 THE TRIAL COURT ERRED IN FAILING TO TAKE INTO CONSIDERATION THE IMPROBABILITY AND IMPOSSIBILITY OF RAPE AS DESCRIBED BY ROWENA AGONUY ON THE INCIDENT OF NOVEMBER 5, 1981 AS WELL AS THE FACT THAT THE INVESTIGATING FISCAL THREW OUT THE COMPLAINT FOR THE RAPE INCIDENTS ON NOVEMBER 9, 11, AND 13, 1981.

3.4 THE TRIAL COURT ERRED IN NOT TAKING INTO CONSIDERATION THE TWO YOUTHFUL ACCUSED AND THEIR REACTION AND ADAMANT DENIAL OF RAPE EVEN UNDER TORTURE DURING THEIR INVESTIGATION BY THE CIS.

3.5 THE TRIAL COURT ERRED IN CONVICTING THE TWO ACCUSED ON DOUBTFUL EVIDENCE OF THE ALLEGED RAPE COMMITTED ON A REGULAR BASIS, NOVEMBER 5, 7, 9, 11, AND 13 WITHOUT COMPLAINT ON ROWENA AGONUY SINCE THERE WAS NO THREAT UPON HER SINCE NOVEMBER 7, 1981 TO DECEMBER 7, 1981 WHEN SHE WAS WITH THE CIS AT CAMP CRAME.[4]

The alleged rape that was supposed to have occurred on November 13, 1981 as referred to in the first assignment of error of the appellants was never proven. Appellants themselves repeatedly mention that the other charges of rape on the different dates mentioned in the complaint of the victim were dismissed by the Fiscal. Nevertheless, the result of the medical examination conducted on the complainant shows that she had previous sexual intercourse, being in a non-virgin state. This corroborates the theory of the prosecution that she was raped before the date of her examination. And it has been established that it was on November 5 and 7, both in 1981, when complainant was raped by appellants and their confederates.

On the second assignment of error, it is an accepted rule that the credibility of a rape victim is not destroyed by some inconsistencies in her testimony more especially if she is testifying on minor matters. In fact, such inconsistencies are to be expected if a witness is unrehearsed and testifies spontaneously. In the case of *People vs. Gozum*,[5] We held that minor inconsistencies in the testimony of a complainant, a 16-year old girl not accustomed to a public trial, do not affect her credibility.

On the third assignment of error, appellants insist that it is impossible for two men to be on top of a woman and do their thing at the same time. Appellants continue that Rowena could have merely twisted her buttocks one way or the other to frustrate the insertion of the penis of Jumandron and she could have bitten the penis of the other. We do not agree.

There is nothing incredible in the story of Rowena. It must be remembered that during the first rape incident, four men ganged up on her simultaneously. While Belisario forced his penis into the girl's mouth and Jamandron forcibly mounted his organ into her vagina, two other men held her arms preventing her from making any possible resistance. If one man could succeed in raping a woman all by himself then all the more when there are others collaborating with him.

The fourth and fifth assignments of error will be taken up together. According to appellants, the trial court should not have convicted them because of the following: 1) the evidence offered by the prosecution was doubtful; 2) no witness was presented to substantiate Rowena's claim and the torn dress was not produced; 3) the appellants were so young at the time of the alleged rape; 4) there was adamant denial on the part of the appellants of the charges of rape; 5) the appellants were tortured; 6) the victim was not abused by them but by her own stepfather; and 7) it took a very long time for Rowena to make a report of the alleged rape incidents.

We do not find the evidence of the prosecution doubtful. We find Rowena a credible witness and seriously doubt that a young, inexperienced girl like her would be able to make up such a ghastly story about how she was physically abused by five men if this did not actually happen to her. We are convinced of the veracity of her testimony. And because of the intrinsic nature of the crime of rape, the conviction of the appellants must depend heavily on the said testimony. Moreover, We must accord due respect to the findings of the trial court since it had the opportunity to examine the witnesses and observe their demeanor while testifying.

The failure to produce the torn dress of the complainant does not weaken the case of the prosecution. It is not improbable that out of fear the complainant threw the same away. Indeed, she revealed her misfortune to her parents only after the lapse of several days.

The youth of the appellants does not thereby exempt them from liability for the crime of rape. They were just as capable of committing the crime. It was clearly established that they in fact ravished the victim on two different dates. Nor does one's adamant denial of guilt mean that he is innocent of a crime. To suggest that an accused should not be convicted of the crime charged for the simple reason that he has tenaciously held on to his plea of innocence is totally misplaced. Even the most notorious criminal stoutly denies his complicity. It is the most convenient of defenses. The denial and alibi of appellants are overturned by their positive identification by the complainant.

As to the allegation of torture on the part of the CIS men, the court finds this accusation to be without basis. According to appellants, they sustained injuries because of the maltreatment that they received in the hands of the CIS men while they were being investigated. Yet, no medical report was submitted in court to support this pretension. The least that appellants could have done was to ask for a medical examination of the injuries that resulted from the supposed physical abuse. This they did not do. Nor was there any complaint lodged with the proper authorities concerning the alleged torture.[6] Photographs of the appellants taken during the investigation where they were allegedly manhandled do not show them with any sign of physical maltreatment.[7] This allegation only surfaced during the trial. Obviously, it is an eleventh hour story not worth any credence.

The assertion of appellants that it was the stepfather of Rowena who abused her impresses the court as a desperate but lame attempt to divert the attention of the court to another person who, because of his relationship and proximity to the rape victim, could be suspected of getting sexually attracted to her. Rowena herself vehemently denies any sexual harassment by her stepfather whom she considers as a kind and good parent. Nonetheless, if the above-mentioned imputation of appellants were true, the Court finds no reason why Rowena would vent her anger at two innocent persons, and for no reason whatsoever, to the extent of filing charges against them and exposing herself to the rigours and disgraceful consequences of a public trial.

Lastly, Rowena explained the reason for the delay in her reporting the matter to her mother and to the authorities. She was scared of the threats made by appellants that not only she but her whole family was to be killed if she revealed the ordeal that she underwent to anyone. The delay in reporting a rape incident by its victim due to death threats is justified.[8]

WHEREFORE, in view of all the foregoing, the appealed DECISION is hereby AFFIRMED in toto with costs

against appellants.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

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[1] Witness was crying when testifying on this; p. 46, Rollo.

[2] Pages 9 to 10, Appellee's brief.

[3] pp. 76-77, Rollo.

[4] p. 89, Rollo.

**[5] 135 SCRA 295.**

[6] pp. 52 - 53, Rollo.

[7] p. 69, Rollo.

[8] People vs. Soterol, 140 SCRA 400.

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