

## THIRD DIVISION

[ G.R. Nos. 132127-29, March 31, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RONIE GABELINIO,  
APPELLANT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Appeal from the Decision<sup>[1]</sup> dated November 7, 1997 of the Regional Trial Court, Branch 50, Bacolod City, in Criminal Cases Nos. 97-18209, 97-18210 and 97-18211 convicting Ronie Gabelinio of three (3) counts of rape and sentencing him to *reclusion perpetua* in each count. He was ordered to pay the victim, Susan Precioso, P50,000.00 as civil indemnity, also in each count.

The Informations in Criminal Cases Nos. 97-18209, 97-18210 and 97-18211 read:

Criminal Case No. 97-18209:

"That on or about the 1<sup>st</sup> day of November, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused Ronie Gabelinio, armed with a revolver, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein complainant, Susan Precioso, a woman 21 years old, against the latter's will.

"Act contrary to law."

Criminal Case No. 97-18210:

"That on or about the 20<sup>th</sup> day of November, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused Ronie Gabelinio, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein complainant, Susan Precioso, a woman 21 years old, against the latter's will.

"Act contrary to law."

Criminal Case No. 97-18211:

"That on or about the 31<sup>st</sup> day of October, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused Ronie Gabelinio, armed with a revolver, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein complainant, Susan

Precioso, a woman 21 years old, against the latter's will.

"Act contrary to law."

Upon arraignment, appellant Ronie Gabelinio, assisted by counsel, pleaded not guilty to the crimes charged.

The evidence for the prosecution shows that on October 31, 1996 at around 7:00 o'clock in the morning, private complainant Susan Precioso, a 21-year old lass, reported for work at Jet's Lechon Manok Eatery, Burgos Street, Villamonte, Bacolod City. Dr. Celeste Lim-Treyes, the owner, instructed her to open the store at around 9:00 o'clock that morning. After Dr. Treyes left, Susan proceeded to the kitchen to wash her hands. Instantly, appellant sneaked from the door and pointed his .38 revolver to her, saying in his dialect, "something will happen today." He dragged her and forced her to lie down on the floor. Then he kissed her lips and neck, touched her breasts and sucked her nipple. He then proceeded to undress her. She shouted for help and struggled by kicking him. But he subdued her, placed himself on top of her and inserted his penis inside her vagina, making push-and-pull movements. When he withdrew his penis, she saw a whitish fluid coming out from her vagina. Afterwards, he threatened to kill her family should she reveal the incident to anyone. Nonetheless, when her co-workers Criselda Bonza and Honeylyn Jimena arrived, she revealed to them what happened. But they advised her not to report the matter to their employer.

The next day or on November 1, 1996, she arrived in the eatery around 7:00 o'clock in the morning and immediately proceeded to the kitchen to defrost the chicken. Suddenly, appellant grabbed her, kissed her lips and neck and caressed her breasts. She shouted for help but nobody came. He then went on top of her and forcibly inserted his penis into her vagina and made push-and-pull movements. Again, he warned her not to tell anybody what transpired or else he would kill her family.

On November 20, 1996 at around 7:00 o'clock in the morning, Susan arrived at the eatery. Appellant suddenly dragged her to a cemented floor surrounded by plants. There he strangled her and pushed her to the floor causing her to feel dizzy. Taking advantage of her condition, appellant kissed her lips, cheeks and neck. He then undressed her and once more, he sexually ravished her.

On November 22, 1996, Susan mustered enough courage and revealed her traumatic ordeal to her mother Nenita. They then reported the incidents to the Women's Desk of the Bacolod City Police Station where she executed and signed a sworn statement.

On the same day, Dr. Joy Ann C. Jocson examined Susan and issued a Medical Certificate<sup>[2]</sup> with the following findings:

- "1) Whitish vaginal discharge noted at the introitus;
- 2) Inflamed vulvar area with abrasion noted at the left labia minora;
- 3) New lacerations noted around the hymenal ring: one at the 3 o'clock position another at the 7 o'clock position and another

at the 10 o'clock position;

4) Vaginal introitus admits 2 fingers with ease."

Dr. Jocson confirmed on the witness stand that the inflammation, abrasion and lacerations at Susan's hymen were caused by the insertion of a penis in her vagina.

Dr. Ester Regina Baron-Servando, a psychiatrist at the Bacolod City Health Department, testified that on November 26, 1996 and December 4, 1996, she examined Susan and found that she was suffering from a major depression.

