

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR DELA CRUZ, ACCUSED-APPELLANT.

*G.R. Nos. 92442-43. March 23, 1992*

Ponente: MEDIALDEA, J.

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### MEDIALDEA, J.:

In two (2) separate complaints both dated July 26, 1989, Remedios Centeno y Lagrosa, 15 years old, assisted by her mother, Remedios Centeno, charged accused-appellant, Nestor de la Cruz with the crime of rape on two (2) counts. The complaints alleged:

"Criminal Case No. 33236

"That on or about the 8th day of May 1989 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above named accused, with lewd design and with the use of deadly weapon, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with complainant REMEDIOS CENTENO Y LAGROSA, 15 years of age, against her will and without her consent.

"Contrary to law." (p. 5, Rollo)

"Criminal Case No. C-33237

"That on or about the 20th day of June 1988 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and with the use of deadly weapon, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with complainant REMEDIOS CENTENO y LAGROSA, 15 years of age, against her will and without her consent.

"Contrary to law." (p. 6, Rollo)

Upon arraignment, the accused pleaded not guilty to both charges (p. 6, Records).

The prosecution's account of the two incidents was summarized by the trial court, as follows:

"The version of the prosecution could be viewed in this manner: that on June 20, 1988, complainant went to the house of accused Nestor de la Cruz to inquire about a forthcoming karate tournament; instead of answering, accused invited her to the house of a certain Mang Romy; while they were at the house, they went upstairs as requested by the accused; suddenly, accused poked a knife at her neck and she was forced to lie down on a folding bed. He warned her not to scream or else he will kill her and if she tells her parents about the incident, they too, will be killed. After that, he placed the knife near her feet and started taking off her clothes and his clothes, kissing her from the neck down to her breast. After removing her drawers, he placed himself on top of her and he inserted his private organ into her private part. She lost consciousness after that due to extreme pain.

"The other instance was when she went to the residence of the accused due to the insistence of her mother to have a fitting of her denture on May 8, 1989 at around 8:00 in the evening. Upon seeing her, he pulled her inside the house and poked a knife at her neck forcing her to lay down on the floor. He placed the knife near her feet and started taking off her clothes, then he pulled off her shorts. She pleaded to him not to repeat what

he had done previously and asked for pity but instead he placed himself on top of her and started to kiss her and embrace her; thereafter, he placed his tongue inside her private part and then he inserted his organ to her private part; later on, his finger was inserted too.

"Because of fear for her life and family, she did not relate the incidents to her parents until one day when her friend Judith Maningan, a karate student of the accused, related to her friends that she was raped by the accused. It gave her the courage to report the incidents to the police accompanied by her parents and friends including Judith Maningan.

"On recall, the private complainant alleged that although the walls on the second floor of the house of Mang Romy were attached near the roof and not totally covering the entire floor, there was no electricity in the house nor in the neighboring houses on June 20, 1988, that no passers-by could see what was inside the house due to extreme darkness." (pp. 23-24, Rollo)

The accused denied that he had sexual intercourse with the victim on two (2) occasions alleged in the complaint, the first, one year apart from the second. He testified that it was not possible for him to rape the victim in the house of Mang Romy on June 20, 1988 because the said house had no walls on the second floor where the victim claimed that she was raped. Moreover, the house was used by the barangay tanods in their place as a headquarters. Neither was it possible for him to rape the victim in their own house on May 8, 1989 because on the said date, his students in karate were assembled in their place and his wife was working in their house (TSN, pp. 136-138). His testimony was corroborated by his wife, Josefina dela Cruz, a certain Aurora Nielo who was a resident of the same place and a member of the barangay tanod and one of his students in karate, Charlina Garnudo.

After trial, a decision was rendered finding the accused guilty of both crimes. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds accused Nestor de la Cruz y Lorica GUILTY beyond reasonable doubt of the crime of RAPE on two (2) counts and sentences him to double reclusion perpetua and to pay the victim the amount of twenty five thousand (P25,000.00) pesos for each count or a total of Fifty Thousand (P50,000.00) Pesos as damages, and to pay the costs." (p. 27, Rollo)

From the judgment of conviction, the accused-appellant filed this appeal alleging that the trial court erred in convicting him because the evidence of the prosecution is not competent, convincing and satisfactory to prove his guilt beyond reasonable doubt.

The main issue presented in the appeal is the credibility of the main witness for the prosecution, the victim herself. The petitioner alleged that the testimony of the complainant on how the alleged rape was committed was unnatural and against the ordinary habits of life. Her testimony shows that the intercourse, if there was such, was not committed by force or intimidation but most probably, with her consent.

It was also alleged by accused-appellant that the trial court should not have given credence to the testimony of the complainant. Her testimony revealed that the manner in which the rapes were allegedly committed on two occasions was almost the same, thereby indicating that complainant was rehearsed.

