

THIRD DIVISION

[G.R. No. 141186, November 27, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAUL S. PULANCO,
APPELLANT.**

DECISION

CORONA, J.:

This is an appeal from the decision^[1] dated October 4, 1999 of the Regional Trial Court, Branch 79, Morong, Rizal, in Criminal Case No. 2996-M, convicting appellant Raul S. Pulanco of rape as defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, and sentencing him to *reclusion perpetua*.

The accusatory portion of the information against appellant Pulanco read as follows:

That on or about the 11th day of March 1998, in the Municipality of [REDACTED], Province of [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused while armed with a deadly weapon, taking advantage of his superior strength and moral authority over AAA, a fourteen (14) year old girl, did, then and there wilfully, unlawfully and feloniously engage in sexual intercourse with her, against her will and without her consent.^[2]

On arraignment, the appellant pleaded not guilty. Thereafter, trial on the merits ensued.

According to the prosecution, on March 11, 1998, at around 4:00 p.m., complainant AAA, a 14-year-old girl, together with her 10- year-old niece [REDACTED], went to the house of a certain Barrientos inside Camp Capinpin, Tanay, Rizal to collect payment for the banana-cues they sold to camp employees on credit. The girls were told to return at around 7:00 p.m.^[3] AAA and [REDACTED] returned to Camp Capinpin at 7:00 p.m. and, after collecting the payment from Barrientos, headed for home.^[4]

While they were walking along a dark and isolated road inside the camp, AAA was suddenly accosted by appellant. He coiled his left arm around her neck and poked a knife at her side, warning her not to resist. Appellant threatened her "*Sige, gumalaw ka, tutuluyan kita.*" He pulled AAA towards his hut nearby. She shouted at [REDACTED] to call for help. [REDACTED] cried as she tried to pull AAA away from appellant but the latter pushed [REDACTED] so hard that she fell down and her back hit a hollow block.^[5]

Again, AAA ordered [REDACTED] to run home and tell her Uncle Nestor what was happening. Appellant, however, exclaimed "*Sige magsumbong ka't papatayin ko kayo paglaya ko.*" Appellant then warned AAA to send her niece home but not to report the matter to anybody, otherwise he would kill both of them.^[6] [REDACTED]

initially refused to leave AAA but later acceded because of fear. Instead of going straight home, however, [REDACTED] went to her neighbor's house in tears and stayed there for about half an hour.^[7]

Immediately after [REDACTED] left, appellant dragged AAA to his hut. Once inside, appellant put out the lighted candle and ordered AAA to undress, threatening to kill her if she refused. AAA unwillingly removed her blouse and macarena skirt but refused to take off her undergarments. It was appellant who removed them before taking his pants off. With both of them naked, appellant sprayed perfume on AAA's neck and ordered her to lie down. Appellant then lay beside her and started kissing her lips. She cried and boxed appellant but her struggle was futile.^[8]

AAA tearfully begged appellant "*maawa na po kayo, huwag n'yo na pong ituloy ang binabalak ninyo,*" but appellant ignored her plea. Instead, he went on top of her and placed her legs on his shoulders before inserting his penis into her vagina. She felt pain in her genitals. She could not do anything though as appellant had pinned her down, his left hand holding her right hand and his right hand poking a knife at her side.^[9]

While appellant was having carnal knowledge of AAA, he whispered that he had raped and killed many. Appellant stayed on top of her for about three minutes. Amidst her helplessness, she could only mutter "*Putang ina mo. Mamatay ka na sana. Hayop ka.*"^[10]

After appellant satisfied his lust, he put on his pants and ordered her to dress up. She pleaded with appellant to let her go because her niece was waiting for her. Appellant initially refused but gave in later after she assured him that she would not file any charges.^[11]

AAA headed for home, unaware that appellant was following her. When she was about to knock at their door, the appellant suddenly called her and gestured to her to come back. AAA refused. At that point, her brother Nestor opened the door and asked her about the man who was following her. She told her brother that the man had raped her. Overcome with anger, Nestor went to the barangay hall and reported the incident. After AAA gave her statement to a barangay official, a *kagawad* ordered some barangay tanods to arrest appellant. That same night, appellant was brought to the police station at the Tanay Municipal Hall for investigation.^[12]

The following day, March 12, 1998, AAA was examined at the PNP crime laboratory.^[13] The report stated:

GENITAL

There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora representing in between. On separating the same disclosed an elastic fleshy-type hymen with healed shallow laceration at 3 o'clock position and deep-healed lacerations at 6 and 8 o'clock positions. External vaginal orifice offers strong resistance to the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.

