

THIRD DIVISION

[G.R. Nos. 116516-20, September 07, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
NEMESIO FERRER Y DE GUZMAN, ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

Nemesio Ferrer y de Guzman, a 60-year old farmer from Barangay Baybay, Aguilar, Pangasinan was charged by his neighbor, 14-year old Irene Paral of five counts of rape. The first information^[1] reads:

"That on or about the 25th day of September 1993 in the morning, in Barangay Baybay, Municipality of Aguilar, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with Irene A. Paral against her will, to her damage and prejudice.

CONTRARY to Article 335 of the Revised Penal Code."

The four other Informations^[2] charged accused-appellant with rape allegedly committed on October 2, 8, 16 and 22, 1993. The cases were tried jointly.

On arraignment, accused-appellant pleaded "not guilty." Whereupon, trial on the merits ensued. The prosecution presented Dra. Wilma Flores Peralta, the Rural Health Officer of Aguilar, Pangasinan, and the alleged victim, as witnesses. The defense on the other hand has accused-appellant and his son-in-law Jorge Dian^[3] as witnesses.

The prosecution established the following facts:

Fourteen-year old Irene Paral and accused-appellant were neighbors, the latter owning a farm located near the house of the Parals in Barangay Baybay, Aguilar, Pangasinan. As part of her routine, Irene would go every morning to a nearby creek, approximately 120 meters away from their house, to wash clothes. In the afternoon, Irene would again go near the creek to gather firewood.

On September 25, 1993 at 6:00 o'clock in the morning, Irene was washing clothes in the creek when suddenly, accused-appellant approached her from behind, grabbed her hair, pointed a knife at her neck and forcibly pulled her towards an area with tall grass, around ten meters away from the creek. Thereafter, accused-appellant pushed her to the ground and told her to keep quiet. Accused-appellant then started removing the short pants of Irene but the latter resisted and kicked the

accused. Accused-appellant retaliated by boxing the thighs of his victim. The strength of Irene proved no match to that of her ravisher. Having subdued his prey, accused-appellant removed Irene's underwear and proceeded to remove his own. Accused-appellant then went on top of Irene and had sexual intercourse with her. Although in pain, Irene struggled and attempted to resist the invasion of her womanhood by accused-appellant but to no avail for the latter was pointing a knife at her all throughout her ordeal. Having momentarily satisfied his lust, accused-appellant stood up and put on his pants. After warning Irene not to divulge the incident to anybody, else her family would be in peril, accused-appellant left.

After the incident, Irene gathered herself, returned to the creek and finished washing the clothes. She did not go back immediately to their house as she was also afraid of the wrath of her mother if she does not finish her chore.

Seven days after her first ordeal, Irene was again subjected to another painful experience at the hands of accused-appellant. On October 2, 1993, Irene was again washing clothes in the creek when accused-appellant, propelled by his lustful desires, surreptitiously approached Irene from behind, pointed a knife at her neck and dragged her to a nearby cogonal area. Accused-appellant pushed her to the ground, undressed her and succeeded in violating her again. As with the first time, accused-appellant was armed with a knife and threatened to kill Irene and her family in case she should disclose the incident to anybody. When Irene struggled, accused-appellant boxed her thighs and pointed the knife at her. The incident happened a third time on October 8, 1993.

After sexually molesting Irene on three separate occasions, accused-appellant's lust apparently remained unsatisfied. In the afternoon of October 16, 1993, Irene was gathering firewood when accused-appellant suddenly approached her and threatened her with a knife. Accused-appellant went through the motions of an accustomed ritual and succeeded in violating her again followed by the threat to harm her and her family if she revealed the incident to anybody.

On October 22, 1993 at 4:30 in the afternoon, Irene was on her way to the creek when, without any warning, accused-appellant dragged her to an area planted with cassava plants where he prepared to mount her when suddenly one Arnel Abaday passed by. Frightened, accused-appellant threatened Irene not to make any outcry and fled.

Since she could no longer bear the abuses she had suffered at the hands of accused-appellant, Irene narrated her harrowing experience to her mother and brother.

Dra. Wilma Flores Peralta, Rural Health Officer of Aguilar, Pangasinan examined Irene and her findings, also contained in a medical certificate,^[4] revealed the following:

"1) Hymenal lacerations, old at 9:00, 1:00 and 5:00 o'clock positions; there are old lacerations in the hymen showing that there is stretching of the hymen or penetration like a penis of a man inserted in the vagina. The lacerations were probably caused in the months of September and October 1993;

- 2) Introitus admits one finger with ease as there was already previous insertion of a penis of a man inside the vagina;
- 3) Cervix soft which indicates that the patient is pregnant, because normally a non-pregnant woman's cervix is firm;
- 4) Uterus enlarged, 2 fingerbreath above symphysis pubis which shows that patient is pregnant 2 to 3 months and the intercourse could have happened in October 1993. Per the medical record of the patient, the latter's last menstrual period was September 25, 1993 and the expected date of delivery is July 1994. The date of the incident was recorded to determine the period of conception of the victim. The patient was only 14 years old at the time she examined her."

