

## SECOND DIVISION

[ G.R. No. 108615, October 09, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO VEDRA,<sup>[1]</sup> ACCUSED-APPELLANT.**

### DECISION

#### QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of Cagayan de Oro City, Branch 24, in Criminal Case No. 92-702, convicting appellant of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the victim the amount of P30,000.00 as moral damages.

The facts are as follows:

At around 7:00 P.M. on February 26, 1992, Gina Vedra, a 13 year-old girl, went to her grandmother's house to inform her parents that supper was ready. They told her to go ahead, so she headed home. When she reached a mango tree located about 100 meters from her house, a man came up to her and embraced her. She recognized the man as herein appellant Nilo Vedra, a cousin of her father.

Appellant dragged her behind the mango tree. She squirmed and resisted but to no avail. Appellant pointed a knife at her chest and removed her panty. Then he removed his pants. While standing, he attempted to put his penis inside her vagina. Unable to penetrate her vagina, he placed saliva on his penis. He tried again, and succeeded to insert his organ inside hers. The victim felt pain. Afterwards, appellant pulled up her panty. It was bloody. He threatened to kill her if her parents found out about the incident.

Her parents got home at around 10:00 P.M. that night. But, it was only on March 1, 1992, after bouts of worry, that she told them she was raped. Her father brought her to the Initao District Hospital for medical examination. Afterwards, her father secured a copy of the medical certificate and gave it to the police.<sup>[2]</sup> The police arrested appellant. After conducting the preliminary investigation of the charge, the Prosecutor filed on March 21, 1992, the following Information:<sup>[3]</sup>

That on or about February 26, 1992 at more or less 7:00 o'clock in the evening, in Sibucawan, Apas, Initao, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being an uncle of the complainant, did then and there willfully, unlawfully and feloniously, and by means of force and intimidation, abuse and threats upon Gina Vedra, a young woman of 13 years old, accused drag her to a secluded place, pinned her down and succeeded in having carnal knowledge with her against her will and consent.

CONTRARY TO and in violation of Article 335 of the Revised Penal Code.

Cagayan de Oro City, May 5, 1992.

Appellant assisted by counsel *de officio* on arraignment entered a plea of not guilty.  
[4]

During trial, the prosecution presented as witnesses complainant Gina Vedra and Dr. Wilma Jane Berwin, resident physician at the Initao District Hospital. Dr. Berwin examined the victim on March 2, 1992, or seven days after the incident, and found healed complete lacerations at 3:00 and 9:00 o'clock of the hymen.<sup>[5]</sup>

The defense, for its part, presented as witnesses (1) appellant, (2) his cousin, Leo Vedra, and (3) his mother, Josefa Vedra.

Appellant denied the charge of rape. He claimed that he was in Agora, Lapasan, Cagayan de Oro City in the afternoon of February 25, 1992 until February 29, 1992, helping his cousin carry fish boxes from the fish car to the landing area.<sup>[6]</sup> His cousin, Leo Vedra, corroborated his story.<sup>[7]</sup>

Josefa Vedra testified that on July 5, 1992, Gina Vedra suddenly arrived at her house. Gina said that she could not "swallow" her affidavit (about the rape) because it was dictated to her by her father and the police. Josefa took pity on Gina and offered to accompany her home. The victim refused, so Josefa informed Gina's grandfather and mother that the child was at her house.<sup>[8]</sup>

On rebuttal, three witnesses testified, namely (1) Gina Vedra, (2) Roque Vedra, the victim's eight year-old brother, and (3) Bienvenido Macalom, a neighbor of appellant.

Gina testified that on July 5, 1992, at around 8:00 A.M., she was washing clothes in the river when Lola Sefa, appellant's mother, approached her. Lola Sefa told her that she will give her something in the house. When they got to the house, Lola Sefa told her to go upstairs and locked her in a room. The following day, Elisibia Tacbobo, the sister of appellant, brought the victim's food and told her that if she would withdraw the case, she would be given a job. That night, her Lola Sefa allowed her to go home.<sup>[9]</sup>

Roque Vedra testified that on July 5, 1992, at around 8 A.M., while he was in the river, he saw his sister Gina talking with Lola Sefa.<sup>[10]</sup>

Bienvenido Macalong, appellant's neighbor, testified that appellant was in Sibokawanon from February 22 to 29, 1992. During said period, Macalong used to see appellant everyday, either working or playing basketball.<sup>[11]</sup>

On sur-rebuttal Christine Tacbobo, granddaughter of Josefa Vedra, testified that on July 5, 1992, at around 9:30 P.M., she saw Gina Vedra knocking at Lola Sefa's house. Gina was carrying a bag of clothes. When Christine opened the door, the victim said that she lost the P100.00 given by her father because she gave it to her boyfriend. Christine let Gina sleep with her in the house. Gina did not speak with Lola Sefa that night. The following day, at around 1:00 P.M., Gina and Lola Sefa had

a talk. Afterwards, Lola Sefa went down to Initao to fetch the mother, grandfather and grandmother of Gina.<sup>[12]</sup>

On October 28, 1992, the trial court rendered its decision,<sup>[13]</sup> thus:

WHEREFORE, premises considered, the court hereby finds accused NILO VEDRA guilty beyond reasonable doubt as principal of the offense of rape defined and punishable under Article 335 of the Revised Penal Code as amended by Rep. Act No. 2632 and Rep. Act No. 4111. Consequently, he is hereby sentenced, with all accessories of the law, to a penalty of RECLUSION PERPETUA. In addition, he is hereby ordered to pay the private offended party, Gina Vedra the sum of THIRTY THOUSAND (P30,000.00) PESOS as moral damages without however, subsidiary imprisonment in case of insolvency.

Accused is credited fully of the preventive imprisonment he has undergone.

Hence, the present appeal. Appellant assigns<sup>[14]</sup> only one error:

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINING WITNESS, GINA VEDRA, DESPITE THE IMPROBABILITIES AND INCONGRUITIES OF HER TESTIMONIES WHICH SERIOUSLY ERODED HER CREDIBILITY.

In his brief,<sup>[15]</sup> appellant faults the trial court for swallowing the uncorroborated testimony of the victim hook, line and sinker. First, appellant contends that the rape could not have occurred while the assailant and victim were standing since sexual intercourse in this position cannot be made without the cooperation of the female partner. Second, appellant assails the reliance of the trial court on the "typical barrio lass" stereotype. Appellant points out that 13 year-old girls from the rural places already have access to professional health services, television, comics and even smuts. Appellant further contends that considering that the victim had a boyfriend, it is possible that she experimented with him about the proverbial birds and the bees. Lastly, appellant insists that his denial should have been given credence, considering the supporting testimonies of his relatives.

For the State,<sup>[16]</sup> the Office of the Solicitor General contends that the trial court correctly gave credence to the testimony of the victim. Her testimony was clear, straightforward and candid, and without any dubious motive shown why she would falsely impute the crime to appellant. Further, the commission of the crime of rape while standing is neither impossible nor improbable. A rapist rarely considers the position of his victim in committing the sexual act, for his purpose is to be sated and that alone. The OSG maintains that the only consideration in the crime of rape is penetration, no matter how slight. Further, appellant's insinuation that the victim had sexual intercourse with her boyfriend is conjectural and does not negate the commission of rape.

The main issue for our consideration pertains to the assessment of credibility of the witnesses. Needless to say, this is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination.<sup>[17]</sup> Such matters