CONCLUSION

Findings are compatible with recent sexual intercourse.

Barring unforeseen complications, it is estimated that the above injuries will resolve in 4-6 days.^[14]

The appellant denied the charge. Uncorroborated by the testimony of any other witness, appellant testified that he and AAA were sweethearts and had long been engaging in sexual intercourse.

According to appellant, at around 6:00 p.m. on March 11, 1998, he was at the barracks cooking supper when AAA and a little girl arrived. After finishing his chores, he and AAA listened to music and played *tong-its*. Before AAA and the little girl went home, he and AAA had sexual intercourse at around 7:00 p.m. Then, about 8:00 p.m., he accompanied the girls home. He headed back to his house to sleep after AAA told him to go home. Moments later, he was roused by several barangay tanods who arrested and brought him to the Tanay Municipal Hall. He later learned that AAA filed a complaint for rape against him.^[15]

The trial court gave weight to the prosecution evidence and convicted appellant of rape. The trial court disregarded appellant's "sweetheart theory" as no evidence was presented by the defense to prove that appellant and AAA were indeed lovers.

In this appeal, appellant raises the following assignments of error:

I

THE COURT A QUO GRAVELY ERRED IN ACCORDING WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE THE FACT THAT IT IS WEAK AND INSUFFICIENT TO CONVICT, CONSIDERING THAT IT IS PERFORATED WITH MATERIAL FLAWS.

II

THE COURT A QUO LIKEWISE ERRED IN NOT ACCEPTING THE ALIBI AND SWEETHEART THEORY OF THE APPELLANT ALTHOUGH THERE IS AMPLE EVIDENCE ON RECORD TO BUTTRESS THIS.^[16]

Appellant maintains that AAA consented to have sexual intercourse with him. Her failure to exert even token resistance proved that there was no rape. Moreover, she did not escape even if she had the opportunity to do so. Her acts indicated submissiveness and mutual agreement, as sweethearts, to engage in sexual contact.

Appellant further claims that the reason behind the filing of the complaint for rape by AAA was probably because she was a scorned lover.

We are not persuaded.

Appellant's sweetheart theory does not deserve serious consideration. As an affirmative defense, appellant's allegation that he and AAA were lovers needed

convincing proof.^[17] However, other than his self-serving assertions, not an iota of evidence was adduced by appellant to establish the existence of such a romantic relationship.

Even assuming that appellant and AAA were indeed sweethearts, such was not an excuse for rape. Sexual intercourse was sufficiently established, not with AAA's consent but through force and intimidation. As held in *People vs. Domingo*:^[18]

(A) sweetheart cannot be forced to have sex against her will. From a mere fiancée, definitely a man cannot demand sexual submission and, worse, employ violence upon her on the mere justification of love. Love is not a license for lust.

Moreover, if appellant and AAA had really been sweethearts, the latter would not have gone to the extent of filing this criminal action which exposed her to the discomforting experience of recounting in public how she was violated.^[19]

AAA's alleged failure to resist appellant's sexual assault and to escape despite an opportunity to do so should not be interpreted as consent. These circumstances, by themselves, did not necessarily negate rape or taint her credibility. At any rate, it was evident from AAA's testimony that appellant employed force and intimidation against her, and that she resisted from the moment appellant dragged her to his hut:

Q Now, when Raul Pulanco started to pull you, what did he say, if any?
A He told me not to resist. There is a knife poking at me.

Q Did you actually see the knife poked at you?
A No, sir.

Q What was your reaction, if any, to this statement of Raul Pulanco?
A None, sir.

Q You did not shout or cry for help?
A How can I shout, the knife poked at me is hurting.

Q How about [REDACTED], what was she doing when Raul Pulanco dragged you and poked a knife at you?
A A little bit far from me.

Q What was she doing at that time?
A Walking, sir.

Q Did you come to know if she saw you being pulled by Raul Pulanco?
A Yes, sir.

Q How did you know that [REDACTED] saw you being pulled by Raul Pulanco?
A I shouted at her, sir.

FISCAL RAMIREZ:

Q What did you shout at [REDACTED]?
A "Lapad, tulungan mo ako".