

EN BANC

[G.R. Nos. 127750-52, November 20, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRISANTO DIGMA Y UBAY, ACCUSED-APPELLANT.**

DECISION

BELLOSILLO, J.:

CRISANTO DIGMA Y UBAY was charged in separate Informations^[1] with three (3) counts of rape allegedly committed on 1 March, 24 October and 27 November 1994 against his fourteen (14)-year old sister-in-law Adora Balce filed before the Regional Trial Court of Daet, Camarines Norte.

On 23 October 1996 the accused was convicted as charged and sentenced to three (3) death penalties. In addition, he was ordered to indemnify Adora Balce P50,000.00 as moral damages and P20,000.00 as exemplary damages for each count, or a total award of P210,000.00 for the three (3) counts of rape.^[2]

The factual backdrop: At about eight o'clock in the evening of 1 March 1994 fourteen (14)-year old Adora Balce was sleeping on the edge of a mat inside a house she had been sharing for three (3) years with her eldest sister Maria Julieta Digma and the latter's family in Poblacion 2, Basud, Camarines Norte. Beside Adora were her five (5)-year old niece Maricris, four (4)-year old nephew Christian and Maria Julieta who was then pregnant. On the opposite edge was Maria Julieta's husband Crisanto Digma.

At about nine o'clock that evening Adora was awakened when she felt somebody holding her hands. As their house was dark at that time, she thought it was either of the children until she realized that the hand holding hers was quite big. Then her mouth was covered by someone who ordered her to keep quiet otherwise someone would be in trouble. It was the voice of her brother-in-law Crisanto. She was so terrified that she did not attempt to shout or awaken the children and Maria Julieta. She tried to struggle but she was no match to his huge frame that was now on top of her. He removed her shorts and panty. He lowered his short pants and brief then penetrated her. As he sexually assaulted her he kept warning her not to tell anybody about the incident or he would kill all the members of her family. Then he went out of the house. She was not able to go back to sleep because of the extreme pain. She merely covered herself with a blanket. She was not able to stand up the following morning. She remained lying on the mat and did not go to school. When asked by Maria Julieta why she did not attend her classes she simply replied that she had a headache. She did not report the incident to anyone because she was afraid of Crisanto who forewarned her earlier.

Crisanto and his family later transferred residence about a kilometer away at the instance of Adora's mother Nilda.

On 24 October 1994, at around three o'clock in the afternoon, while Adora was alone watching the parade at the Basud Elementary School on the occasion of the town fiesta, Crisanto approached her saying that Maria Julieta was sending for her. But upon reaching the Digma residence, Adora discovered that Maria Julieta was not there. He dragged her immediately into the kitchen and repeated his warning that she should not tell anyone or he would kill all the members of her family. He removed her skirt and panty. He also took off his pants. She could not free herself since he was holding her arms. He forced her to bend forward and then succeeded in having carnal knowledge of her from behind in a standing position. He held her waist with one hand and his penis with the other. Her vagina bled. She felt much pain. She was allowed to go home afterwards but not without warning her again not to tell anyone. When she arrived at their house, she saw her sister but she could not tell her what happened to her because, again, she was afraid of Crisanto. So she stayed inside the bathroom and cried helplessly.

