

## THIRD DIVISION

[ G.R. No. 141140, December 10, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CRISPIN  
PAYOPAY, APPELLANT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

From the decision<sup>[1]</sup> of the Regional Trial Court of San Carlos City, Pangasinan, Branch 57 in Criminal Case No. SCC-3128 finding accused-appellant Crispin Payopay guilty beyond reasonable doubt of the crime of rape and sentencing him to reclusion perpetua, he comes to this Court on appeal.

With the assistance of counsel, appellant, who is married,<sup>[2]</sup> pleaded **not guilty** to the charge of rape alleged to have been committed as follows:

That on or about the 16<sup>th</sup> day of August between 1:00 and 2:00 oClock (sic) in the afternoon at [REDACTED] and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation, and with lewd design, did then and there, willfully, unlawfully and feloniously, has (sic) sexual intercourse with the offended party AAA, against her will and consent.

From the testimony of AAA (the victim), the following version is culled:

At noontime of August 16, 1999, as the victim, who was born on September 21, 1982,<sup>[3]</sup> stepped out of the San Carlos College in San Carlos City, Pangasinan where she was a third year high school student, appellant, who had a gun tucked on his waist, grabbed her hands and forcibly dragged her into a tricycle<sup>[4]</sup> where two unidentified male companions were waiting. While the victim yelled for help, albeit no one responded even if "there were plenty of people who saw [her],"<sup>[5]</sup> appellant, holding a "Rambo" type knife, warned her inside the tricycle not to shout or he would stab her.<sup>[6]</sup>

The four sped towards Virgen Milagrosa University (VMU) and on their way, they saw Joan Espinosa (Joan) whom the victim met for the first time.<sup>[7]</sup> Appellant at once grabbed Joan too and forcibly boarded her on the tricycle, he threatening her and the victim not to shout.

On reaching VMU after about an hour, the victim and Joan were forcibly brought to a nipa hut inside the VMU campus.

While inside the hut, on appellant's order, one of his companions bought gin which

appellant drank.

Appellant then forced the victim to drink gin which, however, spilled out of her mouth. Turning to Joan, appellant poured gin into her mouth which rendered her tipsy and unconscious.

Appellant's two companions in the meantime stepped out of the hut and "stayed at the door."<sup>[8]</sup> He then asked the victim to remove her underwear but she refused. The following thereupon transpired, as related by the victim, quoted *verbatim*:

x x x

Q [of prosecutor] After Joan was forced to drink gin what happened to her?

A [ of the victim] When Joan became dizzy she fell down on her back and [appellant] while holding a gun threatened me that if I will not remove my drawer he was going to kill me but when I refused he pushed me to the bed and he removed my drawer, sir.

Q After he remov[ed] your drawer what did [appellant] do?

A He also removed his drawer and then he **abused** me, sir.

Q What did you feel when Crispin Payopay **sexually abused** you?

A I felt extreme pain, sir.

Q After you were abused by Crispin Payopay what happened next?

A He threw my panty to me and then he tried to abuse Joan next, sir.

x x x

Q You were wearing then a pants is it not?

A I was wearing a skirt, madam.

Q And so you were ordered to remove your skirt is it not?

A He told me to remove my underwear, madam.

Q And then thereafter you said that Crispin also remove[d] his drawer is it not?

A Yes, madam.

Q What was Crispin wearing during that time, madam witness?

- A Long pants and T-shirt, madam.
- Q After he removed his pants he removed also his brief? Is it not?
- A Yes, madam.
- Q When he was removing his pants madam witness you did not run or escape?
- A No madam because the two (2) [companions of appellant] were posted themselves as guard at the door.
- Q And despite . . . that you just kep[t] qui[et] inside the nipa hut madam witness?
- A I kept on crying, madam.
- Q And when you were crying you did not shout madam witness?
- A No, madam.
- Q And when you said that after you were allegedly raped by Crispin Payopay he throw your panty to you is it not?
- A Yes, madam.
- Q And thereafter you wore your panty is it not?

x x x (Emphasis and underscoring supplied)

After appellant "abused" or "sexually abused" the victim, he shifted his attention to the unconscious Joan but before he could initiate any act on her, the victim grabbed the empty bottle of gin with which she hit the back of appellant who fell down, enabling her to drag Joan with whom she boarded a tricycle and proceeded to report the incident to the police. At the police station, the victim gave a sworn statement [9] declaring that appellant "sexually abused" her four times, the first on August 4, 1999, the second and third on dates she forgot, and the fourth on that day, August 16, 1999.

