

SECOND DIVISION

[G.R. No. 136254, December 04, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO DAGPIN Y PAUSAL, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

REYNALDO DAGPIN was charged with having raped Ellen Caay on 7 December 1994 in an Information filed before the Regional Trial Court of Dipolog City. It was alleged that the accused, armed with a hunting knife and by means of force, violence and intimidation, succeeded in having sexual intercourse with his victim then seventeen (17) years of age.^[1]

On 2 October 1998 the accused Reynaldo Dagpin y Pausal was convicted as charged and sentenced to *reclusion perpetua* and ordered to indemnify the offended party Ellen Caay y Pausal P50,000.00 for moral damages, and to pay the costs. The accused was given full credit for his preventive detention provided he agreed in writing to abide by the disciplinary measures for convicted prisoners, otherwise he would be entitled only to four-fifths ($\frac{4}{5}$) thereof.^[2]

Ellen Caay lived with her father Jesus Caay and brother Jeffrey in *Sitio* Celix, Brgy. Lingasad, Polanco, Zamboanga del Norte. Her mother Consorcia and another brother Herman were both working in Manila.

On 7 December 1994 at about five o'clock in the afternoon, Ellen who was a third-year high school student at the Zamboanga del Norte National High School arrived home from school. Jeffrey was then attending the *fiesta* in Larayan, Dapitan City, while Jesus was still in his farm. At six-thirty in the evening, Jesus arrived and they dined together. At eight o'clock that evening Jesus proceeded to his *kamalig* to watch over his stocks of *palay* being stored therein. Jeffrey did not go home that evening so Ellen had to sleep alone, which was not the first time she was left alone in the evening. Besides, the houses of their relatives were just close by. Ellen locked the main door of their house before sleeping, and placed a kerosene lamp at the altar in her room. She likewise secured the door of her room with a piece of wood.

At around eleven o'clock that same evening, Ellen was awakened. She felt that someone entered her room. She was terrified. The stranger then covered her mouth with his left hand while his right held a hunting knife. From the illumination emanating from the kerosene lamp she immediately recognized the intruder to be Reynaldo Dagpin who used to eat and sleep in their house, being a close friend of her brother Jeffrey. Reynaldo warned her not to shout or else she would be killed. He laid his knife on the side of the bed and removed her short pants and panty. She resisted but without success since she was small. Reynaldo

placed himself on top of her. He removed his short pants and proceeded to have sexual intercourse with her for some ten (10) minutes. He was making "push and pull" movements. She felt pain. After satiating his lust, he left but only after warning her not to reveal the incident to her parents otherwise he would kill her. She kept her experience to herself even after her father returned the following day because of the threat to her life.

On 26 January 1995 Ellen finally disclosed the rape to her father's sister Dominga Jalapadan who immediately relayed the information to Jesus. On 28 January 1995 Ellen, accompanied by her father Jesus and aunt Dominga, sought assistance from the police authorities of Polanco. On 30 January 1995 she was examined by the Municipal Health Officer of Polanco who issued a medical certificate containing the following pertinent finding: "x x x 5) On pelvic examination, hymen is lacerated at 3 o'clock, 5 o'clock and 8 o'clock, remnants of hymenal tissues are noted flapping around, mucoid vaginal discharge is noted at the vaginal canal, and cervix is closed and normal in appearance."^[3]

The defense presented a different version. According to accused Reynaldo Dagpin, since February 1992 when he was only seventeen (17) years old he already lived with the Caays. He was a helper of Jesus in taking care of his domesticated animals as well as in planting and harvesting his crops in the field. Reynaldo and Ellen were second cousins. Notably, their maternal family names are the same - "Pausal."

In May 1994 he and Ellen attended a *disco* in *Sitio* Celix. Since then, unknown to her parents, an intimate relationship developed between them. In the evening of 22 July 1994 he and Ellen watched a show at the multipurpose building also in *Sitio* Celix. At about nine o'clock they went home. However, nobody was home so they found themselves alone together in her bedroom. For the first time, they engaged in sexual intercourse which was repeated five (5) times that evening. The following night they slept together again in the same room and made love four (4) times.