We quote below the portion of complainant's testimony which touched on the manner the crimes were allegedly committed. The first rape was allegedly committed on June 20, 1988, as follows:

"Atty. Quimpo:

"Q. Madam Witness, do you remember of any unusual incident on June 20, 1989?

"A. Yes, sir.

"Q. What was this unusual incident that you are referring to?

"A. I went to the place of Nestor dela Cruz, sir, in order to ask him whether the tournament to be held on the 21st will be held.

"Q. And where is the residence of this Nestor dela Cruz, Madam Witness?

"A. At Blk. 4, Camada, Torcillo St. Dagat-dagatan, Kalookan City, sir.

"Q. Were you able to reach the residence of Nestor dela Cruz?

"A. Yes, sir.

"Q. What happened when you reached the place of residence of Nestor dela Cruz?

"A. I asked him whether the tournament scheduled will be held, sir, and after telling me that it will be push (sic) through, he invited me to the house of a certain Mang Romy, sir.

"Q. Who is this Mang Romy that you are referring to?

"A. Our neighbor, sir.

"Q. And did you go to the house of Mang Romy?

"A. No, sir. He invited me, sir.

"Q. Were you able to reach the house of Mang Romy?

"A. Yes, sir.

"Q. Now, how far is this house of Mang Romy to (sic) the house of Nestor dela Cruz?

"A. Only two houses away, sir.

"Q. When you went to the house of Mang Romy, who was with you?

"A. Nestor dela Cruz, sir.

"Q. And were you able to reach the house of Mang Romy?

"A. Yes, sir.

"Q. What happened in the house of Mang Romy?

"A. He invited me to go upstairs, sir.

"Q. Court:

Who invited you to go upstairs?

"A. Nestor dela Cruz, your honor.

"Atty. Quimpo:

"Q. And did you go with Nestor dela Cruz upstairs?

"A. Yes, sir.

"Q. What happened when you went upstairs in the house of Mang Romy?

"A. He poked a knife at me, sir.

"Q. In what part of your body did he poke a knife?

"A. Here, sir.

(witness pointing to her neck). While at that moment, he was embracing me, sir.

"Q. When Nestor dela Cruz poked a knife at your neck, what happened after that?

"A. He forced me to lay (sic) down in the folding bed, sir.

"Court:

Excuse me, you said that Nestor dela Cruz poked a knife at your neck. Will you demonstrate to this court, how Nestor dela Cruz embraced you at that time, assuming that you are Nestor dela Cruz and the court interpreter is you.

"A. Like this, sir.

(witness demonstrating by placing her right hand, the hone holding the knife, over the right shoulder directly to the neck, and then the left hand holding the stomach. The person of the accused just behind).

"Atty. Quimpo:

"Q. Madam witness, you mentioned that Nestor dela Cruz forced you to lay (sic) down on the folding bed was he able to force you to lay (sic) down on the folding bed?

"A. Yes, sir. Because a knife was poked at me, sir.

"Q. Did Nestor dela Cruz say something to you while he was doing that?

"A. Yes, sir.

"Q. What was this that Nestor dela Cruz said to you?

"A. That I must not shout, sir, otherwise he will kill me.

"Q. Did you say something to Nestor dela Cruz at that instance?

"A. Yes, sir.

"Q. What was that, that you said to Nestor dela Cruz?

"A. That he must not continue that act or his plan against my person and that he must took (sic) pity on me, sir.

"Q. Now, after you were lying down on the folding bed will you tell us what happened?

"A. He was kneeling, sir, in front of me and he removed my t-shirt, and placed the knife near my feet, sir. In front of me.

"Q. Was he able to remove your t-shirt?

"A. Yes, sir.

Yes, sir, but I was fighting back, sir.

"Q. Now, what happened after he was able to remove your t-shirt?

"A. He also took off my bra, sir.

"Q. Was he able to remove your bra?

"A. Yes, sir.

"Q. After he was able to remove your bra, what, if any did Nestor do?

"A. He began or started kissing me, sir, from my neck down to my breast, sir.

(witness demonstrated by pointing to her neck down to her breast).<sup>2</sup>

"Q. After kissing you on the face, on the neck and in your upper part, what happened?

"A. He rolled down my short, sir.

"Q. Was he able to take off your short at that time?

"A. Yes, sir.

"Q. After that, what did he do, if any?

"A. He rolled down my panty, sir.

"Q. Was he able to remove your panty?

"A. Yes, sir.

"Q. Now, after your panty was removed, were you wearing any clothing? at that time?

"A. Nothing more, sir.

"Q. Madam Witness, when you were naked and already lying down on the folding bed, what, if any happened after that?

"A. He placed his body on top of me, sir.

"Q. And when he placed his body on top of you, did or was Nestor dela Cruz wearing anything?

"A. None, sir.

