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THIRD DIVISION

[G.R. No. 128882. October 2, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOEL AYUDA,** *appellant.*

SYNOPSIS

A 19-year old *barrio* lass charged appellant with rape. She was allegedly on her way home from a benefit dance when she met the appellant. He ordered her to stop at a waiting shed where he pointed a gun at her, dragged her to a grassy spot where she was raped. The appellant vehemently denied the accusation contending that the alleged victim is his sweetheart and what happened between them that early dawn was a sexual tryst. The trial court convicted appellant of rape and sentenced him to *reclusion perpetua*. The basic issue for resolution of the Supreme Court in this appeal is whether the prosecution had established appellant's guilt beyond reasonable doubt.

According to the Supreme Court, a close scrutiny of the transcripts of the proceedings showed that the supposed flaws or inconsistencies bear on relatively minor points and, even taken as a whole, they failed to debunk the gravamen of the accusation that appellant had carnal knowledge of the complainant through force or intimidation. A "sweetheart defense" to be credible, should be substantiated by some documentary or other evidence of the relationship. Here, no such evidence was ever presented by appellant. Considering that appellant committed the crime of rape with the use of deadly weapon, the trial court correctly imposed upon him the penalty of *reclusion perpetua*.

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS.** — The elements of rape under the above provision are: (1) *the offender had carnal knowledge of the victim;* and (2) *such act was accomplished — through the use of force or intimidation;* or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

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2. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT; ACCORDED GREAT WEIGHT AND RESPECT; EXCEPTION.** — It is doctrinally settled that the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the victim through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, the forthright tone of a ready reply, the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, or the carriage and mien. This rule, however, admits of exceptions, as where there exists a fact or circumstance of weight and influence that has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts. We do not find any of these exceptions in the case at bar.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES AND DISCREPANCIES ON MINOR MATTERS NOT RELEVANT TO THE ELEMENTS OF THE CRIME.** — An impeccable recollection cannot reasonably be expected from the victim of a horrendous crime, such that minor contradictions in her testimony are perceived to enhance, rather than detract from, her credibility. Thus, inconsistencies and discrepancies which refer to minor matters are irrelevant to the elements of the crime and cannot be considered as grounds for acquittal. A close scrutiny of the transcripts of the proceedings shows that the supposed flaws or inconsistencies bear on relatively minor points and, even taken as a whole, they fail to debunk the gravamen of the accusation that appellant *had carnal knowledge* of the complainant *through force or intimidation.*

4. **ID.; ID.; SWEETHEART DEFENSE; SHOULD BE SUBSTANTIATED BY SOME DOCUMENTARY OR OTHER EVIDENCE OF THE RELATIONSHIP; NOT PRESENT IN CASE AT BAR.** — A "sweetheart defense," to be credible, should be substantiated by some documentary or other evidence of the relationship — like mementos, love

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letters, notes, pictures and the like. Here, no such evidence was ever presented by appellant. Assuming that appellant and Gloriphine are sweethearts, it does not mean that he could not rape her. Such a relationship is not a guaranty that he will not assault and tarnish that which she holds so dearly and trample upon her honor and dignity. Indeed, a sweetheart can be forced to engage in sexual intercourse against her will.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Cirilo A. Goc-Ong for accused-appellant.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Appeal from the Decision dated August 5, 1996 of the Regional Trial Court, Branch 7, Bayugan, Agusan del Sur, in Criminal Case No. 634 convicting Joel Ayuda of rape and sentencing him to *reclusion perpetua*.

The Information charges Joel Ayuda as follows:

"That on or about the 4th day of May, 1993 at about 2:00 o'clock early dawn, more or less in the premises and vicinity particularly at Barangay Maygatasan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with 3516 caliber pointed at the face of the victim, and by force, threats and intimidation with lewd design, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with one GLORIPIN[1] SENO, a woman nineteen (19) years of age, of good reputation, against her will and consent, to the damage and prejudice of the said victim consisting of moral, actual and compensatory damages.

"CONTRARY TO LAW, Article 335 of the Revised Penal Code."

Upon arraignment, appellant Joel Ayuda, assisted by counsel, pleaded not guilty to the crime charged.

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[1] Spelled as "Gloriphine" as shown by the private complainant's signature.

