

FIRST DIVISION

[G.R. No. 113483, February 22, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARMELO FAIGANO Y GRUTAS, DEFENDANT-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

CARMELO FAIGANO Y GRUTAS appeals from the decision of the Regional Trial Court of Quezon City finding him guilty of the special complex crime of robbery with rape, sentencing him to *reclusion perpetua*, and ordering him to pay complaining witness Nely B. Ojina P50,000.00 for moral damages as well as the costs of suit.^[1]

On the night of 5 January 1993 Nely was in her house at Mangahan, Barangay Commonwealth, Quezon City, with her 4-month old son and 3-year old niece. At eleven o'clock Nely and the children went to sleep. Her husband Rolando Ojina was then in Pampanga where he was working.

At one-thirty in the morning of 6 January 1993 Nely was suddenly roused from her sleep by a man whom she later identified as appellant Carmelo Faigano, a worker at a nearby construction project. He was in black T-shirt but was no longer wearing pants or underwear. Instinctively, Nely tried to scream but he hurriedly raised the mosquito net and poked a 29-inch *balisong* at her neck and warned her not to make any sound. He threatened to kill her and the children beside her. Then he started kissing her. She resisted but her strength was no match to his. He forcibly tore her nightie, raised her pair of brassieres above her breasts and pulled her to the edge of the king-size wooden bed. He spread her thighs apart against her will and inserted his organ into hers. He had sexual intercourse with her. Upon reaching his climax he withdrew and ejaculated on the blanket.^[2] After satisfying his lust, accused-appellant then put on his short pants and ordered Nely to bring out her money.^[3] Fearing for her life she reluctantly pointed to their closet. He took Nely's money amounting to P200.00, her husband's wristwatch valued at P2,000.00, and two (2) rings worth P760.00. He warned Nely not to move. Then he fled. It was only then that Nely was able to shout for help. Two (2) neighbors responded and she told them she had been robbed and kissed. The neighbors ran after the culprit but failed to overtake him so they went back to Nely to comfort her.

At eight o'clock that same morning Nely caught a glimpse of her attacker at the construction site. She immediately went to barangay tanod Alfredo Regacho and informed him that she was robbed and repeatedly kissed by the accused. She did not however divulge that she was raped because she was ashamed. They went to the construction site and invited accused-appellant to go with them to the barangay hall. It was there where Nely finally revealed that she was sexually abused by accused-appellant.

Nely and appellant were later brought to the Station Investigation Division, Police Precinct 5, where Nely gave her sworn statement. She was then referred to the PNP Crime Laboratory Service, Station 4, in EDSA, Kamuning, Quezon City, for physical examination and was issued Medico-Legal Report No. M-0042-93 dated 6 January 1993.

The accused invoked alibi. He claimed that he was asleep in his house during the commission of the crime imputed to him. However, the trial court disregarded his defense and convicted him as charged.

Accused-appellant contends in this appeal that the testimony of complainant Nely is incredible and contrary to human experience. He claims that -

First. The two (2) persons beside her on the king-size wooden bed were never awakened and remained in slumber throughout her alleged sexual ordeal;

Second. The act of Nely in not disclosing immediately that she had been raped is contrary to *res gestae*. If she was sexually abused she should have revealed this to her neighbors soon after. If she could disclose that she was robbed and kissed there was no reason why she could not have told them about the rape;

Third. Assuming *arguendo* that she was raped, it was very unlikely that accused-appellant would withdraw his penis and ejaculate instead on the blanket. He postulates that it is contrary to common experience that one would withdraw his organ at the height of satisfaction when he could easily release himself inside his partner's vagina, which he could have done;

Fourth. If he did commit the crime he would not have the courage to return near the vicinity of the rape. That he went to the construction site where he worked was an indication that his conscience was clear.

We are not persuaded. In rape cases, we seldom find any disinterested person who was actually present when the offense was committed. More often the court is left with the difficult task of weighing the testimony of the victim *vis-à-vis* that of the accused. The issue simply boils down to credibility.

It is oft-repeated that the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it has the distinct opportunity to examine the demeanor of the witnesses as they testify before the court and ascertain whether they are telling the truth. We see no cogent reason to depart from this established rule.

In *People v. Ignacio*^[4] this Court took judicial notice of the rather interesting fact that among poor couples with big families living in cramped quarters the presence of other people is not necessarily a deterrent to copulation. One may also suppose that children sleep more soundly than grown-ups and are not easily disturbed by the