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FIRST DIVISION

[G.R. No. 143124. July 25, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTHONY SANDIG *y* ESPAÑOLA,** *appellant.*

SYNOPSIS

Appellant was charged with and subsequently convicted of the crime of rape committed against Jesavel Q. de Castro, then 13 years old, and sentenced to *reclusion perpetua.* Contending that the Regional Trial Court of Pasay City erred in giving credence to the testimony of the complainant, appellant brought this appeal. Among other things, appellant maintained that the sexual intercourse between him and the complainant was consensual, as they were lovers.

The Supreme Court found that the trial court had not committed any error in its appreciation of the facts of the case. Appellant failed to sufficiently establish his allegation that he and complainant were sweethearts. Having been raised as an affirmative defense, this "sweetheart theory" must be established by clear and convincing proof. Appellant bears the burden of submitting such kind of evidence to prove that he and complainant had an affair, which naturally led to a sexual relationship. This appellant failed to do. Furthermore, the mere assertion of a love relationship does not necessarily rule out the use of force to consummate the crime of rape. A sweetheart cannot be forced to have sex against her will. Accordingly, the Court affirmed the decision of the trial court finding appellant guilty beyond reasonable doubt of the crime of rape but with modification as to award of damages.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ERRORLESS TESTIMONY CANNOT BE EXPECTED WHEN COMPLAINANT IS RECOUNTING DETAILS OF A HARROWING EXPERIENCE.**— Appellant cannot capitalize on the minor inconsistencies in the testimony of complainant. Such minor inconsistencies tend to bolster,

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rather than weaken, her credibility, for they show that her testimony was neither contrived nor rehearsed. Besides, an errorless testimony cannot be expected when complainant is recounting details of a harrowing experience.

2. **ID.; ID.; ID.; TRIAL JUDGE'S FINDINGS WITH RESPECT THERETO WILL NOT BE DISTURBED ON APPEAL.**— As has been repeatedly observed, the trial court is in a better position to evaluate the credibility of a witness. Unlike an appellate court which has to rely almost entirely on inanimate records and transcripts of stenographic notes, the trial judge has the advantage of closely observing the demeanor of witnesses in responding to questions under direct testimony and cross examination. In the absence of any showing that it has overlooked or misconstrued some fact or circumstance of weight and substance that can affect his conclusions in a case, the trial judge's findings on credibility will not be disturbed on appeal.

3. **ID.; ID.; ID.; SOLE TESTIMONY OF VICTIM IS SUFFICIENT TO CONVICT, IF CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.**— Furthermore, in rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. A thorough review of the records of this case reveals that the testimony of the complainant withstands such test of credibility. Hence, we find that the trial court has not committed any error in its appreciation of the facts of the case.

4. **ID.; ID.; ENTRIES IN A POLICE OR *BARANGAY* BLOTTER NOT CONCLUSIVE PROOF OF THE TRUTH OF SUCH ENTRIES.**— Appellant also claims in his testimony that he was nowhere near the construction site on January 21, 1999, the night the rape is said to have occurred. In fact, he presented before the trial court an entry in the *barangay* blotter to prove that indeed he was somewhere else hiding from other foes that night. This contention is not tenable. Entries in a police or *barangay* blotter, although regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries, for these are often incomplete and inaccurate. These, therefore, should not be given undue significance or probative value as to the facts stated therein.

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5. CRIMINAL LAW; RAPE; FAILURE OF COMPLAINANT TO RUN AWAY OR SHOUT FOR HELP AT THE VERY FIRST OPPORTUNITY CANNOT BE CONSTRUED CONSENT TO THE SEXUAL INTERCOURSE.— As to the point that the complainant neither ran away nor shouted for help despite the chance to do so, people react differently under emotional stress. There is no standard form of behavior when one is confronted by a shocking incident especially if the assailant is physically near. The workings of the human mind when placed under emotional stress are unpredictable. In a given situation, some may shout, others may faint, and still others may be frozen into silence. Consequently, the failure of complainant to run away or shout for help at the very first opportunity cannot be construed consent to the sexual intercourse. What is essential is the vivid recollection of complainant and her steadfast claim that she was sexually abused by appellant against her will.

