

FIRST DIVISION

[G.R. No. 152302, June 08, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE OGA Y
CALUNOD, APPELLANT.**

D E C I S I O N

DAVIDE JR., CJ.:

How would parents react if they catch their teen-aged daughter naked and lying beneath a naked man? Let us follow the travails of similarly situated parents as their domestic drama unfolds in the case at bar.

Inside a makeshift house in a construction site in Navotas, Metro Manila, on the evening of 9 August 1998, Ignacio and his wife were peacefully slumbering, thinking that their 14-year-old daughter Irene was selling cigarettes at the fish pier. At around 2:00 a.m. of the following day, they were suddenly awakened by the loud banging of corrugated GI sheet.^[1]

Discovering that the banging came from the barracks of his co-construction worker which was about three meters away, Ignacio and his wife proceeded in haste only to be momentarily rooted to the ground in surprise and dismay by what they beheld inside. Ignacio's co-worker Jose Oga, herein appellant, was naked and in the motion of pumping his seeds into the sexual organ of their daughter Irene. Enraged, Ignacio's wife pushed the appellant and pulled Irene, while Ignacio shouted for the assistance of the guards.^[2]

Irene recalled that at around 10:00 p.m. of 9 August 1999, the appellant summoned her to his barracks. Thinking that he had the usual errand for her like buying him cigarettes or liquor, she approached him. Inside his barracks, the appellant, however, suddenly pulled her and laid her on the *papag* (wooden bed). The appellant then took off her pants and panty, as well as his clothes. Irene resisted the sexual assault, but her efforts proved in vain because the appellant was strong and drunk. He pinned her down with his body, while his right hand pinned her hands above her shoulders and his left hand separated her legs. Then he inserted his penis into her vagina.^[3]

It was only at around 2:00 a.m. that Irene was able to finally kick the galvanized iron that enclosed appellant's barracks. This caused much noise that prompted her parents to check appellant's barracks. There, they caught the appellant naked atop her naked body. She denied that the appellant was her boyfriend.^[4]

Several hours later, at 10:20 a.m. of 10 August 1998, Irene was examined by Dr. Aurea Villena and was found to have fresh hymenal laceration, with no evident sign of extragenital physical injuries on her body.^[5] That same day, at 2:00 p.m., Irene

and Ignacio executed before the police sworn statements^[6] relative to the events that day. This led to the filing of an information charging the appellant with the crime of rape.

For its part, the defense presented as its lone witness appellant Jose Oga. He did not deny that he had sexual intercourse with Irene but interposed the "sweetheart theory." He claimed that on 10 May 1998, after one week of courtship, Irene reciprocated his love. About three months later, at around 10:30 p.m. of 10 August 1998, while he was asleep, Irene came inside his barracks and awakened him with her embraces. He stood up and ordered her to go out, but she continued embracing him and professing her love for him. Irene stripped and, while naked, laid down with him on the bed. Since he is a man, he gave in and had sex with her. Satiated, he and Irene both slept.^[7]

At around 3:30 a.m. of the following day, Ignacio's wife barged into appellant's barracks. She pulled the mosquito net that was tied to the walls, and shouted to Ignacio: "Ignacio, nandito ang iyong anak (Ignacio, your child is here)." Ignacio arrived. Though outraged, Irene's parents decided that the appellant and Irene should be married. Ignacio, however, proposed to the appellant to sign something first at the maritime police because he might be married to another woman. But after the appellant signed a document, Ignacio told him that he would be charged with rape. The appellant did not know what he signed because he could not read and he only knew how to sign his name.^[8]

The Regional Trial Court of Malabon City, Branch 170, to which the case, Criminal Case No. 19766-MN, was assigned, found the version of the prosecution more credible and rejected the defense's sweetheart theory. It noted that the vivid and detailed narration by Irene of the rape incident was corroborated by her father's testimony and the medical findings of Dr. Villena. Hence, in a decision dated 26 December 2001,^[9] the trial court convicted the appellant of rape and sentenced him to suffer the penalty of *reclusion perpetua* and to pay Irene P50,000 by way of civil indemnity and P50,000 as moral damages, plus the costs of suit.

