

SECOND DIVISION

[G.R. No. 116599, September 27, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO PAGPAGUITAN, ALIAS "PINGKONG" AND ROBERTO
SALAZAR ALIAS "OPAW", ACCUSED-APPELLANTS.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the Decision of the Regional Trial Court of Butuan City, Branch I, finding appellants Domingo Pagpaguitan and Roberto Salazar guilty beyond reasonable doubt of the crime of rape and sentencing them to suffer the penalty of *reclusion perpetua* and to pay private complainant Evelyn Nalam, jointly and severally, the amount of P30,000.00 as moral damages.

Assisted by her father, Federico Nalam, complainant on March 24, 1992, filed before the Butuan City Prosecutor a complaint stating that:

"The undersigned complainant accuses DOMINGO PAGPAGUITAN alias Pingkong and ROBERTO SALAZAR alias Opaw of the crime of Rape committed as follows:

"That on or about January 31, 1992 at Barangay Bitan-agan, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with the use of force and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with the undersigned complainant, who is 14 years old, against her will and consent, to her damage and prejudice.

"CONTRARY TO LAW (Art. 335 of the Revised Penal Code)."^[1]

The pertinent facts as found by the trial court are as follows:

"Roberto Salazar is Evelyn's neighbor at barangay Bitan-agan, Butuan City and Domingo Pagpaguitan is his gang mate. In the evening of January 30, 1992, both of them went to see Evelyn at her employer's house at Montilla Boulevard, Butuan City, and told her that they met her father who was very angry with her and swore to come and get her, if not kill her, if she will not go home to Bitan-agan. Although Evelyn wondered why her father should feel that way as she asked permission before she left home, she nevertheless went with the two accused boarding a jeep for San Vicente where the two accused left her things, then proceeded towards Bitan-agan. The accused told her that they would seek the assistance of Commander Coz to help pacify her father's anger. But instead of going to the residence of Commander Coz, the accused brought her to the uninhabited farmhouse of Roberto Salazar's

grandfather. With knives in their hands, they threatened to kill her if she would not go with them up the mountain; they held her by her hands.

"Upon entering the house, Roberto stayed by the door and Domingo started embracing and kissing her several times; she pleaded with him but he answered that if she could not be taken "harmlessly", then it would have to be by force; she kicked Domingo and continued to plead with him, but the latter boxed him (sic) on her chest and thighs many times as she fought back, until she fell to the floor, whereupon Domingo removed his pants and her panties as she continued pleading and weeping telling Domingo not to do it as she considered him a brother; Domingo placed himself on top of her, spread her legs and inserted his penis into her vagina and she felt great pain for this was her first intercourse; he made the motions of pushing and pulling his penis within her vagina x x x. Her body was in pain and her vagina was bleeding. While Pagpaguitan was doing this to her, Salazar was watching them.

"The following morning the accused brought her to the house of Domingo in the mountain where his mother was. As Domingo and Roberto agreed that evening to bring her to Leyte, Domingo's mother left to sell a carabao to earn money for their fare to Leyte. In the absence of Domingo's mother and in the presence of Roberto Salazar, Domingo again forced himself upon her." [2]

The complainant's relatives, meantime, had gone out looking for her. They found her with Pagpaguitan. A meeting was then held on February 2, 1992 before the purok president and the barangay captain between the parents of Pagpaguitan and the parents of the private complainant. Pagpaguitan and the complainant were both present. At the meeting, Pagpaguitan proposed marriage to the complainant, but the latter rejected the proposal.

On February 10, 1992, complainant went to a doctor for a physical examination. The examination was conducted by Dr. Rowena T. Catipay, Medical Officer III of the Butuan City General Hospital and Medical Center. Her findings were as follows:

"Examined a patient who was conscious, coherent, ambulatory.

"SKIN: Fair, Hematoma noted on both thighs, left lateral and right lateral portions.

"x x x

"Genetalia (sic): — No vaginal laceration noted on the mucosa

"HYMEN: — Not intact; Caruncula in appearance.

"x x x

"Vaginal Smear taken for spermatozoa — — Negative." [3]

On February 19, 1992, complainant and her father executed affidavits at the police station, and later filed the complaint for rape with the Butuan City Prosecutor.

Pagpaguitan and Salazar were arrested on August 16, 1992.^[4] They were arraigned on October 2, 1992. Both pleaded "Not Guilty." Thereafter, trial on the merits ensued.

Pagpaguitan admitted having sex with complainant, but insisted that it was consensual. He claimed they had eloped and that truly they were actually sweethearts.

