Supreme Court E-Library

for leave to intervene. It is too late in the day for PFINA to intervene after judgment in the main case has already become final. These proceedings are only for the determination of the conflicting claims of intervenor U.P. Insofar as the other parties are concerned, this case has already been terminated with finality in our Resolution dated December 7, 2001.

IN VIEW WHEREOF, I dissent from the majority Resolution and vote to deny the petition-in-intervention filed by intervenor University of the Philippines for lack of merit.

SECOND DIVISION

[G.R. No. 136397. November 11, 2003.]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALBERTO DAGAMI,** *appellant.*

SYNOPSIS

Appellant was convicted of rape and was sentenced by the trial court to suffer an indeterminate penalty from *prision mayor* as minimum to *reclusion temporal* as maximum. He was also ordered to indemnify thirty six-year old Visitacion, the offended party and to acknowledge and support the offspring resulting from his illegal act.

The CA increased the penalty to *reclusion perpetua*, the single indivisible penalty which must be applied for rape regardless of any mitigating or aggravating circumstances. The CA, however, deleted the order for the recognition and support.

On appeal, he denied having raped Visitation and insisted on his claim that they were lovers.

The Supreme Court affirmed his conviction on appeal, ruling, among others: that the sweetheart theory of the appellant was

Supreme Court E-Library

self-serving because he failed to introduce love letters, gifts and the like to attest to his alleged amorous affair with the victim; different people react differently when placed under a great deal of emotional and psychological stress, thus, it was not unnatural for Visitacion to report the incident to her father the following day despite the appellant's threat. That she would be killed if she divulged to others what he had done to her; and that a married woman with children would not likely file a rape charge unless that was the truth. The qualifying and aggravating circumstances which were not alleged in the information but were proven during the trial cannot be appreciated for the purpose of fixing a heavier penalty in this case, but were considered as basis for an award of exemplary damages.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; PROOF OF USE OF FORCE IN DEFILING VICTIM PRESENT IN CASE AT BAR.** – In the present case, the appellant was armed with a handgun and threatened to kill Visitacion if she resisted. This notwithstanding, she still struggled with all her might to ward him off, but to no avail. During her testimony, Visitacion clearly described how the appellant suddenly grabbed her, forcibly pulled her to the kitchen and ravished her, and afterwards threatened to kill her if she told others what he had done to her.

2. **REMEDIAL LAW; REVISED RULES OF CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROSECUTOR HAS THE PREROGATIVE TO DECIDE WHO TO PRESENT AS A WITNESS; CASE AT BAR.** – The case for the prosecution is not enfeebled by the testimony of Juanita Tayubong and the failure of the prosecution to present Visitacion's mother Jovencia; and to adduce in evidence Fortunato's letter to Visitacion of his impending release from the national penitentiary; nor by the failure of Dr. Giovanni Zilmar and Dr. Isabelita M. Alo to pinpoint the exact time when Visitacion sustained her injuries. The matter of deciding who to present as a witness for the prosecution is not for the appellant or the trial court to decide, as it is the prerogative of the prosecutor.

Supreme Court E-Library

3. ID.; ID.; CREDIBILITY OF WITNESSES; CREDIBLE TESTIMONY ALONE OF RAPE VICTIM IS SUFFICIENT TO CONVICT; CASE AT BAR. – Besides, it is of no moment that Dr. Zilmar failed to give the exact time when Visitacion suffered the contusions and abrasions. Medical findings or proof of injuries, virginity, or an allegation of the exact time and date of the commission of the crime are not essential in a prosecution for rape. In any event, even a medical examination of the victim is not indispensable to the successful prosecution of rape. Expert testimony is merely corroborative in character and not essential to conviction. Even without a medical report, the rape victim's credible testimony, standing alone, is sufficient basis for conviction.

4. ID.; ID.; ID.; NO STANDARD FORM OF BEHAVIOR WHEN ONE IS CONFRONTED WITH A STRANGE OR STARTLING EXPERIENCE; CASE AT BAR. – This Court has repeatedly held that the workings of the human mind placed under a great deal of emotional and psychological stress (such as during rape) are unpredictable, and different people react differently. There is no standard form of human behavioral response when one is confronted with a strange, startling, frightful or traumatic experience – some may shout, some may faint, and some may be shocked into insensibility. As this Court has pointed out, the conduct of a woman immediately following the alleged assault is of utmost importance as it tends to establish the truth or falsity of her claim. In the case at bar, if Visitacion had not been forced and intimidated into submitting to the lustful designs of the appellant, her natural reaction, as a married woman, would have been to conceal her illicit activity instead of denouncing it immediately as rape, for otherwise, her conduct would constitute adultery.

5. ID.; ID.; ID.; "SWEETHEART THEORY"; INDEPENDENT PROOF IN SUPPORT THEREOF IS NECESSARY; CASE AT BAR. – In *People v. Venerable*, we held that the sweetheart theory of the accused-appellant was unavailing and self-serving where he failed to introduce love letters, gifts, and the like, to attest to his alleged amorous affair with the victim. Hence, the defense cannot just present testimonial evidence in support of the theory that he and the victim were sweethearts. Independent proof is necessary, such as tokens, mementos, and photographs.

Supreme Court E-Library

6. ID.; ID.; ID.; MARRIED WOMAN WITH CHILDREN NOT LIKELY TO FABRICATE RAPE CHARGE; VICTIM'S TESTIMONY IS WORTHY OF FULL FAITH AND CREDIT IN CASE AT BAR. – As aptly pointed out in *People v. Mendoza*, a married woman with a husband and three daughters would not publicly admit that she had been criminally abused unless that was the truth. Similarly, it defies reason in this case why a mother of four would concoct a story of defloration, allow the examination of her private parts and publicly disclose that she has been sexually abused if her motive were other than to fight for her honor and bring to justice the person who defiled her. Pertinently, it stands to reason that Visitacion would not bring herself, her family and her husband to embarrassment, to public scrutiny and being the talk of the community unless what she had testified that she was raped is true. It is settled that where there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.

