

## THIRD DIVISION

[ G.R. No. 123150, August 16, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANDREW PACINA Y NEGAPATAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**PANGANIBAN, J.:**

In affirming the conviction of appellant, we rely on the well-settled rule that the credibility of witnesses and their testimonies is best left to the discretion of the trial court which, unlike a review court, observed the demeanor and conduct of witnesses while testifying and thus was in a better situation to assess their capacity for truth. Also, a "sweethearts" defense collapses when confronted with credible testimony on the use of force, corroborated by medical findings.

#### The Case

Andrew Pacina y Negapatan appeals the June 19, 1995 decision of the Regional Trial Court of Cebu City (branch 17),<sup>[1]</sup> convicting him of rape and sentencing him to *reclusion perpetua*. Dated July 30, 1993, a Complaint treated as an Information<sup>[2]</sup> was filed against him charging him with the rape of Joceline P. Yosores, as follows:

"That on or about the 21st day of July, 1993, at about 10:00 in the morning, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, with the use of force and violence, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant and against the latter's will."<sup>[3]</sup>

On August 9, 1993, appellant, assisted by Counsel Bernardito A. Florido, pleaded not guilty to the charge against him.<sup>[4]</sup> Thereafter, pretrial and trial on the merits ensued. On June 19, 1995, the trial court rendered its assailed 15-page decision,<sup>[5]</sup> the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused Andrew N. Pacina GUILTY beyond reasonable doubt of the offense of rape as charged in the information defined and penalized under Article 335 of the Revised Penal Code and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*; to pay the parents and the offended party by way of moral damages under Article 2219 (3) of the New Civil Code of the Philippines the sum of Five Hundred Thousand Pesos (P500,000.00) and attorney's fees of Twenty-Thousand Pesos (P20,000.00) under Article 2208 (11) of the same code and to pay the costs."<sup>[6]</sup> (Capitalization in original)

On June 30, 1995, appellant filed his Notice of Appeal.<sup>[7]</sup> Thereafter, on February 10, 2000, this Court received his Brief.<sup>[8]</sup> On May 31, 2000, the case was deemed submitted for decision when the Office of the Solicitor General filed the Appellee's Brief.<sup>[9]</sup> The filing of reply brief was considered waived, as none was filed within the reglementary period. The delay in the filing of the Briefs was caused by the failure of the trial court to transmit to this Court the transcripts of stenographic notes (TSN), in spite of several Resolutions ordering their immediate elevation. They were completed and finally submitted only on November 3, 1999.<sup>[10]</sup>

## **The Facts**

### **According to the Prosecution**

In the People's Brief, the Office of the Solicitor General synthesized the prosecution's version of the facts as follows:

"Joceline Yosores, (17years old), a high school student, and her three sisters were boarders of a room in a house owned by Marilou Pacina located at 52-A Don Pedro Cui Street, Cebu City (pp. 3-4, TSN, October 15, 1993).

"At about 10:00 in the morning of July 21, 1993, Joceline Yosores was lying down in her bunk and together with Dina Descarten and Raul Seares [was] watching television (TV) and listening to the radio inside the aforesaid rented room (pp. 4 & 5, October 15, 1993). By and by, appellant, nephew of Marilou Pacina, arrived. He requested Joceline that he be allowed to lie down on a vacant bunk (p. 5. id). Joceline refused for the reason that they were all female boarders in that room (Id). Appellant, together with Dina Descarten and Raul Seares then left the room. Joceline remained in the room lying down (pp. 5 & 6, TSN, October 15, 1993).

"Moments later, appellant returned to Joceline's room, locked the door, turned on the volume x x x of the TV [to the full] (p.6, TSN, Oct 15, 1993; p. 25, TSN, Nov. 8, 1993). Appellant sat beside Joceline and held her hands up, palms clasped together (Id). Joceline told appellant, "whatever is in your mind, please don't proceed." (Id) Appellant did not listen and he continued pressing himself on top of Joceline (p. 7, TSN, Oct. 15, 1993). Joceline struggled and shouted, "you help me, Dina, open the door." (p. 27, TSN, Nov. 8, 1993) but nobody heard her call. Annoyed, appellant pinned Joceline against the bed by using his knees in spreading her legs (Id). Appellant kneeled on Joceline's vagina (p. 4, TSN, Nov. 23, 1993). Joceline pushed and kicked appellant away but her strength was no match to appellant's (p. 7. TSN, Oct 15, 1993). When Joceline tried to shout again, appellant covered Joceline's mouth (p. 30 TSN, Nov. 8, 1993). In struggling against appellant, Joceline's head hit the bed (p. 29, *Ibid.*) Sensing Joceline's weakened condition, appellant removed Joceline's maong shorts and panty (p. 7, TSN, Oct. 15, 1993). Appellant kissed Joceline on the lips and touched her breast. Appellant took off his shorts (id). Already naked, appellant inserted his penis inside Joceline's vagina. Joceline felt extreme pain on her vagina and lower abdomen. (p. 9, TSN, Oct. 15, 1993).

