

FIRST DIVISION

[G.R. No. 130341, February 10, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMMEL BALTAR, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

This is an appeal from the Joint Decision^[1] of the Regional Trial Court,^[2] Branch 171, Valenzuela, Metro Manila, convicting accused-appellant, Rommel Baltar, for three counts of rape committed against Kristine Karen Hugo.

Three criminal complaints were filed by Kristine against Rommel. Except as to the date of commission of the crime, they similarly aver:

"That on or about the (date of commission) in Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation employed upon my person, KRISTINE KAREN HUGO, 12 years old, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with me, against my will and without my consent."^[3]

The complaints were filed before the trial court on March 10, 1992. The warrant for accused-appellant's arrest was issued on May 20, 1992.^[4] He was arrested on May 11, 1996 as he could no longer be located at his last known address. He pled not guilty on May 20, 1996.

The prosecution presented Kristine. She related that on the second week of October 1991, at around 9:00 to 10:00 P.M., she was alone in their house. Her father has not lived with them since her fourth grade. Her mother, Adelina Galazan, works at night as a singer in different clubs. Her brother who was her companion at their house usually stays out at night.

While studying her lessons in their sala, accused-appellant was able to enter their house. He pulled Kristine inside her mother's bedroom. He removed her shirt and started kissing her. He took-off his pants, and, thereafter, her walking shorts and underwear. He mounted her, and in the words of Kristine: "He started to get my virginity."^[5] She struggled but her efforts proved futile as he poked a fan knife at her neck. He succeeded in breaking her virginity. Kristine was warned not to report the incident to any person. His threat scared her. After accused-appellant left, she fixed herself and noticed that her private part bled. She fell into sleep dazed by the incident.^[6]

The assault on Kristine's honor was repeated on the fourth week of October 1991. Kristine was also in their house when accused-appellant broke in. He dragged her to

the bedroom, undressed her, placed himself on top of her and penetrated her twice. She could not resist because he was brandishing a fan knife. "It was painful," related Kristine.^[7]

The assault happened again on November 9, 1991. At about 9:00 o'clock in the evening, accused-appellant slid into their house while Kristine was watching television. He forced her inside her mother's room and removed her short pants and underwear. He wrestled her down, took off his pants, mounted her and again abused her. "It was still painful because it was only a span of weeks,"^[8] narrated Kristine. Accused-appellant held a fan knife during the rape.

Despite these incidents, the twelve (12) year old Kristine continued going to school. She kept the incidents to herself due to the threats made by accused-appellant.^[9] However, in the evening of January 4, 1992, her mother, Adelina, caught accused-appellant pulling Kristine in their sala. After accused-appellant hurriedly left, Adelina asked Kristine why accused-appellant was in their house. Kristine did not answer as she was nervous. Adelina sensed something wrong and decided to take her to a doctor for examination.^[10] The prospect of facing a doctor compelled Kristine to tell her mother that she has been raped by accused-appellant.

The following day, Kristine was brought by her mother to the police station. After their statements^[11] were taken, they proceeded to the National Bureau of Investigation (NBI) where Dr. Maximo Reyes examined Kristine. His findings were as follows:

"GENERAL PHYSICAL EXAMINATION:

"Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breast developed, firm, conical. Areolae brown, 2.6 cm. in diameter. Nipples, brown, protruding, 0.8 cm. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fine, scanty. Labia majora, gaping. Labia minora, coaptated. Fourchette, tense. Vestibule, pinkish, smooth. Hymen, thin, short, intact and distensible. Orifice, admits a tube 2.5 cm. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.

2. Hymen, intact but distensible as to allow complete penetration by an average-sized Filipino penis in full erection without producing laceration."