7. ID.; REVISED RULES OF CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; QUALIFYING AND AGGRAVATING CIRCUMSTANCES NOT ALLEGED IN THE INFORMATION BUT PROVEN DURING THE TRIAL, EFFECT THEREOF; CASE AT BAR. – During the trial, the special aggravating circumstance of the use of a weapon (handgun) and the aggravating circumstance of dwelling were proven. Nonetheless, these aggravating circumstances cannot be considered in fixing the penalty because the same were not alleged in the Information. Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure now provide that aggravating as well as qualifying circumstances must be alleged in the information; otherwise, they cannot be considered against the accused even if proven during the trial. Being favorable to the appellant, this rule, as amended, should be applied retroactively to this case. Although the aggravating circumstances in question cannot be appreciated for the purpose of fixing a heavier penalty in this case, they can, however, be considered as basis for an award of exemplary damages. Evidence proving these circumstances forms part of the actual commission of the crime and justifies an award of exemplary damages under Article 2230 of the Civil Code even when the said aggravating circumstances were not alleged in the information.

Supreme Court E-Library

8. CRIMINAL LAW; REVISED PENAL CODE; RAPE; AWARD OF DAMAGES; CASE AT BAR. – The appellate court correctly increased the amount of civil indemnity, from ₱30,000 to ₱50,000, in accordance with the recent ruling of this Court. The Court of Appeals, however, erred in not awarding moral damages and exemplary damages in favor of the victim. In line with recent jurisprudence and in recognition of the victim's injury as being inherently concomitant with and necessarily resulting from the crime of rape, an additional ₱50,000 should be awarded to the victim as moral damages. As discussed above and pursuant to *People v. Catubig*, an award of ₱25,000 as exemplary damages is also proper.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Felidito C. Dacut for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

This case was certified and elevated to this Court by the Court of Appeals pursuant to Section 13, Rule 124 of the Rules of Court[1] after it had reviewed the decision[2] of the Regional Trial Court, Branch 8, Palo, Leyte, which convicted the accused-appellant of rape. The CA affirmed the decision of the trial court with modification, increasing the penalty imposed to *reclusion perpetua* and the amount of indemnity.

The antecedents are as follows:

---

[1] Sec. 13. *Quorum of the court.* — . . .

Whenever a Criminal Cases Division should be of the opinion that the penalty of death or life imprisonment should be imposed in a case, the said Division after discussion of the evidence and the law involved, shall render judgment imposing the penalty of either death or *reclusion perpetua* as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

[2] Penned by Judge Mateo M. Leanda.

Supreme Court E-Library

On the basis of a criminal complaint[3] of the victim Visitacion Locañas, an Information for rape was filed against appellant, the accusatory portion of which reads:

> That on or about the 31st day of October, 1991, in the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ALBERTO DAGAMI did, then, and there willfully, unlawfully and feloniously by means of force, intimidation and threat have carnal knowledge with VISITACION LOCAÑAS, against her will and consent.
>
> ACTS CONTRARY TO LAW.[4]

The appellant pleaded not guilty to the charge. Trial forthwith ensued.

The Case for the Prosecution[5]

Thirty-six-year-old Visitacion Locañas and her three children lived in a farm located at Barangay Castilla, Palo, Leyte.[6] Her husband, Fortunato Locañas, was serving sentence at the New Bilibid Prison, Muntinlupa,[7] for the killing of a certain Hinlo, Jr.[8]

In the early morning of October 31, 1991, while Visitacion and her children were sleeping in the sala of their house, she was awakened by a noise in the kitchen.[9] Curious, she lifted the mosquito net to check what it was.[10] She was shocked when she saw the appellant from the kitchen's doorway, bearing down upon her.[11] With the aid of a kerosene lamp that was lighted in

---

[3] Records, p. 3.

[4] *Id.*, at 1.

[5] The prosecution presented the following witnesses: Visitacion Locañas, Dr. Giovani Zilmar, and Dr. Ma. Isabelita M. Alo.

[6] TSN, 30 August 1993, p. 2.

[7] *Id.*, at 5.

[8] TSN, 16 December 1996, p. 15.

[9] *Id.* at 4.

[10] *Id.* at 7.

[11] *Id.* at 4.

Supreme Court E-Library

the kitchen's table,[12] she recognized the appellant, who also happened to be a neighbor. He pointed a short firearm at Visitacion and warned her not to shout or else she would be killed. Terrified, she raised her hands.[13] The appellant thereupon grabbed her hand and pulled her towards the kitchen floor.[14] Visitacion fell prostrate to the ground, face down.[15] The appellant grappled with her and turned her over.[16] He then went astride her legs and straddled them.[17] Visitacion resisted and struggled to free herself, but the appellant poked his gun against her abdomen and manhandled her.[18] He then raised her duster up to her neck[19] and stripped down her underwear.[20] The appellant proceeded to fondle her vagina[21] and to take off his shorts.[22] With the gun pressed against her chest,[23] Visitacion could not cry out.[24] The appellant then mounted her, pinning both her arms on the floor.[25] He inserted his penis into her vagina,[26] and made push-and-pull movements while inside her.[27] Satiated, the appellant stood up, and at gun-point, warned Visitacion not to divulge the incident to anyone, otherwise he would kill her.[28]

---

[12] *Id.* at 6.