In his Appellant's Brief, the appellant posits that what took place on that fateful night was consensual sex. He points out that for a period of four to five hours from the time Irene was allegedly summoned to his barracks, there was silence therein. No scream escaped from Irene's throat notwithstanding the lack of evidence that something was stuffed into her mouth to stifle her cries. Neither is there evidence that he carried a knife or any deadly weapon to frighten and intimidate her. Her hands were not tied either. Moreover, the testimony of Irene's irate father that he found the appellant and Irene completely naked bolsters the consensual nature of the coition.

On the other hand, the Office of the Solicitor General (OSG) seeks the affirmation of the judgment of conviction. It argues that the absence of an outcry on the part of Irene should not be construed as a manifestation of consent because the appellant employed force and intimidation and that Irene offered resistance. It likewise invites the attention of this Court to the evident disparity between the physical strength of Irene, who was merely a 14-year-old lass, and the appellant, who was 24 years old and in his prime. The physical superiority of the appellant so overwhelmed and intimidated Irene that she succumbed to his carnal desires. Further, Irene's

narration of the rape was clear and straightforward. Being a child victim, her testimony should be given full weight, for when a girl says she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

In reviewing rape cases, the Court has established the following principles as guides: (1) an accusation of rape can be made with facility, difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) by reason of the intrinsic nature of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its merits and cannot draw strength from the weakness of the evidence for the defense.^[10]

Heeding these principles, we need to first take a look at the information charging the appellant with rape to determine whether the allegations stated therein were proved by the prosecution. It is alleged that the crime of rape was committed with force and intimidation under Article 335, paragraph (1), of the Revised Penal Code, as amended by Republic Act No. 7659.

The force employed in rape cases may be physical and actual or psychological and addressed to the mind of the complainant. Both have the same effect on the rape victim. In the latter case, however, we have consistently held that the force or intimidation must be of such character as to create real apprehension of dangerous consequences or serious bodily harm that would overpower the mind of the victim and prevent her from offering resistance.^[11] The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. It is not necessary, therefore, that the force or intimidation employed be so great or be of such character that it can not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose of the accused.^[12] Hence, the victim need not resist unto death or sustain physical injuries in the hands of the rapist.^[13]

Intimidation and coercion must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard-and-fast rule. It depends on several factors like difference in age, size, and strength of the parties, and their relationship.^[14]

We disagree with the OSG that the evident disparity in the age and physical strength of Irene and the appellant manifests the futility of any resistance. This argument is not borne out by the records. The medical certificate issued by Dr. Villena only indicated Irene's height at 58 ½ cms. and weight at 99 lbs. As for the appellant, aside from the claim that he was 24 years at the time of the alleged rape and he was a construction worker, no other physical statistics were mentioned in the records, like his height, weight, and built. We cannot presume that because the appellant was older and a construction worker, he was of larger built which naturally aided him in the employment of the necessary force and intimidation to completely overwhelm and ultimately rape Irene.

As to whether force and intimidation were indeed employed by the appellant upon Irene, let us examine the evidence of the prosecution, particularly Irene's testimony on the details of the rape, viz.:

Q Why are you stating that he has committed rape?
A Because on August 9, 1998 at 10:00 o'clock in the evening I was called by Jose Oga in his barracks. Upon arrival there, he suddenly pulled me and laid me on the wooden bed (papag), sir.

Q What happened next after accused forced you to lie down on the wooden bed?

A I resisted, Your Honor.

...

Court

Proceed.

Pros Aliposa (witness)

Q What happened to your resistance?

A Nothing happened, sir.

Q Why?

A Because he was strong and he was drunk at that time, sir.

Q What did you do then?

A I was resisting – I continued resisting when he continued forcing to remove my pants and panty, your Honor.

Q What happened when you continued resisting?

A Nothing happened, Your Honor.

Q After nothing happened to your resistance, what did the accused do if any?

A He pinned me, Your Honor "dinaganan ako."

Q After that, what happened?

A He took off his clothes and he inserted his organ to my organ, Your Honor.

...

Q After he inserted his organ to your organ, what did you do next?

A He threatened me, sir.

Q What was his threat?

A He told me that I should not be mistaken in resisting, otherwise, he will kill me, sir.