

EN BANC

[G.R. No. 138086, January 25, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONDE RAPISORA Y ESTRADA, ACCUSED-APPELLANT.

DECISION

VITUG, J.:

Before this Court, by way of automatic review, is the decision of the Regional Trial Court of Mandaluyong City, Branch 214,^[1] convicting Conde E. Rapisora of the complex crime of "Forcible Abduction with Rape" and sentencing him to suffer the supreme penalty of death.

Rapisora was indicted in an information that read:

"That on or about the 5th day of August, 1997, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, while armed with a knife, and pretending to be a relative of the private complainant and against the will of Irene Hermo y Cajipe and with lewd design, did, then and there willfully, unlawfully and feloniously abduct and carry away said Irene Hermo y Cajipe, a seventeen year old girl, while she was walking along Shaw Boulevard, this City and thereafter forced her to ride in a taxi and brought her to a Filipinas Walk Inn and while inside, accused with lewd design and at the same time, poking a knife at her, hence, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with said Irene Hermo y Cajipe, a minor, against her will and consent for several times."^[2]

The accused entered a plea of "not guilty" to the charge. Evidence was thereupon adduced by, respectively, the prosecution and the defense.

The trial court gave a resumé of the evidence given at the trial, starting with that submitted by the prosecution.

"At about 11:30 a.m. of August 5, 1997, Irene Hermo y Cajipe, a 17 year old household helper of Susana Dy, was walking along the corner of Pinagtipunan St. and Shaw Boulevard, Mandaluyong City after coming from Aling Naty's store where she bought vegetables, when Conde Rapisora y Estrella, the accused in this case, approached and told her 'you're here' (nandito ka pala) to which she replied 'who are you?' Conde Rapisora introduced himself that he is her Tito Andy. He told her that she could not remember him anymore because she was still small when her mother left her to his care. Few minutes later, Conde Rapisora called a taxicab then dragged and forced Irene Hermo to board the same. She did not, however, resist because he poked a knife on her side (pp.

10-11 TSN Jan. 20, 1998).

"They were seated at the rear passenger seat with Conde Rapisora seated on her right side with his knife poked on her right side. He warned her to keep quiet. He also told her that she had grown bigger and his wife, her Ate Karen, would be very happy to see her since they will be going to their place (pp. 11-13 TSN, *ibid*).

"Irene Hermo noticed that they alighted in Sta Mesa near a motel. He instructed her to hold his waist so that his wife Karen will be very happy. He brought her to a house with a green painted gate and a store in front (p. 14 TSN, *ibid*).

"Reaching the store, the accused got the key inside. She waited for the accused and after he had returned they went inside the house. Irene Hermo thought that it was his house. They entered a room, which according to the accused is the room of his wife Karen. While they were about to enter a room, the accused called up the name of Karen, then he opened it and suddenly pushed Irene inside. He poked his knife at her and told her not to shout and resist (pp. 15-16 TSN, *ibid*).

"Accused ordered her to remove her clothes but when she resisted, he undressed her. He also removed his clothes and told her to lie in bed. He ordered her to spread her legs which the victim obeyed. He forced his penis to enter her vagina but it could not get in because she was moving (*malikot*). So he inserted his finger. He ordered the victim to masturbate him and when his penis hardened, the accused rammed it into her vagina (pp. 17-18 TSN, *ibid*).

"She recalled that the accused inserted his penis to her vagina six (6) times. The accused then placed his hardened penis inside her mouth, licked her vagina, sucked her breast and placed her tongue inside her ears. She was shouting but the accused placed a towel on her mouth.

"Thereafter a roomboy knocked on the door and told the accused that it was already time.

"The accused immediately put on his clothes and left the room leaving behind the victim. She put on her clothes too and went out and hurriedly left the place. The accused chased her and told her that she [would] take her home, but she declined his offer. She [ran] and took a passenger jeep (pp. 23-24, TSN, *ibid*)."^[3]

Rapisora did not deny that he was with Irene in the morning of 05 August 1997 and that the two proceeded to and stayed awhile at the Filipinas Walk-in Motel. He claimed, however, that private complainant had consented to it all. The trial court summed up Rapisora's version of the case.