6. ID.; ID.; MORAL CHARACTER OF THE VICTIM IS IMMATERIAL TO THE PROSECUTION AND CONVICTION OF ACCUSED.— The defense tries to paint a portrait of complainant as an unchaste and impure young girl who promiscuously collects lovers and habitually skips her classes. We believe, however, that such debasement of her character does not necessarily cast doubt on her credibility nor does it negate the existence of rape. The moral character of the victim is immaterial in the prosecution and conviction of an accused for rape. Even a prostitute can be the victim of rape, for she can still refuse a man's lustful advances.

7. ID.; ID.; "SWEETHEART THEORY"; MUST BE ESTABLISHED BY CLEAR AND CONVINCING PROOF.— Appellant's allegation that he and complainant were sweethearts has not been sufficiently established. Having been raised as an affirmative defense, this "sweetheart theory" must be established by clear and convincing proof. Appellant bears the burden of submitting such kind of evidence to prove that he and complainant had an affair which naturally led to a sexual relationship. This appellant failed to do.

8. ID.; ID.; ID.; A MAN CAN NEITHER DEMAND SEXUAL GRATIFICATION FROM A FIANCEE, NOR EMPLOY VIOLENCE UPON HER, ON THE PRETEXT OF LOVE.— Furthermore, the mere assertion of a love relationship does not necessarily rule out the use of force to consummate the

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crime of rape. A sweetheart cannot be forced to have sex against her will. Definitely, a man can neither demand sexual gratification from a fiancée, nor employ violence upon her, on the pretext of love.

9. CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY REDUCED TO ₱50,000.00 UNDER PREVAILING JURISPRUDENCE; MORAL DAMAGES; AWARDED FOR THE MENTAL, PHYSICAL AND PSYCHOLOGICAL SUFFERING SUSTAINED BY A RAPE VICTIM.— As to the damages awarded, the trial court granted civil indemnity of ₱75,000, which is more than the amount of ₱50,000 awarded under prevailing jurisprudence to victims of rape. On the other hand, the trial court correctly ruled that ₱50,000 be awarded as moral damages for the mental, physical and psychological suffering undeniably sustained by a rape victim.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

AZCUNA, *J.*:

This is an appeal of the decision[1] of the Regional Trial Court, Branch 109, Pasay City, finding appellant Anthony Sandig *y* Española guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the complainant, Jesavel Q. de Castro, the total amount of ₱75,000 as civil indemnity and ₱50,000 for moral damages.

On February 2, 1999, an information was filed against appellant, with the accusatory portion thereof reading as follows:

That on or about the 21st day of January 1999, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court and the abovenamed accused, Anthony Sandig *y* Española by

[1] Per Judge Lilia C. Lopez.

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means of force and intimidation, employed upon the person of private complainant Je[s]a[v]el Q. de Castro, a 13-year old minor, and with the use of an ice pick did then and there willfully, unlawfully, and feloniously have carnal knowledge with the said private complainant against her will and consent.

Contrary to law.[2]

After arraignment, wherein appellant pleaded not guilty,[3] the case was tried on the merits. The prosecution presented three witnesses whose testimonies are as follows:

Complainant Jesavel Q. de Castro, 13 years old at the time she took the witness stand, testified that she was born on August 19, 1985. Her testimony is corroborated by a Certificate of Live Birth from the Office of the Local Civil Registrar of Lucena City.[4] As her father was already dead, complainant stayed with her mother, Maria Victoria de Castro and her common-law husband, and her younger sister, Rebecca de Castro.

Jesavel testified that she and her friend Geraldyn de la Cruz were members of the fraternity called Insan Brothers or IB. Her friend Geraldyn was already a member and it was upon her prompting that Jesavel joined the said group. The members of the group customarily meet at a construction site, an unfinished three-storey building near the access road of Merville, Pasay City.

At around 6:30 p.m. of January 21, 1999, Jesavel and her friend Geraldyn went to the construction site for a fraternity meeting. When they arrived, they saw that the other members of the group were already there: Alexander Baltazar, Danny "Kuya Dan" Base, and Richard "Tata" Andrada. They subsequently went up to the second floor of the unfinished building where the appellant was waiting for them. Appellant then instructed the other members to go downstairs.

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[2] RTC Records, pp. 9-10.

[3] RTC Records, p. 20.

[4] Exh. C; RTC Records, p. 114.