[13] *Id.* at 6-7.

[14] *Id.* at 7.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 9.

[18] *Id.* at 10.

[19] *Id.* at 9.

[20] *Id.* at 11.

[21] *Id.* at 9 and 28.

[22] *Id.* at 11.

[23] *Id.*

[24] *Id.* at 12.

[25] *Id.* at 34.

[26] *Id.* at 11.

[27] *Id.* at 12.

[28] *Id.* at 13.

Supreme Court E-Library

Thereupon, the appellant jumped out of the window and disappeared.[29] Visitacion, trembling and in a daze, could not do anything but cry.[30]

In the afternoon of the same day, Visitacion, went to her father at Sitio David, Barangay San Agustin, Palo, Leyte, and revealed her ordeal at the hands of the appellant.[31] The following day, accompanied by her father, she reported the incident to Barangay Captain Roberto Dagami, the appellant's brother, who told them to lodge their complaint with the police authorities.[32]

On November 2, 1991, Visitacion submitted herself to a medical examination at the Tacloban City Medical Center. She was examined separately by Dr. Giovanni Zilmar of the Surgery Department, and Dr. Isabelita M. Alo of the OB-GYNE Department.[33] On November 6, 1991, the attending physicians issued a Medico-Legal Report which stated that:

FINDINGS

— Contusion, 1 cm. right forearm middle 3rd anterior aspect.

— Abrasions anterior chest wall right.

— Abrasions, left anterior axillary line.

OB-GYNE findings:
Pelvic examination findings:

— Normal external genitalia.

— Parous introitus

1. Abrasion 1 cm. right labia minora at 7:00 o'clock position with erythema.

2. Abrasion 1 cm. left labia minora at 5:00 o'clock position.

---

[29] *Id.*

[30] *Id.*

[31] *Id.* at 13-14.

[32] *Id.* at 14.

[33] *Id.* at 14-15.

Supreme Court E-Library

3. Abrasion, 0.5 cm. fourchet with erythema.

4. Lacerations, superficial, 1-2 mm. in length # 3 at para-uretheral orifice.

— Vagina admits 2 finger with ease.

Cervix — pinkish with eversion, small, firm, closed, non-tender.
Uterus — 6 cms. from S/P
Discharge — Whitish, scanty
Spermatozoa examination — No spermatozoa seen.
UCG exam — Negative for UCG.

xxx xxx xxx[34]

Dr. Alo recalled that when she examined Visitacion, she noticed a redness on the entrance of her vagina.[35] She opined that abrasions Nos. 1, 2, 3, and 4, above, sustained by Visitacion could have been caused by the rubbing or by the force and friction of a sexual act.[36] She explained that though there were no traces of spermatozoa in Visitacion's vagina, this does not negate rape since the same could had been expelled out or had simply died after 72 hours.[37]

Dr. Zilmar, elaborating on his finding, declared that the contusion on the right forearm and the abrasions on the left anterior axillary line and right chest of Visitacion could have been caused by the forceful application of a blunt force and/or a struggle.[38]

On November 6, 1991, Visitacion reported the incident to the police authorities.[39]

In the meantime, in January 1992, Visitacion received a letter from her husband Fortunato advising her of his coming release

[34] Records, p. 5.

[35] TSN, 6 September 1993, p. 7.

[36] *Id.* at 8.

[37] *Id.* at 9.

[38] TSN, 21 October 1993, pp. 6-9.

[39] TSN, 30 August 1993, p. 16.

Supreme Court E-Library

from prison in April of that same year. Thus, in March 1992, Visitacion left for Manila to fetch her husband.[40]

The Case for the Appellant[41]

The appellant testified that he was a next-door neighbor of Visitacion in Barangay Castilla, Palo, Leyte.[42] He eked out a living as a farmer[43] and doubled up as a Chief *barangay tanod* at night.[44] He denied having raped Visitacion and vigorously claimed that they were lovers.[45] He began courting her in August of 1991 and being a convict's wife, won her love effortlessly.[46] The following month, they had sexual intercourse three times in her house, usually at around 11:00 p.m.[47] The appellant said that as Chief *barangay tanod*, he had a convenient excuse to his wife for his nocturnal escapades.[48] As his lover, he brought Visitacion *palay* during harvest season.[49]

On October 30, 1991, at about 10:00 p.m., Visitacion summoned him to her house. Visitacion showed him a letter from Fortunato, informing her of his forthcoming release from prison in May 1992. She told him that she was carrying their love child.[50]

To the appellant's surprise, his brother told him that Visitacion filed a criminal complaint against him.[51] He immediately went

---

[40] *Id.* at 16-17.

[41] The appellant testified in his behalf. He also presented three witnesses, namely, Carolina Cobacha, Adelina Ronquillo, and Juanita Tayubong.

[42] TSN, 14 December 1995, p. 3.

[43] *Id.* at 3.

[44] *Id.* at 7.

[45] *Id.* at 4.

[46] *Id.* at 5.

[47] *Id.* at 6-7.

[48] *Id.* at 7.

[49] *Id.* at 5.

[50] *Id.* at 9-10.

[51] *Id.* at 13.

