

SECOND DIVISION

[G.R. No. 133237, July 11, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO DIZON Y ILARDE, APPELLANT.

DECISION

CALLEJO, SR., J.:

Before this Court on appeal is the Decision^[1] dated March 16, 1998 of the Regional Trial Court of Pasay City, Branch 110, in Criminal Case No. 96-8676 finding appellant Ernesto Dizon y Ilarde guilty beyond reasonable doubt of the crime of rape and meting on him the penalty of *reclusion perpetua* and directing him to indemnify the victim, AAA, the amount of P50,000.

Ernesto Dizon was charged with rape upon the sworn complaint of the victim that reads:

That on or about the 12th day of May, 1996, in Pasay City, Metro Manila, Philippines, and with[in] the jurisdiction of this Honorable Court, the above-named accused, Ernesto Dizon y Ilarde, by means of force and intimidation employed upon the person of AAA, 14 years of age, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the said complainant AAA against her will and consent.

Contrary to law.^[2]

At his arraignment, the accused, assisted by counsel, pleaded not guilty to the charge. Trial ensued.

The Case for the Prosecution^[3]

In the evening of May 11, 1996, the victim, AAA, then 14 years old, joined the other youngsters of Barangay [REDACTED], Pasay City, in making banners (*banderitas*) for their *barangay's* forthcoming fiesta. They dispersed at around 2:00 a.m. the next day. On the way home, AAA noticed that the accused was following her. He was about one meter behind her. She did not mind his presence as she thought that he was likewise on his way home. After all, they both lived in the same vicinity and even had the same address, [REDACTED], Pasay City, with only one house separating their respective homes. Further, AAA knew the accused as he was the former live-in partner of her sister [REDACTED].

As AAA passed the comfort room of the house of the accused which was just a door away from her house, the accused suddenly embraced her, covered her mouth with his left palm and shoved her inside the comfort room. AAA struggled but she was no match to Dizon's strength. He forced her to lie down on the wet floor of the comfort room. He placed himself on top of her and simultaneously pulled down her pants

and panty. The accused also removed his short pants. He initially inserted the middle finger of his right hand into her vagina. He then inserted his penis into AAA's sexual organ and made pumping movements. AAA tried to push him away but to no avail. To AAA, the pumping motions seemed to last for ten minutes. After he had satisfied his bestial desires, Dizon stood up, pulled up his short pants and warned AAA against reporting the incident to anyone. He then left her.

As soon as the accused was gone, AAA pulled up her pants and panty and hurriedly went home. She loudly knocked at their door, which was opened by her mother, [REDACTED]. [REDACTED] noticed that AAA was crying and that her hair and clothes were wet. [REDACTED] asked her what happened but AAA just ignored her and went directly upstairs. [REDACTED] followed her and asked her again what happened. AAA continued crying and told her mother that the accused had raped her. [REDACTED] became hysterical causing the entire family to wake up. When AAA's father learned about what happened, he was furious. He immediately got a knife and wanted to go directly to Dizon's house but [REDACTED] prevailed upon him. [REDACTED] instructed her husband to go instead to the police and report the matter. AAA's father went to Barangay Chairman Angelito Cruz and together they went to the police station and reported the incident.

Two policemen went to the house of the accused and brought him to the police station for investigation. On the other hand, AAA, together with her parents and godfather, went to the Pasay police headquarters where she was investigated by SPO3 Milagros Carrasco. On SPO3 Carrasco's instruction, AAA submitted the clothes that she wore at the time of rape to the policewoman. There were bloodstains on her panty. AAA was then brought to Camp Crame where she underwent physical examination conducted by Dr. Jesusa Nieves Vergara.

The medico-legal report of Dr. Vergara contained, in part, the following findings:

There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed a congested and abraded vestibule and posterior fourchette and an elastic, fleshy-type and congested hymen with deep healed laceration at 3 o'clock, shallow healed laceration at 5 o'clock and shallow fresh laceration at 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.^[4]

When she took the witness stand, Dr. Vergara explained that the congestion and abrasion found on the vestibule of AAA's vagina indicated that there was forcible entry of a hard blunt object therein. The fresh laceration at 9 o'clock position also signified that the laceration was inflicted several hours prior to the examination. Further, the bloodstains found on AAA's panty could have been from the fresh laceration caused by the insertion of a penis or other hard blunt object into her vagina. According to Dr. Vergara, the absence of spermatozoa did not negate sexual intercourse because there would usually be no smear taken from the vagina when the male did not ejaculate inside the female sexual organ.

The accused vigorously denied raping AAA. He claimed that he and AAA were lovers and that they agreed to a rendezvous at 2:00 in the morning of May 12, 1996. He testified that in the evening of May 11, 1996, after having supper at his sister's house, he stayed there and watched video until it was time for his tryst with AAA. At 2:00 in the morning the next day, Dizon stood in front of AAA's house and, as agreed upon by them, he whistled twice to let her know that he was already outside. After several minutes, AAA came out of the house. They immediately embraced and kissed each other. The accused told her that they should go to a secluded place so nobody would see them. They went to the comfort room of his house. As soon as they were inside, they kissed each other again. AAA pulled down her pants and panty to her knees. The accused inserted the middle finger of his right hand into her vagina. He made a push and pull movement. Just then, Dizon's wife came down and saw them. She instantly slapped AAA hitting her mouth. AAA cried and hurriedly left. The accused and his wife had a heated argument. After a while, a policeman arrived at their house and arrested him. He was brought to the police sub-station in [REDACTED], Pasay City.

