

FIRST DIVISION

[G.R. Nos. 119837-39, December 09, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERWIN AGRESOR, ACCUSED-APPELLANT.

D E C I S I O N

KAPUNAN, J.:

Appellant Erwin Agresor, then 19, was charged before the Regional Trial Court (RTC) of Laoag City with three (3) counts of rape under three separate informations all allegedly committed against his second cousin, Ritchie Calastro, then 13 years old. The informations are quoted hereunder:

In Criminal Case No. 7018:

That on or about February 1, 1994 at nighttime in Brgy. Alsem, municipality of Vintar, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused thru force, violence and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with the undersigned against her will and consent.

In Criminal Case No. 7017:

That on or about February 12, 1994 at nighttime in Brgy. Alsem, municipality of Vintar, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused thru force, violence and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with the undersigned against her will and consent.

In Criminal Case No. 7016:

That subsequent to the second incident of rape committed on or about February 12, 1994 at nighttime on the same date, in Brgy. Alsem, municipality of Vintar, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused thru force, violence and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with the undersigned against her will and consent.^[1]

Upon arraignment, appellant pleaded not guilty to these charges. The RTC, thus, proceeded with the consolidated trial of the three rape cases.

Appellant's alleged victim, Ritchie Calastro testified that at about 10:00 in the morning of February 11, 1994, just after taking her snacks near the market, she

was joined by her classmates Chuchi, Hermie and Lothelyn in walking back to school, the Vintar Academy at Vintar, Ilocos Norte. Suddenly, Erwin Agresor pulled Ritchie into a tricycle by grabbing both her hands. "If you do not follow me, I will kill you," he warned. Ritchie cried for help but her classmates, in fear, did not respond to her cries.

The tricycle, which was driven by Ciano Viernes, sped away through Margaay Road and on to Barangay Alsem, passing through three other barangays. The tricycle stopped at around a quarter to two in the afternoon upon reaching Alsem. Appellant then paid Viernes, who proceeded back home.

Appellant pulled Ritchie towards a hut around thirty (30) to forty (40) meters from where the tricycle had stopped. There were no other houses around the hut. "If you will not follow me, I will kill you," he threatened her.

Appellant forced Ritchie into the hut and ordered her to undress. "If you do not want, I will kill you," he said. Ritchie removed her black denim pants and white T-shirt. He commanded her to lie down as he repeated his threat, "If you do not want, I will kill you, including your mother and father." Appellant brandished a knife around 10 1/4 inches long.

Ritchie was still wearing her *sando* and panty when appellant put himself on top of her. He kissed her breast as he held her hands with his left hand and pointed the knife at her neck. Ritchie resisted as appellant pulled down her panty. He kissed her neck, lips and private part for about an hour. Appellant then "took advantage of (her) womanhood" by inserting his penis into her private part and making "push and pull movements." Ritchie felt pain. Appellant's penis remained in her vagina for a "short time only" or for "less than one hour."

Ritchie stayed in the hut with, appellant the whole night. Because of appellant's threats, Ritchie did not escape.

The next morning, or on February 12, 1994, Jose Ubay came to the hut to fetch Ritchie and appellant. Ritchie knew Ubay as a *barkada* of appellant, having seen them together on previous occasions. According to Ritchie, Ubay learned that they were in the hut after appellant told two men who went fishing in the river to inform Ubay about their presence: While these two men were in the hut, Ritchie cried for help but they did not heed her plea.

When Ubay arrived, Ritchie told him about what appellant had done to her but he said nothing. Ritchie was forced to sit on Ubay's motorcycle between appellant and Ubay, who drove the vehicle to his house.

The three arrived at Ubay's residence, which was fifty (50) to eighty (80) meters from the hut, at around 8:00 in the morning. Ubay, his three children, and a woman who lent Ritchie clothes were the only occupants of the house. (Ubay's wife was abroad.) Ubay served breakfast but Ritchie could only eat a little.

After a while, appellant's *barkada*, namely, Marlon, Boy, Bobby and Ruveno arrived on a jeep. The boys sat in the sala and drank gin. Ritchie, Erwin and Jose Ubay joined them while they drank. Ritchie asked appellant's *barkada* to help her because appellant "took" her. The men, who would stay in Ubay's house until the police

came to her rescue, ignored her pleas. The men stopped drinking at about 5:00 in the afternoon. All the time they were drinking, Ritchie sat by herself. Ritchie wanted to escape but did not know where to go because it was her first time to be in that place.