"The accused, who was a member of the Mandaluyong Fire Department since 1995 until August 5, 1997, x x x claimed that he first met the victim in the morning of August 1, 1997 at Market Place Shopping Mall, Mandaluyong City which is in front of Kalentong Fire Station where he was

assigned. They chanced upon each other while they were both viewing the still pictures displayed outside the moviehouse of the shopping mall. Allegedly, the victim introduced herself to him as Jocelyn and a cashier in a grocery in Shaw Boulevard. He gave his name as Andy Villanueva. They had a beautiful conversation wherein the victim even kidded him that he looked like actor Andy Poe (pp. 5-12 TSN March 18, 1998).

"They again met on August 3, 1997 at the same shopping mall at about 8:00 o'clock in the morning. It was his day-off and the victim was there to buy something. The only thing they talked about was that they agreed to see each other on August 5, 1997 in front of that shopping mall (pp. 14-16 TSN, *ibid*).

"So, on August 5, 1997 about 10:00 in the morning, the accused was already standing in front of the shopping mall waiting for the victim, who arrived past 10:00 in the morning. The accused noticed that while the victim was approaching him, she was looking for something in her pocket. He asked her what was that she was looking for, and the victim told him that she lost her P300.00 in her pocket. She then suggested that they looked for her money by going back to the route taken by her which was from Kalentong to Shaw Boulevard to see if her money had dropped on the ground. He alleged that while they were walking along Kalentong, the victim was holding his hand and was not also looking for her lost money.

"Later, the victim told him if he can help her pay that missing money but the accused asked her when is she going to pay him. The victim answered, later, and when he asked what time, she merely kept quiet.

"They went back to the shopping mall, took a snack and watched a movie.

"Inside the moviehouse they sat beside each other. She leaned on his chest, kissed and embraced each other. As he inserted his finger on her private parts her legs spread and she embraced him tightly. She then uttered, 'slowly only' ('dahan dahan lang daw'). He then noticed that her hand was going down to his pants until she got hold of his penis. She unzipped his pants, held his penis and asked him if she could place it in her mouth (pp. 22-30 TSN, *ibid*).

"The accused told him that it could not be because of the chair ('hindi pwede kasi nakaharang and silya') so he invited her to go somewhere else. It was the victim who suggested that they go to a place in Sta. Mesa which is near the place where she previously worked. She asked the accused if he had money and when the latter answered in the affirmative they boarded a taxi and proceeded to Filipinas Walk-in Motel.

"While they were inside the taxicab the victim reminded him of the P300.00 she will borrow from him. So the accused took out his wallet and showed him his money. While he was opening his wallet she saw his I.D. and she immediately grabbed it. It was then that the victim knew his real name (pp. 31-35 TSN, *ibid*).

"They checked-in at the motel at about 1:00 in the afternoon. As soon as they entered the room, the victim immediately took off her clothes because the accused told her to take a bath first. While she was removing her panty the accused saw that she had her menstruation. Since the comfort room was outside the room, the victim did not take a bath anymore. Meanwhile, it was during this moment when the victim revealed her name and worked (pp. 36-39 TSN, *ibid*).

"The accused refused to have sexual intercourse with the victim because of her menstruation. So the victim instead placed herself on top of him, kissed his body, held his penis and placed it inside her mouth. After he reached his climax, he hurriedly went to the comfort room to wash himself (pp. 40-44 TSN, *ibid*).

"Thereafter, the victim put her clothes on and hurriedly left the room leaving the accused behind."^[4]

The trial court gave no weight to the narration of the accused, describing it as a "fantastic fallacy"^[5] and as having "merely showed his sexual perversity."^[6] Convicting the accused, the trial court pronounced a death sentence on him.

"WHEREFORE, this Court finds the accused, CONDE RAPISORA Y ESTRADA guilty beyond reasonable doubt of the crime of forcible abduction with rape, as defined and penalized under Article 335 (as amended by R.A. 7659 and R.A. 8353) and Article 342 in relation to Article 48 of the Revised Penal Code, and hereby imposes upon him the penalty of DEATH, with the accessory penalties of the law, to indemnify the private complainant, IRENE HERMO in the sum of P50,000.00 as civil indemnity.

"Costs against the accused.

"SO ORDERED."^[7]

Accused-appellant, praying for an acquittal and a reversal of the judgment rendered by the trial court, came up with the following assignment of errors:

- "I. THE COURT A QUO ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND IMPLAUSIBLE TESTIMONY OF IRENE HERMO.
- "II. THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF FORCIBLE ABDUCTION WITH RAPE.
- "III. THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT."^[8]

The court *a quo* has accorded full credit to the testimony of Irene, "a simple and unsophisticated girl," finding it to be a "straightforward, clear and x x x good account" of how she has been "beastly attacked by the accused."^[9] The long