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THIRD DIVISION

[G.R. No. 141140. December 10, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CRISPIN PAYOPAY,** *appellant.*

SYNOPSIS

Rejecting the defense of sweetheart theory, the trial court convicted appellant of the crime of rape committed against the almost 17-year old high school student of San Carlos College. The Court, however, ruled that the guilt of appellant was not sufficiently established, hence, acquitted him.

Allegedly, at noontime of August 16, 1999, as the victim stepped out of her school, appellant, with gun tucked on his waist, grabbed her hands and forcibly dragged her into a tricycle where two male companions were waiting. It was unthinkable how the victim would be overcome by fear to forcefully resist appellant at this stage. The victim then yelled for help, but no one responded even if there were plenty of people who saw her. This runs counter to human experience as it mocks human sensibility. And given the victim's claim that appellant had previously raped her on three occasions, it was incomprehensible why she did not cry out in protest when they passed through the guarded barrier gate to the Virgen Milagrosa University (VMU). The lame excuse that appellant might stab her was too puerile to merit consideration. Neither did the victim shout for help at the house where she was brought when it was in fact clustered with other houses.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM MUST BE CLEAR AND CONVINCING TO SUSTAIN CONVICTION. — In a long line of rape cases, this Court upheld the rule that: An accused may be convicted [of rape] on the basis of the lone, uncorroborated testimony of the rape victim, *provided that her testimony is clear, positive, convincing and otherwise consistent with*

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human nature. That appellant and the victim may indeed have been sweethearts does not, of course, negate the commission of rape, or acts of lasciviousness. As reflected, however, the victim's testimony does not pass the test of credibility.

2. CRIMINAL LAW; RAPE; NOT EQUATED WITH SEXUAL ABUSE. — Even gratuitously crediting the victim's account that appellant "abused" her, this Court does not appreciate the commission of rape. Thus, she claimed that she was "abused" or "sexually abused" as her counsel suggested. "Sexual abuse" cannot, however, be equated with rape, absent any showing, nay claim, that appellant's organ entered or penetrated the victim's pudendum.

3. ID.; SEXUAL ABUSE; NOT APPRECIATED WHERE THE VICTIM'S AGE NOT DULY ALLEGED IN THE INFORMATION. — At all events, since "sexual abuse," as defined by inclusion in Section 2 (g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, issued pursuant to Section 32 of Republic Act 7610, otherwise known as The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, to wit: Sexual abuse *includes* 1) the employment, use, persuasion, enticement, or coercion of a *child to engage* in, or assist another person to engage *in sexual intercourse or lasciviousness conduct* or 2) the molestation, 3) prostitution, or 4) *incest with children*, has the following elements: 1. The accused commits the acts of sexual intercourse or lascivious conduct. 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3.The child, whether male or female, is *below 18 years of age*. Appellant cannot just the same be faulted therefor. For while it is not procedurally incorrect to convict appellant of sexual abuse, a lesser offense necessarily included in rape which is the crime charged, a perusal of the information shows that the victim's age was not duly alleged. Appellant's acts can not thus fall under the child abuse law without violating appellant's constitutional right to due process and to be informed of the nature and cause of the accusation against him. The prosecution having failed to prove the guilt of appellant beyond reasonable doubt, appellant must be set free.

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APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

From the decision[1] of the Regional Trial Court of San Carlos City, Pangasinan, Branch 57 in Criminal Case No. SCC-3128 finding accused-appellant Crispin Payopay guilty beyond reasonable doubt of the crime of rape and sentencing him to *reclusion perpetua*, he comes to this Court on appeal.

With the assistance of counsel, appellant, who is married,[2] pleaded *not guilty* to the charge of rape alleged to have been committed as follows:

> That on or about the 16th day of August between 1:00 and 2:00 o'clock (sic) in the afternoon at Virgen Milagrosa University Foundation, San Carlos City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation, and with lewd design, did then and there, willfully, unlawfully and feloniously, has (sic) sexual intercourse with the offended party Maricel de Guzman, against her will and consent.

