

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCOS ABUYAN, JR., Y UDARBE, DEFENDANT-APPELLANT.**

G.R. Nos. 95254-55. July 21, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Accused-appellant Abuyan was charged with two (2) crimes of rape in two (2) separate informations filed by private complainant Gelen Udarbe on March 5, 1984. The informations read as follows:

"Criminal Case No. 9804"

"That on or about the 1st day of November, 1983, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats and intimidation with the use of a kitchen knife, did then and there willfully, unlawfully and feloniously have carnal knowledge with one GELEN UDARBE Y ELAIDA, against her will and consent." (Rollo, p. 1)

"Criminal Case No. 9805"

"That on or about the 16th day of November, 1983, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threats and intimidation with the use of a kitchen knife, did then and there willfully, unlawfully and feloniously have carnal knowledge with one GELEN UDARBE Y ELAIDA, against her will and consent." (Rollo, p. 12)

Upon arraignment on May 8, 1984, Abuyan entered a plea of not guilty in both cases. After trial, he was found guilty of the two (2) crimes of rape in a decision rendered by the trial court on February 11, 1990. The dispositive portion of the decision reads:

"Considering all that has been stated the Court finds the accused MARCOS ABUYAN, JR., guilty beyond reasonable doubt of the crimes of rape in the two above-entitled cases penalized under the provisions of Article 335 of the Revised Penal Code.

"WHEREFORE, the commission of the crimes not having been attended by any mitigating or aggravating circumstances, the Court hereby sentences the accused MARCOS ABUYAN, JR., in each of the above-entitled cases, as follows:

1. To suffer the penalty of RECLUSION PERPETUA, with all the accessory penalties prescribed by law;
2. To indemnify the private offended party Gelen Udarbe in the sum of THIRTY THOUSAND (P30,000.00) Pesos, without subsidiary imprisonment in case of insolvency; and
3. To pay the costs." (Rollo, p. 108)

The accused now questions the aforementioned decision and assigns the following as errors allegedly committed by the trial court:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF COMPLAINING WITNESS GELEN UDARBE AND COMPLETELY DISREGARDING THE TESTIMONY OF THE ACCUSED.

II

THE TRIAL COURT ERRED IN FINDING THAT RAPE WAS COMMITTED BY THE ACCUSED TWICE - FIRST, ON NOVEMBER 1, 1983 AND SECOND, ON NOVEMBER 16, 1983, THROUGH THE USE OF FORCE AND INTIMIDATION.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED MARCOS ABUYAN, JR. GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF RAPE AS CHARGED." (Rollo, p. 68)

The facts of the case as established in the People's Brief are as follows:

"Appellant and complainant, Gelen Udarbe, are first cousins. His mother is the sister of her father. In November 1983, appellant and complainant were staying in the house of her aunt, Erlinda Pedrera, married to Basilio Pedrera, at Pembo, Fort Bonifacio, Makati, Metro Manila. Her father brought her to the Pedreras sometime in May 1983 in order for her to continue with her studies. She was only 13 years old. Appellant, who is older by 12 years, had been living with the Pedreras since 1982. He was employed at Philippine Textile (TSN, July 10, 1983, pp. 3-5; November 20, 1987, pp. 2-3; July 1, 1988, pp. 2-3).

"On November 1, 1983, at about 1:00 A.M., in the early dawn, while the Pedrera spouses were not at home as they brought their sick child to a doctor, appellant crept to her, held her right hand and pulled her hair. Awakened and surprised, she told him: 'Kuya, Jr., bitiwang mo ako, ano ba ang gagawin mo sa akin, wala naman akong kasalanan sa iyo.' (TSN, July 10, 1984, pp. 6-7). She related in court how she was sexually assaulted on November 1 and 16, 1983 in the following way:

"Q. After telling Marcos Abuyan that you have not done anything wrong to him, what did he do?

"A. I shouted for help when he did not let me go, Sir.

