

**[ C.R. No. 29932, May 31, 2007 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY SOLIVERES, JR., ACCUSED-APPELLANT. [\*]**

This is an appeal from the January 5, 2006 Decision of the Regional Trial Court, Branch 42, Virac, Catanduanes, in Criminal Case No. 2757, finding accused Henry Soliveres, Jr. guilty beyond reasonable doubt of having committed the crime of Rape Through Sexual Assault against one Jesusa (Susan) Santelices. The Information indicting the accused reads:

INFORMATION

"The undersigned First Assistant Provincial Prosecutor accuses Henry Soliveres, Jr. of the crime of RAPE defined and penalized under Articles 266-A and 266-B of the Revised Penal Code as amended by R.A. No. 8353, committed as follows:

That on or about the 27th day of September 1999 in the afternoon in Barangay Sta. Elena, Municipality of Virac, Province of Catanduanes, Philippines within the jurisdiction of the Honorable Court the said accused by means of force and intimidation willfully, unlawfully and feloniously embraced, kissed and inserted his finger into the genital organ of Jesusa Santelices against her will and consent.

CONTRARY TO LAW."<sup>[1]</sup>

During the trial, the prosecution presented, as witnesses, Jesusa Santelices, the complainant herself; Marites Canon, a co-boarder of the victim; Evelyn Jose, her supervisor; Consolacion Santelices, her mother; and Dr. Lilian Olfindo, the examining physician. As stated in the "Counter-Statement of Facts" in the Appellee's Brief, the thrust of its evidence is as follows:

"On September 27, 1999, around 12:00 o'clock noon, Jesusa Santelices and Marites Canon were having lunch at their boarding house in Barangay Sta. Elena, Virac, Catanduanes. Suddenly, appellant arrived and entered the boarding house. He was hell-bent on winning Jesusa's heart after the latter broke up with him on December 31, 1998, to the point that he threatened to kill Jesusa's father, burn her boarding house and make trouble at Century Trading where she used to work. Upon the prodding of Marites, Jesusa entertained appellant at the sala but told him that they will be leaving for work by 12:45 o'clock in the afternoon. Immediately, appellant held Jesusa's hands. Jesusa resisted by boxing and kicking appellant but the latter prevailed. Appellant thereafter told Marites that Jesusa would not report for work as she was sick. When Marites was about to leave, Jesusa desperately tried to block the door but appellant pulled Jesusa away from

the door and Marites was able to go out. Bothered, Marites reported the incident to her supervisor when she reached Century Trading.

Meanwhile, about 3:00 o'clock in the afternoon of that day, appellant got the key of Jesusa's room from her handbag. When appellant was opening Jesusa's room, the latter tried to run out of the boarding house but appellant pulled her back. Jesusa shouted and struggled to free herself from appellant, but to no avail. Appellant then locked the room.<sup>1</sup> Jesusa switched the light on but appellant switched it off. She opened the windows but appellant closed them. While holding Jesusa's hand, appellant kissed her lips but she bit him. Appellant thereafter attempted to forcibly remove Jesusa's panty. She closed her legs and kicked appellant but the latter inserted his legs between her legs. As Jesusa was already exhausted, appellant succeeded in removing her panty and inserted his finger into her vagina. Jesusa felt pain. Appellant unzipped his pants and put out his penis. He then forced Jesusa to hold his penis but she resisted. Because of Jesusa's continued struggle to free herself from appellant, the latter's finger was removed from her vagina.

When appellant felt the call of nature, he opened a condom and urinated into it. Thereafter, he got another condom and inserted it into his penis. Realizing that appellant was bent on raping her, Jesusa pretended that she was willing to submit herself to protect her life. Jesusa kissed, embraced and made him believe that she would marry him. Fortunately, Jesusa was able to convince appellant that she would first take a bath as she was perspiring. Appellant allowed her to leave the room. Jesusa then hurriedly changed clothes in the comfort room and sneaked out of the boarding house, escaped through the garage, and went home.