Supreme Court E-Library

to Visitacion's house to straighten things out. The appellant was accompanied by his mother. He confronted Visitacion but elicited no answer.[52] He then told Visitacion's mother, Jovencia, of his illicit love affair with her daughter and that the latter was pregnant. Jovencia got furious and started calling her daughter names.[53] Unable to control herself, Jovencia went berserk and started beating up Visitacion. The appellant explained that this particular event accounts for the injuries of Visitacion as reflected in the medico-legal report.[54]

The appellant further testified that Visitacion went to Manila to remove herself from the prying eyes and ears of her barriomates. There, months after or on June 29, 1992, she gave birth to a baby boy at the Cogio Hospital.[55] He was present when Visitacion delivered their child. The child was thereafter given up for adoption, and was adopted by Rizalina Estiller.[56]

The appellant asserted that Visitacion merely fabricated the rape charge to save herself from the shame and ignominy of having been impregnated by him, and, likewise, to escape the wrath of her ex-convict husband.[57]

Carolina Cobacha corroborated the appellant's claim that the latter was Visitacion's paramour. She testified that despite being a neighbor and a *kumadre* of Visitacion, she came forward to shed light on the truth.[58] She was a farmhand of Visitacion's mother who knew of the love affair between the appellant and Visitacion. In March 1991, she saw them twice in a very uncompromising situation.[59] The first was during a harvest, when

---

[52] *Id.* at 13-14.

[53] *Id.* at 14.

[54] *Id.* at 12 and 14.

[55] *Id.* at 10-11.

[56] TSN, 15 January 1996, p. 9.

[57] TSN, 14 December 1995, p. 8.

[58] TSN, 16 April 1996, p. 4.

[59] *Id.* at 6.

Supreme Court E-Library

the appellant and Visitacion were kissing and caressing each other inside a *nipa* hut located in the rice-field.[60] The other was when the appellant dropped by the house of Visitacion. The two kissed in her presence.[61]

Juanita Tayubong, 80 years old, testified that on October 31, 1991, at about 7:00 p.m., she was at her porch when she heard Jovencia shouting at Visitacion at the top of her voice and berating her about the illicit relationship.[62] From Visitacion's window she witnessed Jovencia punch, scratch, and pinch Visitacion on different parts of her body.[63] The incident attracted the attention of the neighbors who rushed to the house of Visitacion.[64]

Adelina Ronquillo, 56 years old, is the maternal aunt of Visitacion and resided at Bonifacio St., Bangkal, Makati City.[65] She said that sometime in November 1991, Visitacion went to her place, seeking financial help for her rape case.[66] Initially, she obliged, but when she found out from Visitacion's parents and other relatives that the charge was but a sham, she stopped extending financial assistance.[67] Thereafter, Visitacion returned home to Leyte. In January 1992, Visitacion again went back to Manila where she gave birth to a child on June 29, 1992 at the Antipolo Municipal Hospital. She said that the child was adopted by Visitacion's sister, Riza.[68]

The prosecution then recalled Visitacion to the witness stand as a rebuttal witness. She testified that after the release of her

---

[60] *Id.*

[61] *Id.*

[62] *Id.* at 9.

[63] *Id.* at 8.

[64] *Id.* at 10.

[65] *Id.* at 3.

[66] *Id.* at 4.

[67] *Id.* at 4-5.

[68] *Id.* at 7-9.

Supreme Court E-Library

husband from prison, they left Barangay Castilla, Palo, Leyte and settled down at her husband's place at Moroboro, La Paz, Leyte.[69] She indignantly denied that the appellant was her sweetheart and that she had consensual sexual relations with him.[70] She said that she was neither impregnated by the appellant, nor had given birth to a child on June 29, 1992 sired by the appellant.[71] Her youngest child was born on April 23, 1995 and its father was her husband, Fortunato.[72] She averred that in June 1992, her Aunt Adelina approached her and sought the dropping of the case by offering money, which she flatly refused.[73] According to Visitacion, her mother and her aunt Adelina were not in speaking terms, as the two were squabbling over some property left by her maternal grandmother.[74] She further said that the *nipa hut* located at the rice-field being alluded to by Carolina as their love tryst was an open hut without any wall.[75]

On July 3, 1996, the trial court rendered judgment convicting the appellant. The dispositive portion of the decision reads:

> WHEREFORE, IN THE LIGHT OF THE FOREGOING, the Court finds accused ALBERTO DAGAMI, *alias* Bebot, guilty beyond reasonable doubt, as principal, of the consummated offense of RAPE, as defined and penalized under Art. 335 of the Revised Penal Code, with the use of a deadly weapon, a handgun, and applying the pertinent provisions of the Indeterminate Sentence Law, convicts him to suffer an indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of *reclusion temporal*, as maximum, with the accessory penalties provided for by law.
>
> Pursuant to Art. 345 of the RPC, the accused is hereby condemned to: (1) indemnify the offended party, Visitacion Locañas, the sum

[69] TSN, 1 July 1996, p. 4.

[70] *Id.*

[71] *Id.* at 10.

[72] *Id.* at 5.

[73] *Id.* at 8.

[74] *Id.* at 9-10.

[75] *Id.* at 20.

Supreme Court E-Library

of ₱30,000.00; & (2) to acknowledge and support the offspring resulting from the accused's illegal act subject of this indictment.

With costs *de oficio*.

SO ORDERED.[76]

The appellant appealed to the Court of Appeals.[77] On October 26, 1998, the CA promulgated its decision[78] affirming the decision of the trial court but with modifications. The decretal portion of the decision of the CA reads:

WHEREFORE, the judgment convicting the accused-appellant Alberto Dagami is *AFFIRMED*, with the *MODIFICATIONS* that (a) the penalty of imprisonment to be imposed is *reclusion perpetua*; (b) that Alberto Dagami indemnify Visitacion Locañas in the sum of fifty thousand pesos (₱50,000.00); (c) that the order for the recognition and support be deleted.

Considering the imposable penalty and pursuant to Rule 124, Section 13 of the Rules of Court, instead of entering judgment, this case is certified to the honorable Supreme Court for review. Let the entire records be accordingly elevated.