"Q. And when you shouted for help, what happened?

"A. He touched his back then suddenly he pulled out a knife from his back, Sir.

"Q. When this accused Marcos Abuyan pulled out a knife, what happened?

"A. He poked the knife at my neck, Sir.

"Q. After that, what happened?

"A. He pushed me to the bed where I am sleeping, Sir.

"Q. Do you know what the accused Marcos Abuyan was wearing at that time?

"A. Brief lang po, Sir.

x x x x x x x x

"Q. You stated that you shouted when the accused Marcos held your right hand, and my question is very clear, what happened to your call of assistance?

"A. When he pointed the knife at my neck, he told me to stop shouting and he told me that he will kill me if I don't stop shouting/if I kept on shouting, Sir.

"Q. Was there somebody who responded to your shouting?

"A. Nobody, Sir.

"Q. Why do you say that nobody responded to your shouting?

"A. We were far away from neighbors, Sir.

"Q. What about the people inside the house where you were staying?

"A. My auntie and Kuya Basil went to the doctor because his/their son or daughter is sick.

"Q. In other words, when you said Kuya Basil, you are referring to whom?

"A. To the owner of the house, Sir.

x x x

"Q. On that particular date, November 1, 1983 and on that particular time were there other people than your auntie and uncle?

"A. On November 1, 1983, my auntie and uncle went to the doctor because their son or daughter was sick and we were the only two left and that was when he raped me, Sir.

"Q. You said Miss Gelen Udarbe that accused Marcos Abuyan poked a knife or pointed a knife in your neck and after which he pushed you down in your bed, after that what else happened?

"A. I cried and he undressed my skirt, Sir.

"Q. Now, how did Marcos Abuyan undressed (sic) your skirt?

"A. He took it upward and then downward because my skirt was fastened very well, Sir. He could not pull it upward so he just pulled it downward again.

"Q. When you said the accused pulled your skirt upward and downward and downward (sic), what hand did he use in removing your skirt?

"A. Both hands, Sir.

"Q. You said awhile ago, Miss Udarbe that the accused was holding a knife with his left hand, what happened to the knife when he started undressing or removing your skirt?

"A. He took the knife away from my neck and started undressing my skirt, Sir.

"Q. After he started undressing your skirt, what happened else (sic)?

"A. I kicked both of my legs against him, Sir.

"Q. What happened to the accused when you kicked him?

"A. He boxed both of my thighs, Sir.

"Q. After boxing you on both thighs, what happened to you?

"A. Both of my legs were cramp (sic) and then I could not move I just started crying because, I could not do anything and he started taking my panty off, and he was able to get my panty off, Sir.

"Q. After the accused took off your panty, what else happened?

"A. I stood up and he took off his brief also.

"Q. Do you mean to tell us that when the accused removed your panty, you stood up and the accused likewise took off his brief, is that what you mean?

"A. When he was able to remove my panty, I stood up even though it was hard for me to stand up, Sir.

"Q. Were you able to stand?

"A. I was just in stooping position ready to stand up but after he took off his brief he pushed me again to the bed, Sir.

"Q. After that what else happened?

"A. When he pushed me to the bed, he went on top of me and he forced me to spread my legs and he forced his organ to my private part or organ, Sir.

"Q. Was he able to do that?

"A. Yes, Sir, he forced to push his private organ to my organ, Sir.

"Q. When you said the accused forced his private organ to enter your private organ, will you kindly explain to the Court, how did he force his organ to your private part or organ?

"A. He pushed me on the bed where I was lying and he took off my panty. I stood up and he also took off his brief. He came again to me and pushed me again to bed and he came over me and spread my legs sideways and forced to insert his organ to mine and when I felt it to be very painful, that was the time when I lost consciousness, Sir.

"Q. When you said that when you felt that it was so painful, and suddenly you became unconscious, can you tell the Court what happened after that?

