

EN BANC

[G.R. No. 119072, April 11, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS
EDUALINO, ACCUSED-APPELLANT.
D E C I S I O N**

PADILLA, J.:

Accused Jesus Edualino was charged with rape in an information dated 5 July 1994 reading as follows:

"That on or about the 12th day of May, 1994, at Bgy. xxx, Municipality of xxx, Province of xxx, Philippines, and within the jurisdiction of this Honorable Court, the said accused with lewd design, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one AAA, a pregnant woman, against her will and consent to her damage and prejudice.

CONTRARY TO LAW."^[1]

The case for the prosecution, as told by complainant AAA, is as follows:

On 12 May 1994, the complainant and her mother BBB were in xxx to attend a dance. At about ten (10) o'clock in the evening of that day AAA saw her cousin CCC at the dance and she asked him to drink beer with her.

CCC got drunk and fell asleep. It was at this time that accused Jesus Edualino approached her and offered her a glass of beer. AAA noticed that Edualino was drunk so she accepted the glass. She then felt dizzy after drinking the beer.

Edualino then dragged her towards a grassy area where no people were present. The accused then forced himself on top of her and succeeded in raping her while she was in a semi-unconscious state.

AAA further stated that she was continuously resisting the assault upon her but Edualino was stronger and he even boxed her in the stomach. She stated that she passed out after the rape was consummated.

Prosecution witness DDD testified that she saw the accused in the act of raping AAA in the grassy area near the store of a certain Sgt. Edep and the house of a certain Mrs. Adier.

DDD stated that she was looking for her cousin AAA in the early morning of 12 May 1994 at xxx where a dance was being held. She saw AAA with the accused on top of her in a dark grassy area near the site of the dance. Both the accused and AAA were naked. She was able to identify the accused by pointing her flashlight from a distance of less than two (2) meters away.

She then called her aunt EEE, the victim's mother, but when they returned, the accused immediately left when he noticed their presence.

Dr. xxx, a physician at the xxx District Hospital, testified that on 13 May 1994, he examined AAA who alleged that she was sexually abused.

The medical certificate issued by Dr. xxx reads as follows:

"Medical Certificate

This is to certify that Mrs. AAA, 22 years old, married, of xxx, with a 2-1/2 yrs old child, was examined of this date. She alleged to have been sexually forcefully assaulted by a known person, last May 12, 1994. She was accompanied by her mother.

The patient upon admission was found to be combative, with emotional outburst, shouting and crying. She was then put to sleep.

Findings

1. General: Fairly developed and nourished, patient was still under sedation during the exam. Approximately 5'4" in Ht.; wt.: 118 lbs.
2. Head & Face: contusion left temporal area 2 x 2 cm. dia. Multiple superficial abrasions on the left forehead, right and left side of the face.
3. Abdomen: Linear abrasion, post. lumbar, 3 inches length, longitudinal
4. Breast: slightly globular, dark brown areola and nipple, presence of multiple contusion just below the areola on both breast.
5. Upper extremities: presence of multiple linear abrasions on both arm and forearm.
6. External genitalia: numerous pubic hair, labia majora and minora both gaping, presence of numerous dry leaves (grass) noted on both buttocks.
7. I.E. hymen fimbriated in shape, no laceration noted, easily admits 2 fingers vaginal wall lax, less prominent rugae, uterus enlarges to 2-3 mos. gestation.

Note: no sperm cell exam. done. no available microscope.

Conclusion: hymenal opening admits easily 2 fingers, it can admit an average size penis in erection without laceration, uterus enlarges to 2-3 months gestation.

(SGD.) Rogelio C. xxx, M.D.

Medical Officer" [2]

The defense had a different version of the incident.

Accused Jesus Edualino, while admitting that he was at the dance at xxx on 11 May 1994, denied that he raped complainant AAA.

Edualino testified that after leaving the dance, he and a certain Calixto Flora went to the store of Sgt. Edep to drink beer. After he and Flora had finished a big bottle of beer, complainant AAA and a certain CCC arrived. They noticed that AAA and CCC were already drunk. Accused Edualino testified that complainant AAA then began teasing him to kiss her. He (Edualino) stood up to get away from her but the latter followed him. Flora then held on to AAA's arm to prevent the latter from following him. Edualino testified that he and Flora then went to his house where they stayed until the morning of 12 May 1994.

Edualino also testified that CCC and AAA may have been under the influence of marijuana since he heard the two (2) talking about having taken drugs.

Calixto Flora corroborated the accused-appellant's version of the incident.

Felix Alberto, a resident of xxx, testified that in the evening of 11 May 1994 while they were walking towards the place where the dance was being held, he and his sister Rose saw complainant AAA sitting by the roadside with her hands cupped covering her mouth. Upon seeing them, AAA allegedly called out "Rose, halika, tikman mo, masarap ito." (Rose, come and try this. It's tasty). When they approached AAA, Alberto testified that he saw her holding what appeared to be dried marijuana leaves. Alberto then testified that he even scolded AAA saying, "Why are you doing that? You have already two children and you know that is bad." Alberto then took his sister and left.

Rodolfo Caabay, then barangay captain of xxx testified that in the early morning of 12 May 1994, an unusual incident was reported to him. BBB complained that her daughter AAA was found lying on the ground about eight (8) meters from the store owned by a certain Sgt. Edep. He found AAA was very hysterical and he observed that she had too much to drink. He turned over AAA to the police. He later learned that accused-appellant was picked up for questioning regarding his alleged rape of AAA.