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The evidence for the prosecution shows that in the evening of May 3, 1993, private complainant Gloriphine Seno, a 19-year old lass, attended a benefit dance held at the drier of Lorenzo Campilan situated at Purok 1, Maygatasan, Agusan del Sur. At around 2:00 o'clock in the early dawn, Gloriphine and her sister, Jocelyn Seno, while on their way home, met appellant Joel Ayuda. At that instance, Jocelyn walked ahead, accompanied by Clodualdo "Joy" Estores, while Gloriphine and appellant were left behind. Then appellant ordered Gloriphine to stop at a waiting shed. There he pointed his 3516 caliber revolver at her right cheek and dragged her to a grassy spot about 30 to 40 meters away. Appellant commanded her to undress and lie down, as he removed his pants and placed himself on top of her. He inserted his penis inside her vagina, making a push and pull movement. She felt pain. She could not shout because he continually poked his gun at her. Afterwards, he threatened to kill her, her parents and relatives should she reveal the incident to anyone. But on her way home, she met Clodualdo and revealed to him her excruciating experience. They later parted ways when they met her mother, sister and cousin. Upon reaching their house, Gloriphine immediately threw away at the trash bin her blood-stained sanitary napkin. Later that same day (May 4, 1993), she reported the incident to the Bayugan Police Station. After the investigation, she executed an affidavit dated May 5, 1993.

Gloriphine was examined by Dr. Romeo Cedeño at the Bayugan Community Hospital, Bayugan, Agusan del Sur. He issued a medical certificate dated May 4, 1993 stating that the victim sustained linear skin abrasion on her right forearm, slight swelling of her vulva, lacerated wound about 1 cm. on her right labia minora, and hymenal laceration and bruising.[2]

Appellant vehemently denied the rape charge, contending that Gloriphine has been his sweetheart since 1988 or 1989, and that what transpired between them that early dawn of May 4, 1993 was a sexual tryst.

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[2] RTC Records at 6.

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On August 5, 1996, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, viewed from the above perceptions, this Court finds accused Joel Ayuda guilty beyond reasonable doubt of the crime of Rape pursuant to Article 335 of the Revised Penal Code. He is accordingly sentenced:

1) to a penalty of *Reclusion Perpetua*;

2) to indemnify Gloriphine Seno the amount of ₱30,000.00; and

3) to pay the costs.

"SO ORDERED."

Appellant, in his brief, submits the following assignments of error:

"I. THE LOWER COURT ERRED IN FINDING THAT RAPE WAS COMMITTED.

"II. THE LOWER COURT ERRED IN FINDING THE TESTIMONY OF GLORIPHINE SENO TO BE FORTHRIGHT, POSITIVE AND EMPHATICALLY UNSULLIED BY INCONSISTENCIES, CONTRADICTIONS OR MENDACITIES.

"III. THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF GLORIPHINE THAT SHE WAS THREATENED WITH A GUN BY ACCUSED AND THEN RAPED.

"IV. THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED DUE TO REASONABLE DOUBT."

The basic issue for our resolution is whether the prosecution has established appellant's guilt beyond reasonable doubt.

The law applicable to the case at bar is Article 335 of the Revised Penal Code which provides:

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

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1. By using force or intimidation;

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

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

"The crime of rape shall be punished by *reclusion perpetua.*

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be ***reclusion perpetua*** *to death.*

x x x" (Italics supplied)

The elements of rape under the above provision *are*: *(1) the offender had carnal knowledge of the victim;* and *(2) such act was accomplished — through the use of force or intimidation;* or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

An extract from Gloriphine's testimony, quoted hereunder, indubitably shows that appellant had carnal knowledge of her through force and intimidation, thus:

x x x x x x x x x

"PROSECUTOR PAG-ONG ON DIRECT EXAMINATION:

x x x x x x x x x

Q On May 4, 1993, at about 2:00 o'clock in the early dawn, can you still remember where were you?

A I was going home with my younger sister, sir.

Q Who is that younger sister of yours?

A Jonelyn Seno, sir.

Q Where did you come from by the way at that time?

A From the dancing hall, sir.

Q You mean you attended the benefit dance on May 3, 1993?

A Yes, sir.

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Q Up to the early dawn of May 4, 1993?

A We were already going home in the early dawn, sir.

x x x x x x x x x

Q While you were on your way home from the dancing hall together with your younger sister, what happened if there was any?

A I was accompanied by Joel Ayuda, sir.

x x x x x x x x x

Q x x x Are you referring to Joel Ayuda, the accused in this case?

A Yes, sir.

Q If Joel Ayuda is in the courtroom now, will you kindly point at him?

A That person, sir.

(Witness pointing to a man wearing violet T-shirt who answered the name of Joel Ayuda when he was asked as to what is his name [*sic*])

Q When the accused approached and accompanied you, where did you go?