When Jesusa arrived in their house at Timbaan, San Andres, Catanduanes, she was crying and shocked. Her hair was disheveled and her dress was torn.

Marites was surprised upon arriving at their boarding house when she found their room in disarray. She found the victim's sandal's heels detached and a wrapper of trust condom inside their room.

On September 28, 1999, Jesusa revealed her horrifying experience to her family. She was accompanied by her mother in reporting the incident to the police. On September 29, 1999, Jesusa submitted herself for medical examination. Dr. Gilberto S. Bernardo, Medical Officer III of the Provincial Health Office of Virac, Catanduanes found an abrasion and laceration in the victim's hymen measuring one (1) centimeters at 11:00 o'clock position. Dr. Bernardo concluded that the laceration and abrasion in the victim's hymen could have been caused by a finger."<sup>[2]</sup>

Those who testified for the defense were accused Henry Soliveres himself and Rosabella Azul. The defense of the accused is that he and Susan were sweethearts from May, 1998 to December, 1998. They did not formally break up. In August, 1999, they become lovers again and they frequently went out for a date but she cautioned him that her parents should not know about their relationship because she would be reprimanded.<sup>[3]</sup>

As to what happened on September 27, 1999, he related that he went to her boarding house because she asked him. When he was there, she told him not to frequent her boarding house because her parents might learn about it. When he answered that it was not a problem because if his petition to go to U.S. would be approved, he would be leaving. At this point, she got angry and hysterical crying that, after all her sacrifices, he would just leave her. To avoid making a scene, he dragged her inside her room because of the presence of her co-boarders and neighbors. While inside her room, he took her key and locked her inside the room. He opened the door only when she stopped making noise.<sup>[4]</sup>

He denied removing her panty and inserting his middle finger inside her vagina.<sup>[5]</sup>

His witness, Rosabella Azul, informed the court that he knows the accused and Susan. She averred that Susan is a girlfriend of Henry Soliveres because she saw them going together at Blossom's Restaurant sometime in the third week of August, 1999.<sup>[6]</sup>

On January 5, 2005, the trial court handed down the subject decision, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Henry Soliveres, Jr. guilty beyond reasonable doubt of the crime of rape by sexual assault, as defined and penalized under Articles 266-A (2) and Article 266-B, respectively, of the Revised Penal Code and sentences him to suffer the indeterminate prison term ranging from 2 years, 4 months and 1 day of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum. The accused is also ordered to pay the victim Jesusa Santelices P25,000.00 as civil indemnity and P25,000.00 as moral damages.

SO ORDERED."

In reaching said determination, the trial court gave credence to the evidence of the prosecution as it rejected the sweetheart defense of the accused. The trial court's ratiocination of its decision reads:

#### "THE RULING OF THE COURT

"In the case at bar, the victim, Jesusa Santelices, categorically testified that the accused defiled her on September 27, 1999. Her testimony was positive, straightforward and unhesitating. She maintained her testimony despite the lengthy and grueling cross-examination by the defense counsel. She vividly narrated how the accused overpowered her and how he succeeded in inserting his finger into her vagina. Jesusa's testimony is corroborated by physical evidence. The hymenal laceration

suffered by her is the best physical evidence of forcible defloration. When, the victim's testimony is corroborated by the physician's finding of sexual assault, as in this case, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge (*People vs. Malones, G.R. Nos. 124388-90, March 11, 2004*). The sole testimony of the credible victim which is supported by physical evidence of hymenal laceration, as in this case, seals the fate of the accused.

\* \* \*

Thus, any physical overt act manifesting resistance against the rape in any degree from the victim is admissible as evidence of lack of consent. Tenacious resistance is not required. Neither is a determined and persistent physical struggle on the part of the victim necessary (*People vs. Gondaway Dulay, G.R. Nos. 144344-68, July 23, 2002*). In the case at bar, the victim has sufficiently established that she resisted and never consented to accused' sexual assault. Thus, when the accused prevented her from leaving for work, she boxed and kicked him; when he was opening her room, she tried to run out of the house; she shouted for help; when he kissed her, she bit him; when he tried to remove her panty, she pinned her legs together, when he inserted his finger into her vagina, she struggled to remove his finger and when she had the opportunity, she escaped and, the following day, she reported the incident to the police authorities.