In support of the claim of the accused that AAA was his girlfriend, Reynante Ramos, a *compadre* of his brother, testified that on several occasions prior to May 12, 1996, he had seen the accused and AAA holding hands with each other. For her part, Lydia averred that [REDACTED], the victim's sister, wrote a letter to the accused once threatening to take revenge on him for leaving her ([REDACTED]) for Lydia. Lydia further narrated that in the early morning of May 12, 1996, she was awakened by the crying of their baby. While preparing the baby's milk, she noticed that the accused was not in bed. She looked for him and found him in their comfort room with AAA in a compromising situation. Lydia shouted invectives at them and slapped AAA, who hurriedly left.

Commenting on the medico-legal report, Dr. Vertido gave the opinion that the fresh laceration at 9 o'clock position in AAA's hymen may not have been caused by a penis but could have been caused by a fingernail.

After the prosecution and defense presented their respective evidence, the trial court rendered judgment finding the accused guilty beyond reasonable doubt of raping AAA. The decretal portion of the trial court's decision reads:

WHEREFORE, the Court finds the herein accused, ERNESTO DIZON Y ILARDE GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*.

ACCUSED is further ordered to indemnify the private complainant, AAA, the amount of FIFTY THOUSAND PESOS (P50,000.00) and to pay the costs.

SO ORDERED.^[6]

The accused forthwith filed his notice of appeal with the trial court.^[7] In his appeal brief, the accused, now the appellant, alleges that the trial court erred:

I

IN MERELY RELYING ON THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION INSTEAD OF WEIGHING AND RATIONALIZING THE PIECES OF

EVIDENCE ADDUCED DURING THE TRIAL IN FAVOR OF ACCUSED-APPELLANT THAT THE CRIME CHARGED OF [sic] WAS NOT COMMITTED;

II

IN CONVICTING ACCUSED-APPELLANT WITHOUT THE REQUIRED PROOF BEYOND REASONABLE DOUBT.^[8]

Essentially, the appellant assails the credibility of the victim as he asserts that his guilt for the crime of rape was not proven beyond reasonable doubt.

The appellant harps on the seeming inconsistent statements made by AAA in her *sinumpaang salaysay* and during her testimony in court. In her *sinumpaang salaysay*, AAA stated that the appellant removed her pants and t-shirt then forced her to lie down on the floor of the comfort room. On the other hand, during her testimony, AAA averred that the appellant shoved her inside the comfort room, forcibly made her lie down on the floor, lay on top of her, pulled down her pants and panty, inserted his finger then his penis into her vagina. The discrepancy in AAA's narration of the sequence of events, he avers, taints her credibility as a witness.

Moreover, according to the appellant, AAA's narration of how he raped her, *i.e.*, he embraced her from behind, shoved her inside the comfort room, forced her to lie down on the floor, lay on top of her, pulled down her pants and panty, removed his short pants, inserted his finger then his penis into her vagina, and during the entire time his left hand covered her mouth, is incredulous. The appellant insists that it was physically impossible for him to have raped AAA in the said manner. The appellant likewise points out that the medico-legal report stated that "there are no external signs of application of any form of violence."^[9]

The appellant further contends that the fact that AAA had swollen mouth after the incident corroborates his claim that his wife slapped AAA when she caught them (the appellant and AAA) in an intimate position inside the comfort room. The appellant maintains that he did not have sexual intercourse with AAA and that his acts of embracing and kissing her and inserting his middle finger into her vagina arose out of mutual passion and consent.

The appellant's contentions fail to persuade.

In reviewing rape cases, the Court has always been guided by three well-entrenched principles: (a) that an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the complainant's testimony must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of evidence of the defense.^[10] Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of the complainant's testimony.^[11]

When she took the witness stand, AAA testified how the appellant succeeded in raping her as follows:

FISCAL VIBANDOR:

q Now Miss [W]itness, do you recall the date May 11, 1996
at around may be prior to midnight of May 12, where

were you?

COURT

About what time?

FISCAL VIBANDOR

Prior to midnight Your Honor.

WITNESS

a I was in the place where small banners (*banderitas*) were being prepared sir.

COURT

q You are making or you manufacture is that an industry or what?

WITNESS

a We were making *banderitas* for our forthcoming fiesta Your Honor.

COURT

q You are referring "we" (*kami*) who is this "*kami*" you are referring?

WITNESS

a The youth in our place, Your Honor.

COURT

q Where were you making this *banderitas*?

WITNESS

a In the middle of the road, Your Honor.

COURT

q How far in relation to your house?

WITNESS

a Around 50 meters Your Honor.

COURT

q So you were making this *banderitas* in open space or in a house?

WITNESS

a We were on the road Your Honor.

COURT

Proceed, fiscal.

FISCAL VIBANDOR

q Now you said that you are at that time and date you were making *banderitas*, will you tell the exact address[s] where you are making this *banderitas*?

WITNESS