"Joceline again shouted for help, but nobody responded. The TV and the radio were still on full volume (pp. 8 & 9, TSN, Oct. 15, 1993). Joceline lost consciousness. When she regained consciousness, appellant was sitting beside [her] (p.10, *id*). Appellant put on his brief and shorts. He warned Joceline not to tell the incident to anybody, otherwise, something [would] happen to her and the members of her family. Appellant left the room. (*id*)

"Joceline felt pain [i]n her body and vagina. Blood flowed profusely from her vagina prompting her to change clothes several times (*id.*). Joceline stayed inside the room until her sister Manuel[a] arrived. Fearful of appellant's warning, Joceline did not tell the incident to Manuela (p. 13, TSN, Oct. 15, 1993).

"At about 1:00 o'clock in the afternoon, Joceline forced herself to go to school (*id*) but was not able to stay long for her body and vagina ached with pain (*id*). Feeling dizzy and hardly able to walk, Joceline returned to her boarding house at about 2:00 o'clock pm, (p. 14, *ibid*). She slept inside her room. When she awoke, she found herself confined at the Cebu Community Hospital (*id*). When asked by Manuela why she was bleeding, Joceline revealed that she was raped by appellant. Joceline stayed in the hospital for a week, (p. 15, TSN, Oct. 15, 1993) where she underwent [a]n operation to remove blood clots due to vulvar hematoma (p. 9, TSN, Dec. 6, 1993).

"The medical examination conducted by Dra. Asuncion Hipolito Libre, revealed the following injuries sustained by Joceline: (I) vulvar hematoma on the left side of the labia majora; and (ii) hymenal laceration[s] at 3:00 and 9 o'clock positions (pp. 6 & 7, TSN, Dec. 6, 1993). Dra. Libre referred Joceline to Dra. Michelline Buot, a psychiatrist who conducted three sessions with Joceline. Dra. Buot diagnosed that Joceline suffered post-traumatic stress disorder as a result of the rape experience. Joceline was found to be in state of physical and emotional shock (*id*). She prescribed medicines 'to help lessen her sleep disturbance and depression.' (*id*).

### **According to the defense**

The appellant admits having had sexual intercourse with the victim, but insists that it was consensual. The trial court summarized the evidence for the defense as follows (unedited):

"On the other hand, the evidence for the defense as established thru the oral testimony of Andrew Pacina, Dina Descarten, Mylah Descarten, Christabel Negapatan, Luisito Lecias, Sabiniano Labra, Abelardo Lecias, Erwin Costillas, Ruth Costillas, Raul Seares, Antonio (Tony) Desoujo, Fil Anthony Negapatan, Orlando Leyese and Hilda Ladaga and the exhibits they had identified substantially shows that accused Andrew Pacina is 21 years old, third year student in Bachelor of Science in Marine Transportation at the University of the Visayas (U.V.) and resides at the ground floor in the house of his aunt at 52-A Don Pedro Cui St., Cebu City with her sister Gladys. Mary Rose or Mitos is Andrew's other sister

who resides somewhere in Lahug, Cebu City but serves as the caretaker of the said boarding house.

"Four (4) months before July 21, 1993 private complainant Joceline Yosores and accused Andrew Pacina were already sweethearts. This started in February 1993 but they kept this relationship a secret because Joceline's mother does not like it. Being students, both of them used to study at night in their boarding house together.

"The relationship of Joceline and Andrew started when they were introduced to each other by a female friend. At first Andrew was attracted to Joceline because he had to know her very well. He courted Joceline because he had an honest intention. That was before his birthday on March 21, 1993. Andrew told Joceline that he likes her. Joceline did not answer. When he asked Joceline again while she was washing downstairs, she just smiled and he considered that gesture as a affirmative answer especially when she said, 'sige na lang'. His brief courtship lasted for only two (2) days. They did not, however, give each other love notes, cards or gifts except that Joceline gave Andrew a kiss on his birthday. Their plan to see a movie did not materialize because Joceline wanted to see Sharon Cuneta movie which Andrew did not like. Although the relationship was kept a secret, Joceline happened to tell Hilda Ladaga and Ladaga also told the accused what she heard from Joceline. Maybe the other co-boarders Dina and Raul sensed it.