The Court cannot sustain the accused' claim that he and the victim had several intercourse prior to September 27, 1999 as this is inconsistent with the single laceration found on the victim's hymen. Granting that Jesusa was his sweetheart, the accused cannot definitely demand sexual submission and worse, employ violence upon her on mere justification of love (*People vs. Lasay, 253 SCRA 654 [1996]*, Love is not a license for carnal intercourse through force or intimidation (*People vs. Geromo, 254 SCRA 82 [1996]*).

Accused' denial is essentially weak. A denial unsubstantiated by clear and convincing evidence is negative, self-serving and merits no weight in law, and cannot be given greater evidentiary value than the testimony of a credible witness who testify on affirmative matters. In this case, Jesusa has positively identified the accused as the one who raped her on September 27, 1999. She has no motive to testify falsely against him. The Court gave credence to her testimony. The testimony of a rape victim is credible where she has no motive to falsely testify against the accused (*People vs. Apila, 263 SCRA 582 [1997]*)."<sup>[8]</sup>

Dissatisfied, accused Henry Soliveres, Jr. interposed this appeal praying for the reversal of the subject decision anchored on the following:

#### ASSIGNMENT OF ERRORS

I

THAT THE TRIAL COURT GROSSLY ERRED IN NOT CONSIDERING THE

VERSION OF THE ACCUSED-APPELLANT WHICH IS CONSISTENT AND IN HARMONY WITH TRUTH AND HUMAN EXPERIENCE.

## II

THAT THE TRIAL COURT GROSSLY ERRED IN NOT FINDING THAT THERE WAS MUTUAL CONSENSUAL SEX BETWEEN THE ACCUSED-APPELLANT AND THE PRIVATE COMPLAINANT.

## III

THAT THE TRIAL COURT GROSSLY ERRED IN NOT FINDING THAT THE PROSECUTION MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT OF THE OFFENSE OF RAPE OF SEXUAL ASSAULT.<sup>[9]</sup>

In advocacy of his position, the accused contends that in convicting him, the trial court perfunctorily brushed aside his version without any justification or explanation. He asserts that his evidence is entitled to a greater consideration and credibility being logically consistent and in harmony with truth and human experience.

He stresses that it is an unquestioned fact that he and the complainant were sweethearts from May, 1998 to December, 1998. They did not formally break up. In August, 1999, they became lovers again and they frequently went out for a date but the complainant informed him that her parents should not know about their relationship because she would be reprimanded.<sup>[10]</sup>

On the September 27, 1999 incident, he explained that he went to her boarding house because she told him so. He reiterated that when he reached the boarding house, she told him not to frequently go to there because her parents might know. When he answered that it was not a problem because if his petition to go to U.S. would be approved, he would be leaving. At this, she became angry and hysterical and cried that, after all her sacrifices, he would just leave her. She then tried to create trouble and went in and out of her room. He then pulled her inside the room to avoid any embarrassment in view of the presence of her co-boarders and neighbors. While inside her room, he got her key and locked her inside her room. He stayed outside until she stopped creating noise. If ever he held her hand and pushed her inside the room, it was to stop her from making trouble.<sup>[11]</sup>

He denied having zippered off his pants and let her hold his penis because he was outside the room. Neither was it true that he removed her panty and inserted his middle finger inside her vagina.<sup>[12]</sup>

The accused claims that the version of the complainant is absurd and does not deserve credence as it is belied by the following circumstances, to wit:

- "a. The fact that the complainant allowed Marites Canon to leave her while the accused was still holding her both hands;<sup>[13]</sup>
- b. The fact that she did not tell Marites Canon to get the