At around 7:00 in the evening, appellant ordered Ritchie to enter one of the rooms. Once they were inside, appellant locked the door. "Help me to go out of this room!" Ritchie cried, as appellant removed his clothes. No one came to Ritchie's aid. After undressing himself, appellant removed Ritchie's clothes. She struggled but appellant held her hands and pointed a knife at her. He removed her T-shirt and kissed her breast for "less than an hour." He kissed her as he removed her pants, panty and *sando*. Appellant forced Ritchie to lie down, and placed himself on top of her. "If you resist I will kill you," he threatened, pointing the knife at her. He then inserted his penis into her vagina and made push and pull movements. Ritchie felt pain during the intercourse, which lasted less than an hour.

At around 8:00 that same evening, as Ritchie was putting on her clothes, appellant ordered her to undress and lie down again. For the third time, he inserted his penis into her private part and repeated the push and pull movements. Ritchie felt pain, and blood came out of her. Appellant then disengaged himself from Ritchie, and changed his clothes. He locked the door as he left. Ritchie cried and put on her clothes.

Ritchie did not see appellant the rest of the night.

The following day, on February 13, 1994, at around 6:00 in the morning, appellant opened the door and told her to eat. She ate with Ubay and his children after which appellant ordered her to enter the room again, and locked the door.

Ritchie was locked inside the room for the duration of her captivity; she was allowed to go out only during mealtime. She could not escape because the room was supposedly guarded by appellant's friends, Boy, Marlon and Bobby.

On February 16, 1994, five days after Ritchie was taken by appellant, appellant informed her that the police were looking for her. She wanted to run to the police but appellant brought her to the mountains, about eighty (80) meters south of Ubay's house. Big trees and thick foliage hid them from view. They stayed there until 4:00 that afternoon then they went back to Ubay's house where she spent the night in the same room. Appellant locked the door and went away.

At 6:00 the following morning, appellant arrived and told her the police were in the area. Appellant dragged Ritchie from the room and again took her to the mountains. At about 8:00 that morning, the police found the two but appellant managed to escape. She told the police that appellant had taken advantage of her womanhood three times.^[2]

SPO1 Tomas Jose, Jr. of the Vintar Philippine National Police testified that they received a report at around 10:00 in the morning of February 11, 1994 from Ely Calastro, Ritchie's father, that appellant had taken her away. A few days later, Ritchie's father reported that Ritchie and appellant were in Barangay Alsem. Apparently, the father and SPO4 Edgar Norienton went to Barangay Cabayo, where appellant's parents resided, to inquire as to the whereabouts of appellant.

Upon learning that appellant had taken Ritchie to Alsem, the police on February 17, 1994 set out for Ubay's house, where appellant was reported to be hiding. They arrived there at around 8:00 in the morning but Ubay told them that neither appellant nor Ritchie was around.

The police, thus, conducted a meeting with the barangay officials to seek their help. One of the barangay councilmen informed them that the two were hiding near the barangay water tank. The police then proceeded to the location of the water tank where they saw, from a distance of about forty (40) meters, appellant pulling Ritchie by the hand. Appellant dragged her for around twenty (20) meters. As the police chased the two, narrowing the distance to about fifteen (15) meters, appellant released Ritchie and ran away. The police chased appellant but they failed to catch him in the thick forest.

SPO1 Jose asked Ritchie what happened. "He forced me to go away," she replied.^[3]

Hermie Albano, Ritchie's classmate, corroborated Ritchie's story on how she was taken by appellant. Between 9:00 and 10:00 in the morning of February 11, 1994, Hermie and Ritchie together with classmates Argentina Tunac, Lothelyn Matute, Chuchi Aghayani and Maris Vivid, were on their way to school after taking their snacks. They saw a tricycle parked near the gate of the Vintar Academy but they did not mind it. Suddenly, appellant pulled Ritchie's left wrist with his two hands and immediately put her inside the tricycle. Ritchie struggled and cried but the tricycle quickly drove away. Hermie and her classmates reported the incident to Porfirio Pascua, Ritchie's uncle and a teacher at the Vintar Academy.^[4]

On March 1, 1994, Ritchie was brought to the Gov. Roque Ablan, Sr. Memorial Hospital where she was examined by Dr. Lorna Castillo. The certification^[5] issued by Dr. Castillo reveals that Ritchie had lacerations at the 3 and 9 o'clock positions of her hymen and a fresh superficial laceration 0.5 cm. in length at the fourchette.

