

FIRST DIVISION

[G.R. No. 125692, October 24, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GADFRE TIANSON, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant Gadfre Tianson was charged before the Regional Trial Court of Romblon, Romblon, Branch 81, with two (2) counts of rape under two (2) separate Informations filed on August 23, 1991, alleging as follows -

Criminal Case No. 1822

"That on or about the 11th day of February 1991, at around 11:00 o'clock in the evening, in barangay Concepcion Norte, municipality of Santa Maria, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned offended party, against her will and in her own house.

CONTRARY TO LAW, with the aggravating circumstance that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for the offense."^[1]

Criminal Case No. 1825

"That on or about the 17th day of July, 1991, at around 2:00 o'clock in the afternoon, in barangay Concepcion Norte, municipality of Santa Maria, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a fan knife, and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned offended party, against her will.

CONTRARY TO LAW."^[2]

Upon arraignment on June 10, 1994, accused-appellant, assisted by counsel de oficio, pleaded not guilty. The two (2) cases were consolidated and jointly tried. On November 20, 1995, the Regional Trial Court of Romblon, Romblon, Branch 81 rendered a Decision finding accused-appellant Gadfre Tianson guilty of rape.^[3] The dispositive portion of said Decision provides, as follows -

"WHEREFORE, this Court finds the accused GADFRE TIANSON GUILTY beyond reasonable doubt of the crime of:

1. 1. Rape under the Information, dated August 23, 1991, in Criminal Case No. 1822 and is sentenced to suffer the penalty of *reclusion perpetua*, with the accessory penalties therefor, and to pay P40,000.00 to the victim, Rosalie M. Gapi, as moral damages, without subsidiary imprisonment in case of insolvency. With costs against the accused; and
2. Rape under the Information, dated August 23, 1991, in Criminal Case No. 1825 and is sentenced to suffer the penalty of *reclusion perpetua*, with the accessory penalties therefor, and to pay P40,000.00 to the victim, Rossana M. Manipol, as moral damages, without subsidiary imprisonment in case of insolvency. With costs against the accused.

The period of preventive imprisonment the accused had undergone shall be credited in his favor to its full extent and the penalties herein imposed shall be served successively in accordance with Articles 29 and 70, respectively, of the Revised Penal Code.

SO ORDERED."^[4]

Hence, this appeal.

In both cases, the trial court relied on the separate testimonies of the victims, Rosalie M. Gapi and Rosanna M. Manipol, corroborated by the testimony of Dr. Catalino B. Gumban, medical officer of the Romblon District Hospital.

The facts of Criminal Case No. 1822 are as follows:

In the evening of February 11, 1991, the victim, Rosalie M. Gapi, then thirteen (13) years old and a confessed virgin, was left alone in their house in Concepcion Norte, Santa Maria, Romblon. After cooking for herself and eating, Rosalie closed the door and windows of their house, lit a gas lamp in her room and went to bed. At around 11:00 o'clock that night, she woke up and noticed that the gas lamp was off. She was about to go outside her room to get a match for the lamp when she suddenly met the accused-appellant who blocked her and placed a pillow on her face. Accused-appellant then ordered her to lie down on the bed and held both her hands behind her with his left hand. With his right hand, accused-appellant removed his pants and succeeded in removing the shorts and panty of Rosalie. While this was happening, Rosalie smelled an odor that seemed to come from a cigarette, which odor caused her to feel dizzy and eventually made her unconscious. However, before becoming unconscious, Rosalie was aware that accused-appellant laid on top of her and inserted his penis into her vagina. She heard accused-appellant utter the words, "Wow, virgin". During this time, Rosalie felt pain and tried to struggle. When she woke up at around 4:00 o'clock in the morning, accused-appellant was no longer around. Rosalie noticed that she only had her t-shirt on and that her body was painful, particularly her thighs and vagina. She also saw blood on the blanket and mat where she had lain. After crying, she washed the bloodied blanket and mat, afraid that her parents might see these and scold her.

Rosalie further testified that after the rape, accused-appellant even told her on the street that it was he who had sex with her. In her sworn statement, Rosalie likewise

stated that accused-appellant was openly narrating what happened to them in public.

It took Rosalie some time before she was able to narrate the incident to her mother, who accompanied her to file a sworn statement with the police on July 27, 1991. Rosalie then submitted herself to a medical examination on July 29, 1991. A certification was issued by the examining physician, Dr. Jocelyn I. Ilagan, that Rosalie's vulvar opening revealed a mucosal scar or a healed lacerated wound. It was also reported that during her internal examination, her vaginal vault admitted two fingers without pain, and that there was no resistance on internal examination, suggesting a possible hymenal break.^[5]

In his defense, accused-appellant testified that he had known Rosalie for a year prior to the incident and had been courting her two (2) weeks prior to such date. Rosalie, however, turned him down because she already had a boyfriend. Yet, he claims that even while he was still courting Rosalie, they already had sex and that at around six o'clock in the evening of that fateful night, Rosalie invited him over to her house to help her with her school assignment. He also claims that Rosalie left him to look for a companion in the house of one Bogoy Dalisay but that she returned alone. Accused-appellant alleges that he declared he was going home but Rosalie stopped him and asked him to spend the night in her house. At around 12:00 o'clock midnight, Rosalie gave him a pillow and mat and told him he could already sleep. They then started kissing, after which he undressed himself first and then Rosalie and then proceeded to have sex with her. He narrated that while they were having sex, Rosalie even asked him to place a pillow under her buttocks. They had sex again at around 12:30 o'clock and, again, at around 3:00 o'clock in the morning. He left her at around 4:00 o'clock the following morning.

Accused-appellant further alleges that Rosalie was no longer a virgin when they had sex and that her charge of rape against him is a lie as she consented to their sexual acts. He claims that Rosalie was probably afraid of her mother, prompting her to cry rape. Accused-appellant also avers that on July 28, 1991, Rosalie's mother asked him to go to their house where she asked him to wait for Rosalie's father so that they can arrange their marriage. He narrated that he asked the same from Rosalie's mother. He claims that he stayed in their house from 9:00 o'clock in the morning until 4:00 o'clock in the afternoon. However, Rosalie's father failed to arrive.

On cross-examination, accused-appellant admitted leaving for Manila on July 30, 1991, or three (3) days after he learned of the criminal cases filed against him, admittedly to hide. He stayed in Manila for three (3) years and only returned to Romblon in May, 1994.

The facts of Criminal Case No. 1825, are as follows -

In the afternoon of July 17, 1991, Rosanna M. Manipol, then fifteen (15) years old and a confessed virgin, was in the house of one Vicente Ramirez with her brother and classmates, to eat lunch as was their custom during school lunch breaks. Rosanna was not, however, able to return to school that afternoon because she developed a fever and decided to stay in the said house and rest while waiting for a companion to take her home; her own house being two and a half (2 and ½) kilometers away from their school. At around 2:00 o'clock that afternoon, while lying down and resting in the said house, Rosanna felt somebody enter and later saw accused-appellant in front of her, wearing t-shirt and short pants. She was about to