

THIRD DIVISION

[G.R. No. 112034, January 31, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RIZALDY CONDE Y CORTEZ, ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., J.:

AAA was allegedly raped by accused-appellant Rizaldy Conde y Cortez^[1] in the early morning of 31 October 1990. She reported the incident to the police authorities on that same day and then signed and swore to a complaint^[2] for rape against the appellant before an Assistant City Prosecutor of xxx. The complaint was filed with the Regional Trial Court (RTC) of xxx on 2 November 1990, docketed as Criminal Case No. C-36045, and assigned to Branch 124 of the said court. The accusatory portion of the complaint reads as follows:

That on or about the 31st day of October 1990 in xxx. and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with one AAA, against the latter's will and without her consent.^[3]

Trial on the merits ensued after the appellant entered a plea of innocence upon his arraignment.^[4]

On 17 June 1992, the trial court rendered a decision^[5] finding the appellant guilty beyond reasonable doubt of rape and sentencing him to suffer an imprisonment penalty of *reclusion perpetua*; to indemnify the victim, AAA, in the amount of P20,000.00; and to pay the costs.^[6]

The evidence for the prosecution upon which the judgment of conviction is based is summarized by the trial court as follows:

At about 1:00 o'clock in the early morning of October 31, 1990, AAA, a 38 year old housewife was sleeping on a bed at the ground floor of her house located at xxx. As she was sleeping, AAA felt something hard penetrating her private organ. She suddenly woke up and found a man on top of her. She shouted at the man, "Sino ka?" The man whom she recognized but never saw before this incident, stood up and hurriedly put on his shorts and tried to flee from the house. AAA then put on her panty, which she wore when she slept the night before and which panty she found beside her on the bed, in order to run after the man. Just as the man was leaving the house by the front door, he was met by BBB, the sister of AAA, the two daughters of AAA named CCC and DDD and EEE, a male friend of CCC and DDD. The accused, in going out of the door managed to touch the thigh of

CCC. At this point, EEE confronted the man and the two fought each other. CCC, DDD and BBB shouted for help. Several neighbors responded and assisted in apprehending the man who identified himself as Rizaldy Conde. The neighbors as well as her two daughters and EEE brought the accused to the house of Barangay Councilman Ben Silverio who was living nearby. Later on, Councilman Silverio brought the accused to the Police Station accompanied by AAA and her two daughters as well as EEE. On their way to the Police Station, the accused threatened to rape AAA again and the latter's two daughters once he was released.

Upon arrival at the xxx Police Station, the case was investigated by Corporal Alberto David. AAA executed a sworn statement on this case at about 2:40 A.M. of the same day - October 31, 1990 (Exh."A"). She had herself physically examined at the NBI Medico-Legal Office in the afternoon of October 31, 1990.^[7]

The testimony of the private complainant was corroborated by her daughter, CCC,^[8] who likewise executed a sworn statement on 31 October 1990.^[9]

Dr. Bienvenido Muñoz, the Medico-Legal Officer of the National Bureau of Investigation (NBI) who physically examined the private complainant, made the following findings and conclusions:

GENITAL EXAMINATION:

Pubic hair, fully grown, abundant. Labia majora and labia minora, both gaping. Fourchette, lax. Vestibule, pinkish. Hymen, reduced to carunculae myrtiformis. Vaginal orifice, admits a tube, 3.5 cm. in diameter. Vaginal walls, lax. Rugosities, obliterated.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
2. Vaginal orifice wide (3.5 cm. in diameter) as to allow complete penetration by an average-sized, adult male organ in full erection without producing new hymenal injury.^[10]

He further testified that it is possible for a woman to be raped while asleep and that if she has experienced childbirth several times, she may be raped even without being awakened.^[11]

The appellant, the lone witness for the defense, denied the charge of rape. He claimed that the night before the incident in question he had a drinking session with his brother and cousin at his home at xxx. He became too drunk that his brother had to hail a passenger jeepney for him to report to his employer, Major Edilberto Santos, Chief of the xxx Police Station. During the ride, he lost consciousness and could no longer recall what transpired thereafter.^[12]

He only regained consciousness when he was being mauled by several persons in

front of the house of the private complainant. The latter accosted and asked him what he was doing in front of her house. He apologized, but instead the private complainant struck a lighted cigarette on his face. He was eventually brought to the police station. There, he learned that he was being accused of raping the private complainant. He then requested that he be allowed to seek the help of his employer but to no avail.^[13]