"A. When I woke up at about 6:00 a.m. I saw myself in blood stain and my body was aching most specially my private part and when I stood up, I saw that my private part was still bleeding and I was not able to work yet because of the pain that I felt on both legs.

x x x x x x x x

"Q. Before I proceed, Your Honor, this is already a joint trial of criminal cases nos. 9804--05. Where were you on November 16, 1983?

"A. On November 16, 1983, I was sleeping at (sic) my room and the reason why I woke up was that Marcos Abuyan suddenly entered into (sic) my room and he pulled my blanket and he puffed smoke from his mouth coming from a cigarette like straw, as thin as a straw which he was smoking at that time, Sir.

"Q. After that, what happened to you?

"A. He stared at me, Sir.

"Q. And then?

"A. I stood up from my bed, and when I stood up, he slapped me at my face with his left and right hands, Sir.

"Q. After slapping you with his left and right hand, what happened?

"A. I fell on my bed and he forced me to stand up but he held both my hands and I told him, Kuya Jr., please

release me because I feel pain on both my hands.

"Q. When you said Kuya Jr., to whom are you referring to?

"A. To Marcos Abuyan, Sir.

x x x

"Q. My question Miss Gelen Udarbe is, when you pleaded to the accused Marcos Abuyan, what did Marcos Abuyan do?

"A. He release (sic) again my left hand and he took again a knife, Sir.

"Q. What did he do with the knife?

"A. He poked the knife at my neck, Sir.

"Q. After that, what else happened?

"A. I could no longer shout and he pushed me to the bed, Sir.

"Q. After pushing you to the bed, what else happened?

"A. He took away the knife from my neck and immediately I kicked both of my legs against his face.

"Q. When you kicked Marcos Abuyan with your feet, what happened to Marcos Abuyan?

"A. He just stood still and I immediately stood up but upon standing, he boxed me in my stomach and both of my thighs, Sir.

"Q. What happened to you when he boxed you in your stomach and both of your thighs?

"A. When he boxed me in my stomach and both of my thighs/legs it was very painful that I lost consciousness.

"Q. What time did you regain consciousness?

"A. More or less 6:30 a.m., Sir.

"Q. Will you kindly describe to the Honorable Court what you saw and what you feel/felt when you regain (sic) consciousness at about 6:30 a.m., on that particular day on (sic) November 16, 1983?

"A. I just noticed that I do not have my panty anymore, and my skirt was undressed and my whole body was painful, Sir, and when I stood up, I saw Marcos Abuyan in the kitchen and when I saw him, he was dressing up.

"Q. By the way, Gelen Udarbe, on that particular night of November 16, 1983, where was your auntie Erlinda Pedrera?

"A. They went to the party with her husband and child, Sir, on that particular time/date, Sir, so we were only two who were left in the house.

"Q. After you regain (sic) consciousness, you saw the accused in the kitchen and he was dressing up, what else happened after that?

"A. He came to me and threatened me that if I tell anybody about the incident he is going to kill me.

x x x x x

"Q. Let's go back to the incident Miss Udarbe, on this particular day November 16, 1983, on this night, that

you have mentioned, you stated that he took a knife again and poked the point of the knife in your neck, where did he get the knife?

"‘A. He took it out from his yellow short pants, he inserted it there, Sir.’

(Pages 5 to 23, TSN dated July 10, 1984).

(pp. 6-12, Decision)

"After she was sexually abused, appellant repeatedly warned her not to tell anybody or he would kill her (TSN, Ibid., pp. 21-23; August 9, 1984, pp. 13 and 17; August 21, 1984, pp. 4 and 14).

"On November 20, 1983, complainant stopped attending her classes at the Pateros Municipal High School where she was in first year high school. She was bothered by her experience and she could no longer concentrate on her lessons (TSN, August 7, 1984, pp. 11 and 18).

