

## SECOND DIVISION

[ G.R. No. 148899, October 28, 2002 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VENTURA PELIGRO Y AMPO, ACCUSED-APPELLANT.**

### DECISION

**Mendoza, J.:**

This is an appeal from the decision,<sup>[1]</sup> dated December 18, 2000, of the Regional Trial Court, Branch 17, Davao City, finding accused-appellant Ventura Peligro guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the complainant, Maria de la Rama, the amount of P50,000.00 as civil indemnity and 50,000.00 as moral damages.

The information against accused-appellant Ventura Peligro alleged —

That on or about September 21, 1999, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, wilfully, unlawfully and feloniously had carnal knowledge with complainant Maria dela Rama y Manliges through threat and intimidation and against her will.<sup>[2]</sup>

Accused-appellant pleaded not guilty to the crime charged, whereupon trial ensued.

The prosecution presented four witnesses, namely: complainant Maria de la Rama, Barangay Kagawad Bienvenido Dana, Barangay Police Reynante Camirino and Medico-Legal Officer Dr. Samuel Cruz.

Complainant Maria de la Rama testified that, on September 21, 1999, her husband was out working in Davao City, while her children were either in school or attending a Boy Scout training. At about 1 o'clock in the afternoon of the same day, she was pasturing her cattle on a hill about 300 meters from her house in Barangay Lamanan, Calinan in Davao City, when accused-appellant suddenly appeared and grabbed her by the shoulders and neck. He pushed her to the ground, removed his pants, went on top of her and had sexual intercourse with her. After ejaculating, accused-appellant stood up and flung P150.00 at complainant, warning her not to talk about the incident. According to complainant, when she reached home, she told her brother-in-law, Bienvenido dela Rama, what had happened to her. Together with her brother-in-law, she reported the matter to Barangay Kagawad Bienvenido Dana. The following day, she was examined by Dr. Samuel Cruz who then issued a medical certificate on his findings. On September 24, 1999, complainant executed an affidavit at the Calinan Police Station in Davao City, charging accused-appellant with rape.<sup>[3]</sup>

Barangay Kagawad Bienvenido Dana next testified. He said that, on September 21, 1999, at around 6 o'clock in the afternoon, complainant and her brother-in-law,

Bienvenido dela Rama, reported to him that accused-appellant Peligro had raped complainant. He informed Kagawad Nicanor Pepito about the complaint and the latter ordered accused-appellant to be brought to his house. According to Kagawad Dana, accused-appellant admitted he had sexual intercourse ("*ginamit*") with complainant, but alleged that he paid her P150.00.<sup>[4]</sup>

Reynante Camirino, barangay police of Lamanan, Calinan, testified that, on September 21, 1999, at around 6 o'clock in the afternoon, he apprehended accused-appellant upon orders of Kagawad Nicanor Pepito on the basis of a report made by Bienvenido de la Rama, complainant's brother-in-law, that accused-appellant had raped complainant. Accused-appellant was then presented to Kagawad Pepito and Kagawad Dana and thereafter brought to the police station.<sup>[5]</sup>

Dr. Samuel Cruz, the medico-legal officer who examined complainant, issued a medical report, dated September 22, 1999, which reads:

GENERAL PHYSICAL EXAMINATION:

*Height:* 154.0 cms.      *Weight:* 53.0 kgs.

Fair[ly] nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breasts: Pendulous, soft. Areolae, light brown, 4.5 cms. in diameter.

Nipples, light brown, protruding, 1.5 cms. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, sparse. Labia majora and minora, gaping. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, reduced to carunculae myrtiformis. Hymenal orifice, admits a tube, 3.5 cms. in diameter. Vagina walls, lax. Vaginal rugosities, shallow.

CONCLUSIONS:

1) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.

2) Hymen, reduced to carunculae myrtiformis.

REMARKS: SEMENOLOGY: Positive for Spermatozoa.<sup>[6]</sup>

Dr. Cruz said complainant's hymen was reduced to "carunculae myrtiformis," which meant that she had previous deliveries and that her vaginal rugosities were shallow, probably because of several pregnancies. Complainant was also tested positive for spermatozoa, but no finding was made as to its owner. According to Dr. Cruz, complainant told him that accused-appellant ejaculated outside her vagina. Thus, Dr. Cruz presumed that the spermatozoa found inside complainant's vagina belonged to complainant's husband with whom she had sexual intercourse on September 19, 1999.<sup>[7]</sup>

The defense presented accused-appellant Ventura Peligro as its sole witness. Accused-appellant testified that he knew complainant Maria de la Rama because they had been neighbors since 1993. According to accused-appellant, at around 10

o'clock in the morning of September 21, 1999, complainant agreed to have sex with him for P500.00. Accused-appellant gave her P50.00 as advance payment, promising to deliver the balance in the afternoon. They met again at 1 o'clock in the afternoon of that same day near complainant's house, where they had sexual intercourse. Accused-appellant afterwards paid complainant P100.00, promising to give her the balance of P350.00 later that day. However, according to accused-appellant, at around 6 o'clock in the afternoon, he was apprehended by the authorities and taken to the house of Kagawad Dana, who informed him that complainant had accused him of having raped her. He denied the accusation and told Kagawad Dana that he and complainant had consensual sex and that he paid her per their agreement. Accused-appellant said that, when he was later taken to the Calinan Police Station, he again denied the rape charge and maintained that he and complainant engaged in consensual sex.<sup>[8]</sup>

