

## SECOND DIVISION

[ G.R. No. 106233, January 29, 1998 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROBINSON ESTRERA, ACCUSED-APPELLANT.**

**D E**

**C I S I O N**

**MENDOZA, J.:**

This is an appeal from the decision<sup>[1]</sup> dated June 1, 1992 of the Regional Trial Court of Danao City (Branch 25), convicting accused Robinson Estrera of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the complainant, Ester Estrera Mistula, in the amount of P40,000.00.

The information against accused-appellant reads:<sup>[2]</sup>

That on or about the 1st day of May 1991, at 10:00 o'clock in the morning, more or less, in Sitio Pacijan, Barangay San Isidro, Municipality of San Francisco, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, while offended party was in her farm, herein accused, by means of force and intimidation, with the use of a sharp-pointed knife, did then and there wilfully, unlawfully and feloniously had carnal knowledge with ESTER MISTULA y ESTRERA against her will and without her consent.

CONTRARY TO LAW.

Complainant testified that on May 1, 1991, at around 10:00 a.m., while she was feeding the chickens at the family farm in Sitio Pacijan, San Isidro, San Francisco, Camotes, Cebu, accused-appellant suddenly appeared and, with his right hand, seized her right arm and twisted it behind her back, even as he poked a knife at her left side, with his left hand.<sup>[3]</sup> Complainant said accused-appellant later transferred the knife to his right hand and, with his left hand, pulled down her shorts thereby breaking its zipper. Complainant said he threatened to kill her if she resisted.<sup>[4]</sup>

After pulling down complainant's short pants, accused-appellant pulled down her panty, causing its garter to snap.<sup>[5]</sup> Complainant claimed she was thrown to the ground and her panty and short pants were removed. She said she was going to deliver a "kicking blow" to accused-appellant, but she was held by the knees by him.<sup>[6]</sup> After that, complainant said, accused-appellant took off his pants and brief with the use of his right hand, while he held her down with his left hand.<sup>[7]</sup>

Complainant claimed she tried to curl up by bending her knees but accused-

appellant straightened her up, and with his right hand, inserted his penis into her vagina.<sup>[8]</sup> According to her, because she was a virgin, it took accused-appellant an hour and a half to consummate his deed.<sup>[9]</sup> During the sexual act, she said she “did nothing” and “just remained flat on the ground.”<sup>[10]</sup>

After accused-appellant was through, complainant said she was warned not to tell her mother otherwise accused-appellant would kill her family. Accused-appellant then put on his clothes and left. Complainant said she lay on the ground for 20 more minutes to rest because she was exhausted.<sup>[11]</sup> As she was about to get up, she saw blood oozing from her vagina. She wiped it with her panty and then put on the panty and short pants and, upon reaching home, washed her panty because she was afraid her mother might discover what had happened to her.<sup>[12]</sup>

Complainant kept quiet about the rape but, on May 15, 1991, she learned that accused-appellant had also tried to molest her younger sister Rosie. She did not want the same thing to happen to her sister, so she decided to reveal her ordeal.<sup>[13]</sup> Accordingly, on May 16 she and her mother and elder sister took a motorbike and proceeded to the poblacion to report the rape to the police.<sup>[14]</sup> While they were on their way, accused-appellant saw them and went after them on his motorcycle and warned them that he would kill them if they filed a case against him. Undeterred the Mistulas proceeded to the municipal hall where complainant reported the matter to the mayor.<sup>[15]</sup>

Complainant was examined by Dr. Leah S. Celestial, who later issued a medical certificate<sup>[16]</sup> indicating the following:

= HEALED HYMENAL LACERATION AT 3 O’CLOCK, 6 O’CLOCK AND 9 O’CLOCK POSITION  
= NO EVIDENCE OF ABRASION NOR HEMATOMA

Dr. Celestial reiterated in court that she found no abrasion or hematoma.<sup>[17]</sup>

Rosie Mistula, 16 years of age, corroborated her sister’s testimony. She said that twice accused-appellant tried to force her to go with him, but on both occasions, she was able to run away. The first incident allegedly took place at around 10:00 p.m. on May 11, 1991, in Unidos, San Francisco, Cebu. She claimed she was on her way home with friends when accused-appellant came along, seized her right arm, and tried to pull her, telling her to “Come here.” But, Rosie said, she managed to break loose. She spent the night at the house of her cousin Rosalinda Pleños. The next morning, she said she told her mother about the incident. Then on May 15, 1991, while Rosie was at the coronation of the fiesta queen of San Isidro, accused-appellant tried to force her to go with him. Again, she was able to extricate herself, according to her, and she ran to the house of her aunt. Rosie claimed that in September 1990 her elder sister Laura Mistula had been raped by accused-appellant.<sup>[18]</sup>

Complainant’s cousin, Rudileo Mistula, also testified. He claimed that accused-appellant’s wife, Alicia Gubalani Estrera, had gone to his house in Basak, Mandaue City on July 10, 1991 and offered to settle the case. Alicia thought that Rudileo was financially supporting complainant in filing the case. Rudileo said he told accused-

appellant's wife that an amicable settlement was out of the question because this was not the first time accused-appellant had committed misconduct and if nothing was done to put a stop to his mischief others would be encouraged to do the same.  
[19]