"From then on, her woes and misfortune continued to haunt her. On January 17, 1984, Gelen started to have vaginal bleeding. Since she had profuse bleeding which did not stop, she was brought to the nearest physician, Dr. Thelma Galla. On February 10, 1984, Dr. Galla conducted an internal examination and found that Gelen's introitus or opening was openly admitting two fingers which means that something had been inserted in her vagina (TSN, September 18, 1986, pp. 3-6, 8).

"On February 15, 1984, Jaime Udarbe, Gelen's father, received Erlinda Pedrera's telegram informing that something happened to Gelen. After selling his carabao in order to raise the needed money, he immediately left home at barrio An-an, Hinundayan, Southern Leyte, and took the boat for Manila.

"Upon his arrival on February 22, 1984, Gelen confided to her father that she was raped twice by appellant. Jaime Udarbe, Gelen, the Pedreras and Maria Alas immediately went to the barangay captain of Pembo, Fort Bonifacio, to report the matter. Since the barangay captain was uncooperative, they proceeded the following morning, on February 23, 1984 to the Civil Relations Office (CRO) at Fort Bonifacio. Major Pansifare, however, advised them to proceed to the Post Provost Marshal at Camp Crame.

"On February 24, 1984, in the PC Crime Laboratory at Camp Crame, Dr. Dario Gajardo, medico-legal examiner, conducted a general and extragenital examination on Gelen. He found that there was (sic) deep healed lacerations of the hymen at 6:00 o'clock and shallow healed lacerations at 3:00 and 9:00 o'clock (TSN, April 3, 1986; Exhibit C).

"On March 1, 1984, complainant, accompanied by her father, the Pedreras and Elsa Muli, filed her complaint against appellant before the police authorities of the Southern Police District at Fort Bonifacio, Makati, Metro Manila. Corporal Ernesto Tinio took her formal statement or 'Sinumpaang Salaysay' (Exh. A; TSN, October 25, 1984, pp. 4-6) and eventually two (2) complaints of rape were filed." (Appellees' Brief, pp. 141--142, 151-154)

The accused-appellant in his first assigned error assails the credibility of Gelen Udarbe's testimony as not plausible, credible, straightforward and sincere.

We find no merit in the appellant's contention. The matters alleged by the accused-appellant in support of the contention refer to minor, procedural and insignificant details.

Complainant's inconsistencies, if that is what they were, merely represented minor lapses during her direct examination, which do not affect her credibility. Such minor lapses are to be expected when a person is recounting details of a humiliating experience which are painful to recall. She was testifying in open court in the presence of strangers, on an extremely intimate matter, which is not normally talked about in public; such circumstances may be expected to cause witnesses' narratives to be less than letter-perfect (People v. Magaluna,

G.R. No. 66755, January 23, 1992).

The arguments of the defense to stress the complainant's alleged lack of credibility are strained. The defense has labored hard trying to look for error in each and every detail of the complainant's testimony but has come up with nothing except peripheral and minor details.

These minor inconsistencies in the complainant's testimony do not affect her credibility (*People v. Seculles*, 132 SCRA 653 [1984]) especially if what is challenged is the credibility of a fifteen year-old girl not accustomed to public trial.

Moreover, the court usually lends credence to testimonies of young girls especially where the facts point to their having been victims of sexual assault. As held in *People v. Lor*, 132 SCRA 41 [1984], a 15-year old unlettered girl could not have merely concocted her rape charge.

Gelen Udarbe, the victim in the case before us is basically a barrio lass even if she had stayed for seven (7) months in the city. As such, she was not yet fully exposed to the sophistication and complexities of city life.

The accused-appellant further questions the reaction of the victim during and after the rape. He claims that the victim did not offer verbal or tenacious resistance during the alleged rape.

The records show that there was resistance on the part of Gelen and that force was likewise applied to her so much so that she lost consciousness. The accused-appellant again questions the victim's loss of consciousness itself saying that it was an unnatural reaction of a rape victim to lose consciousness for five (5) hours and to go back to sleep again after regaining consciousness.