SO ORDERED.[79]

The appellate court found no cogent reason to disturb the judgment of the trial court, but ruled that the trial court erred in applying the Indeterminate Sentence Law because the law does not apply to persons convicted of offenses punishable by *reclusion perpetua*. Rape is punishable by *reclusion perpetua*, a single indivisible penalty which, under Art. 63 of the Revised Penal Code, must be applied regardless of any mitigating or aggravating circumstances. Thus, the CA increased the penalty meted to the appellant from *reclusion temporal* to *reclusion perpetua*, and likewise increased his civil liability from ₱30,000.00

---

[76] Records, p. 200.

[77] *Id.* at 214.

[78] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Minerva P. Gonzaga-Reyes and Godardo A. Jacinto,*concurring*.

[79] CA Decision, pp. 8-9.

Supreme Court E-Library

to ₱50,000.00. It deleted the order of the trial court on the matter of acknowledgment and support of the offspring for being incongruous.[80]

The appellant assails the decision of the trial court contending that it erred in:

I. CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE BEYOND REASONABLE DOUBT DESPITE THE UNCORROBORATED TESTIMONY OF THE PRIVATE COMPLAINANT;

II. CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE BEYOND REASONABLE DOUBT DESPITE THE EVIDENCE TO THE CONTRARY THAT THEY WERE LOVERS;

III. CONDEMNING THE ACCUSED-APPELLANT TO RECOGNIZE THE OFFSPRING RESULTING FROM ACCUSED'S ILLEGAL ACT SUBJECT OF THIS INDICTMENT; and,

IV. DENYING ACCUSED-APPELLANT'S MOTION FOR NEW TRIAL AND/OR RE-TRIAL.[81]

The appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He stresses that the trial court should have given due weight and credence to the testimonies of defense witnesses who were all not actuated with improper motives in testifying in his favor, instead of believing the uncorroborated testimony of Visitacion, which is full of inconsistencies and contradictions.[82]

The appellant contends that the prosecution failed to prove the elements of force and intimidation beyond a shadow of doubt. He argues that if there was any resistance at all from Visitacion, it was only perfunctory and superficial. He added

---

[80] *Id.* at 8.

[81] CA *Rollo*, pp. 37-38.

[82] *Id.* at 43-44.

Supreme Court E-Library

that she failed to resist to the last ounce of her strength, the attempts of the appellant to rape her.[83]

The argument is bereft of merit. In *People v. Fraga*,[84] we held:

> The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.[85]

In the present case, the appellant was armed with a handgun and threatened to kill Visitacion if she resisted. This notwithstanding, she still struggled with all her might to ward him off, but to no avail. During her testimony, Visitacion clearly described how the appellant suddenly grabbed her, forcibly pulled her to the kitchen and ravished her, and afterwards threatened to kill her if she told others what he had done to her. She testified, thus:

PROSECUTOR DAGANDAN:

Q In the early morning of October 31, 1991, do you recall where you were?
A Yes, ma'am, I was in our house.

Q Do you recall what you were doing at that time?
A We were sleeping.

Q Do you recall if there was any unusual incident that happened?
A Yes, ma'am.

---

[83] *Id.* at 41-42.

[84] 330 SCRA 669 (2000).

[85] *Id.* at 689-690.

Supreme Court E-Library

Q What was that?
A I heard a noise in our kitchen.[86]

... ...

Q So, when you heard the noise, what did you do?
A I got up and verified what was happening.[87]

... ...

Q Since you said that you tried to verify the noise, were you, in fact, able to verify?
A No, ma'am, because when I was near the door Alberto Dagami was there already at the door.

Q What door of your house?
A Door to the kitchen.[88]

... ...

Q You said that it was early morning, how were you able to identify the accused (Alberto Dagami) since you said it was early in the morning?
A We have a kerosene lamp which was lighted.[89]

... ...

Q Will you describe again the accused as you saw him?
A As I was raising the edge of the mosquito net because I want to go out to verify the noise in the kitchen, Alberto Dagami was already at the door and he said "you shout now or else you will die.[90]

... ...

Q What was his position when he said those words?
A He was pointing his gun towards me.[91]

---

[86] TSN, 30 August 1993, p. 4.

[87] *Id.* at 5.

[88] *Id.*

[89] *Id.* at 6.

[90] *Id.* at 7.

[91] *Id.* at 8.

Supreme Court E-Library

... ...

Q So, what was your reaction as the accused had uttered those words?
A I was shocked and afraid. I said, why is this gun pointed at me.

Q So what did the accused do after saying those words?
A He grabbed my hand.

Q Towards where?
A Towards the kitchen.

Q So, what happened at the kitchen?
A I fell down.

Q What was your position when you fall (sic) down?
A I was as if in a crawling position.[92]

... ...

Q What did he do?
A Because I fell down, face downward, he held my hand and turned my body facing upward.[93]

... ...

Q So, what did the accused do after that?
A He sat down on my knees.

Q In what manner? Will you demonstrate?
A He was sitting on my knees straddling.[94]

... ...

Q What happened after that?
A He raised my dress because I was wearing a duster at that time.

Q Up to what portion of your body was your dress raised?
A Up to the upper portion of my chest, up to my neck.

---

[92] *Id.*

[93] *Id.*

[94] *Id.* at 9.

Supreme Court E-Library

Q After that, what did he do?
A He held and massage my vagina.[95]

... ...

Q So, what else happened?
A I tried to struggle, and then he pointed his gun towards my abdomen and I could not do anything.