"Q. Now, when Nestor placed himself on top of you, what happened next?

"A. 'Ginalaw po niya ako'.

"Q. And what do you mean by, 'ginalaw niya ako'?

"A. He kissed me many times, sir, and all designs or acts of loothness (sic) he did to me, sir.

"Q. What happened after that, Madam Witness?

"A. Because of the extreme pain I suffered, sir, I lost my consciousness, sir." (TSN, pp. 23-26)

As regards the alleged rape committed on May 8, 1989, she testified as follows:

"Q. And what did you tell Nestor dela Cruz at that time?

"A. Upon arrival at that place of Nestor dela Cruz, I verified from him whether his information relayed to my mother regarding my inclusion as participant in the coronation and that my denture will be fitted is true and he answered in the positive, sir.

"Q. And what happened after that?

"A. After that, sir, he told me to wait for awhile, that he will arrange the necessary thing in order that I will appear beautiful, and then he went inside the room, and at that very moment when he opened the door, he

immediately pushed me going inside the house, sir.

"Q. Now, what happened when you were pulled inside the house by Nestor dela Cruz?

"A. He poked a knife at me, sir.

"Q. What particular portion of your body was this knife poked at you?

"A. Also here on my neck, sir. Just like the first occasion, sir.

"Q. Are you referring to the relative position of Nestor dela Cruz and you when he first poked a knife on you on June 20, 1989? (sic)

"A. Yes, sir.

"Q. Now, after Nestor dela Cruz poked a knife at your neck, what happened?

"A. He told me to lay (sic) down, sir.

"Q. Did you follow him or did you lay (sic) down?

"A. Yes, sir.

"Q. Where did you lay (sic) down?

"A. On the floor, sir.

"Q. What happened after you laid down on the floor?

"A. He brought down the knife, sir.

"Q. Where did he place the knife?

"A. Also near my feet, sir.

"Q. What happened after that?

"A. He removed my shirt, sir.

"Q. After he removed your shirt, what else happened?

"A. He took off my bra, sir.

"Q. After he removed your bra, what did he do, if any?

"A. He also rolled down my panty, sir.

"Q. After removing your panty, what else did Nestor dela Cruz do?

"A. He took off his short, sir.

"Q. During that time, did he say something to you?

"A. Yes, sir. That he will kill me if I will shout at that very moment, sir.

"Q. How about you, did you say something to Nestor dela Cruz?

"A. Yes, sir.

"Q. What was that?

"A. That he must not repeat the same act against me, and he must took (sic) pity on me, sir.

"Q. After he removed his short, what did he do or what happened after that?

"A. He placed his body atop of me, sir.

"Q. What happened when he placed his body atop of you?

"A. He kissed me many times, sir, and he embraced me and he placed his tongue inside my private part and then he inserted his private organ inside my private part, sir.

"Q. What happened after that, Madam Witness?

"A. He fingered me, sir, or he inserted his finger inside my private part, sir.

"Q. What else did Nestor dela Cruz did at that night?

"A. He inserted his private organ to my private part, sir.

"Q. After that what happened, Madam Witness?

"A. I was crying, sir.

"Q. And after that, what happened after that, if any?

"A. No more, sir.

"Q. Did you tell your parents about these incident, Madam Witness?

"A. No, sir.

"Q. And why did you not tell them about these incidents?

"A. Because he will kill me, if I will report the incidents to my parents and then he will kill members of my family if I will report the same." (TSN, pp. 28-30)

There are three settled principles to guide an appellate court in reviewing the evidence in rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove it but more difficult for the persons accused, though innocent, to disprove it (*People v. Aldana*, G.R. No. 81817, July 27, 1989); (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense (*People v. Villapana*, G.R. No. 53984, May 5, 1988, 161 SCRA 72, cited in *People v. Calixto*, G.R. No. 92355, January 24, 1991, 193 SCRA 303).

Indeed, it is so easy to allege that one was raped by a man. As in this case, all that the victim had to testify to was that the accused poked a knife at her, threatened to kill her if she shouts, and under these threats, undressed her and had sexual intercourse with her. The question then that confronts the trial court is whether the complainant's testimony is credible.

The matter of credibility of witnesses is peculiarly within the province of the trial judge (*People v. Tejada*, G.R. No. 81520, February 21, 1989, 170 SCRA 497). In the instant case, the trial judge, commenting on the credibility of the complainant's testimony ruled:

"Firstly, private complainant while on the witness stand appeared candid, sincere, honest and was direct to the point in her answers. As between her positive testimony as against the denial of the accused, the Court gives credence to the former because her testimony was logical, straight-forward and more probable. Besides, her credibility was not in any manner shaken by the exhausting and humiliating cross-examination, to which she

has been exposed. (p. 25, Rollo)

A cursory reading of the direct testimony of the complainant revealed that her testimony was spontaneous, straightforward. However, a closer scrutiny of the complainant's testimony itself in relation to the revelations supplied by the defense witnesses revealed some flaws.