From the testimony of Maricel de Guzman (the victim), the following version is culled:

At noontime of August 16, 1999, as the victim, who was born on September 21, 1982,[3] stepped out of the San Carlos College in San Carlos City, Pangasinan where she was a third year high school student, appellant, who had a gun tucked on his waist, grabbed her hands and forcibly dragged her into a

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[1] Decision, Records at 72-76.

[2] Order of Pre-Trial of September 1, 1999, Records at 24-25.

[3] Exhibit "A", Records, Vol. I at 41.

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tricycle[4] where two unidentified male companions were waiting. While the victim yelled for help, albeit no one responded even if "there were plenty of people who saw [her],"[5] appellant, holding a "Rambo" type knife, warned her inside the tricycle not to shout or he would stab her.[6]

The four sped towards Virgen Milagrosa University (VMU) and on their way, they saw Joan Espinosa (Joan) whom the victim met for the first time.[7] Appellant at once grabbed Joan too and forcibly boarded her on the tricycle, he threatening her and the victim not to shout.

On reaching VMU after about an hour, the victim and Joan were forcibly brought to a nipa hut inside the VMU campus.

While inside the hut, on appellant's order, one of his companions bought gin which appellant drank.

Appellant then forced the victim to drink gin which, however, spilled out of her mouth. Turning to Joan, appellant poured gin into her mouth which rendered her tipsy and unconscious.

Appellant's two companions in the meantime stepped out of the hut and "stayed at the door."[8] He then asked the victim to remove her underwear but she refused. The following thereupon transpired, as related by the victim, quoted *verbatim*:

x x x x x x x x x

Q [of prosecutor] After Joan was forced to drink gin what happened to her?

A [of the victim] When Joan became dizzy she fell down on her back and [*appellant*] *while holding a gun threatened me that if I will not remove my drawer he was going to kill*

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[4] TSN, September 8, 1999 at 4.

[5] TSN, September 10, 1999 at 3.

[6] TSN, September 8, 1999 at 4.

[7] TSN, September 8, 1999 at 5.

[8] *Id.* at 9.

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me but when I refused he pushed me to the bed and he removed my drawer, sir.

Q After he remov[ed] your drawer what did [appellant] do?

A He also removed his drawer *and then he* **abused** *me, sir.*

Q What did you feel when Crispin Payopay **sexually abused** you?

A I felt extreme pain, sir.

Q After you were abused by Crispin Payopay what happened next?

A He threw my panty to me and then he tried to abuse Joan next, sir.

x x x x x x x x x

Q You were wearing then a pants is it not?

A I was wearing a skirt, madam.

Q And so you were ordered to remove your skirt is it not?

A He told me to remove my underwear, madam.

Q And then thereafter you said that Crispin also remove[d] his drawer is it not?

A Yes, madam.

Q What was Crispin wearing during that time, madam witness?

A Long pants and T-shirt, madam.

Q After he removed his pants he removed also his brief? Is it not?

A Yes, madam.

Q *When he was removing his pants madam witness you did not run or escape*?

A *No madam because the two (2) [companions of appellant] were posted themselves as guard at the door.*

Q And despite . . . that you just kep[t] qui[et] inside the nipa hut madam witness?

A I kept on crying, madam.

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Q *And when you were crying you did not shout madam witness*?

A *No, madam.*

Q And when you said that after you were allegedly raped by Crispin Payopay he throw your panty to you is it not?

A Yes, madam.

Q And thereafter you wore your panty is it not?

A Yes, madam.

x x x x x x x x x (Emphasis and italics supplied)

After appellant "abused" or "sexually abused" the victim, he shifted his attention to the unconscious Joan but before he could initiate any act on her, the victim grabbed the empty bottle of gin with which she hit the back of appellant who fell down, enabling her to drag Joan with whom she boarded a tricycle and proceeded to report the incident to the police. At the police station, the victim gave a sworn statement[9] declaring that appellant "sexually abused" her four times, the first on August 4, 1999, the second and third on dates she forgot, and the fourth on that day, August 16, 1999.

Partly corroborating the victim's testimony, Joan declared that they (Joan and the victim) were both forcibly taken to the VMU premises and threatened with a knife.[10] She further declared that the hut to which they were taken was not isolated as it was clustered with other huts-houses;[11] that the hut belonged to a certain "Alex" whom she had known for almost a year;[12] that as she became dizzy, she could not remember what transpired thereafter;[13] and that she could remember, however, fleeing

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[9] Exhibit "B", Records at 3.