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Appellant thereafter told Jesavel, who was left with him, to sit on a folding bed. She thought that appellant would scold her about her not attending her classes with Geraldyn. However, when she sat down, appellant started kissing her on the lips and neck. Jesavel started pushing him away. Appellant persisted and started raising her blouse. Jesavel continued to push him away, but appellant pointed an ice pick at her. When she saw the ice pick, she kept quiet.

Jesavel was afraid because appellant might suddenly stab her. Appellant raised her bra and repeatedly kissed her breasts, lips and neck. Then, he removed her shorts, lay on top of her, and forced his penis into her vagina. After appellant inserted his penis into her vagina, Jesavel felt something sticky coming from his penis. Appellant was still holding the ice pick when he lay on top of her.

Moments later, somebody called the appellant. When he stood up, Jesavel likewise stood up and put on her clothes. Before she left, appellant told her not to tell anybody about what happened or else he would kill her. Jesavel immediately ran downstairs and told her friend Geraldyn that they should go home.

Jesavel told her mother about the incident on February 1, 1999. They then went to the Pasay City Police Station and there Jesavel gave a sworn statement.[5] It was also there that they found out that appellant was already incarcerated in the Pasay City jail for theft. Thereafter, they proceeded to the Philippine General Hospital (PGH) Child Protection Unit for medical examination.[6]

Dr. Stella Guerrero-Manalo of the PGH Child Protection Unit examined the complainant and issued a report, which reads as follows:

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[5] *Salaysay* of Jesavel de Castro, dated February 1, 1999, Exh. A; RTC Records, p. 112.

[6] TSN (Jesavel de Castro), pp. 4-19, March 15, 1999.

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FINDINGS:

GENITAL EXAMINATION:

External genitalia: normal

Hymen: annular, estrogenized, healed laceration at the 7 o'clock position; healed scar at the fossa navicularis

Anus: normal

IMPRESSION:

Disclosure of sexual abuse made in sworn statement to the PNP-Pasay City. Physical findings of genitalia are definitely indicative of previous penetration.[7]

Dr. Guerrero-Manalo testified that the complainant was a non-virgin and that the healed hymenal lacerations she sustained could have been caused by penetration of a penis or any object.[8]

Maria Victoria de Castro, the complainant's mother, also testified that Jesavel was born on August 19, 1985. She did not know anything about the incident until that day when she was summoned by Mrs. Cabildo, complainant's teacher, so that they could talk about the behavior of complainant in school. She went to her daughter's school and met with the teacher on February 1, 1999. There, the teacher informed her that complainant had been having troubling, changes in her behavior lately. The teacher also informed her that she, the teacher, overheard a conversation between Jesavel and Geraldyn during which the latter teased the former about her being no longer a virgin. They called Jesavel and, when asked about these things, complainant did not speak but merely cried. Mrs. Cabildo then advised her to bring the child to the doctor to be examined. They instead went directly to the Pasay City Police Station where Jesavel was interviewed by one of the female police officers. Jesavel was asked what was bothering her and she finally admitted that appellant, Anthony Sandig, sexually abused her. They immediately filed a complaint against appellant. The police officers then brought out one of

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[7] Exh. B; RTC Records, p. 113.

[8] TSN (Dr. Stella Guerrero-Manalo), pp. 2-4, June 17, 1999.

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the inmates from the Pasay City jail who turned out to be appellant himself. Her daughter pointed to him as the very same person who sexually abused her. She then brought her daughter to the PGH Child Protection Unit where she had her examined.[9]

For its part, the defense presented appellant and complainant's friend, Geraldyn de la Cruz.

Appellant, Anthony Sandig *y* Española, 18 years old, an elementary-school dropout, testified that he first met complainant on January 5, 1999, when he introduced himself as the adviser and one of the founding members of the fraternity Insan Brothers. At that time, complainant was already a member of the group, having joined it on December 17, 1998. Complainant became his girlfriend shortly thereafter. However, their relationship only lasted for one week. He broke up with her because he learned that she had many other boyfriends. Complainant allegedly got mad at him and told him, "*May araw ka rin*!"