In his defense, appellant Erwin Agresor claimed that he and Ritchie were sweethearts, and their sexual intercourse consensual.

Appellant testified that he and Ritchie were neighbors. Their houses in Barangay 1, San Roque, Vintar, Ilocos Norte stood beside each other. Back in 1993, complainant would go to appellant's house, and they would take care of the baby together. At first, they were merely "gangmates" but feelings of love later developed between them. According to appellant, he started courting complainant on March 3, 1993 when he was 19 and when complainant "must have been 13." Although she was young, he was interested in her because she was beautiful. On January 31, 1994, the two went to Balacad, Laoag City where they spent the night. That night, she allowed him "to take advantage of her."

Erwin also claimed that Ritchie used to send letters through his friend Cherry Anne Alcaraz and his aunt, Imelda Balaan. In a letter she sent through Cherry Anne on the first week of February 1994, Ritchie wrote that she was being forced to abort the baby she was carrying and that she wanted to go away. The lovers thus agreed to meet in one of the stores in the supermarket and leave together. After talking in the store, Erwin got his clothes from the house of one of his *barkada*. He also

instructed Marciano Viernes, a tricycle driver, to fetch Ritchie from the store at around 10:00 that same morning. He and complainant then rode to Barangay 24, Alsem, Vintar in the tricycle.

They reached Alsem at noon and proceeded, to a *bahay kubo* where they stayed the night and did what was "usual for sweethearts," kissing and "satisfying" their "mutual feelings" by performing the "sexual act" twice.

The next day, Jose Ubay fetched them in his motorcycle. The three went to Ubay's house, where they stayed for the rest of the week. According to Erwin, Ubay had two children who stayed in the house with him. While they were in Ubay's house, they "did what husband and wife do."

During the week, appellant went thrice to the river for a picnic with his *barkada*, and a girl companion. They usually meet there at about 10:00 in the morning and returned at 3:00 in the afternoon. On February 17, 1994, while Erwin was out fishing with his *barkadas* the police arrived in Ubay's house. When he and his *barkada* returned to the house, Ritchie was no longer around. People in Alsem told him that she had been taken by the police. He and his *barkada* then had a "drinking spree." Thereafter, they went around downtown and went back to Alsem about three hours later.

Erwin denied that he grabbed Ritchie and put her in the tricycle, claiming that he was not in the tricycle when the tricycle picked her up. Neither did he point a knife at her neck when they had sexual intercourse in the hut. He claimed that she consented to the sexual act. In Ubay's house, she was free to leave had she wanted to since the "house was open." However, he conceded that the only means of transportation to the *poblacion* was Ubay's jeep.

Appellant admitted that the hut where he first took Ritchie was isolated, the houses very far apart. Had she shouted, however, her shouts would echo from the river.^[6]

Cherry Ann Alcaraz, Ritchie's neighbor and schoolmate, corroborated appellant's claim that he and Ritchie were sweethearts. Cherry Ann declared that she knew of such fact since she and Ritchie were still in the Sixth Grade. Cherry Ann had also seen Erwin accompany Ritchie to school many times. On the first week of February 1994, complainant pleaded with Cherry Ann to deliver two (2) letters to appellant. Cherry Ann acceded to the request and delivered the letters to Erwin. She saw Erwin read the letter, fold it, and place it in his pocket.^[7]

Imelda Balaan, 24 years old, is appellant's aunt, being married to the brother of appellant's mother. She claimed that Ritchie's mother and her husband are cousins since Ritchie's grandmother and her husband's father are siblings. She said she knew that Ritchie and Erwin were sweethearts since Ritchie was thirteen and Erwin was twenty-one, because Ritchie told her so. Living with appellant in the house of her in-laws, she had seen Erwin and Ritchie putting their hands on each other's shoulders several times. At another time, she saw the two kissing in Erwin's room. As Erwin and Ritchie were relatives, Imelda admonished them that it was not proper for them to be sweethearts.

Imelda delivered more than five of Ritchie's letters to appellant. On one occasion,