Appellant vehemently denied the charges. He testified that he initially courted Susan when they were schoolmates at Ramon Torres High School at Bago City. He was then a senior student, while she was a sophomore. After graduation, he was employed as a security guard by Tirad Pass Security Agency at Bacolod City and eventually assigned at the Jet's Lechon Manok Eatery where Susan worked as a waitress. There he again courted her and finally they became sweethearts. From then on, he accompanied her whenever she visited her parents in E.B. Magalona, Tabigui, Negros Occidental. He was surprised when her mother, during his and Susan's visit on November 20, 1996, demanded P20,000.00, with threat that she will file rape charges against him should he fail to comply with her demand.

According to appellant, what transpired between him and Susan were sexual trysts, they being sweethearts. He explained that he could not have committed the crimes considering that his twelve (12) hour shift at the eatery was from 6:00 o'clock in the evening to 6:00 o'clock in the morning, and that he applied for leave of absence from October 30, 1996 to November 3, 1996 to attend an in-service re-training course conducted by the NEMA Agency in Barangay Villamonte, Bacolod City.

During her rebuttal testimony, Susan denied appellant's claim that they were sweethearts; and that her mother demanded P20,000.00 from him.

Nenita Preciosa, complainant's mother, testified denying that she threatened to file rape charges against him should he refuse to give her P20,000.00 for her husband's medical treatment.

Criselda Bonza and Honeylyn Jimena, cashiers at Jet's Lechon Manok Eatery, testified that Susan confided to them that appellant was indeed her sweetheart and that they planned to get married.

Gloria Villalobos, secretary of Tirad Pass Security and Investigation Agency, appellant's employer, confirmed that from October 30, 1996 to November 3, 1996, appellant did not report for duty in Jet's Lechon Manok Eatery as he was on leave.

On November 7, 1997, the trial court rendered a Decision, the dispositive portion of which reads:

"After a very careful evaluation of the evidence, the Court finds that the guilt of the accused for the offenses he is charged has been proven beyond reasonable doubt. The Court therefore, declares the accused guilty as charged in all the Informations and there being no extenuating

circumstances, condemns him to suffer the following penalties and civil liabilities:

	Penalty	Civil Liability
1. CC No. 97-18209	Reclusion Perpetua	P50,000.00
2. CC No. 97-18210	Reclusion Perpetua	P50,000.00
3. CC No. 97-18211	Reclusion Perpetua	P50,000.00

"The civil liability shall inure in favor of the complainant Susan Precioso and shall earn interest at the rate of six (6) percent per annum from date of this judgment.

"The accused shall be credited the full term of his preventive detention."

Appellant, in his brief, submits the following assignments of error:

"I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF COMPLAINANT SUSAN PRECIOSO WHEN HER BEHAVIOR SHOWS THAT THERE WAS NO RAPE AT ALL.

"II

THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT HAD COERCED COMPLAINANT INTO HAVING SEX WITH HIM THRICE.

"III

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS BEEN ABLE TO PROVE THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE ON THREE (3) COUNTS."

The basic issue for our resolution is whether the prosecution has established appellant's guilt beyond reasonable doubt.

The law applicable to the cases at bar is Article 335 of the Revised Penal Code, as amended by R.A. 7659, which provides:

"Art. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;  
and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding

paragraphs shall be present.

"The crime of rape shall be punished by *reclusion perpetua*.

**"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.**

x x x."

The elements of rape under the above provision are: (1) **the offender had carnal knowledge of the victim**; and (2) **such act was accomplished through the use of force or intimidation**; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

An extract from Susan's testimony, quoted hereunder, indubitably shows that appellant had carnal knowledge of her by using force and intimidation, thus:

**For Criminal Case No. 97-18211:**

"x x x

"FISCAL EDUARDO B. ESQUILLA:

x x x

Q Do you know the accused in this case, Ronie Gabelinio?

A Yes, sir.

Q If he is inside this courtroom, will you be able to identify him?

A Yes, sir. The witness pointed crying.

Q So, while washing your hand what happened?

A While I was washing my hands at the kitchen I noticed that there was somebody opening the door, when I turned around I saw Ronie holding a .38 revolver pointed at me.

Q So, that on October 31, 1996 at about 7:00 o'clock in the morning, were you able to report to Jet's Lechon Manok?

A Yes, sir.

x x x

Q So, while you were opening the store what happened?

A When I opened the store, nothing happened.

Q After Dr. Treyes left Jet's Lechon Manok, what happened?

A I washed my hands at the kitchen.

Q So, while washing your hand what happened?

A While I was washing my hands at the kitchen I noticed that there was somebody opening the door, when I turned around I saw Ronie holding a .38 revolver pointed at me.