(I would like to manifest that when the witness testified, she was shaky and crying)

Q Was he successful with your struggle?
A No, ma'am.

Q Why not?
A Because he was sitting on my legs and pointing his gun towards me.[96]

... ...

Q So, what happened after that?
A He took off my panty.

Q With what hand?
A With his left hand.

Q How about the right hand?
A The right hand was used in holding the gun and it was always pointed at me.

Q In what part of your body was the gun pointed?
A Towards my chest.[97]

... ...

Q So what did you do next?
A He pulled out his shorts and placed himself on top of myself, face downward.

Q What did he do with that position?
A He raped me.

---

[95] *Id.*

[96] *Id.* at 10.

[97] *Id.* at 11.

Supreme Court E-Library

Q How did you come to know that he raped you?
A He raped me and sexually molested me.

Q How did you come to know that he raped you?
A He inserted his penis inside my vagina.

Q Did you feel anything?
A He was doing "push and pull."

Q How did you feel at that particular time?
A I was afraid.

Q For how long a time did the accused place himself on top of you?
A It did not take a long time.

Q What did you do when he was on top of you?
A I tried to struggle. While he was on top of me having that "push and pull" movement, I had my legs stretched.

Q For what purpose?
A So that he cannot be successful in what he wanted to do.

Q Did you make an outlet or did you shout?
A No, ma'am.

Q Why not?
A Because I was afraid.[98]

... ...

Q So, after the accused made that "push and pull" movement, what else happened?
A After he sexually abused me, he got up.

Q And after that what happened next?
A. He said, "If you will tell somebody, I will kill you."

Q Do you recall where was the gun (sic)?
A He was holding the gun with his right hand. When he said that "if you will tell somebody, I will kill you," he was holding that gun it was pointed to me.

Q So, what did the accused do?
A He jumped off from the window of the kitchen.

---

[98] *Id.* at 11-12.

Supreme Court E-Library

Q How about you?
A When he jumped out, I got up.[99]

The contusion on Visitacion's forearm, the abrasions on her chest and other parts of her body, and the redness of her genitalia are eloquent physical evidence of the force employed by the appellant in defiling her. In a rape case, the physical evidence showing use of force speaks louder than words.[100] And as disclosed by the records, Visitacion constantly cried during her testimony.[101] Her tears add poignancy to verity born out of human nature and experience.[102]

The case for the prosecution is not enfeebled by the testimony of Juanita Tayubong and the failure of the prosecution to present Visitacion's mother Jovencia; and to adduce in evidence Fortunato's letter to Visitacion of his impending release from the national penitentiary; nor by the failure of Dr. Giovanni Zilmar and Dr. Isabelita M. Alo to pinpoint the exact time when Visitacion sustained her injuries.[103]

The matter of deciding who to present as a witness for the prosecution is not for the appellant or the trial court to decide, as it is the prerogative of the prosecutor. Besides, the testimony of Juanita is belied by the findings of Dr. Alo that the redness and abrasions on Visitacion's genitalia were caused by the rubbing or by the force and friction of a sexual act.[104]

Assuming that Visitacion's mother is a vital witness, her non-presentation was the appellant's own undoing. There was nothing that could have prevented the appellant from presenting the said witness in order to discredit the testimonies of Visitacion and the other witnesses of the prosecution. Case law has it that

---

[99] *Id.* at 12–13.

[100] *People v. Obar, Jr.*, 253 SCRA 288 (1996).

[101] TSN, 30 August 1993, p. 10; TSN, 1 July 1996, p. 9.

[102] *People vs. Sagun*, 303 SCRA 382 (1999).

[103] *Id.* at 44.

[104] *People vs. Tuvilla*, 259 SCRA 1 (1996).

Supreme Court E-Library

the presumption of suppressed evidence does not apply when the same is equally accessible to the defense.[105]

Contrary to the appellant's claim, Dr. Alo categorically declared when she testified that the incident, per her interview of Visitacion, occurred on October 31, 1991, thus:

> PROS. DAGANDAN:
> Q - On this Medico-Legal Report when did the incident happen?
> R - The incident occurred on October 31, 1991 at about 1:00 o'clock in the morning.[106]

Besides, it is of no moment that Dr. Zilmar failed to give the exact time when Visitacion suffered the contusions and abrasions. Medical findings or proof of injuries, virginity, or an allegation of the exact time and date of the commission of the crime are not essential in a prosecution for rape.[107] In any event, even a medical examination of the victim is not indispensable to the successful prosecution of rape.[108] Expert testimony is merely corroborative in character and not essential to conviction.[109] Even without a medical report, the rape victim's credible testimony, standing alone, is sufficient basis for conviction.[110]

It was not unnatural for Visitacion to report the incident to her father the following day despite the appellant's threat that she would be killed if she divulged to others what he had done to her. She must have been overwhelmed by cascades of fear when he pointed his gun at her and threatened to kill her if she resisted. However, she regained the courage and equanimity the next day and decided to reveal her misfortune to her father.[111]

---

[105] *People vs. Araja*, 105 SCRA 133 (1981).

[106] TSN, 6 September 1993, p. 5.

[107] *People v. Docena*, 322 SCRA 820 (2000).

[108] *People v. Licanda*, 331 SCRA 357 (2000).

[109] *People v. Baltazar*, 329 SCRA 378 (2000).

[110] *People v. Salazar*, 258 SCRA 55 (1996).

[111] CA *Rollo*, pp. 40-41.