^[12]

He explained that normally, a virgin's hymen will only admit the examining finger of the doctor which is about 0.5 cm. in diameter. In Kristine's case, her hymen is elastic. It can admit a tube of 2.5 cm. in diameter, which is about the average size of a fully erect male Filipino penis, without producing any tear.^[13]

After filing the cases at bar, Adelina saw accused-appellant again when he went to their house with a certain Danny Camantang. They offered her P10,000.00 as settlement. She did not accept the money.^[14]

In defense, the accused-appellant claimed that Kristine was his girlfriend since May 4, 1991. He courted her whenever she went to the store of his aunt, Teresita Layague. He won her love without going to her residence which is just in front of the store. He did not have any sexual intercourse with her. He said that on January 4, 1992, Adelina warned him that something would happen to him if he did not stay away from Kristine.^[15] The following day, Adelina complained to Gerry Comitan that accused-appellant had raped Kristine. Comitan and Layague took him to the house of Kristine for a face-off. During the confrontation, Kristine denied that she has been sexually abused by accused-appellant. She revealed that they were lovers. The revelation angered Adelina who then threw an ashtray at Kristine. They went home.^[16]

Accused-appellant also denied that he offered P10,000.00 to Adelina to settle the case. He explained that he and Camantang were not even acquainted at that time.

Teresita Layague and Gerry Comitan, Executive Vice-Chairman of the Peace and Order Committee, Samahang Pangkalahatan sa Sitio Kabatuhan, corroborated the testimony of accused-appellant.^[17]

On April 20, 1997, accused-appellant escaped from the Valenzuela Municipal Jail. He was recaptured on April 26, 1997 at Barangay Victoria, Sta. Fe, Leyte.^[18]

On July 28, 1997, the prosecution presented Adelina as rebuttal evidence. She denied that Kristine said that she was the girlfriend of the accused-appellant during the confrontation on January 5, 1992.^[19]

In a decision dated August 13, 1997, the trial court convicted the accused-appellant. It observed that Kristine's testimony is clear, positive and convincing. It did not find any fact or circumstance from which it can be inferred that Kristine falsely testified or was actuated by improper motive to testify falsely against accused-appellant. It accepted the explanation of Kristine that she did not immediately report the incident to anyone because she was scared. It interpreted the escape of the accused as indicative of his guilt.^[20] It disposed the cases as follows:

"CRIMINAL CASE NO. 1292-V-92

"WHEREFORE:

"Finding accused Rommel Baltar Guilty beyond reasonable doubt of the crime charged he is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the costs.

"Accused is hereby ordered to indemnify the victim the amount of P50,000.00.

"CRIMINAL CASE NO. 1283-V-92

"Accused Rommel Baltar Guilty beyond reasonable doubt of the offense charged, he is hereby sentenced to *Reclusion Perpetua* and to pay the costs.

"He is ordered to indemnify the complainant the amount of P50,000.00.

"CRIMINAL CASE NO. 1294-V-92

"Prosecution having proved the guilt of Rommel Baltar beyond reasonable doubt, he is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the costs of suit.

"Accused is likewise ordered to indemnify the victim the amount of P50,000.00."^[21]

Accused-appellant interposes in this appeal the following errors:

I

THE COURT A *QUO* ERRED IN NOT ACQUITTING THE ACCUSED OF THE CRIME OF RAPE IN THREE (3) SEPARATE CRIMINAL COMPLAINTS CONSIDERING THAT THE EVIDENCE ADDUCED BY THE PROSECUTION IS INSUFFICIENT TO PROVE THE GUILT OF THE HEREIN ACCUSED BEYOND A REASONABLE DOUBT.

II

THE LOWER COURT ERRED IN NOT PROPERLY APPRECIATING THE DEFENSE'S VERSION THAT COMPLAINANT KRISTINE KAREN HUGO HERSELF ADMITTED IN THE PRESENCE OF HER MOTHER ADELINA GALAZAN THAT THE ACCUSED ROMMEL BALTAR IS HER BOYFRIEND.

In assailing the sufficiency of the prosecution evidence, accused-appellant harps on Kristine's failure to describe in detail how she resisted the rapes and the two-month delay she incurred in reporting the crimes.

We reject these contentions. The evidence proving the use of force by the accused-appellant is overwhelming. Kristine testified that the accused-appellant poked a fan knife at her and fear muted her resistance against his bestial desire. Kristine was then only 12 years old and her efforts to frustrate accused-appellant can not be expected to be as contumacious and unyielding as that of a more mature and stronger woman. At any rate, physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear.^[22]

Kristine also adequately explained why she did not immediately report to the police authorities. The threats made by accused-appellant scared her. Her fear was not