Complainant did not state on direct examination the time she went to the house of the accused-appellant. On cross-examination however, she said that she went to the accused's house at nine o'clock in the evening (p. 2, TSN) allegedly to inquire from the accused whether the tournament scheduled the next day would push through.

Complainant testified that the accused invited him to the house of a certain Mang Romy, which was two houses away from the accused's house. She was invited on the pretext that the accused would tell her something very important. Then the accused asked her to go up to the second floor. Two witnesses for the defense, however, testified that the house of Mang Romy is a two-storey structure with no walls, hence, whatever would have transpired in the second floor and on a folding bed would be visible from the streets and from the surrounding houses. None of the neighbors reported any unusual incident on that date and time. It is improbable that the accused-appellant would use such a conspicuous place to commit a crime and in such a surrounding. These facts cast doubt on the claim of the complainant that she was raped in that house of Mang Romy. If ever something did happen that night, she cooperated in its consummation.

It is likewise hard to believe that the accused-appellant in the alleged second rape would use his own house where his wife and child live to commit such heinous crime. Since the said house was used not only as a residence, but also as a clinic and a gymnasium, people are expected to come and go. The accused-appellant could not have accomplished the rape if the complainant did not in any manner cooperate in its consummation in silence.

It cannot be believed that the accused-appellant used force or intimidation in having sexual intercourse with the complainant. In the first place, the accused-appellant did not seek the complainant with the intention of committing the crime. It was the complainant who sought the accused-appellant in his house and who followed his order to go to the unlighted house of Mang Romy and to the second floor of the same house. Knowing that the house was not lighted, she had no reason to go up to its second floor at the request of the accused-appellant. Second, considering that the house of Mang Romy had no walls, it was easy for complainant to shout for help. It was alleged though that the accused-appellant held a knife and threatened to kill her but complainant also testified that the accused-appellant put down the knife near the complainant's feet while he was caressing and undressing her. She said that she fought back. How, she did not elaborate.

What strikes Us as unnatural is that while she had all the opportunities to escape or shout for help, knowing that the accused-appellant relaxed his guard on her while he allegedly removed her t-shirt, then her bra, then kissed her neck, her breast then rolled down her panty and finally her bra, she did not.

The same observation can be said regarding complainant's account of the second incident. Instead of avoiding her ravisher, she again made herself available to the accused-appellant. She knew that the accused also just put down the knife near her feet, yet she failed to exert any effort to thwart the attempt of the accused. She recalled that the accused kissed her several times, embraced her, placed his tongue in her private part and inserted his penis in her vagina. But she never testified on the effort she exerted to prevent the accused from succeeding in having sexual intercourse with her.

Another point that creates a reasonable doubt in the mind of the Court is that after both incidents, the complainant never reported the matter to her parents. The parents as well noticed nothing unusual with their daughter. If it were true that she was ravished, the most natural-thing for her to do, considering her age of 15, just on the early

stage of her womanhood, was to manifest her outrage, report the incident to her parents or to the authorities. And, instead, the matter surfaced only after the complainant and her friends had a girls' talk and where she revealed to her friends that the accused-appellant had sexual intercourse with her. She did not relate to her friends that she was raped. She just said "ginalaw ako" not "ginahasa ako." It was only when her mother heard of this story that she confronted her and they filed the case in court.

We noticed also the discrepancy between her testimony during trial and her statement made before the inquest fiscal on July 25, 1989. In the latter, she said that:

"x x x nagpunta ako sa bahay nila para tanungin siya (referring to the accused-appellant) tungkol sa coronation ng contest ng pagandahan sa sang-ayon sa kanya ay isasali niya ako na nounge nag-uusap na kami ako ay muli niyang hinatak at tinutukan ng patalim at pinilit na pahigain x x x."

In her direct testimony, however, she said that her mother forced her to go to accused-appellant's house to have her dentures fitted. There was a need to mention in her testimony before the court that her mother forced her to go to the place of accused-appellant to give the court an impression that her going to accused-appellant's place was not of her own volition. This was never mentioned in her sworn statement before the fiscal and this matter could not have been omitted in her first declaration if it were true.

It is probable that the herein accused-appellant had sexual intercourse with the complainant. It is doubtful, however, that force or intimidation was used by the former to consummate the act in any of the instances complained of by the complainant. Proof of the alleged intimidation used by the accused-appellant on the complainant is not strong enough and not uninterrupted as to have prevented the complainant from resisting it or from crying for help.

ACCORDINGLY, the decision of the Regional Trial Court is REVERSED and the accused-appellant is ACQUITTED of the crimes charged against him.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Cruz, and Griño-Aquino, JJ., concur.  
Bellosillo, J., on leave.

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