Supreme Court E-Library

This Court has repeatedly held that the workings of the human mind placed under a great deal of emotional and psychological stress (such as during rape) are unpredictable, and different people react differently. There is no standard form of human behavioral response when one is confronted with a strange, startling, frightful or traumatic experience — some may shout, some may faint, and some may be shocked into insensibility.[112] As this Court has pointed out, the conduct of a woman immediately following the alleged assault is of utmost importance as it tends to establish the truth or falsity of her claim. In the case at bar, if Visitacion had not been forced and intimidated into submitting to the lustful designs of the appellant, her natural reaction, as a married woman, would have been to conceal her illicit activity instead of denouncing it immediately as rape, for otherwise, her conduct would constitute adultery.[113]

Equally incredible is the appellant's claim that he was the paramour of Visitacion and that she charged him with rape because she needed a scapegoat for her pregnancy, in anticipation of the possible retribution by her ex-convict husband should the latter discover their relationship.[114]

In *People v. Manalo*,[115] this Court said that the *sweetheart defense* is a much-abused defense that rashly derides the intelligence of the Court and sorely tests its patience. Being an affirmative defense, the allegation of a love affair must be supported by convincing proof.[116] Since the appellant admitted to having had carnal knowledge of the complainant several times,[117] he bears the burden of proving his defense by clear and convincing evidence.[118] The appellant failed to discharge his burden.

---

[112] *People v. San Juan*, 270 SCRA 693 (1997).

[113] *People v. Bayron*, 313 SCRA 727 (1999).

[114] *Id.* at 38-39.

[115] G.R. No. 143704, March 28, 2003.

[116] *People v. Monfero*, 308 SCRA 396 (1999).

[117] TSN, 14 December 1995, pp. 6-7.

[118] *People v. Bayani*, 262 SCRA 660 (1996).

Supreme Court E-Library

Visitacion adamantly denied that the appellant was her sweetheart.[119] Although the appellant presented witnesses to support his claim, the corroborating testimonies were neither credible nor convincing. Incredible was the story of Carolina Cobacha that in March 1991, she saw the appellant and Visitacion twice in very uncompromising situations. The testimony is even inconsistent with the appellant's testimony. By the appellant's account, he began courting Visitacion only in August 1991,[120] and had sexual intercourse with her the following month. Also, the *nipa* hut, where Carolina allegedly saw the appellant and Visitacion kiss each other, is located in the rice-field. Visitacion must have been so morally depraved as to allow herself to be seen in the arms of a man not her husband, in a conspicuous place, in a very rural community where everyone practically knew each other. The Court has taken judicial cognizance of the fact that in rural areas in this country, women by custom and tradition act with circumspection and prudence, and that great caution is observed so that their reputation remains untainted.[121] As to Adelina Ronquillo, her testimony, with respect to the love affair of her niece and the appellant, is hearsay. She testified that she learned of the illicit affair from Visitacion's parents and other relatives.[122] When evidence is based on what was supposedly told the witness, the same is without any evidentiary weight, being patently hearsay. Moreover, it has been shown that Adelina Ronquillo was a biased witness. She never denied that she sought from Visitacion the dropping of the charge against the appellant by offering money, which offer was flatly rejected by Visitacion. Hardly can her corroborative statements be accepted as gospel truth. Juanita Tayubong's testimony is, likewise, as unreliable, as she merely overheard the alleged illicit relationship of Visitacion with another man from Jovencia.[123]

---

[119] TSN, 1 July 1996, p. 4.

[120] TSN, 14 December 1995, p. 5.

[121] *People v. Edualino*, 271 SCRA 189 (1997).

[122] TSN, 24 May 1996, pp. 4-5.

[123] TSN, 17 April 1996, p. 9.

Supreme Court E-Library

We agree with the trial court and the Court of Appeals that the sweetheart story was a mere concoction of the appellant in order to exculpate himself from his criminal liability. In *People v. Venerable*,[124] we held that the sweetheart theory of the accused-appellant was unavailing and self-serving where he failed to introduce love letters, gifts, and the like, to attest to his alleged amorous affair with the victim. Hence, the defense cannot just present testimonial evidence in support of the theory that he and the victim were sweethearts. Independent proof is necessary, such as tokens, mementos, and photographs. If the appellant were really the paramour of Visitacion, she would not have gone to the extent of charging the appellant with rape which inevitably exposed her to the humiliation of recounting in public the violation of her womanhood. Moreover, she would not have implicated a person, who was allegedly her lover, as the perpetrator of an abominable crime and thereby lay open their illicit relationship to public shame and ridicule, not to mention the ire of an ex-convict husband and the smoldering contempt of her children were it not the truth.[125] Evidence to be believed must not only come from a credible source but must also be credible in itself such as one that the common experience and observation of mankind can approve as probable under the circumstances.[126]

Even assuming *ex gratia argumenti* that the appellant and the private complainant were indeed sweethearts as he claims, this fact alone would not extricate him from his predicament. The mere assertion of a love relationship would not necessarily rule out the use of force to consummate the crime.[127] It must be stressed that in rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent.[128] Visitacion, even if she was indeed the appellant's

---

[124] 290 SCRA 15 (1998).

[125] *Ibid.*

[126] *Cosep v. People*, 290 SCRA 378 (1998).

[127] *People v. Betonio*, 279 SCRA 532 (1997).

[128] *People v. Igat*, 291 SCRA 100 (1998).