Police Inspector Joshua Gillamac of Mabolo in Cebu City testified that their assistance was sought by the police of San Francisco because accused-appellant was believed to be hiding in Cebu City. Gillamac and the other policemen were able to obtain a picture of accused-appellant because he had a previous rape case. They traced accused-appellant's whereabouts in Lorega, Sikatuna, Cebu City. Gillamac claimed that on June 5, 1991, when the police proceeded to the house indicated by their informant, they were told that accused-appellant had fled to the basketball court and was hiding there. They therefore proceeded to the basketball court where they found accused-appellant and arrested him at 9:45 p.m. that day.<sup>[20]</sup>

Testifying in his behalf, accused-appellant denied the charge and claimed that he and complainant Ester Mistula were lovers and that they had a tryst on April 27, 1991 at 11:00 in the evening. The occasion was a dance during the fiesta of Sitio Amihaw, San Francisco, Cebu. Accused-appellant said he danced with complainant six times and, sensing that complainant "liked" him, he asked her not to dance with anybody else. Later, he asked if they could have a talk near the reservoir. Complainant agreed but at her suggestion lest they be seen by other people, they went to a house, which apparently had been abandoned because it had been damaged during a storm. There they engaged in sexual intercourse. Accused-appellant said he left for Cebu City on April 30 to see his wife who was working there and returned to Sitio Pacijan on May 4. On May 5, 1991, accused-appellant claimed he and complainant again had a rendezvous at the back of complainant's house at 9:00 p.m. They had met earlier while he was fetching water and she was washing clothes. There was a stone at the back of the house which according to accused-appellant complainant used as back support during their tryst.<sup>[21]</sup>

Accused-appellant testified that he had known complainant for a long time since they had been neighbors and they met near the well whenever he drew water.<sup>[22]</sup> He admitted knowing Rosie Mistula but denied making sexual advances to her.<sup>[23]</sup> Indeed, complainant had earlier told the court that she was related to accused-appellant, her mother's family name being Estrera.

Accused-appellant claimed that his wife quarreled with complainant on May 15, 1991 after learning that she and accused-appellant were having an affair. He himself left San Francisco and went to Cebu City after May 4, 1991, because he and his wife had quarreled over complainant.<sup>[24]</sup> He denied that he had gone in hiding.<sup>[25]</sup>

Accused-appellant's wife, Alice Estrera, corroborated his story. She testified that she knew complainant because they were neighbors in Barangay San Isidro, San Francisco and she had seen complainant and her husband teasing each other and had heard her husband describe Ester as "sweet." She learned of their affair from Emelita Castardo, who was present at a benefit dance held on April 27, 1991 at Sitio Amihaw and saw accused-appellant and Ester holding hands. On May 14, 1991, Alice said she went home to San Francisco for the fiesta and confronted her husband, as a result of which they quarreled.<sup>[26]</sup> Alice also confronted Ester on May 15, 1991 as Ester passed by their house. After telling complainant that she should

not have gotten involved with a married man who had children, she called Ester “a paramour ... ill-mannered and a harelip.” Ester did not deny the imputation. Instead she told Alice to talk to her husband and keep him from her (Ester) because if he came to see her she was “ready.”<sup>[27]</sup>

Alice claimed that she later met complainant on June 29, 1991, and that when she asked her why she had filed a case against her husband, complainant allegedly told her because she had been embarrassed in public.<sup>[28]</sup>

Alice denied Rudileo Mistula’s allegation that she offered to settle the case. Alice said<sup>[29]</sup> she went to Rudileo’s house because Rudileo’s father had told her to and that, when she saw Rudileo, it was Rudileo who said complainant’s family was willing to settle for P100,000.00. However, she said she told Rudileo that she did not have that amount and that anyway whatever complainant and her husband might have done was the result of their agreement.

The trial court gave credence to the prosecution’s version of the events and convicted accused-appellant. The court thought that Ester’s positive testimony was entitled to greater weight than the denial of accused-appellant, and that the offer of compromise from accused-appellant’s family was an implied admission of his guilt. Hence this appeal.

Accused-appellant contends:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE COMPLAINANT WHICH IS INCREDIBLE, UNRELIABLE, THEREFORE NOT SUFFICIENT TO SUSTAIN A CONVICTION BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT WHEN THE EVIDENCE ADDUCED BY PROSECUTION FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN THEIR FAVOR BY CLEAR AND CONVINCING EVIDENCE OF GUILT BEYOND REASONABLE DOUBT.

Under Art. 335 of the Revised Penal Code, the following must be established: first, that accused had carnal knowledge of the complainant and second, that the same was accomplished through force or intimidation.

With regard to the first requirement, accused-appellant admits having carnal knowledge of complainant Ester Mistula. But he claims that it was with her consent and that he had sexual intercourse with her not just once but twice. The question is whether such a claim is true, or whether as complainant says the sexual intercourse was accomplished by means of force or intimidation.

Accused-appellant points to two circumstances which he claims makes complainant’s claim that she was raped unbelievable: (1) it took complainant 15 days after the alleged rape before she told her parents and reported the matter to the authorities,