On 26 November 1994 Adora went to Sta. Milagrosa, Jose Panganiban, Camarines Norte, in time for the town fiesta the next day. She was accompanied by her brother Anton and sister Nora. They stayed in the house of their brother whom they called *Kuya Ilo*. At around nine o'clock in the evening the following day, 27 November 1994, she and her cousin Rona Trampe watched the coronation night at the Barangay Plaza. Crisanto was also there. He approached them, threatened Rona and ordered her to go home. Crisanto and Adora walked towards the bridge. Upon reaching the bridge he asked her why her parents were mad at him. She answered him that it was because he was a drunkard and jobless. As if to scare Adora he told her that he was used to killing people and threatened anew to kill her parents, brothers or sisters should she reveal what happened to her. Then he dragged her down the bridge. While there he lifted her skirt and pulled down her panty. He pulled down his pants and brief then forced her to bend forward. With one hand holding his penis and the other holding her waist from behind, he inserted his penis again into her vagina in a standing position. She could not do anything but cry because of fear. Afterwards, they went up the bridge. At this juncture, they were seen by her sister Nora who asked her what Crisanto did to her. Adora was reluctant to tell her the truth because Crisanto was there. Adora went back to the Barangay Plaza. At around ten o'clock that same evening, she went home to the house of her *Kuya Ilo*. She found Crisanto there sleeping beside her brother. When Crisanto left at about midnight, she told the truth to Nora. She told her straight that she had been raped by Crisanto ten (10) times from 1 March to 27 November 1994. She remembered only those that occurred on 1 March, 24 October and 27 November 1994 while the exact dates of the rest were beyond her recollection.

The following day, Adora and Nora returned to Basud and reported the matter to the police. Thereafter, Adora proceeded to the Camarines Norte Provincial Hospital. The physician noted that the genital of Adora admitted one (1) finger easily; and that there were old hymenal lacerations at 3:00, 4:00, 6:00 and 9:00 o'clock positions. [3] The physician opined that the cause of the lacerations could be an object or an erect penis.

Nilda Balce corroborated the assertion of Adora that Crisanto was "*sanay pumatay*." Nilda knew that before he and Maria Julieta left his hometown in Cavite he had been charged in court with homicide or murder. When he became a member of their family, they covered up for him.

Crisanto Digma, twenty-eight (28) years old, claimed that he initially played jokes on Adora, such as telling her that had he met her earlier than Maria Julieta she would have been his wife. They in fact became sweethearts. He admitted that on 1 March 1994 he had sexual intercourse with Adora despite Maria Julieta's presence in the same room. He asserted that it was Adora who invited him to where she was lying down, caressed and kissed him, touched his breasts and uttered that she liked him. At first, he was reluctant but when she told him she was responsible enough, he immediately removed her skirt and panty, pulled down his short pants and brief, then performed the sexual act. Their sexual encounter was repeated several times in the same house and it was always she who initiated the moves.

On 24 October 1994, according to the accused, Adora arrived at his house informing him that Maria Julieta was being summoned by their mother, so the sisters proceeded to their parents' house. After a while, however, Adora returned. She kissed him which caused him to be sexually aroused. Wearing a skirt, she pulled down her panty as he also pulled down his short pants. She bent forward while he went behind her in a dog-style fashion. They both reached their orgasm in ten (10) minutes. Afterwards, she left the house while he laid down to rest.

With respect to the 27 November 1994 incident, the version of the accused was that Adora asked him to accompany her to watch the coronation at Sta. Milagrosa. At eleven o'clock in the evening, they went to the site but after a short period she suggested that they go under the bridge where they kissed and made love again in a dog-style standing position. Thereafter, they decided to go home. Along the way, they met Nora who became suspicious that there was something that happened between them. Nora pulled Adora and they hurriedly left. On that same night, in the house in Sta. Milagrosa, he was awakened by Nora who forced him and Adora to confess. Apprehensive that Adora's relatives might harm him, he proceeded to the bus terminal.

The accused submitted in court a "love letter" supposedly sent by "Bing" during his confinement at the provincial jail.^[4] He claimed that he called Adora "Bing" and sometimes "Bi," although Adora vigorously denied being the author of the letter or that she was the sender. She submitted her high school spelling booklet and test papers showing her penmanship.^[5] Moreover, she asserted that her nickname was "Babes" and not "Bing" nor "Bi."

While the trial court believed Adora Balce, it was totally unconvinced of the version of the defense; hence, the conviction of accused Crisanto Digma.