"Joceline like the other boarders used to lie down on Andrew's bed downstairs until a time came when only the two of them were in his room. They kissed and he undressed her. He asked for sexual intercourse but she did not answer. Andrew made the attempt to have sex with Joceline but Christabel Negapatan, his cousin knocked at the door because of a long distance call for Andrew. That was in the first week of July 1993. Christabel asked him why he did not pass thru the door. Christabel knew the real reason when she visited Andrew at the Bagong Buhay Rehabilitation Center (BBRC).

"Out of Andrew's previous girlfriends, namely Rosemarie Romualdez, Jonaline Ybanez, Connie Monar, Yvonne Maglasang and Cheryl Andradaga, he only had sexual intercourse for several occasions with Connie Monar which was his first experience.

"Accused made four (4) attempts to have sex with Joceline and he succeeded in the fourth attempt on July 21, 1993 inside Joceline's rented room in the second floor of the same boarding house. There are four (4) rooms in the second floor all occupied by boarders. There is also a sala where there is a table and a chair. Placed on the chair was a notebook (Exhibit '6') belonging to the accused.

"July 20, 1993 was the birthday of Fil Negapatan, a cousin of Andrew and a co-boarder. They celebrated the day outside with Christian Salvado, brothers Louie and Ding Lecias. The cousin of the Lecias brothers is married to the brother of Andrew's father. Culminating the celebration, Fil Negapatan and Andrew brought to their boarding house two (2) call girls from Junquera St., Cebu City and had sex with them there except Andrew

because he did not like his partner. This was noticed by the lady boarders including Joceline in the early morning hours of July 21, 1993. Some of the girls were peeping thru the door. Joceline, Dina, May or Manuela were then sleeping in the sala at the second floor when the boys arrived and the latter made some signs to the two girls to keep quiet and brought them to Ding's room. After the call girls left, Andrew talked to Joceline who was sitting on the foam near the door of Ding's room. Andrew embraced Joceline but told him not to embrace her because he had AIDS already and told him to take a bath. Thereafter, Andrew went back to Ding's room upstairs where he lay down.

"Two (2) days after his attempt, accused made another try to have sex with Joceline but the latter refused fearing that her sister May or Manuela would arrive. That was the time when Mitos, Andrew's sister and Hilda Ladaga were seen downstairs.

"The third attempt of Andrew was made inside the room of the Descarten sisters Myla and Dina at about 10:00 o'clock in the morning when Joceline and Andrew had no classes as the latter's class was still in the afternoon. At first they were in Joceline's room but the two of them transferred to the room of the Descarten sisters because Joceline was afraid of May's arrival which was expected anytime. They asked Dina and she agreed after telling her that they would just talk to each other. Andrew took off his shirt. He rolled Joceline's T-shirt up to her chest but five (5) minutes later, Andrew heard Myla's voice downstairs. So they put on their clothes and went out.

"During his fourth attempt to have sex with Joceline (Joy), she was wearing a large black T-shirt that reached her knees. Joceline was the one who personally completely removed her panty although he did not tell her he wanted to have sex with her. Then he kissed her lips, neck, down to her breast and back to her lips. Joceline leaned on the wall and also kissed Andrew. His left hand was on her breast while his right hand was on her vagina with an inserted middle finger. She did not complain and went down on bed. Maybe she enjoyed what the accused was doing. Joceline readily opened her legs when accused was about to insert his penis inside her vagina and he placed them on his shoulders. Accused made several strokes for about five (5) or seven (7) times and as the penetration was completed, she said 'aray' without any protest. She was grimacing in pain. Her voice was not loud enough to be heard by people outside the room. Joceline wiped off and cleaned the ejaculated semen in her belly as a result of the accused's withdrawal technique and accused put on his shorts and brief without cleaning himself.

"Accused was aware of Joceline's operation as a result of the injuries in her vagina. This is different from his sexual experience with Miss Monar who was also a virgin but did not bleed.

"After the coitus, Raul knocked at the door who was afraid of the expected arrival of Manuela the sister of Joceline. Raul was previously in Joy's room with Dina. Andrew thought that Raul left the house after the former locked the door. Andrew had no intention of marrying Joy until he learned that she was a virgin. He did not even have the intention to have