Partly corroborating the victim's testimony, Joan declared that they (Joan and the victim) were both forcibly taken to the VMU premises and threatened with a knife. [10] She further declared that the hut to which they were taken was not isolated as it was clustered with other huts-houses; [11] that the hut belonged to a certain "Alex" whom she had known for almost a year; [12] that as she became dizzy, she could not remember what transpired thereafter; [13] and that she could remember, however, fleeing with the victim in a tricycle [14] and filing a complaint at the police station. [15]

Dr. Araceli Callao, who on the day of the incident examined the more than 16 year

old victim the result of which examination is reflected in the medico-legal certificate  
[16] she issued reading:

PE: No signs of external injuries noted.

PERINIUM: No signs of external injuries noted.

HYMEN: - With old, incomplete lacerations at 7 & 8 o'clock positions;  
- With old complete laceration at 5 o'clock position  
- With fresh **abrasion** at the lateral side near the base of hymen at around 4 & 8 o'clock positions

POSTERIOR FOURCHETTE: Rounded

VAGINA : Admits 2 fingers with ease

IE : Cervix - close with dark red bleeding

UTERUS: Small

LABORATORY The 2 slides are both **negative for the presence**

RESULTS : **of sperm cell with menstruation at the time of examination**

(Emphasis and underscoring supplied),

testified on the cause of the "fresh abrasion" or *gasgas* which was noted "at the lateral side near the base of [the victim's] hymen at around 4 and 8 o'clock positions" in this wise:

Q And you said Madam Witness, that the abrasion could have been caused by a friction?

A Yes, madam.

Q And you said Madam Witness, or rather, that friction could have been caused by a scratch of the hand while cleansing the vagina, Madam Witness?

A Yes, madam.

Q And that could have been caused by the use . . . of a very tight underwear, up to the extent of a vagina, Madam Witness?

A Yes, madam.

Q And it is possible also Madam Witness that that abrasion could have been caused by a penis?

A Yes, because that abrasion can be caused by a friction of two objects and it is not specifically by a penis or by mere scratching of the hand, madam.<sup>[17]</sup> (Underscoring supplied)

Continuing, the doctor declared:

Q And you will agree with me Madam Witness that by that fresh abrasion, no such sexual intercourse could have happened to the victim, is it not?

A        It is possible, madam.

Upon the other hand, proffering innocence, appellant, admitting having brought the victim whom he claimed to be his sweetheart, along with Joan, to the hut of Alex Guaron at the VMU campus, declared as follows:

He met the victim on the first week of July 1999 and they had since become lovers, in support of which he presented a photograph (Exhibit "1") depicting him and the victim "in a jolly and happy moment" together with Alex and a traffic aide, and a ring (Exhibit "2"- "2-A") given by the victim on which was engraved her name.

The two of them had been seeing each other everyday in the month of July 1999. In August 1999, he brought the victim to the house of Alex Guaron in VMU for about seven times.

On August 16, 1999, at about 12:00 noon, he fetched the victim at San Carlos College and as they were on board a tricycle on their way to VMU, they passed by Joan who later joined them. On arrival at Alex's house, they then proceeded to VMU where they had a drinking session together with Alex and two others.

He purposely brought the victim and Joan to the hut because he wanted to sever his relationship with the two, his wife having discovered his extra-marital affairs with them. The victim and Joan proffered no objection to his proposal. After a brief drinking session, he, together with the victim and Joan went to the plaza where they ate in an eatery before they finally bade each other goodbye.

Alex corroborated appellant's version.

In fine, appellant denies that rape ever took place on August 16, 1999.

Rejecting the sweetheart theory of appellant, the trial court **convicted** him as charged by the decision on appeal the dispositive portion of which reads:

**WHEREFORE,** in the light of all the foregoing, the Court hereby finds the accused Crispin Payopay guilty beyond reasonable doubt, with the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended. The court hereby sentences him to suffer the penalty of reclusion perpetua and indemnify AAA the sum of P50,000.00 and to pay her exemplary damages of P25,000.00 and to pay the costs.

In his brief, appellant assigns to the trial court the following errors:

## I

. . . IN GIVING DUE WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT WHICH IS PUNCTURED WITH MATERIAL INCONSISTENCY, UNCERTAINTY AND UNRELIABILITY THEREBY CASTING GRAVE DOUBT ON THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT; [AND]

## II

. . . IN FINDING THAT ACCUSED-APPELLANT USED FORCE AGAINST