The appellant admitted that he had no idea why the private complainant whom he never met before would contrive the charge of rape. He surmised that his close association with his employer could be the source of envy of the investigating officer, P/Cpl. Alberto David, who happened to be a neighbor of the private complainant.^[14]

The trial court rejected the version of the appellant noting that he had admitted to having been arrested while he was outside the residence of the victim in the early morning of 31 October 1990. It gave weight to the testimony of the private complainant and concluded that the fact that she immediately pushed the appellant upon waking up, tried to run after him, immediately reported the incident to the police authorities, and lost no time in having herself physically examined at the NBI Medico-Legal Office indicate her sincerity and enhance her credibility.^[15]

In this appeal, the appellant imputes upon the trial court the following errors:

1. IN FINDING THAT THERE WAS RAPE IN THE INSTANT CASE;
2. IN GIVING CREDENCE TO THE PROSECUTION EVIDENCE PARTICULARLY THE TESTIMONIES OF PRIVATE COMPLAINANT AAA AND CCC;
3. IN FINDING THAT THE EVIDENCE FOR THE PROSECUTION HAD ESTABLISHED BEYOND REASONABLE DOUBT THE GUILT OF APPELLANT FOR THE CRIME OF RAPE.^[16]

The appellant asserts that the medico-legal findings negate the alleged rape in that nothing therein shows that there were manifestations of recent sexual intercourse or any indication that the private complainant suffered extragenital physical injuries. Considering that she has been separated from her husband since 1985 and, according to her, she never had any sexual intercourse with any man thereafter, it was improbable for her not to have been awakened when the appellant was on top of her or not to have sustained any injury after having fought and pushed the appellant while the latter's organ was in her private organ. Moreover, if indeed she was waiting for the arrival of her children, then she could not have been in deep sleep as she so alleged.

The appellant also points out inconsistencies between the testimonies in court and the sworn statements of the private complainant and her daughter CCC. For one, in their testimonies in court, they declared that when the appellant met CCC at the door while he was escaping, he stopped and mashed CCC's body from the chest downwards to the thigh - that fact was not mentioned in their sworn statements. For another, CCC testified that when she was mashed by the appellant she parried his hand and shouted, and then she, her sister DDD, her aunt BBB, and EEE pursued him; in her affidavit, however, she stated that while she, DDD, BBB, and EEE were

walking along the alley leading to their house they were surprised to see a person hurriedly leaving their house and that EEE then blocked the man's path and boxed him.

Finally, the appellant submits that the testimony of the AAA and CCC that while they were on their way to the police station he threatened to kill and rape the private complainant and her daughter is incredible because after he was mauled, it would be "preposterous and highly contrary to human behavior and experience" that he "would still have the guts to threaten private complainant and her family."

In the Brief for the Appellee, the Office of the Solicitor General submits that the trial court committed no error in finding the appellant guilty beyond peradventure of doubt of the crime of rape but recommends that the indemnity be increased from P20,000.00 to P50,000.00 conformably with the present policy of this Court.

The common denominator of the assigned errors is the credibility of the principal prosecution witnesses. One of the highly revered dicta Philippine jurisprudence has established is that this Court will not interfere with the judgment of the trial court in passing on the credibility of opposing witnesses unless there appears in the record some facts or circumstances of weight and influence which have been overlooked, which if considered would affect the result of the case. The reason therefor is founded on practical and empirical considerations. The trial judge is in a better position to decide the question of credibility, since he has personally heard the witnesses and observed their deportment and manner of testifying.^[17]

Our meticulous and dispassionate review of the evidence leads us to the conclusion that, except as to the amount of indemnity awarded to the private complainant, the trial court committed no error of fact or of law in its challenged decision.

The rape was consummated even before the private complainant was awakened. According to her, she was awakened at the time when something hard - the appellant's penis - had penetrated her private organ. The entry or penetration was thus accomplished while she was still asleep. She may be considered to be unconscious then, for sleep is the "natural usu. regular suspension of consciousness during which the powers of the body are restored,"^[18] or "a natural or artificially induced state of suspension of sensory and motor activity."^[19] Under Article 335 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman who is, inter alia, unconscious. The said Article provides in part as follows:

Art. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

xxx

xxx

xxx

2. When the woman is deprived of reason or otherwise unconscious; and x x x

This Court has held that carnal knowledge with a woman who is asleep constitutes rape.^[20]

We find undeserving of any consideration, for being purely speculative, the