

FIRST DIVISION

[G.R. No. 114144, February 13, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS.FLORENTINO ABAD, ACCUSED-APPELLANT.
D E C I S I O N**

KAPUNAN, J.:

This is an appeal from a decision of the Regional Trial Court of Tarlac, Tarlac, rendered on 27 December 1993 finding accused-appellant guilty of the crime of Rape and sentencing him as follows:

WHEREFORE, judgment is hereby rendered convicting the accused of the crime of rape punished under Article 335 of the Revised Penal Code and sentences the accused to suffer the penalty of reclusion perpetua with all its attendant accessory penalties.

The Court further orders the accused to indemnify the offended party in the amount of P50,000.00 and the further sum of P30,000.00 as exemplary damages.

SO ORDERED.

Jenny Manaloto was a thirteen-year old girl who lived with her maternal grandparents since birth in their home in Barangay De La Paz, Tarlac, Tarlac. Her parents were separated. From infancy, she was raised by her grandparents who provided for her day-to-day needs and sent her to school.

One morning, sometime in the third week of April 1991, while her grandmother was away and she was attending to her daily chores, the accused, her grandfather, summoned her to one of the rooms in their house, pointed a bladed weapon at her neck, and tried to remove her panties. When she resisted, he slapped her. Succeeding in removing her underwear, the accused laid her down on the bamboo floor of the room, one hand still grasping the weapon. He then spat on his other hand, lubricated his penis with saliva, then proceeded to defile Jenny.^[1]

According to Jenny, the accused forced himself on her an average of four times a month for the succeeding thirteen months, or about fifty-two (52) times. She informed no one of the sexual attacks against her. However, after an attack on 19 May 1992, she summoned enough courage to visit her estranged mother and inform her of the incidents. She was promptly brought to the Tarlac Provincial Hospital for medical examination where the examining physician, Dr. Maria Carmela Estrada found essentially negative gynecological findings except for a non-intact hymen.^[2]

The accused-appellant denied the accusations against him, and in his own defense claimed that his granddaughter voluntarily left his house on 19 May 1992 after a

scolding where she was hit and slapped by the former. According to him, he usually hit and scolded her whenever she was caught stealing rice (which she sold).^[4] To bolster his claim, he suggested that his granddaughter had every occasion to report the alleged attacks during the thirteen-month period, but did not do so in spite of the fact that there were occasions where she was alone in the house, or free to go out or to sleep with other relatives.^[5] Additionally, appellant contended that absence of relevant clinical findings in the gynecological examination conducted two days after the last attack, ought to have ruled out the probability that the complainant was raped.

The trial court found the testimony of Jenny Manaloto credible and convicted the accused. Hence, this appeal, interposing the following assignment of errors:

I

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINANT WHICH IS HIGHLY INCOMPETENT AND UNRELIABLE AND IN NOT GIVING EXCULPATORY WEIGHT TO THE EVIDENCE ADDUCED BY THE ACCUSED-APPELLANT.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FLORENTINO ABAD OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

We affirm.

Our courts have been traditionally guided by three settled principles in the prosecution of the crime of rape: 1) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; 2) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and 3) the evidence of the prosecution must stand on his own merits and cannot draw strength from the weakness of the evidence of the defense.^[6]

The prosecution anchored its case against the accused-appellant exclusively on the basis of the complainant's testimony. For obvious reasons, it was the defense, not the prosecution which presented the medical examination, though this was procured by the complainant's mother prior to the filing of the complaint. While we find nothing wrong with rape convictions obtained mainly on the basis of the complainant's testimony, the testimony should be clear and consistent and supported by the physical evidence. When an alleged rape victim says that she was defiled, she says all that is necessary to show that rape has been inflicted on her provided her testimony meets the test of credibility.^[7] That determination is made by the court which has the opportunity to observe the demeanor of the complainant and the witnesses first hand and this Court will not, in the absence of a palpable misperception or misapprehension of facts, interfere with such court's original findings.

In the case at bar, much was made by the defense about alleged inconsistencies in the complainant's testimony mainly as to the kind of weapon used and the relative

positions of the accused and the complainant during the incident complained of. Under the circumstances, and considering the age of the complainant, we find these so-called inconsistencies of little significance.

As to the kind of weapon, appellant makes much of the fact that the complainant was not sure as to whether or not a bolo (a large weapon) or a knife (relatively smaller than a bolo) was used to threaten her during the rape, to wit:

PROSECUTOR LLOBERA:

Q Once inside the room, what else happened, if any?

A When I was already inside the room, he removed my panty and then he pointed a bolo to me. (TSN, p. 6, Nov. 25, 1992; Exhibits '1-A')

ATTY. OVEJERA:

Q Who (sic) comes first, the act of removing your panty or the act of making you lie down?

A When the small knife was pointed at my neck, sir, that was the time when he simultaneously removed my panty. (TSN, p. 7, May 13, 1993; Exhibit '2-A')

However, appellant conveniently ignores the fact that throughout her testimony, the complainant consistently interchanged the phrase "small bolo" with the word "knife." To a person not used to handling deadly bladed weapons, a small bolo could be a knife; a large knife, a bolo. The supposed inconsistency" is more apparent than real. Moreover, curiously absent from appellant's lifted quotations from the transcript of stenographic notes was the following exchange, which clearly indicates that the complainant liberally mixed up the term "small bolo" with the word knife:

ATTY. OVEJERA:

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Q When you entered the room, what happened next?

A He held me, sir, and at the same time he pointed a small bolo at my neck.

Q Will you demonstrate how he held you with a knife?

A He held me and pointed the small knife at my neck, sir. [8]

With respect to the alleged discrepancies in the complainant's testimony regarding the defendant's relative positions during the incident referred to in the complaint, it is plainly obvious, from a careful reading of the transcript of the testimony, that the inconsistencies were brought about by the lower court's and the defendant counsel's confusing interchanging of the words "right" and "left" when they referred to the (defendant's) hand which held the knife, and the hand which grasped the complainant's hand. Any adult would have been similarly confused by the dizzying trend of questioning. For example:

COURT:

Q What hand was holding the bolo?

A The left hand, sir.

ATTY. OVEJERA:

Q What did he do next?

A After that, sir, he removed my panty and laid me down.

Q What hand was he (sic) used in removing your panty?

A His right hand, sir.

COURT:

Q You mean to say, he removed your panty with his right hand?

A Yes, sir. [9]

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ATTY. OVEJERA:

Q Madam Witness, the situation you have stated was that your grandfather was on top of you and making some motions to enter his penis and he was only holding your left hand with his right hand only, you were not injured by the knife?

A The left hand was holding the knife and his right hand was pinning my right hand, sir.

COURT:

Q The knife was being held by the left hand?

A Yes, sir.

Q How can he hold the knife on your neck by using his left hand and then pressing your right hand with his right hand, you mean to say the position of the accused was like that?

A No, sir. My grandfather was behind me.

Q I thought he went on top of you?

A At first he pointed the knife at my neck and he stayed behind me at the same time, sir.

ATTY. OVEJERA:

Q The situation was that you were only laid down on the floor and your grandfather was on top of you?

PROS. LLOBRERA:

May we know the situation? What situation?