Appellant further testified that on January 21, 1999, at 7:00 p.m., he was engaged in a fist fight with a certain Reden Lacanilao, who is a member of a rival fraternity. This is evidenced by the excerpt dated January 21, 1999 from the *barangay* blotter of Barangay 201, Zone 20, Balagbag, Pasay City.[10] This excerpt is a report filed by Reden Lacanilao at 8:00 p.m. on January 21, 1999, stating that on said date, he was punched by a certain "Ricky" of Central Kalayaan, Balagbag, Pasay City, and one "Sandig," a resident of St. Joseph, Balagbag, Pasay City. Appellant testified that he is the same person referred to as "Sandig" in the report, and that, after the fight, he went home and hid himself. He denied having been with the complainant at the construction site where the alleged incident happened on January 21, 1999. He likewise denied ever having forced or threatened complainant to have sexual intercourse with him.[11]

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[9] TSN (Ma. Victoria de Castro) pp. 2-8, April 13, 1999.

[10] Exh. 1; RTC Records, p. 158.

[11] TSN (Anthony Sandig), pp. 2-21, July 2, 1999.

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Geraldyn de la Cruz, 13 years old, and a friend of the complainant, testified that she is the best friend of the latter. The complainant is her classmate at the Kalayaan Elementary School in Pasay City and both of them are members of the IB fraternity. According to the witness, the complainant constantly plays hooky from school and is a consummate playgirl. It was the complainant, she said, who convinced her to join the said group. She also testified that she knows appellant because he is a member of the St. Joseph Youth Choir and also a fellow member of the IB fraternity.

On January 21, 1999, at around 7:00 p.m., she met complainant near the construction site where their fraternity usually meets. Complainant asked her to accompany her to the construction site where she was going to talk with a certain Richard "Tata" Andrada. Arriving at the construction site, the complainant and Richard Andrada went upstairs. She was left downstairs with the two other members, Danny Base and Alexander Baltazar. The complainant and Richard Andrada remained at the upper floor for more than one hour. They went down together at around 8:00 p.m. Afterwards, complainant accompanied Geraldyn to the bakery near their house and then they parted ways. The following day, in school, she met complainant and asked her what she and Richard Andrada did the previous night. Complainant revealed that she and Richard Andrada had sex. She then teased the complainant about her being no longer a virgin. She was heard by their teacher, Mrs. Cabildo, who promptly asked them what the teasing was all about. Neither of them answered and they just kept silent.

Geraldyn further testified that she learned later on that their teacher summoned complainant's mother to school. It took a week for complainant's mother to meet with the teacher. She was surprised, therefore, when she heard that complainant had filed charges against appellant for raping her on January 21, 1999. This was because she never saw appellant on that night at the place where the incident allegedly happened.[12]

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[12] TSN (Geraldyn de la Cruz), pp. 3-10, July 1, 1999.

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The Regional Trial Court gave credence to complainant's testimony, finding it clear, straightforward and consistent. On February 28, 2000, the trial court rendered its decision, the dispositive portion of which reads:

> In view of all the foregoing, the Court finds the accused Anthony Sandig *y* Española guilty beyond reasonable doubt for the crime of rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim ₱75,000.00 as civil indemnity and ₱50,000.00 for moral damages.
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> SO ORDERED.[13]

Appellant now submits this sole assignment of error:

> The trial court erred in giving weight and credence to the testimony of private complainant that she [was] forced by accused to have sexual intercourse with him.[14]

Appellant attempts to discredit the victim by noting alleged inconsistencies in her testimony. According to appellant, it would be impossible for him to be pointing an ice pick at the right side of complainant's waist while kissing her breasts. Appellant argues that the ice pick should have been pointed at the left side of complainant's waist since they were supposed to be facing each other. Furthermore, appellant points out that while he stood up to remove his shorts and briefs, complainant could have shouted for help from her companions downstairs or she could have run away.

Appellant cannot capitalize on the minor inconsistencies in the testimony of complainant. Such minor inconsistencies tend to bolster, rather than weaken, her credibility, for they show that her testimony was neither contrived nor rehearsed. Besides, an errorless testimony cannot be expected when complainant is recounting details of a harrowing experience.[15]

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[13] RTC Decision, p. 19; *Rollo*, p. 41.

[14] Appellant's Brief, p. 14; *Rollo*, 72. (Original in upper case).

[15] *People v. Gonzales*, G.R. No. 143143-44, January 15, 2002.