Accused Dagpin further claimed that in the succeeding months of August, September and November, during Saturdays and other days when they had no companions in the house, they would have sexual encounters. However, on 7 December 1994 they were caught sleeping together in Ellen's room by his brother Danilo who also used to spend nights in the same house of the Caays. Danilo shouted and woke Reynaldo up. Danilo was drunk and was holding a bolo so Reynaldo rushed to the *kamalig* where Jesus was sleeping. Awakened by the noise created by Danilo, Jesus asked what the commotion was all about. Reynaldo could only say that perhaps Danilo was having some problems. Reynaldo then proceeded to the house of his uncle Pedro also in *Sitio* Celix.

The following morning, according to Reynaldo, he and Ellen met in the place of a certain Elumbaring. There, Ellen disclosed to him that she was pregnant. He assured her that he would marry her, but she thought instead of having an abortion. From then on, he stayed with his parents in Buli, San Miguel, Polanco, Zamboanga del Norte.

Danilo Dagpin corroborated the defense of his brother, accused-appellant Reynaldo Dagpin, that Ellen was indeed his sweetheart and that he used to see them walking closely together. However, after the incident of 7 December 1994, neither accused-appellant nor Danilo returned to the house of the Caays.

The trial court found the narrations of the prosecution witnesses credible, particularly the testimony of Ellen. According to the court *a quo*, it was natural for her to withhold the incident from anyone in view of the death threats of the accused, only to confide to her aunt later since her mother was at that time in Manila. It was also in accord with human nature and experience that upon learning of such incident her aunt would pass the information to her father.

Indeed, Ellen would not have sought police and medical assistance if her claim of rape was a mere fabrication. At any rate, the trial court did not believe the version of the accused. It opined that the circumstance that he left Ellen in the house thus exposing her to the risk of being harmed or molested by Danilo who was drunk and armed with a bolo, was inconsistent with his "sweetheart theory." Ellen would not have prosecuted him for rape if they were really lovers and if in fact he offered to marry her. And why was it that he and Danilo never returned to the house of the Caays after the incident of 7 December 1994?

Accused-appellant Dagpin assails in this appeal Ellen's alleged feeble attempt to resist his carnal assault and failure to make an outcry from the inception to the conclusion of the sexual assault. He makes much of the circumstance that she reported the matter to the authorities only after about two (2) months. He maintains that what actually took place between them on 7 December 1994 was a consensual act brought about by their mutual lust as sweethearts.

We sustain the conviction of accused-appellant for rape. As found by the trial court, which we find no reason to doubt, the testimony of complaining witness Ellen Caay was clear, positive, convincing and consistent with human nature and the normal course of things.^[4] Otherwise stated, her credibility is the single important issue.^[5] Ellen gave a candid, plain and straightforward account of her harrowing experience in a manner reflective of an honest and unrehearsed testimony.^[6]

It is oft repeated in rape cases that it is highly inconceivable that a barrio lass like Ellen, inexperienced in the ways of the world, would fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation, unless she was motivated by a potent desire to seek justice for the wrong committed against her.^[7] And inasmuch as there was no showing that she was impelled by any improper motive in making the accusation against him, her complaint is entitled to full faith and credit.^[8]

As for Ellen's feeble attempts to resist the accused-appellant, it is clear from the evidence that she was unsuccessful in warding off his carnal assault because, as she explained, she was too small compared to him. At any rate, physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety.^[9] Intimidation is addressed to the mind of the victim and therefore subjective, and its presence cannot be tested by any hard-and-fast rule but must be viewed in the light of her perception and judgment at the time of the perpetration of the crime.^[10] It may be of the moral kind, *e.g.*, the fear caused by threatening a woman with a knife.^[11] Here, accused-appellant was holding a hunting knife when Ellen was awakened, covered her mouth, then threatened her