

## FIRST DIVISION

[ G.R. No. 146956, July 25, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGER FEDERICO  
Y BUNGGAO, APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Caloocan City, Branch 129, finding appellant Roger Federico y Bunggao guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the complainant, Analyn Abejuela y Avila, the amount of P50,000.00 as civil indemnity.

The information charges appellant with rape committed as follows:

That on or about the 9<sup>th</sup> day of August, 2000 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie, kiss and insert his finger to the vagina of one ANALYN ABEJUELA Y AVILA, 22 yrs. old, single and had carnal knowledge against the latter's will and without her consent.

CONTRARY TO LAW.<sup>[2]</sup>

Appellant pleaded "not guilty" to the crime charged, whereupon trial on the merits ensued.

The victim, Analyn Abejuela, and appellant, Roger Federico, were both employed as cooks at the canteen owned by Analyn's aunt located on Cleofas Street, Sta. Quiteria, Caloocan City. On August 9, 2000 at 12:00 noon, while Analyn was asleep on the sofa inside the receiving room of the house, appellant knocked on the door. He had just been dismissed from employment and went to the house to get his belongings. Analyn opened the door for him and went back to sleep on the sofa.

After some time, Analyn felt someone kissing her breasts and other parts of her body. She woke up and saw appellant brandishing a knife. Appellant told her, "*paliligayahin kita*," and threatened to kill her if she does not give in to his desires. He removed her dress, shorts and panties and inserted his finger into her vagina. Analyn could not do anything but beg him to stop, for fear that he might make good his threat to kill her. Appellant dragged Analyn to one of the rooms on the second floor where he forcibly had sexual intercourse with her.

That same afternoon, Analyn told her aunt about the incident and, together, they

proceeded to the La Loma Police Station, Quezon City to file a formal complaint. Analyn's aunt accompanied SPO1 Arnold Lonzanida to the Family Public Market at Edsa-Balintawak, Quezon City, where appellant was. After she identified appellant, SPO1 Lonzanida invited him to the precinct for questioning. When they arrived at the Police Station, Analyn positively identified appellant as the one who raped her. Appellant was thus placed under arrest.

Dr. Jose Arnel M. Marquez, the medico-legal officer who examined Analyn's private parts, found "fleshy-type hymen with deep fresh laceration at 6 o'clock position," but no external signs of application of any form of violence.<sup>[3]</sup>

In his defense, appellant testified that the sexual intercourse between him and Analyn was consensual as they were lovers. He claimed that prior to the incident, he and Analyn had been "necking". During his sexual intercourse with Analyn, she even told him to be gentle and appeared to enjoy their love-making which lasted for about ten (10) minutes.

On February 5, 2001, a decision was rendered finding appellant guilty beyond reasonable doubt of the crime of rape, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds the accused ROGER FEDERICO y BUNGGAO guilty beyond reasonable doubt as principal of the crime charged which is defined and penalized under Chapter Three of Republic Act No. 8353, otherwise known as the Anti Rape Law of 1997, in relation to Sec. 11 of Rep. Act No. 7659. Accordingly, he shall serve the penalty of *Reclusion Perpetua*, with all the accessory penalties under the law, and shall pay the costs.

By way of civil indemnity, and pursuant to the ruling in *People vs. Galimba*, 253 SCRA 722, the accused shall pay the complaining witness Analyn Abejuela the amount of P50,000.00, without subsidiary imprisonment in case of insolvency.

The accused shall be credited with the period of his preventive detention.

SO ORDERED.<sup>[4]</sup>

Hence, this appeal, based on the sole assignment of error:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION DESPITE THE EXISTENCE OF SOME FORM OF CONSENT WHICH NECESSARILY CREATED REASONABLE DOUBT UPON THE ACCUSED-APPELLANT'S GUILT.<sup>[5]</sup>

Appellant maintains that complainant consented to the sexual intercourse. To bolster this claim, he cites the absence of any tenacious resistance on Analyn's part. He argues that, even with a knife in his hand, Analyn should at least have struggled or resisted the sexual assault considering that he could not, without using both his hands or putting the knife aside, remove her clothes or insert his penis into her vagina. Moreover, Analyn's testimony that she failed to resist the sexual attack because of appellant's size and strength was incredible, considering that these factors did not prevent her from shouting to attract the attention of others.

Appellant's contention is specious. It does not follow that when a victim fails to offer tenacious or vigorous resistance against the sexual onslaught of her attacker, the inference is that she must have consented to it. The information alleges that appellant employed intimidation to consummate sexual intercourse with Analyn. When a victim is intimidated, she is gripped with fear for her physical safety and is cowed into submission, which surely cannot be equated with consent.

Thus, in *People v. Dreu*,<sup>[6]</sup> it was held:

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. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.

Well-settled is the rule that the threat of bodily injury, when made with the use of a deadly weapon such as a pistol, knife, ice pick or *bolo*, constitutes intimidation sufficient to bring the victim to submission to the lustful desires of a rapist. In such cases, physical resistance need not be established since intimidation is exercised over the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety. Thus, if resistance would nevertheless be futile because of intimidation, offering none at all does not amount to consent to the sexual assault so as to make the victim's submission to the sexual act voluntary.<sup>[7]</sup>

Likewise, appellant's argument that he could not have removed the victim's clothes or inserted his penis without using both hands is untenable. A man consumed with uncontrollable lust can accomplish those things even with one hand. More so if appellant is bigger and stronger, thus lending credence to Analyn's testimony that she was intimidated and rendered helpless by appellant's size and strength.

Besides, the workings of the human mind placed under emotional stress, such as Analyn's, are unpredictable. People react differently - some may shout, some may faint, and some may be shocked into insensibility while others may openly welcome the intrusion. In any case, the law does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life and personal safety.<sup>[8]</sup>

Also, no woman would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.<sup>[9]</sup>

This rule cannot be more dramatically shown than when, in reaction to appellant's