On December 18, 2000, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused beyond reasonable doubt of the offense charged, pursuant to Republic Act 7659 amending Art. 335 of the Revised Penal Code, in Sec. 8 thereof, without any aggravating circumstance, proved by the prosecution, in the commission of the offense charged, accused VENTURA PELIGRO Y AMPO, is sentenced, to suffer a penalty of RECLUSION PERPETUA with all accessory penalties as provided for by law.

Pursuant to Art. 100, in relation to Art. 104 of the Revised Penal Code, accused Ventura Peligro is furthermore ordered to pay complainant, Maria dela Rama, an amount of P50,000.00 by way of Civil Indemnity and another amount of P50,000.00 by way of moral damages. (People of the Philippines vs. Rolando Bacule; G.R. No. 127568, promulgated on January 28, 2000; People of the Philippines vs. Pacito Garces, Jr. G.R. No. 132368, promulgated on January 20, 2000).

SO ORDERED.<sup>[9]</sup>

Hence this appeal. Accused-appellant's sole assignment of error is that —

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE ON THE BASIS OF THE UNCORROBORATED AND INCREDIBLE TESTIMONY OF THE ALLEGED VICTIM.<sup>[10]</sup>

In deciding rape cases, this Court has laid down the following guiding principles, to wit: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where generally only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[11]</sup> Applying these principles, we find that the prosecution has failed to establish the guilt of accused-appellant beyond reasonable doubt.

Accused-appellant is charged with rape committed through threat and intimidation.  
[12] The question is whether accused-appellant had carnal knowledge of complainant as a result of the threat or intimidation employed by him.

In *People v. Las Piñas, Jr.*, [13] it was held:

[T]he test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.

In this case, the prosecution failed to establish the existence of threat or intimidation that would engender a genuine fear in the mind of complainant as would effectively deter her from putting up a tenacious resistance, considering that: (1) accused-appellant, who was 44 years old, was unarmed; (2) complainant was mature, 36 years old, married and apparently physically fit; and (3) there was no proof whatsoever of great disparity in terms of physical strength or capacity between them.

Well-settled is the rule that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or *bolo*, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist. [14] In such cases, physical resistance need not be established since intimidation is exercised over the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety. [15] Thus, if resistance would nevertheless be futile because of intimidation, offering none at all does not amount to consent to the sexual assault so as to make the victim's submission to the sexual act voluntary. [16]

However, none of these circumstances is present in this case. Complainant was 36 years old at the time the alleged rape took place. She weighed 53 kilograms and was about five feet tall. [17] She is a housewife with five children. It is thus incredible that complainant did not even attempt to resist accused-appellant, who was unarmed, if she in fact did not want to have sexual intercourse with him. Aside from her bare allegation that she was overpowered by accused-appellant and that she yielded to his desire because of fear that he might kill her, there is absolutely nothing in the records to show that complainant was forced to have sexual intercourse with accused-appellant. Indeed, it has not even been alleged that there was great disparity between complainant and accused-appellant in terms of physical strength, capacity or maturity such that she could not have put up any substantial resistance against him.

To show the improbability of complainant's testimony we reproduce below the pertinent portions thereof:

Q On September 21, 1999 at about 1:00 o'clock in the afternoon, where were you?

A I was pasturing my cow.

Q Where?

A In the upper portion of our house.

Q How far is that when you were pasturing to your house?

A 300 meters.

Q Where was your husband Arnold at that time when you were pasturing your cow?

A He was at that time here in Davao City Poblacion.

Q Your children where were they?

A The younger children of mine were in school while the two elder were having a training in Boy Scout at Lamanan.

Q While pasturing your cow at that time, tell the court what unusual incident that happened if any.

A I was at that time following the cow, when I was all of a sudden held by Ventura. (witness pointing to the direction of the accused).

Q When you said Ventura, are you referring to the accused in this case Ventura Peligro?

A Yes, sir.

Q Do you know him personally?

A Yes, sir.

Q Why?

A Because he is our neighbor.

Q When you said neighbor, how far is the house of Ventura Peligro to that of your house?

A About 300 meters on the other side of the hill.

Q So now again for purposes of identification, can you point it out clearly for the Honorable court, for the record?

A (witness pointing to accused Ventura Peligro.)

Q You said you were suddenly held by the accused, what part of your body [was] suddenly held by the accused?

A My shoulder.

Q After holding your shoulder, what did Ventura do if any?

A He pushed me to the ground.

Q How did he push you? Please demonstrate to this court.

A He pushed me to the ground by holding with his left hand around my neck (witness demonstrating using her left arm