[10] TSN, September 8, 1999 at 11.

[11] TSN, September 16, 1999 at 10.

[12] TSN, September 16, 1999 at 11.

[13] *Ibid.*

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with the victim in a tricycle[14] and filing a complaint at the police station.[15]

Dr. Araceli Callao, who on the day of the incident examined the more than 16-year old victim the result of which examination is reflected in the medico-legal certificate[16] she issued reading:

> PE: No signs of external injuries noted.
>
> PERINIUM : *No signs of external injuries noted.*
>
> HYMEN: - With old, incomplete lacerations at 7 & 8 o'clock positions;
>
> - *With old complete laceration at 5 o'clock position*
>
> - *With fresh* **abrasion** *at the lateral side near the base of hymen at around 4 & 8 o'clock positions*
>
> POSTERIOR FOURCHETTE: Rounded
>
> VAGINA : Admits 2 fingers with ease
>
> IE : Cervix — close with dark red bleeding
>
> UTERUS : Small
>
> LABORATORY RESULTS : The 2 slides are both ***negative for the presence of sperm cell*** *with* ***menstruation*** *at the time of examination* (Emphasis and italics supplied),

testified on the cause of the "fresh abrasion" or *gasgas* which was noted "at the lateral side near the base of [the victim's] hymen at around 4 and 8 o'clock positions" in this wise:

> Q And you said Madam Witness, that the abrasion could have been *caused by a friction*?
>
> A Yes, madam.

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[14] *Ibid.*

[15] TSN, September 8, 1999 at 12.

[16] Exhibit "C", Records at 40.

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Q And you said Madam Witness, or rather, that friction could have been caused by a scratch of the hand *while cleansing the vagina,* Madam Witness?

A Yes, madam.

Q And that could have been caused by the *use . . . of a very tight underwear,* up to the extent of a vagina, Madam Witness?

A Yes, madam.

Q And it is possible also Madam Witness that that abrasion could have been caused by *a penis*?

A Yes, because that abrasion can be caused by a friction of two objects and it is not specifically by a penis or by mere scratching of the hand, madam.[17] (Italics supplied)

Continuing, the doctor declared:

Q And you will agree with me Madam Witness that by that fresh abrasion, no such sexual intercourse could have happened to the victim, is it not?

A It is possible, madam.

Upon the other hand, proffering innocence, appellant, admitting having brought the victim whom he claimed to be his sweetheart, along with Joan, to the hut of Alex Guaron at the VMU campus, declared as follows:

He met the victim on the first week of July 1999 and they had since become lovers, in support of which he presented a photograph (Exhibit "1") depicting him and the victim "in a jolly and happy moment" together with Alex and a traffic aide, and a ring (Exhibit "2"–"2-A") given by the victim on which was engraved her name.

The two of them had been seeing each other everyday in the month of July 1999. In August 1999, he brought the victim to the house of Alex Guaron in VMU for about seven times.

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[17] TSN, September 16, 1999 at 6.

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On August 16, 1999, at about 12:00 noon, he fetched the victim at San Carlos College and as they were on board a tricycle on their way to VMU, they passed by Joan who later joined them. On arrival at Alex's house, they then proceeded to VMU where they had a drinking session together with Alex and two others.

He purposely brought the victim and Joan to the hut because he wanted to severe his relationship with the two, his wife having discovered his extra-marital affairs with them. The victim and Joan proffered no objection to his proposal. After a brief drinking session, he, together with the victim and Joan went to the plaza where they ate in an eatery before they finally bade each other good-bye.

Alex corroborated appellant's version.

In fine, appellant denies that rape ever took place on August 16, 1999.

Rejecting the sweetheart theory of appellant, the trial court ***convicted*** him as charged by the decision on appeal the dispositive portion of which reads:

> WHEREFORE, in the light of all the foregoing, the Court hereby finds the accused Crispin Payopay guilty beyond reasonable doubt, with the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended. The court hereby sentences him to suffer the penalty of *reclusion perpetua* and indemnify Maricel de Guzman the sum of ₱50,000.00 and to pay her exemplary damages of ₱25,000.00 and to pay the costs.

