

EN BANC

[G.R. Nos. 152683-84, December 10, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LEONARDO ILAO,
APPELLANT.**

DECISION

QUISUMBING, J.:

For automatic review is the decision^[1] dated December 18, 2001 of the Regional Trial Court (RTC) of Pasig City, Branch 163, convicting appellant Leonardo Ilaog of two counts of rape, and imposing on him the penalty of death in Criminal Case No. 118448-H and *reclusion perpetua* in Criminal Case No. 118449-H.

The informations against appellant alleged:

Criminal Case No. 118448-H

That on November 18, 1999 at the residence of the victim Zenaida Vargas y Hipos, at 648 Magsaysay St., Pasig City, Philippines, and within the jurisdiction of this Honorable Court the above-named accused with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously pull the victim while the latter was washing their clothes, cover her mouth, point a knife at her, bring her to a nearby room, kiss her in different parts of her body and succeed in raping her against her will and consent, in the presence of the victim's 12-year-old daughter Rose Vargas.

Contrary to law.^[2]

Criminal Case No. 118449-H

That on December 9, 1999 at the residence of the victim Zenaida Vargas y Hipos, at 648 Magsaysay St., Pasig City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously, point an ice pick on the victim, threaten to kill her and succeed in raping the victim against her will and consent.

CONTRARY TO LAW.^[3]

When arraigned on September 5, 2000, appellant entered a plea of not guilty to both charges. Thereafter, joint trial on the merits commenced.^[4]

The prosecution presented in evidence the testimonies of the private complainant, Zenaida Vargas; her daughter, Rose Vargas; Zenaida's husband, Ruben Vargas; the

examining Medico-Legal Officer, Dr. Evelyn Ignacio; and Saulito Castillo, a customer of Ruben Vargas.

Briefly, the facts of the case, based on the records, are as follows:

A two-storey structure of light materials in No. 648 Magsaysay St., Manggahan, Pasig City is home to Zenaida Vargas, her spouse Ruben, and their three daughters. The first floor is used as an ice cream factory where Ruben works as an ice cream vendor while the second level, with its sixteen rooms, served as a rent-free dwelling for the Vargases and three other ice cream vendors as well as their families.^[5]

On November 17, 1999, appellant, who is the godfather of the Vargas' youngest daughter, Mary Jane, came from Batangas in time for his godchild's birthday. Ruben and appellant, as well as some of Ruben's co-workers at the ice cream factory, had a drinking binge. That night, Saulito Castillo arrived to order ice cream from Ruben. Appellant offered Saulito a shot of gin to which he readily obliged before going home.^[6]

Appellant spent the night at the Vargas' abode.

The next morning, Saulito returned to get the ice cream he ordered the previous day. He spotted appellant, sitting on a bench in the factory compound, morose-looking, and drunk.

At 10:30 a.m., after seeing her husband off to work, Zenaida went up to the second floor of the building to gather her laundry. When she was passing by a vacant room, appellant suddenly appeared and with a knife pointed at her, shoved Zenaida into the room. It was during that fraction of time that Zenaida's eldest daughter, Rose, arrived from the store and saw the ruckus. Appellant swiftly grabbed Rose by the hair, poked a knife at her, and rammed her inside the room with Zenaida.^[7]

At first, Zenaida tried kicking appellant. Ila then mercilessly beat her at the upper right torso which made her writhe with pain.^[8] With his prey neutralized and weakened, appellant removed her shorts and like a mad dog started licking her on various parts of her body. While pointing a knife at her, appellant sexually assaulted and satiated his lust upon Zenaida. In her weakened state, she could not put up any further resistance; she wept after her ravishment and dishonor.

Rose, who was down on the floor, saw the entire monstrous assault by appellant on her mother. But Rose could do nothing but cower in overwhelming fear of the rapacious monster attacking her mother sexually. ^[9]

Appellant cautioned mother and daughter not to squeal before he casually strode off.^[10] Zenaida and Rose feared of worse things to come so they kept mum about the incident.^[11] Not until the second rape occurred.

