

SECOND DIVISION

[G.R. Nos. 115035-36, February 23, 1996]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PERCIVAL GECOMO Y OSIT, ACCUSED-APPELLANT.**

DECISION

REGALADO, J.:

In Criminal Cases Nos. 92-108024 and 92-108025 of the Regional Trial Court, Branch 8, Manila, accused-appellant Percival Gecomo y Osit was charged on August 11, 1992 with two crimes of rape under separate informations filed on the bases of duly amended complaints sworn to by the complainant, Regina Rapuzon y Fuenteblanca, and annexed thereto.

The information in Criminal Case No. 92-108024^[1] alleges:

"That on or about June 20, 1992, in the City of Manila, Philippines, the said accused, by means of force, violence, and intimidation, to wit: by then and there poking a knife at one REGINA RAPUZON Y FUENTEBLANCA, removing her dress, and forcing her to lie down and inserting his penis into her private part, and succeeded in having carnal knowledge of the said REGINA RAPUZON Y FUENTEBLANCA, against her will and consent."

while that in Criminal Case No. 92-108025^[2] avers:

"That on or about July 3, 1992, in the City of Manila, Philippines, the said accused, by means of force, violence, and intimidation, to wit: by then and there poking a knife at one REGINA RAPUZON Y FUENTEBLANCA, removing her dress, and forcing her to lie down, and inserting his penis into her private part, and succeeded in having carnal knowledge of the said REGINA RAPUZON Y FUENTEBLANCA, against her will and consent."

During the arraignment, appellant entered a plea of not guilty to the offenses charged. The cases having been consolidated, after a joint trial the lower court rendered judgment on March 7, 1994 sentencing appellant to suffer the penalty of *reclusion perpetua* and to indemnify the victim in the amount of P50,000.00 in each of the two cases.^[3]

Hence this appeal from the lower court's decision, with the following assignment of

errors^[4] allegedly committed by and imputed to the court *a quo*:

- "1. The trial court seriously erred in giving full credence to the uncorroborated testimony of the private complainant;
2. The trial court failed to scrutinize with care and caution the details of the testimony of the private complainant which is replete with serious inconsistencies and statements not in accordance with the ordinary and natural experience of mankind;
3. The trial court seriously erred in not considering the clear and convincing testimony of the accused as corroborated by the testimony of another disinterested person that he and private complainant are sweethearts and the sexual intercourse were (sic) consummated with mutual consent;
4. The trial court erred in not considering the memorandum of the accused which laid down in full detail the true factual circumstances established by both prosecution and defense during the trial of this case, and the reasons stated to show that no rape was committed by the accused;
5. The judge who rendered the decision failed to exercise utmost scrutiny in reviewing the testimonial and documentary evidence on record, especially so that he never presided in the trial of this case."

From the records of these cases, it appears that complainant Regina F. Rapuzon and appellant were co-employees, the former working as a waitress and the latter as a "mami" steamer, in Kim Hiong Restaurant located near Gil Puyat Street, Sta. Cruz, Manila. Both worked in the 7:00 P. M. to 5:00 A. M. shift of said restaurant.^[5]

At about 6:30 P.M. of June 20, 1992, complainant was walking along the side of the street of the Fair Center Department Store to go to her place of work^[6] when appellant suddenly appeared and placed his left arm over her shoulder.^[7] Simultaneously, appellant poked a knife concealed under a handkerchief at the side of Regina and told her to go with him or else he would kill her.^[8] Feeling weak and nervous, Regina went and walked along with Percival. From the place where she was accosted, Regina was brought to the Mansion Hotel located just in front of Isetann Department Store along Recto Avenue.^[9]

After appellant had signed the registry of the hotel, he and complainant were led to the second floor by a room boy who opened the door for them. Inside the room, appellant slapped complainant and ordered her to remove her dress. It was only after appellant threatened to kill her inside the room that Regina submitted and took off her clothes.^[10] When she was already naked, appellant pushed her towards the bed, lay on top of her and kissed her whole body. While the accused was on top of her, the former hit the latter twice on her stomach rendering her unconscious.

Awaking from her fainting spell, complainant noticed that there was blood in her vagina. After this, appellant again went on top of Regina and inserted his penis into her organ. While appellant was going through his up and down motions over Regina, she pushed him away. This irked appellant who again slapped her. Pointing the knife again at her, appellant ordered her to put on her clothes and warned her not to tell anyone what he did to her. Appellant sent Regina home at around 6:30 in the morning of June 21, 1992.^[11] In the evening of the same day, complainant went to work in the restaurant and there she saw appellant also reporting for work.^[12]

On July 3, 1992, at about 5:30 in the afternoon, Regina went to the restaurant to inform its owner that she was resigning from her employment.^[13] As she was walking towards the place where she usually took her ride home, appellant again intercepted her in the same manner as he did on June 20, 1992. Appellant placed his left arm over her shoulder and at the same time poked a handkerchief-covered knife on the right side of her waist. After Regina was told by appellant to go with him or else he would kill her, they walked towards the house of appellant located near the Central Market at Quezon Boulevard. Appellant brought complainant to the second floor of the house, pushed her into a small room and locked its door.^[14]

Inside the room, appellant told Regina to undress but she refused. It was only after appellant threatened to kill her with the knife that she removed her clothes. At this time, appellant was also removing his clothes. After Regina had discarded her clothes, appellant slapped her on the cheek twice causing her to fall on a double-decked bed.^[15] Appellant tried to put complainant's legs apart with his hands but she resisted, so appellant warned her that if she did not consent, he would kill her. Reluctantly, she followed his orders. Thereafter, appellant placed himself on top of complainant and had sexual congress with her.