In his brief, appellant assigns to the trial court the following errors:

I

... IN GIVING DUE WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT WHICH IS PUNCTURED WITH MATERIAL INCONSISTENCY, UNCERTAINTY AND UNRELIABILITY THEREBY CASTING GRAVE DOUBT ON THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT; [AND]

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II

. . . IN FINDING THAT ACCUSED-APPELLANT USED FORCE AGAINST PRIVATE COMPLAINANT IN THE PERPETRATION OF THE INCIDENT IN QUESTION.

From the decision of the trial court, it is gathered that in convicting appellant, it relied chiefly on the testimony of the victim. Thus the trial court held:

x x x x x x x x x

In her testimony, Maricel recounted how she resisted Crispin. *Resistance indicates use of force.* In this case, *the credibility of her story was further bolstered by her actuations subsequent to the commission of the crime* when she brought Joan with her and they proceeded to the police station where she executed a sworn statement and underwent a medical examination.

The sweetheart theory is a defense that is becoming common in rape cases. This is a defense which negates force or intimidation, an essential element in the crime of rape. Even if Crispin's averment that they are sweetheart is true, *it does not necessarily follow that no rape has been committed against one's sweetheart. A sweetheart cannot be forced to engage in sexual intercourse against her will.*

x x x x x x x x x (Italics supplied)

In a long line of rape cases, this Court upheld the rule that:

An accused may be convicted [of rape] on the basis of the lone, uncorroborated testimony of the rape victim, ***provided that her testimony is clear, positive, convincing and otherwise consistent with human nature.***[18]

The place where the victim was allegedly taken by force by appellant — in the premises of the San Carlos College — is located in a public place which was admittedly teeming with students. The time was 12:00 o'clock noon of a regular school day. It is highly unthinkable that appellant would drag the victim in the presence of so many students and no one would heed

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[18] *People v. Belga*, 349 SCRA 678 (2001).

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her shouts for help. That runs counter to human experience as it mocks at human sensibility. Just as it is unthinkable how the victim would be overcome by fear to thereby prevent her from forcefully resisting or struggling even when what appellant merely initially did to her was, by her own account, forcibly grab her by her hands as she stepped out of school.

And given the victim's claim that appellant had priorly raped her on August 4, 1999 and on two other occasions, it is incomprehensible why she, on August 16, 1999, did not flee or cry out in protest or in anger when they reached and passed through the guarded barrier or boom-equipped gate to the VMU.

x x x x x x x x x

Q What time did you arrive at VMU madam witness?

A [of the victim]: 1:00 o'clock, madam.

Q When you arrived at the VMU madam witness you passed at the gate fronting on apartment, that is the entrance of VMU madam witness?

A Yes, madam.

Q And that the one you are talking about is that, *the gate where there was a barrier which is being lifted by the guard when you passed madam witness*?

A Yes, madam.

Q And that you saw the guard when he lifted that barrier when the tricycle passed?

A Yes, madam, and he even raised his hand to Crispin Payopay.

Q And in that event madam witness *you did not shout for help* considering that you saw the security guard?

A *No madam because I suspected that that guard might be his cohort.*

Q And that was just your thinking is it not madam witness?

A Yes, madam.

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Q And when you arrived at VMU on August 16, 1999 at around 1:00 o'clock in the afternoon you saw many student who also inside the premises of VMU is it not madam witness?

A Few, madam.

Q *But there were students you saw inside the VMU*?

A *Yes, madam.*

Q *And you did not shout for help*?

A *No madam because I was afraid that he might pursue in stabbing me with his balisong.*

x x x x x x x x x[19]

Q And are you telling the Honorable Court that all in all you were five riding in that tricycle, is it not?

A Yes, madam.

Q And that tricycle passed at the VMU Compound, is it not?

A Yes, madam.

Q *And when the tricycle passed at the VMU campus, you did not shout for help, Madam Witness*?

A *No, madam.*[20]

The victim's lame excuse for not shouting for help at the gate and while inside the premises of the VMU — that appellant "might pursue in stabbing" her — is too puerile to merit consideration in light of the presence of the guards manning such gate.