As narrated by the trial court, his version of the facts follows:

"[O]n January 3, 1992, [Evelyn] went to his and Roberto's place of work at RGS Bakery, Obrero, Butuan City, to tell him that his (sic) father was angry with her as somebody reported to him that she and Domingo often met at the plaza; he told Evelyn that her father would be angrier if he knew she came to his place of work, to which Evelyn charged that he did not love her; his pride was pricked so he invited her to his house at Bitan-agan; Roberto Salazar went with them; he and Evelyn lived together in his parent's house as husband and wife; on January 5, 1992, he told Evelyn to go home and he and his parents would follow to ask for her hand, but her parents did not entertain them; in the dawn of January 6, 1992, Evelyn went to his house which was one kilometer away from her house and from then on lived with him until March 15, 1992 when her parents went to his house and pulled their daughter and maltreated her in front of him and his parents; x x x they met again on March 16, 1992 before the purok president of Purok 2; from there they proceeded to the barangay captain of Bitan-agan; when they went out of the office of the barangay captain, Evelyn told him to bring her personal belongings because she would look for a way to follow him wherever he would go; Evelyn admonished him to leave Bitan-agan as her parents are looking for a way to kill him and his parents so he left for Leyte; while in Leyte, he and Evelyn exchanged letters (Exh. 2); he received three letters from Evelyn; he is willing to marry Evelyn because he loves her; x x x [F]rom January 3 to 5, he and Evelyn had sexual intercourse 4 times; from January 6 to March 15, 1992, he could no longer remember how many times he had sex with Evelyn x x x"^[5]

The trial court, however, disbelieved Pagpaguitan's version. Finding the prosecution's evidence convincing, the court convicted Pagpaguitan and Salazar and sentenced them to *reclusion perpetua*. Both appealed.

Before us they raise the following errors:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BEYOND REASONABLE DOUBT OF RAPE DESPITE UNTRUSTWORTHY AND FLIP-FLOPPING UNCORROBORATED TESTIMONY OF THE PRIVATE COMPLAINANT/VICTIM.

II

THE TRIAL COURT ERRED IN DISREGARDING THE TESTIMONIES OF THE PUROK PRESIDENT AND THE BARANGAY CAPTAIN THAT THE SUBJECT OF THE INSTANT COMPLAINT WAS INITIALLY ELOPEMENT.

III

THE TRIAL COURT ERRED IN ARROGATING UNTO ITSELF THE SPECIAL TASK OF DETERMINING THE GENUINNESS OF THE HANDWRITING OF THE COMPLAINANT WHICH RESULT IT HEAVILY RELIED UPON IN ITS VERDICT AGAINST THE ACCUSED.^[6]

We find the appeal without merit.

Regarding the *first error*, it must be pointed out that in a prosecution for rape, the evaluation of the evidence presented during trial ultimately revolves around the credibility of the complaining witness.^[7] If found positive and credible by the trial court, her testimony suffices to support a conviction.^[8]

Complainant's testimony in the present case never "flip-flopped", contrary to the appellant's claim. On direct testimony, complainant categorically stated that she was boxed, mauled, and forced to submit to accused's carnal desire. She testified, thus:

"Q: In that house, what happened if any when you arrived there together with the two accused?

"A: Upon arriving there, they took me to the room while Roberto Salazar stayed at the door.

"Q: What happened, if any?

"A: Domingo Pagpaguitan embraced me and kissed me several times.

"Q: What did you do when you were embraced and kissed by Domingo Pagpaguitan?

"A: I pleaded with him not to do that because I considered him as my brother.

"Q: What was his reply, if any?

"A: He said that since I could not be taken harmlessly, he will get me by force.

"Q: What happened after that?

"A: When he tried to get near me and embrace me and kiss me, I tried to resist and kicked Domingo Pagpaguitan and pleaded (with him) not do that to me as I considered them as my brothers.

"Q: When you said you kicked him did you hit him?

"A: Yes, sir.

"Q: What was his reaction when you kicked him?

"A: Domingo Pagpaguitan again embraced me and kissed me.

"Q: And what was your reaction again?

"A: I resisted him but I could not overpower him because he mauled me.

"Q: When you said Domingo Pagpaguitan mauled you, where in particular, in relation to your body did he maul you?

"A: I was boxed here (witness indicating her chest) and also my thighs.

"Q: How many times were you boxed?

"A: Many times because I fought back.

"Q: What happened to you, if any, when you were boxed on the thighs by Domingo Pagpaguitan?

"A: I fell to (sic) a lying down position.

"x x x

Q: When you fell down upon being boxed at the thigh and chest by Domingo Pagpaguitan, what else did he do to you, if any?

"A: He removed his pants and also removed my panties.

"Q: When he was removing your panties, what did you do, if any?

"A: I continued pleading and weeping.

"x x x

"Q: After removing your panty, what else, if any, did Domingo Pagpaguitan do to you?

"A: He placed himself on top of me.

"Q: After that, what did he do when he was on top of you?

"A: He spread my legs.

"Q: Then what else happened if any?

"A: He inserted his penis into my vagina.

"Q: What did you feel when he inserted his penis into your vagina?