On December 9, 1999 at 10:30 p.m., almost a month after the first molestation, Zenaida went out of her room to check if her husband had arrived. While passing by the same vacant room where she was once raped by appellant, the latter again came into view and pointed an ice pick at Zenaida. Once more appellant sated his

lust upon Zenaida under circumstances almost similar to the first rape, except that this time the maniac used an ice pick instead of a knife. [12]

Her fear of another repetition of sexual abuse prompted Zenaida to reveal her ordeal to her husband on December 19, 1999. [13] It took the family two days to decide on their course of action. On December 21, 1999, Ruben with Zenaida and daughter Rose in tow, resolved to bring charges against appellant before the barangay officials. A week after, on December 27, 1999, upon the prodding of their relatives from Bacoor, Cavite, the Vargases sought the assistance of the National Bureau of Investigation (NBI) office and executed their sworn statements thereat. Zenaida later submitted herself to a physical examination. [14]

When appellant got wind of the raps brought by Ruben and his wife against him in court, he confronted Ruben at the factory. With his typical brandishing of an ice pick, he badgered Ruben to back off from the case. [15]

Appellant's defense is one of alibi and denial. Appellant averred that he was in San Isidro, San Luis, Batangas on the dates and hours the alleged rapes happened. He was harvesting *chico* fruits on November 18, 1999 and on December 9, 1999, he was with his family celebrating his birthday, he recalled. His wife Delilah, and neighbors Potenciana Balog and Espiridion Cuasay corroborated his story.

In due course, the lower court rendered a decision on December 18, 2001, disposing of the two cases, as follows:

WHEREFORE, in Criminal Case No. 118448, accused is convicted of the crime of rape and sentenced to suffer the penalty of death by lethal injection and the accessory penalties provided by law and to pay the costs.

In Criminal Case No. 118449, the accused is, likewise, convicted of the crime of rape and sentenced to suffer the penalty of reclusion perpetua and the accessory penalties provided by law and to pay the costs.

As to the civil aspects of the two cases, the accused is ordered to pay the victim, Zenaida Vargas, Php50,000.00 as civil indemnity and Php50,000.00 by way of moral damages in each case.

SO ORDERED. [16]

In view of the imposition of the death penalty, the case is now before us on automatic review, pursuant to Article 47 [17] of the Revised Penal Code, as amended.

Reversal of the decision is sought on the grounds that:

I.

THE TRIAL COURT ERRED IN NOT CONSIDERING THE SEXUAL ACTS BETWEEN ACCUSED- APPELLANT AND THE PRIVATE COMPLAINANT AS CONSENSUAL.

II.

THE TRIAL COURT ERRED IN NOT FINDING THAT NO FORCE OR INTIMIDATION ATTENDED THE SEXUAL ACTS BETWEEN THE ACCUSED-APPELLANT AND THE PRIVATE COMPLAINANT.^[18]

The basic issues are: (1) the credibility of witnesses for the prosecution, particularly private complainant Zenaida Vargas, upon whose testimony appellant was convicted, (2) the sufficiency of the evidence for the prosecution, and (3) the propriety of the penalty imposed.

Anent the first issue, appellant implores the Court to take a closer look at the testimony of the complainant. He points to several aspects of complainant's testimony which allegedly affected her credibility, namely: (a) that there was delay in reporting to her husband or to the police of the alleged rapes,^[19] (b) that she was an experienced woman and older than appellant by 5 years, (c) that she did not resist or attempt to flee or shout for help,^[20] and (d) that no proof was presented to indicate that the alleged threats were continuous and thus prevented her from reporting the rape promptly.

For the State, the Office of the Solicitor General contends that the credibility of private complainant and her witnesses are beyond question. They had no motive to maliciously implicate appellant in a serious offense, except their desire to see to it that justice for the victim is done and that the guilty is punished properly.

We find the appellant's contentions devoid of merit. As a rule, the trial court's assessment of the credibility of witnesses is accorded great respect because of its opportunity to hear their testimonies and observe their demeanor and manner of testifying. However, considering that the deciding judge had heard only the testimonies of the defense witnesses, said rule may not be applicable fully. Nonetheless, following a careful perusal of the records, this Court is inclined to agree with Judge Leili Suarez Acebedo's assessment of facts and appreciation of evidence.

As borne by the records, we agree with the trial court that complainant's testimony that she was raped was straightforward, credible, and convincing, whereas the denial and alibi of the appellant, that he was in Batangas on the dates and hours of the rape incidents, were unworthy of belief and lacking in plausibility.

Said the trial court in its decision:

The Court is not inclined to believe that the complainant would be so cold-blooded as to hatch up the humiliating and degrading story of the repeated sexual assaults and violations of her honor by the accused; to allow a meticulous examination of her body and sex organs and to suffer the humiliation and embarrassment of narrating in Court the shameful ordeal she had gone through if she had not really been a victim of repeated sexual assaults by the accused, or was motivated by extreme desire for justice and the punishment of the accused. Zenaida could have invented a story of rape without having to include her daughter in it to spare her the trouble, inconvenience, shame and anxiety of having to testify in court on what appeared to be a humiliating experience of her