But assuming *arguendo* that the victim was too gripped by fear to benumb her and render her mute as they passed through the VMU gate, she could have shouted for help at the house of Alex which was clustered with other houses, but she did not.

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[19] TSN, September 10, 1999 at 6-7.

[20] TSN, September 16, 1999 at 9.

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Q You said, you arrived at a house near the VMU, is it not?

A Yes, madam.

Q And that, how many persons did you see inside the house near VMU?

A None, madam.

Q *And that house you are referring to in VMU, it is situated, with clusters of houses, near it, is it not*?

A *Yes, madam.*

Q Upon arrival thereat, you were ordered to alight *and you did not shout for help*?

A No, madam.

Q And in fact, both of you, were ordered by Crispin Payopay, to get inside the house, is it not?

A Yes, madam.

x x x x x x x x x[21] (Italics supplied)

That appellant and the victim may indeed have been sweethearts does not, of course, negate the commission of rape, or acts of lasciviousness. As reflected above, however, the victim's testimony does not pass the test of credibility.

In fact, even gratuitously crediting the victim's account that appellant "abused" her, this Court does not appreciate the commission of rape. Thus, she claimed that she was "abused" or "sexually abused" as her counsel suggested. "Sexual abuse" cannot, however, be equated with rape,[22] absent any showing, nay claim, that appellant's organ entered or penetrated the victim's pudendum.

At all events, since "sexual abuse," as defined by inclusion in Section 2 (g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases,[23] issued pursuant to

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[21] TSN, September 16, 1999 at 10.

[22] *People v. Egan*, 382 SCRA 326 (2002).

[23] Approved on October 11, 1993, cited in *People v. Pedro Flores, Jr. y Flores Alias "Pesiong,"* G.R. No. 128823-24, December 27, 2002.

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Section 32 of Republic Act 7610, otherwise known as The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,[24] to wit:

> Sexual abuse *includes* 1) the employment, use, persuasion, enticement, or coercion of a *child to engage* in, or assist another person to engage *in sexual intercourse or lasciviousness conduct* or 2) the molestation, 3) prostitution, or 4) *incest with children.* (Italics supplied),[25]

has the following elements:

1. The accused commits the acts of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is *below 18 years of age.*[26] (Italics supplied),

appellant cannot just the same be faulted therefor.

For while it is not procedurally incorrect to convict appellant of sexual abuse, a lesser offense necessarily included in rape which is the crime charged,[27] a perusal of the information shows that the victim's age was not duly alleged. Appellant's acts can not thus fall under the child abuse law without violating appellant's constitutional right to due process and to be informed of the nature and cause of the accusation against him.

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[24] Approved on June 17, 1992.

[25] *People v. Flores, Jr. y Flores Alias "Pesiong,"* G.R. No. 128823-24, December 27, 2002.

[26] *People v. Larin*, 297 SCRA 309 (1998)

[27] Rule 120, Section 5, Rules of Court —

> Section 5. When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter."

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The prosecution having failed to prove the guilt of appellant beyond reasonable doubt, appellant must be set free.

WHEREFORE, the appealed decision of the Regional Trial Court, Branch 57, San Carlos City, Pangasinan, is hereby *REVERSED and SET ASIDE*. Appellant Crispin Payopay is hereby *ACQUITTED* of rape.

The Director of Prisons is hereby directed to forthwith cause the release of appellant, unless the latter is being lawfully held for another cause, and to inform this Court within Ten days from notice the action taken on this directive.

SO ORDERED.

Vitug (Chairman), Sandoval-Gutierrez, and *Corona, JJ.,* concur.

SECOND DIVISION

[G.R. No. 142305. December 10, 2003]

SINGAPORE AIRLINES LIMITED, *petitioner, vs.* **ANDION FERNANDEZ,** *respondent.*

SYNOPSIS

Petitioner issued respondent a ticket for Flight No. SQ 27, from Germany to Singapore with onward connections to Manila. The flight was to arrive at Singapore 8:30 a.m. of January 28, 1991 and the connecting flight to Manila was to leave at 11:00 a.m. of the same day. Flight No. SQ 27, however, arrived in Singapore two hours later than scheduled and respondent missed the connecting flight. The trial court ruled that there was breach of contract of air carriage.