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As to the point that the complainant neither ran away nor shouted for help despite the chance to do so, people react differently under emotional stress. There is no standard form of behavior when one is confronted by a shocking incident especially if the assailant is physically near. The workings of the human mind when placed under emotional stress are unpredictable. In a given situation, some may shout, others may faint, and still others may be frozen into silence. Consequently, the failure of complainant to run away or shout for help at the very first opportunity cannot be construed consent to the sexual intercourse.[16] What is essential is the vivid recollection of complainant and her steadfast claim that she was sexually abused by appellant against her will.

The defense tries to paint a portrait of complainant as an unchaste and impure young girl who promiscuously collects lovers and habitually skips her classes. We believe, however, that such debasement of her character does not necessarily cast doubt on her credibility nor does it negate the existence of rape. The moral character of the victim is immaterial in the prosecution and conviction of an accused for rape.[17] Even a prostitute can be the victim of rape,[18] for she can still refuse a man's lustful advances.[19]

As has been repeatedly observed, the trial court is in a better position to evaluate the credibility of a witness. Unlike an appellate court which has to rely almost entirely on inanimate records and transcripts of stenographic notes, the trial judge has the advantage of closely observing the demeanor of witnesses in responding to questions under direct testimony and cross examination.[20] In the absence of any showing that it has overlooked or misconstrued some fact or circumstance of weight

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[16] *People v. Gecomo*, 254 SCRA 82 (1996).

[17] *People v. Javier*, 311 SCRA 122 (1999).

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

[19] *People v. Iglanes*, 272 SCRA 113,(1997).

[20] *People v. Balderama*, 226 SCRA 537 (1993).

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and substance that can affect his conclusions in a case, the trial judge's findings on credibility will not be disturbed on appeal.[21]

Furthermore, in rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[22] A thorough review of the records of this case reveals that the testimony of the complainant withstands such test of credibility.

Hence, we find that the trial court has not committed any error in its appreciation of the facts of the case.

Appellant's allegation that he and complainant were sweethearts has not been sufficiently established. Having been raised as an affirmative defense, this "sweetheart theory" must be established by clear and convincing proof. Appellant bears the burden of submitting such kind of evidence to prove that he and complainant had an affair which naturally led to a sexual relationship.[23] This appellant failed to do.

Furthermore, the mere assertion of a love relationship does not necessarily rule out the use of force to consummate the crime of rape.[24] A sweetheart cannot be forced to have sex against her will. Definitely, a man can neither demand sexual gratification from a fiancee, nor employ violence upon her, on the pretext of love.[25]

Appellant also claims in his testimony that he was nowhere near the construction site on January 21, 1999, the night the rape is said to have occurred. In fact, he presented before the trial court an entry in the *barangay* blotter to prove that indeed he was somewhere else hiding from other foes that night. This contention is not tenable. Entries in a police or *barangay* blotter,

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[21] *People v. Lao*, 249 SCRA 137 (1995).

[22] *People v. Delos Santos*, G.R. No. 134525, February 28, 2003.

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

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

[25] *People v. Manahan*, 315 SCRA 476 (1999).

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although regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries, for these are often incomplete and inaccurate. These, therefore, should not be given undue significance or probative value as to the facts stated therein.[26]

We, therefore, agree with the trial court and find the accused guilty beyond reasonable doubt of the crime of rape.

As to the damages awarded, the trial court granted civil indemnity of ₱75,000, which is more than the amount of ₱50,000 awarded under prevailing jurisprudence to victims of rape.[27] On the other hand, the trial court correctly ruled that ₱50,000 be awarded as moral damages for the mental, physical and psychological suffering undeniably sustained by a rape victim.[28]

WHEREFORE, the decision of the Regional Trial Court of Pasay City, Branch 109, dated February 28, 2000, in Criminal Case No. 99-0179, finding appellant Anthony Sandig y Española *GUILTY* of rape and sentencing him to suffer *reclusion perpetua* and to pay moral damages of FIFTY THOUSAND PESOS (₱50,000) is *AFFIRMED*, with the *MODIFICATION* that the civil indemnity that appellant is ordered to pay the offended party is hereby reduced to FIFTY THOUSAND PESOS (₱50,000).

Costs *de oficio*.

*Davide Jr., C. J. (*Chairman*), Vitug, Ynares-Santiago,* and *Carpio, JJ.,* concur.

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[26] *People v. Durohom*, G.R. No. 146276, November 21, 2002.

[27] *People v. Padrigone*, G.R. No. 137664, May 9, 2002.

[28] *People v. Gabawa*, G.R. No. 139833, February 28, 2003.