A young woman who has just been sexually assaulted is not expected to immediately regain composure as she is, at this point, confused and dazed by the experience. There was nobody around to whom she could turn to after such a horrible experience. Considering her tender age, her inaction was quite normal. She was alone and afraid such that she decided to keep her sad experience to herself. The accused-appellant finds this inaction on the part of complainant for four (4) months questionable.

There is nothing surprising about the complainant's reaction. She was repeatedly threatened by the accused that he would kill her if she told anybody of the incident. While she was not physically prevented from going out of the house to report the incident to the authorities, the fact is that the accused was living in the same house with her and she was repeatedly warned that she will be killed. This threat on one's life is sufficient to frighten a 15-year old girl. There was intimidation and moral ascendancy by the accused being an older cousin. Thus, as held in the case of *People v. Soterol*, 140 SCRA 400 [1985]), complainant's delay in reporting the rape incident due to death threats is justified.

We held in the case of *People v. Oydoc*, (125 SCRA 250 [1983]) that:

"One should not expect a 14-year old girl to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life x x x and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapists' threat on their lives x x x." (at p. 256)

This fear of the accused was clearly the reason why the victim requested first that her father be around before she made any statement. She needed an assurance of safety.

What is important is that the trial court, which had observed the demeanor of the witnesses during their testimonies, found the testimony of the complainant credible. She testified with guts and candor with the sole

objective of seeking justice for her plight. It has been long settled in our jurisdiction that the findings of the trial courts will not be disturbed considering that the latter are in a better position to evaluate testimonies, having seen and heard the witnesses themselves and observed their demeanor and manner of testifying unless the trial court had overlooked or misconstrued some material facts which if considered would affect the result (*People v. Villeza*, 127 SCRA 349 [1984]).

Secondly, the accused-appellant claims impossibility of rape on November 1 and November 16, 1983 and his use of force and intimidation on the victim, interposing the defense of alibi to exculpate himself.

The accused-appellant claims that he was in San Fernando, Pampanga from November 15 to November 17 to help in the preparations for the birthday celebration of his Auntie's son.

We find the defense of the accused-appellant extremely flimsy because the distance from his place of work to San Fernando, Pampanga is a mere 2 1/2 hour-trip by bus. There was no need for him to go there a day before and stay there a day after. He could leave early in the morning of November 16 and still be on time for his cousin's party and similarly, he could return home after the party in the afternoon of November 16. The point is, it was not impossible for him to commit the crime.

The minimum requirement of the defense of alibi is physical impossibility for the accused to be at the scene of the crime. The accused has not met this minimum requirement as explained in the foregoing paragraph. Moreover, alibi is useless where the rape victim positively identified the rapist (*People v. Malabad*, 133 SCRA 392 [1984]). There is no reason to doubt the complainant's positive identification of the accused as they had been living in the same house for seven (7) months. What is decisive in rape cases is that complainant identified the accused (*People v. Ramilo*, 146 SCRA 258 [1986]).

Neither is appellant's contention tenable that rape was impossible to have been committed in the Pedrera house considering the number of people living there. The accused-appellant has not presented other evidence except his own self-serving declaration. He did not even endeavor to present any of the persons allegedly in the house. On the contrary, the prosecution presented Erlinda Pedrera's corroborating testimony that in the afternoon of October 31 up to the afternoon of November 1, 1983, they were not at home because they brought their sick child to the doctor. The complainant further testified that the Alases and the del Rosarios were not living in the Pedrera's house but were staying somewhere in Mandaluyong. This was not rebutted by the defense.

The guilt of the accused-appellant has been proven beyond reasonable doubt in the absence of motive on complainant's part in filing the case. (*People v. Tumaliuan*, 129 SCRA 682 [1984]).

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby **AFFIRMED** in toto.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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