

FIRST DIVISION

[G.R. No. 148394-96, April 30, 2003]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGER ELIARDA, APPELLANT.

DECISION

VITUG, J.:

A conviction or acquittal in a rape case hinges much on the credibility, or lack of it, of the supposed victim.

Roger Eliarda was charged with three counts of rape by complainant Julita Gali Pascua, said to have been committed on 04 September 1998, 22 September 1998 and 01 October 1998, in three corresponding Informations that read:

"That on or about the 4th day of September, 1998, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the private complainant Julita G. Pascua, a 38 year old woman, against her will and consent, inside the accused's house/residence at Brgy. 44 Zamboanga, Laoag City.

"x x x x x x x x

"That on or about the 22nd day of September, 1998, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the private complainant Julita G. Pascua, a 38 year old woman, against her will and consent, inside the complainant's house/residence at Brgy. 44 Zamboanga, Laoag City.

"x x x x x x x x

"That on or about the 1st day of October, 1998, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the private complainant Julita G. Pascua, a 38 year old woman, against her will and consent, inside the complainant's house/residence at Brgy. 44 Zamboanga, Laoag City."^[1]

When arraigned, Roger Eliarda entered a plea of "not guilty" to the charges. The cases were consolidated and tried jointly.

The prosecution placed at the witness stand the complainant and her aunt Remelita delos Santos. The defense, in its case, presented Roger Eliarda himself and a score of witnesses, namely, Gloria Eliarda, Tecla Cacot, Edna Anac, Enida Corpuz, Hector Corpuz, Cleotilde Corpuz and Matilde Marcelo, who gave corroborative testimony.

Julita Gali Pascua, a 38-year old single parent to a 16-year old boy, stayed in Brgy. 44, Zamboanga, Laoag City, at the house of her son's father, Felino Agustin, who migrated to the United States in September 1981. Roger Eliarda, a neighbor in Brgy. 44, lived just across the street. On 04 September 1998, Eliarda summoned Julita to cook for him in his house. At the time, the wife of Eliarda had left for Manila to send off her sister who was leaving for abroad. According to Julita, Eliarda poured her a glass of beer. She took it so as not to embarrass Eliarda. Moments later, she felt dizzy and sat on a wooden chair. Eliarda reached for her and embraced her. Julita resisted his embrace and tried to push him away but he was too strong for her. She ran towards the door. Eliarda caught up with her and took her to a nearby room. He laid her on the bed, pinned her two hands, and kissed her. He pulled up her blouse, removed her top undergarment and kissed her breast. Julita tried to stop Eliarda but he was just too quick for her. After removing her walking shorts, Eliarda took off his own. Julita struggled to break herself free from his grasp and moved her legs to avoid Eliarda. He spread her legs open and tried to penetrate Julita but she moved her buttocks to avoid him. Ultimately, she thrice felt the thrusts of his penis into her vagina. After a while, Eliarda stood up and put on his shorts. He warned Julita not to report the incident to anyone.

On 22 September 1998, Julita was cleaning up the yard when Eliarda approached her and remarked, "do not mind cleaning" up the place. She retorted that she would rather clean up her yard "than be bitten by a snake." She then turned her back to him and went in a huff inside her house. Eliarda followed and pushed the door open. Gaining entry into the house, he embraced and carried her to the second floor. She unsuccessfully tried to push him away. He laid her down on a wooden bed. He kissed her lips and immediately went on top of her, pulled up her blouse and kissed her breast. He removed her shorts. He raised her legs and licked her private part. Moments later, despite her struggles, he succeeded in inserting his penis into her organ.

On 01 October 1998, Julita was at home up on the second floor of the house when Eliarda came up to her. Eliarda covered her mouth to prevent her from shouting for help. He laid her on the floor. Mounting her, he kissed her lips, her breast and pulled down her shorts. He then inserted his penis into her vagina while the latter kept on struggling by wiggling her hips until ultimately his penis dangled out of her. He stood up and left.

Remelita delos Santos, an aunt of Julita, testified that her niece confided to her the last sexual assault. She was present when barangay officials came to Julita and encouraged her to settle the case amicably. She said that the Eliarda couple went to Julita to ask for her forgiveness but the latter was unmoved.

