

FIRST DIVISION

[G.R. No. 133185, February 06, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDWARD OLLAMINA, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant Edward Ollamina appeals from the February 6, 1998 Decision^[1] of the Regional Trial Court of Davao City, Branch 15, in Criminal Case No. 38,390-97, convicting him of the crime of Rape and sentencing him to suffer the penalty of *Reclusion Perpetua*, and to pay the private complainant Julie Ann Redulla the amount of P40,000.00 as civil indemnity.

Upon arraignment on March 3, 1992, accused-appellant entered a negative plea.^[2] Trial thereafter ensued.

Private complainant Julie Ann Redulla, who was then fifteen years of age and a sixth grader, lived with her aunt in Bucana, Davao City. Twenty-four-year old accused-appellant Edward Ollamina was their neighbor. She first met him on January 8, 1997. From then on, she became familiar with him as he passes by their house everyday.^[3]

At around 8:30 in the evening of January 21, 1997, Edward went to Julie Ann's house and invited her to attend his friend's birthday party in Sasa, Davao City. She agreed but did not seek permission from her aunt as the latter was still at work.^[4]

That same night, the two rode a jeepney going to Sasa, Davao City, and alighted in a squatter's area with small closely-built houses. Julie Ann asked which one is the house of Edward's friend. He pointed to a house, the door of which was secured with a rope as a lock. The house was apparently not lighted, prompting Julie Ann to inquire why the house was dark. Edward told her to shut up. At this point, Julie Ann sensed danger and feared for her life.^[5]

Edward then held Julie Ann's hand and brought her inside the house and into the bedroom. Julie Ann noticed that there were no other persons in the house. Frightened, she sat at the corner of the room. Then, Edward closed the door of the room, undressed himself and approached Julie Ann. He kissed her, but she did not shout because Edward threatened to kill her. He held her right arm and right leg, thus, causing her to lie down. Edward's hand covered her mouth.^[6]

Julie Ann told Edward, "you said it's a birthday party, you are a liar." He asked her to remove her shirt and bra, but she refused. Thus, Edward took them off. When he tried to remove her pants, she pleaded with him not to do it as she wanted to finish

her studies. He did not, however, listen and proceeded to insert his penis into her vagina causing her to feel pain. Thereafter, they dressed up and Edward allowed her to go home.^[7]

The following day, Julie Ann told her aunt what happened. She submitted herself for physical examination, which yielded the following results:

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breasts fully developed, hemispherical, firm. Areolae, light brown, 5.0 cms. in diameter. Nipples, light brown, protruding, 8 cm. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, sparse. Labia majora and minora, coaptated. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, thick, tall, distensible. Hymenal orifice, annular, admits a tube, 2.5 cms. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSION:

- 1) No evident signs of extragenital physical injuries noted on the body of the subject at the time of the examination.
- 2) Hymen, intact, but distensible (2.5 cms. in diameter), as to allow complete penetration by an average-sized male organ in erection without causing hymenal injury.

REMARKS: Semenology: POSITIVE.^[8]

On the other hand, accused-appellant Edward Ollamina claimed that he and Julie Ann were sweethearts, but denied having sexual intercourse with her on the night of January 21, 1997. He alleged that on January 21, 1997 at about 6:30 p.m., while he was in their house, a certain Bebeng told him that Julie Ann wanted to see him. When he went to see the latter, he saw her crying. She told Edward that her aunt wanted her to leave their house because she came to know her relationship with him. She begged him to elope with her, thus Edward agreed. They went to the house of a certain "Nanan" in Sasa, Davao City, and asked that they be allowed to rent one of the rooms in her house. The latter acceded. Inside the room, Edward and Julie Ann talked and assessed if they were ready for a commitment. In the end, they realized that they were not yet prepared, hence, they went home to Bucana, Davao City that very same evening.^[9]

On February 6, 1998, the trial court rendered the assailed judgment finding accused-appellant guilty beyond reasonable doubt of the crime of rape.

Accused-appellant raised the following errors:

I.

THE TRIAL COURT ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE AND TOTALLY UNRELIABLE TESTIMONY OF PRIVATE COMPLAINANT RELATIVE TO THE INCIDENT IN QUESTION.

II.

THE TRIAL COURT ERRED IN COMPLETELY DISREGARDING THE EVIDENCE ADDUCED BY ACCUSED-APPELLANT WHICH WAS AMPLY CORROBORATED ON MATERIAL POINTS BY A DISINTERESTED WITNESS.

III.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.^[10]

In reviewing rape cases, we are guided with three settled principles, namely: (a) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove the same; (b) In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) The evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. By the very nature of the crime, judgments in rape cases turn on the credibility of the complainant as only the participants can testify as to its occurrence.^[11]

The testimony of the complainant should not be received with precipitate credulity but with the utmost caution. The test for determining the credibility of complainant's testimony is whether it is in conformity with common knowledge and consistent with the experience of mankind. Whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.^[12]

Corollary thereto, it must be stressed that in rape committed through force and intimidation under Article 335, paragraph (1), of the Revised Penal Code (as amended by R.A. No. 7659), the prosecution must prove that force or intimidation was actually employed by accused-appellant upon his victim to achieve his end. Failure to do so is fatal to its cause.^[13]

We are not unaware of the settled jurisprudence that the findings of fact of the trial court as well as its assessment of the credibility of witnesses are accorded great respect. In the case at bar, however, there exists sufficient reasons not to apply this general rule.

The alleged force or intimidation employed by accused-appellant in consummating the rape at bar was narrated by private complainant as follows:

PROS. VILLAFUERTE:

X X X

X X X
X X

X

Q. This Edward Ollamina is he in court today?

A. Yes, sir.

x x x

x x x

x

x x

Q. You said that he invited you?

A. Yes, sir.

Q. Where?

A. Sasa.

Q. For what occasion?

A. Birthday party.

Q. Did you go with him?

A. Yes, sir.

Q. What did you take for your ride?

A. Jeep.

Q. Do you recall what time did you arrive in that place?

A. I do not know, sir.

Q. What happened when you arrive?

A. He raped me.

Q. Did you see the house...by the way what happened when you arrived at the house?

A. I asked him, where is the house of his friend and he pointed the house, I asked him why it was dark.

Q. What did he tell you?

A. He said, just keep your mouth shut.

Q. How did you feel when he told [you] that?

A. I feared for my life.

Q. What happened?

A. He held my hand and brought me up in the room.

Q. Were there other persons in the house?

A. No, sir.

Q. What happened?