When he was through, appellant tied complainant's hands to the post of the bed and covered her mouth with masking tape.^[16] After resting for several hours, appellant again had sexual intercourse with private complainant, after untying her and removing the tape.^[17] Later, appellant told her to go home but warned her not to tell anyone about the incident or else something bad would happen to her ("*malilintikan ako.*")^[18]

Upon arriving home in the morning of the following day, July 4, 1992, complainant's mother noticed her wounded and blackened right cheek and asked her how she got those injuries. It was then that she told her mother everything that happened to her. They then went to the Jose Abad Santos Police Station in Tondo to report the crimes committed by appellant.^[19]

National Bureau of Investigation (NBI) medico-legal officer Dr. Louella I. Nario conducted a physical examination of Regina and issued her report in Living Case No. MG-92-570^[20] dated July 6, 1992, with the following findings:

"GENERAL PHYSICAL EXAMINATION:

Height: 145.0 cm. Weight: 44.5 lbs.

Normally developed, fairly nourished, conscious, coherent, ambulatory subject.

Breasts, developed, hemispherical, doughy. Areolae, light brown, 3.0 cm. in diameter. Nipples, light brown, protruding, 0.8 cm. in diameter.

EXTRAGENITAL PHYSICAL INJURY:

Abrasion, with brownish scab formation, cheek, right, 4.0 cm. x 6.0 cm.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and minora, congested. Fourchette, tense. Vestibular mucosa, pinkish, smooth. Hymen, moderately wide, moderately thick, with a healing, deep laceration at 9:00 o'clock position corresponding to the face of a watch, edges congested, slightly edematous. Hymenal orifice, originally annular, admits a tube, 2.5 cm. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1. The above-described extragenital physical injury was noted on the body of the subject at the time of examination.
2. Genital findings compatible with sexual intercourse with man on or about the alleged date of commission."

Asked on how one can determine or differentiate if a woman had sexual intercourse through force or violence or with her consent, Dr. Nario explained that force can be deduced if extragenital injuries can be found on the body of the subject. However, the expert witness added that the presence of hymenal laceration in the genitalia of a woman does not necessarily connote force or violence during the sexual act.^[21]

For his defense, appellant vehemently denied the charges of rape. He claimed that the complainant was his girlfriend and that the sexual intercourses on June 20 and July 3, 1992 were with the voluntary will of complainant. He added that the second carnal intercourse occurred in the Pension Hotel, and not in his house as alleged by complainant.

Their alleged tryst on June 20, 1992 began with some sight seeing at Fort Santiago.^[22] Thereafter, they bought food and proceeded to Pension Apartelle located at Quezon Boulevard in Quiapo at around 9 o'clock in the evening.^[23] Inside a room of the hotel, their reciprocating hugs and kisses culminated in a blissful mutual expression of their love for each other as they had sexual relations three times on that night.^[24]

After getting their respective salaries on July 3, 1992 at around 2:00 o'clock in the afternoon, appellant and complainant went to Jollibee at Universal Theater to take their snack.^[25] Thereafter, they went to see the movie "*Tayong Dalawa*" also at

Universal Theater.^[26] After that, they went to Fort Santiago for a stroll. While in Fort Santiago, appellant asked complainant to go home but as she had just been fired from work and feeling bad about it, she preferred to be with appellant in her supposed time of desperation. From Fort Santiago, they went to Pension Apartelle^[27] where, lying side by side in bed, they kissed and embraced each other until they felt the need to release their pent-up passion for each other. They engaged in sexual intercourse four times until 5:00 A.M. of the following day.^[28]

Melanie Duran, who worked as a waitress in Kim Hiong Restaurant, testified that she often saw appellant and complainant together in the restaurant, especially during closing hours when the former would lie down on the latter's lap while she fanned his face. She observed that the two would arrive at and leave the restaurant together.^[29] In said restaurant, they always ate together and appellant would often offer Regina food which he got from the "mami" section.^[30]

Firstly, taking up appellant's fifth assignment of error, it is true that Judge Willelmo C. Fortun decided these cases by virtue of Administrative Order No. 68-92 of this Court, without hearing the case at all, the trial having been presided over by three different judges.^[31] Such fact alone, however, does not render his decision erroneous or irregular. It is axiomatic that a judge who did not hear a case may write the decision therein based on the records thereof.^[32]

In these cases, the transcripts of the stenographic notes taken during the trial were complete and can be assumed to have been studied and examined by Judge Fortun, before he rendered his decision, under the presumption of regularity in the performance of official functions by public officers. Of course, the well-settled general rule that the trial court's findings as to the credibility of witnesses deserves respect from the appellate courts cannot be unqualifiedly applied.^[33] This is because, not having heard the testimonies himself, the judge is in no better position than the appellate courts to make such determination.^[34]

After a thorough review and assessment of the entire records of the case, however, we find ourselves in agreement with the findings of Judge Fortun and accord the stamp of credence on complainant's testimony. The story she presented is credible and consistent, contrary to appellant's first assigned error.

Considering the inbred modesty and the consequent revulsion of a Filipina against airing in public things that affect her honor, it is hard to conceive that complainant would reveal and admit the ignominy she had undergone if it were not true. Besides, by so testifying, she made public a painful and humiliating secret which others would have simply kept to themselves forever, jeopardizing her chances of marriage or foreclosing the possibility of a blissful married life as her husband may not fully understand the excruciatingly painful experience which would always haunt her.^[35]

Moreover, as oft-repeated by the Court in rape cases, it is difficult to believe that young unmarried women would tell a story of defloration, allow the examination of their private parts and thereafter permit themselves to be the subject of a public trial, if they were not motivated by an honest desire to seek justice.^[36] When there is no evidence to show any improper motive on the part of the prosecution witness to testify falsely against an accused or to falsely implicate him in the commission of