In his testimony, Roger Eliarda insisted that he and Julita were lovers and that the sexual encounters were consensual. According to Eliarda, he was smitten by Julita's charm and manners. His admiration for Julita grew when she would frequent his house to take care of his mother-in-law. He took care of Julita when she was sick

and he would oftentimes attend to her. While he tried to be discreet about their affair, his wife, however, ultimately found out and he was constrained to confess to her that Julita was his mistress. He denied having forced the complainant in all three occasions of sexual congress between them.

Tecla Cacot, Edna Anac, Hector Corpuz, Enida Corpuz, and Mrs. Gloria Eliarda, sought to corroborate the claim of Eliarda. The witnesses intimated that Eliarda and Julita maintained an amorous relationship and that Julita never behaved like being a rape victim.

When the trial concluded, the court a quo found Eliarda guilty of the crimes charged, discarding thereby the "sweetheart theory" advanced by the defense. The trial court held:

"ACCORDINGLY, after assiduously weighing the evidence for the prosecution and the defense, the Court is morally convinced beyond reasonable doubt that the accused Roger Eliarda is GUILTY of the crime of Rape in all the three (3) criminal Informations filed against him.

"He is hereby sentenced to the penalty of Reclusion Perpetua with all the accessory penalties provided by law in each of the crime charged. Likewise, he is ordered to pay a civil indemnity of Fifty Thousand Pesos (P50,000.00) and moral damages of Fifty Thousand Pesos (P50,000.00) for each of the three (3) crimes committed; and to pay the costs."^[2]

In this appeal, Roger Eliarda would have this Court overturn his conviction upon the thesis that Julita failed to pass the test of credibility.

The factual findings of the trial court on this issue are held to be, as it is so often said, entitled to the highest degree of respect by an appellate court^[3] but when something critical and significant would appear to have been ignored or missed, the essence in an appellate review,^[4] such evaluation made by the trial court may have to be re-examined.^[5]

On the **first** charge of rape, Julita testified on direct examination thusly:

"Q As you were sitting in the sala because you felt dizzy, do you remember what time it was?

"A About 7:30 in the evening, sir.

"Q As you were sitting down . . . by the way on what material were you sitting down?

"A Wooden chair, sir.

"Q At that time that you were sitting down at the sala, do you remember any unusual incident that happened?

"A While I was sitting he came to embrace me, sir.

"Q Will you please describe to the Honorable Court how the accused embraced you?

"A Like this, sir (witness putting his 2 arms around the body of the complainant both the palm of her hands locking its other at the middle of the back of the complainant while the 2 hands of the complainant were on her thighs, the accused is stooping with his face beside the face of the complainant, with the face of the accused placed at the left side of the face of the complainant).

"Q When he embrace[d] you what was your reaction, if any?

"A I pushed him, sir.

"Q What part of his body did you push?

"A His breast, sir.

"Q And what did you use in pushing his breast?

"A My two hands (witness demonstrating her two hands moving them forward).

"Q And when you pushed the accused, what was its effect if any upon him?

"A He [did] not release me, sir.

"Q Because he did not release you eventhough you pushed him, what did you do next?

"A I was struggling, pushing him, sir.

"Atty. Lazo

May we pray your honor, that the movement of the witness be put on record.

"Fiscal Asencion

And we request that the witness demonstrate.

"Atty. Lazo

We are asking the Honorable Court to put on record the demonstration made by the witness.

"A (Witness demonstrating by showing her 2 hands by moving alternately forward and backward.)

"Fiscal Asencion

"Q And what was the result of your struggling effort as you said?

"A When I [had] the chance I ran away, sir.

"Q To where did you run?

"A Towards the door, sir.

"Q What was your intention in running to the door?

"A I wanted to escape, sir.

"Q Were you able to escape?

"A No, sir.

"Q Why not?

"A Because he chase[d] me, sir.

"Q Was he able to overtake you?

"A Yes, sir.

"Q Where?

"A Near the door, sir.

"Q When he overtook you near the door, what did he do, if any?

"A He closed the door and he embraced me, sir.

"Q Will you please demonstrate to the Honorable Court how he embrace[d] you after he close[d] the door?

"Court

"Q What was your position when he embrace[d] you?

"A I was standing, your honor.

"Fiscal Asencion

"Q And will you please demonstrate to the Honorable Court how he embraced you?

"A Like this (witness again putting her 2 hands to the back of the accused with both hands lock[ed] its other while the 2 hands of the complainant [were] stretched downward placed between the accused and the complainant, both of them facing each other).