Understandably, accused-appellant came up with a different version. He alleged that on September 24, 1993 he was sitting under the shade of a camachile tree watching his carabao when Irene arrived and asked for money. Since he had no money with him, he promised to give Irene some amount the following day. When they met the next day, Irene asked him to follow her to the creek where she would be washing clothes. When they were already near the creek, accused-appellant tried to hand the money to Irene but the latter insisted that she would only receive the money in the area where there were tall cogon grasses, about ten meters away from the creek.

Allegedly acting upon Irene's instructions, accused-appellant went to the grassy area where, upon arrival of Irene, the latter undressed herself and offered herself to him. When he removed his brief and discovered that his penis remained flaccid, Irene held it and rubbed it against her vagina but when erection failed, Irene became angry, whereupon, he gave the money to her and left. Subsequent events allegedly happened in the same manner.

Jorge Dian, son-in-law of accused-appellant, testified that he noticed that everytime his father-in-law and complaining witness met, they would smile at each other and on one occasion, he even saw his father-in-law give Irene some money.

On rebuttal, Irene testified that on each occasion that accused-appellant raped her, the latter had an erection and his penis penetrated her vagina. She likewise denied asking money from accused-appellant as her parents could afford to spend for her needs.

After trial on the merits, the trial court rendered a decision finding accused-appellant guilty of four counts of rape and one count of attempted rape. The dispositive portion reads:

"WHEREFORE, in light of all the foregoing considerations, the court renders judgment against the accused Nemesio Ferrer as follows:

In Criminal Cases Nos. L-4962, 4963, 4964 and 4965, the court finds and holds the accused, Nemesio Ferrer, guilty beyond reasonable doubt of the crimes of Rape, charged in the Informations filed against him, defined and penalized under Article 335 of the Revised Penal Code as amended, and conformable thereto, hereby sentences said accused, to suffer in each case the penalty of Reclusion Perpetua and its accessory penalties

provided by law and further to pay the costs of the proceedings.

In Criminal Case No. L-4966, the court likewise finds and holds the accused, Nemesio Ferrer, guilty beyond reasonable doubt of the crime of Attempted Rape, defined and penalized under the provisions of Article 335 in relation to Article 6 of the said code and conformable thereto, hereby sentences said accused to suffer an indeterminate penalty of six (6) years of prision correccional as minimum to ten (10) years of prision mayor as maximum and to pay the cost of the proceedings.

The court further orders the accused to indemnify the offended party the sum of Three Hundred Thousand (P300,000.00) Pesos as moral damages in all the cases without subsidiary imprisonment in case of insolvency. The court likewise orders the accused to acknowledge and support the child in the womb of the complainant, as his illegitimate child.

And applying the three-fold rule in favor of the accused, the total duration of the penalty to be served by him in all the cases shall not exceed forty (40) years. The preventive imprisonment served by him in relation to the cases shall be fully credited in his favor pursuant to the provisions of R.A. No. 6127."

The said decision stated that "in the ultimate and final analysis and evaluation of the totality of the evidence presented during the trial, the court finds that the evidence adduced by the prosecution is overwhelming against the sham and pretended innocence of the accused and has established a moral certainty of the guilt of Nemesio Ferrer of the offenses filed against him."^[5]

Accused-appellant is now before this Court arguing for the reversal and setting aside of his conviction and praying for his acquittal. In his appeal, accused-appellant claims that the lower court erred:

1. In giving credit to the testimony of the victim which is incredible;
2. In not scrutinizing with extreme caution the testimony of the victim who really caused her pregnancy, whether a male member of her family or the accused himself;
3. In not acquitting the accused, this guilt having not been satisfactorily proven beyond reasonable doubt.

This Court, seeing through accused-appellant's fabricated yarn, is not persuaded. His conviction must stand. Accused-appellant attempted to cast doubt on the testimony of Irene that he was armed with a knife when he intimidated and raped her. If indeed there was a knife, then the prosecution should have at least presented it during the trial.

This Court disagrees. During trial, what was presented and offered by the prosecution was the testimonial evidence of Irene. It did not attempt to offer the knife since in the first place, the knife was never in the possession of the prosecution but with the accused-appellant. Secondly, it is not necessary for the prosecution to corroborate Irene's testimony with a physical evidence, i.e., the knife.