Supreme Court E-Library

lover, cannot be forced to have sex against her will.[129] Definitely, a man cannot demand sexual gratification from a loved one, worse, employ violence upon her on the pretext of love. Love is not a license for lust.[130]

The appellant's imputation of ill motive on the part of the private complaint hardly persuades us. In the afternoon after the rape, Visitacion told her father of the rape incident. The day after, she went to the *barangay* captain to report the same. Later, she submitted herself to medical examination and went to the police station to report the rape incident. She lodged a criminal complaint for rape against accused-appellant before the Metropolitan Trial Court of Palo, Leyte. This sequence of events after the rape indicates that indeed, Visitacion was deeply wronged and aggrieved, otherwise she would not have instituted this case at all. As aptly pointed out in *People v. Mendoza*,[131] a married woman with a husband and three daughters would not publicly admit that she had been criminally abused unless that was the truth. Similarly, it defies reason in this case why a mother of four would concoct a story of defloration, allow the examination of her private parts and publicly disclose that she has been sexually abused if her motive were other than to fight for her honor and bring to justice the person who defiled her. Pertinently, it stands to reason that Visitacion would not bring herself, her family and her husband to embarrassment, to public scrutiny and being the talk of the community unless what she had testified that she was raped is true.[132] It is settled that where there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[133]

---

[129] *People v. Jimenez*, 302 SCRA 607 (1999).

[130] *Ibid.*

[131] 292 SCRA 168 (1998).

[132] *People v. Vallena*, 244 SCRA 685 (1995).

[133] *People v. Abrecinoz*, 281 SCRA 59 (1997).

Supreme Court E-Library

In rape cases, the accused may be convicted on the sole basis of the victim's testimony, provided it is credible, natural, convincing and consistent with human nature and normal course of things. [134] Indeed, even the testimony of a lone witness is sufficient to support a conviction, especially when the testimony enjoys the badges of sincerity and veracity.[135]

The time-honored rule is that the trial court's factual findings[136] and assessment of credibility of witnesses,[137] especially when affirmed by the Court of Appeals, are entitled to great weight and are even conclusive and binding on this Court, barring arbitrariness and oversight of some fact or circumstance of weight and substance.

Evaluation of the credibility of witnesses is a matter that peculiarly falls within the province of the trial court as it had the opportunity to watch and observe the demeanor and behavior of the witnesses at the time of their testimony.[138] Similarly, assigning value and weight to the testimonies of witnesses is also within its jurisdiction.[139] Thus, the trial court's evaluation and assessment of the credibility of the witnesses should be given weight by this Court, especially because it had been affirmed by the Court of Appeals. In the case at bar, the appellant has failed to provide a substantial argument to warrant a departure from this rule, nor has he pointed to a matter of weight or substance that had been overlooked by the trial and appellate court.

During the trial, the special aggravating circumstance of the use of a weapon (handgun) and the aggravating circumstance of dwelling were proven. Nonetheless, these aggravating circumstances cannot be considered in fixing the penalty

---

[134] *People v. Bayona*, 327 SCRA 190 (2000).

[135] *People v. Alagon*, 325 SCRA 297 (2000).

[136] *People v. Nuestro*, 240 SCRA 221 (1995).

[137] *People v. Ombrog*, 268 SCRA 93 (1997).

[138] *People v. Morin*, 241 SCRA 709 (1995).

[139] *People v. Torres*, 247 SCRA 212 (1995).

Supreme Court E-Library

because the same were not alleged in the Information. Sections 8[140] and 9[141] of Rule 110 of the Revised Rules of Criminal Procedure now provide that aggravating as well as qualifying circumstances must be alleged in the information; otherwise, they cannot be considered against the accused even if proven during the trial. Being favorable to the appellant, this rule, as amended, should be applied retroactively to this case.

Although the aggravating circumstances in question cannot be appreciated for the purpose of fixing a heavier penalty in this case, they can, however, be considered as basis for an award of exemplary damages. Evidence proving these circumstances forms part of the actual commission of the crime and justifies an award of exemplary damages under Article 2230 of the Civil Code even when the said aggravating circumstances were not alleged in the information.[142]

Furthermore, the appellate court correctly increased the amount of civil indemnity, from ₱30,000 to ₱50,000, in accordance with the recent ruling of this Court.[143]

The Court of Appeals, however, erred in not awarding moral damages and exemplary damages in favor of the victim. In line with recent jurisprudence and in recognition of the victim's injury as being inherently concomitant with and necessarily

---

[140] Sec. 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[141] Sec. 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[142] *People v. Duhorom*, G.R. No. 146276, November 21, 2002.

[143] *People v. Atop*, 286 SCRA 157 (1998).

Supreme Court E-Library

resulting from the crime of rape, an additional ₱50,000 should be awarded to the victim as moral damages.[144] As discussed above and pursuant to *People v. Catubig*,[145] an award of ₱25,000 as exemplary damages is also proper.

IN THE LIGHT OF ALL THE FOREGOING, the decision of the Court of Appeals is *AFFIRMED WITH MODIFICATION* that, in addition to the amount of ₱50,000 awarded as civil indemnity, accused appellant Alberto Dagami is ORDERED to pay complainant Visitacion Locañas the amount of ₱50,000 as moral damages and ₱25,000 as exemplary damages.

SO ORDERED.

Bellosillo, (Chairman) *Quisumbing, Austria-Martinez,* and *Tinga, JJ.*, concur.

SECOND DIVISION

[G.R. No. 138612. November 11, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PERCIVAL GONZA *Y* BORRAL,** *appellant.*

SYNOPSIS

The penalty of *reclusion perpetua* was imposed upon appellant by the Regional Trial Court of Bulan, Sorsogon, after finding him guilty beyond reasonable doubt of the crime of murder qualified by treachery for the killing of Virgilio Mortega. Appellant questioned his conviction contending, among others, that the trial court erred in rejecting his plea of self-defense and in giving credence to the testimonies of prosecution

---

[144] *People v. Prades*, 293 SCRA 411 (1998).

[145] 363 SCRA 621 (2001).