

THIRD DIVISION

[G.R. No. 119543, November 28, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARISTON PARDILLO, JR. ALIAS "YANYAN", ACCUSED-
APPELLANT.
D E C I S I O N**

FRANCISCO, J.:

This is a soul-less crime of rape committed by accused-appellant upon the complainant on the eve of the day of souls. The criminal charge reads:

"That on or about the 1st day of November, 1993 at about 8:00 in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by the use of force and intimidation upon the person of the undersigned, with deliberate intent, did then and there willfully, unlawfully and feloniously have carnal knowledge or sexual intercourse with the undersigned complainant FLOR DE MAY DIADA Y VILLABETO, against the will of the undersigned.

"CONTRARY TO LAW."^[1]

When arraigned, appellant pleaded not guilty. After trial, the lower court convicted him of the crime charged, sentenced him to suffer reclusion perpetua and to indemnify the victim.^[2] Hence this appeal whereby appellant denies any criminal liability and assails the trial court's (a) assessment of the credibility of complainant and (b) his conviction for the crime of rape.

The facts ably supported by the records are as follows:

"The complaining witness Flordemay Diada testified that at about 6:30 o'clock in the early evening of November 1, 1993 she asked permission from her mother to see her cousin at V. Rama Avenue, Cebu City. As she was walking towards V. Rama Avenue via Mabolo District she noticed the accused Ariston Pardillo, Jr. also known as 'Yanyan', then her neighbor at the Reclamation Area, this City, following her in his pedicab (or trisikad). The accused offered her a ride in his pedicab (or trisikad), and she accepted his invitation. On reaching the White Gold House at the Reclamation Area she flagged down a jeepney for Colon street. She took the jeepney, the accused took it too. She got off opposite the Rosita's Department Store at Colon Street, and was about to take another jeep bound for Mabolo when the accused persuaded her not to ride the jeepney yet because he would still show her around. She was persuaded, and they roamed around Colon for some thirty (30) minutes, from 7:00 o'clock to 7:30 o'clock, that evening of November 1, 1993. They then went to Julie's Bakeshop near the Gazinin Plaza, still at Colon. Beside

Julie's Bakeshop she bought some candies.

"The accused then bade her follow him, saying that he would buy something nearby. They entered an alley in Sanciango Street, at the Kamagayan District, behind the University of the Visayas (Cebu City red light district and haven for drug addicts), until they reached a house with many rooms. Flordemay narrated what happened after that, thus:

'ATTY. BERNALDEZ"

Q: Now, upon reaching that particular place, you observed that there were rooms, after a particular moment, what did you do?

A: I tried to free myself, I tried to run but he took hold of my hair.

Q: Kindly explain to the Court why you tried to free yourself from him?

A: Because he wanted to pull me inside.

Q: What happened next when he was trying to pull you inside?

A: He pulled me inside the room and once inside he locked the room.

Q: And after the accused locked the door of that particular room of the house, what else transpired at that time?

A: He ordered me to remove my pants.

COURT:

xxx xxx xxx

ATTY. BERNALDEZ:

Q: Now, did you remove your pants as ordered by the accused?

A: No.

Q: Now, what happened after you refused to remove your pants?

COURT:

Q: When you say pants are you referring to your panty or to your pair of pants?

A: My pants and my panty.

Q: In other words, you were wearing a pair of pants at that time?

A: Maong.

ATTY. BERNALDEZ:

Q: After you refused to remove your pants and panty, what did the accused do at that time?

A: He boxed me on my stomach.

Q: How many times did the accused box you on your stomach?

A: Twice.

Q: And when the accused boxed you on your stomach how did you feel?

A: My vision was somewhat blurred as a result of the blow. My vision became dim.

Q: After the accused boxed you what else happened at that particular time?

A: I slumped face down on the bed.

Q: What was the kind of bed that were at that time?

A: It was a wooden bed.

Q: An while you slumped your body on the bed face up, what else happened?

A: Then he took off my pants and he removed my panty.

Q: While the accused was removing your pair of pants, what did you do?

A: I tried to free myself from him and I struggled to free myself of him because of the pain I felt on my stomach I cannot do otherwise.

Q: That, of course, included your panty?

A: Yes.

Q: After the accused has succeeded in forcibly removing your pair of pants and panty what else did you do at that time?

ATTY. ENCINAS:

We object to the use of the word 'forcibly', there was no mention by the witness.

COURT:

Lay the basis.

ATTY. BERNALDEZ:

Q: How did the accused remove your pants?

A: He unzipped (bunlot) my pants and pulled it up forcibly.

Q: And while the accused unzipped your pair of pants what you say?

A: I was trying to prevent him from taking off my pants but at that time I was also holding on to my stomach because it was very painful and since my vision dimmed already, and there was nothing I can do anymore.

Q: Did the accused exert effort or force in removing your pair of pants?

ATTY. ESCASINAS:

Leading, Your Honor.

COURT:

Refrain from asking leading questions, Compañero, or else I will direct the public prosecutor to take over.

ATTY. BERNALDEZ:

Q: Once your pair of pants were removed and your panty also, what else did the accused do?

A: He also undressed himself.

Q: Now, how far was the accused to you at that time... at that particular time while he was undressing himself?

A: Very near by my side.

Q: Now, what happened next?

A: He placed on top of me.

Q: While the accused was placing himself on top of you, what did he do?

A: The witness demonstrated by placing her hands in her side at the level of her neck--- eagle spread.

Q: What else did the accused do at that time?

ATTY. ENCASINAS:

I request the Court to admonish the witness to refrain from using the word CUAN.

ATTY. BERNALDEZ:

With due respect to the Honorable Court, the private complainant is just 14 years old and she is very naïve considering the gravity of the offense that happened to her.

COURT:

The Court will allow the answer of the complainant, the Court understands what she is answering because of her obvious naivety.

A: He put his own into my own.

ATTY. BERNALDEZ:

Q: What did you do at that particular moment when the accused was placing his own into your own?

A: I cried and pleaded with him.

Q: What did you say to him at that particular time?

A: I told him "Please do not do this to me because we are friends and

that my parents knew you.”

Q: Now, for how long was the accused on top of you at that time?

A: About five minutes.

COURT:

Q: But while he was on top of you, what were you doing, if any?

A: I struggled to free myself (kisi-kisi or lugnot) but he overpowered me considering that I also felt pain in my stomach.

TRIAL PROS. SOLIMA:

Q: What did the accused do as soon as the accused inserted his private organ to your vagina?

A: He started to push and pull and I screamed because of pain, but he covered my mouth with his hands.

Q: For how long did the accused do that push and pull to you?

A: Five minutes.

Q: What was your reaction while the accused was doing that push and pull?

Q: What were you doing if any?

A: I cried and I struggled to free myself.

Q: Then after that what happened?

A: When his organ entered mine I felt extreme pain.

Q: After his organ was inserted to your private part, what did he do next?

A: He stood up.

Q: Then after he stood up, what did he do next?

A: He sat down in bed.

Q: What about you, what did you do? What did you observe on your private part?

A: It was bleeding.

Q: And what did he tell you, if any?

A: He put on his pants.

Q: While he put on his pants, what did he tell you?

A: He said that if I'm amenable he would marry me but if not, then I should not tell anybody otherwise he will kill me, my parents and my younger brothers and sisters.

Q: While the accused was putting on his pants, what did you do?

A: I started to pull slowly my pants.