Epifania Caabay, Rodolfo's wife, testified that she accompanied AAA and her mother on board the police vehicle which took them to xxx District Hospital. She stated that AAA was hysterical and kept on shouting in the vernacular, "I want water! " Epifania further stated that AAA's mother slapped her and hit her on different parts of the body to quiet her down. Epifania agreed with the other defense witnesses that AAA was quite drunk at the time.

On 23 December 1994, the trial court rendered a decision, the dispositive part of which reads:

"WHEREFORE, in view of all the foregoing facts and considerations, the Court hereby finds the herein accused, JESUS EDUALINO guilty beyond reasonable doubt of the crime of RAPE charged in the above-entitled case as defined and penalized under Article 335 of the Revised Penal Code in relation to and as amended by Republic Act

No. 7659 and accordingly, he is hereby sentenced to suffer the penalty of DEATH in the gas chamber or in the electric chair and ordered to indemnify the raped victim, AAA moral and exemplary damages amounting to P60,000.00, and to pay the costs.

With this conviction and imposition of the death penalty to the accused, he is hereby ordered immediately shipped to the national penitentiary, Muntinlupa, Metro Manila, under maximum security, to await the execution of this sentence there and the review of this decision by the Honorable Supreme Court, Manila, Philippines.

SO ORDERED."^[3]

The conviction of accused-appellant is now before this Court on automatic review.

Accused-appellant assigns the following errors to the trial court.

1. The trial court acted with grave abuse of discretion and demonstrated bias and partiality in favor of the prosecution during the entire proceedings of the case;
2. The trial court erred in giving credence to the false and incredible testimony of the complainant and other witnesses for the prosecution and in not giving due credence to the evidence for the defense;
3. The trial court erred in making findings of facts not supported by the evidence and in making conclusions based on mere surmises, conjectures and speculation; and
4. The trial court erred in convicting the appellant of the heinous crime of rape instead of upholding his innocence based on the evidence and the law.^[4]

Accused-appellant contends that the trial judge actively and "enthusiastically" assisted the prosecution, both in the direct and cross-examination of the witnesses. It is argued that "the undue interest and bias of (the trial judge) is revealed by his active participation in the entire proceeding, consistently taking the cudgels for the prosecution, instead of conducting the trial with the cold neutrality of an impartial judge."^[5]

A close and careful scrutiny of the transcripts of the proceedings before the trial court shows that the trial court judge may have exhibited a degree of zeal which could lead to impressions of partiality and bias. However, this per se does not warrant nullification of the entire proceedings in the case.

In *People v. Hatton*^[6], this Court citing *People v. Ibasan*^[7] held thus:

"x x x. It is not denied that the court had at certain points conducted its own questioning during the proceedings. The records, however, show that the court's questions did not amount to interference as to make the case for the prosecution and deprive the accused of their defense. The question of the judge addressed to the witnesses and the accused were merely to clarify certain points and confirm certain statements. The number of times that a judge intervenes is not necessarily an indication of bias. It cannot be taken against a judge if the clarificatory

questions he propounds happen to reveal certain truths which tend to destroy the theory of one party.

'As held in the case of *Ventura v. Yatco* (105 Phil. 287) 'Judges are not mere referees like those of a boxing bout, only to watch and decide the results of a game; they should have as much interest as counsel in the orderly and expeditious presentation of evidence calling attention of counsel to points at issue that are overlooked, directing them to ask questions that would elicit the facts on the issues involved, clarifying ambiguous remarks by witnesses, etc.'

A judge may properly intervene in the trial of a case to promote expedition and avoid unnecessary waste of time or to clear up some obscurity (*People v. Catindihan*, 97 SCRA 196; Par. 14 Canons of Judicial Ethics; Administrative Order No. 162 dated August 1, 1946, 42 O.G. 1803). In this respect, the record shows no irregularity in the conduct of the trial judge."

Moreover, it is of note that counsel for accused-appellant did not object, during the trial, to the manner of questioning of the trial judge nor was his inhibition sought by the defense for alleged bias and technicality for the prosecution.

The Court will now proceed to determine if the guilt of accused-appellant has been proven beyond reasonable doubt.

The elements of the crime of rape, as allegedly committed by accused-appellant, are:

1. That the accused-appellant had carnal knowledge of the complainant;
2. That the act was done against the complainant's will;
3. That force and/or intimidation was used in the commission of the act.

In the present case, the prosecution's evidence consists mainly of the testimonies of the complainant AAA, DDD and Dr. xxx.

On the other hand, accused-appellant relies on alternative defenses of alibi and consent on the part of complainant. While accused-appellant's defense before the trial court alleges that he had left the scene of the incident together with defense witness Calixto Flora, he alternatively raises before this Court the contention that the elements of the crime of rape have not been established.^[8]

Accused-appellant posits the following arguments:

1) No carnal knowledge occurred

It is argued that since Dr. xxx did not examine specimens from the complainant's private parts for the presence of spermatozoa, then complainant's testimony to the effect she, although in a state of semi-unconsciousness, felt accused-appellant on top of her consummating the sexual act, deserves no credence.

2) No force or intimidation was employed