Accused-appellant maintains that his series of sexual congresses with Adora was consensual. As regards the first alleged rape incident, he argues that it is hard to believe that she was not able to create some noise nor move her body to awaken her sister and thus prevent the rape. With regard to the alleged second and third rape incidents, he submits that the voluntariness in the sexual acts is evident from the fact that they were executed in an unusual manner, i.e., dog-style fashion and in a standing position. He proffers that lovers resort to such position to discover and attain extraordinary delight and satisfaction. He explains that a rapist would normally refrain from this position because of difficulty and the amount of time involved in the execution, especially if the victim repels the act. Moreover, he invites

attention to the established circumstance that in the three (3) alleged rape incidents, he was not armed with a deadly weapon. Lastly, he banks on the circumstance that Adora finally disclosed the incident to her family only after they were caught by Nora.

Accused-appellant fails to persuade. By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that usually only the participants can testify as to its occurrence.^[6] We recall Adora Balce's narrations that she was awakened at about nine o'clock in the evening of 1 March 1994 when she felt somebody holding her hands and then covering her mouth with his hand. She was ordered to remain silent otherwise somebody would be in trouble. At that time, their house was dark but she recognized the voice to be that of accused-appellant.

Pertinent portions of her testimony read -

- Q: How were you awakened?
A: I noticed that somebody was trying to hold my hands, sir.
Q: So what did you do when you noticed that somebody was trying to hold your hands?
A: I thought the two children were the ones holding my hands, but later I found out that it was Kuya Cris, sir.
Q: How did you find out that it was your Kuya Cris, the accused?
A: I noticed it was him because when he held my hand it was quite a big hand; at the same time he put one of his hands on my mouth x x x x
Q: Did he ever talk on that night when he awakened you?
A: Yes, sir.
Q: What did he say x x x x
A: He told me to just keep quiet, otherwise, somebody would be involved, sir.
Q: After saying those things to you, how did you feel?
A: I was afraid, sir.
Q: So what did the accused do to you?
A: He closed my mouth by using his hand and at the same time he undressed me.
Q: What were you wearing on that night?
A: T-shirt, short pants and skirt, sir.
Q: You said the accused undressed you, was he able to remove your short pants and your panty?
A: Yes, sir.
Q: How about your shirt?
A: He just lifted the T-shirt, sir.
Q: While the accused was removing your panty, your shorts, what were you doing?
A: I kept on moving but I could not do anything because he was too big, sir.
Q: You said the hand of the accused was in your mouth, which hand or do you mean both hands?
A: His left hand, sir.
Q: After the accused removed your shorts and your panty and lifted your T-shirt, what did he do?

A: I felt that something was inserted in my vagina, a hard object, sir.

Q: When you felt that something, a hard object according to you, was inserted into your vagina, what was the position of the accused relative to you?

A: He was on top of me, sir x x x x

Q: While that hard object was inserted to you by the accused as he was on top of you, what did you feel?

A: I felt pain, sir.

Q: Was the accused moving while that hard object was inserted in you by the accused?

A: Yes, sir.

Q: What was that hard object that was inserted in your vagina by the accused?

A: His penis, sir.

Q: While the accused Crisanto Digma was doing this, was he telling you anything x x x x

A: He warned that if I would divulge that to anybody, he would kill all of us.

PROSECUTOR: May I put on record that the victim is crying while answering these questions.

Q: When these things were being done to you by the accused, did you notice the two children beside you, and your sister who is the wife of the accused?

A: They were sleeping, sir x x x x

Q: After the accused inserted his penis in your vagina while he was on top of you, what did he do?

A: The accused went out of the house x x x x^[7]

During the cross examination, the defense counsel tried to mislead Adora to make her admit that the sexual intercourse was consensual but was obviously unsuccessful -

Q: In fact, you bent your body forward so that his penis could penetrate your vagina, isn't it?

A: Yes, sir.

PROSECUTOR: We object! Because the translation was - in fact pinayuko ka para maipasok `yong pag-aari niya, so, that is not the question as translated. The question should be: You were forced to bend so that he can enter your vagina?

ATTY. DIALOGO: My question is: In fact you bent your body forward?

Witness: He forced me to bend forward, sir.^[9]

On 26 November 1994 Adora was again raped by the accused. Hereunder is her account -

Q: You said you were raped at 9:00 p.m., will you please tell the Court how it happened?