A He told me to stop at the waiting shed and at the waiting shed he pointed to me his gun, sir.

Q At what portion of your body was the gun pointed?

A *Here, sir, at my right cheek.*

x x x x x x x x x

Q Now, after accused Joel Ayuda pointed his gun to you, what happened next?

A He dragged me to the grassy place, sir.

x x x x x x x x x

Q What happened when you were brought to the grassy place?

A He told me to undress, sir.

Q Who removed your dress.

A He, sir.

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x x x x x x x x x

Q What was your dress during that time?

A Polo, sir.

Q Were you wearing trousers?

A A polo and a trouser, sir.

Q Which was removed by the accused, your polo or your trouser?

A He first removed my trouser, sir.

Q After he removed your trouser, what did the accused do to you?

A He removed my panty, sir.

Q What happened to your panty which was removed by the accused Joel Ayuda?

A It was torn, sir.

Q There are two panties here that were attached to the records of the case. Will you please explain to this Honorable Court why there are two panties?

x x x x x x x x x

A Because my menstruation just ended, sir.

x x x x x x x x x

Q After your long pants and two panties were removed by the accused Joel Ayuda, what did he do to you?

A He made me lie down and placed himself on top of me, sir.

Q Before he placed himself on top of you, what did the accused Joel Ayuda do to his pants?

x x x x x x x x x

A He removed his pants.

x x x x x x x x x

Q While he was on top of you, what was he doing?

A He made a push and pull movement, sir.

x x x x x x x x x

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Q Aside from the push and pull movement that he made, what did he do to you?

A He pointed his gun to me, sir.

Q Aside from that, what did the accused Joel Ayuda do with his penis?

x x x x x x x x x

COURT:

The best way to be done here is to let the witness explain the meaning of *'sakyod-sakyod.'*

Q What do you mean by the *'sakyod-sakyod,'* Miss Seno?

A *Iya kong gikayat.*

ATTY. GOC-ONG:

May I request, Your Honor, that all the answers of the witness which are in the Visayan dialect be interpreted.

COURT:

She was asked by the Court the meaning of *'sakyod-sakyod'* and she said he placed his penis inside her vagina. That is the explanation there.

x x x x x x x x x

PROSECUTOR PAG-ONG:

Q After the accused Joel Ayuda inserted his penis to your vagina, what did he do next?

x x x x x x x x x

A The gun was pointed to me, sir.

Q How long did the sexual intercourse committed by the accused take?

A Only a few minutes, sir.

Q Could it be five (5) minutes?

A Maybe, sir.

Q What did you feel when the accused inserted his penis to your vagina?

A Painful, sir.

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Q When the accused inserted his penis to your vagina, what did you do?

A I cried, sir.

Q Why did you cry?

A Because I was abused, sir.

Q While the accused Joel Ayuda was on top of you performing the sexual intercourse, where was his firearm?

A He held the gun with his left hand and used it as support (*gitukod*).

COURT:

Q What did he do with his gun?

A He pointed it to my face, your Honor.

x x x x x x x x x

Q After accused Joel Ayuda raped you, what happened next?

x x x x x x x x x

A He threatened me not to tell the incident to anybody and if I will do so he will kill me including my parents and relatives.

x x x x x x x x x"[3]

The trial court found Gloriphine's testimony credible since it was forthright, positive and emphatically unsullied by inconsistencies; and that being credible, her testimony is sufficient to sustain a conviction. It is doctrinally settled that the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the victim through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, the forthright tone of a ready reply, the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of

[3] Transcript of Stenographic Notes (TSN), April 12, 1994 at 3–18.

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it, the scant or full realization of the solemnity of an oath, or the carriage and mien. This rule, however, admits of exceptions, as where there exists a fact or circumstance of weight and influence that has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts. We do not find any of these exceptions in the case at bar.[4]

In his brief, appellant desperately attempts to discredit Gloriphine credibility by pointing flaws in her testimony. According to him, she could not categorically determine where he pointed his gun — whether it was to her neck or face. She contradicted herself by admitting later that she did not inform the doctor she was raped by appellant. She could not also remember whether she wore her yellow panty first or the orange one (which had traces of a man's semen). And she could not intelligently explain why she threw away her blood-stained sanitary napkin.

An impeccable recollection cannot reasonably be expected from the victim of a horrendous crime, such that minor contradictions in her testimony are perceived to enhance, rather than detract from, her credibility.[5] Thus, inconsistencies and discrepancies which refer to minor matters are irrelevant to the elements of the crime and cannot be considered as grounds for acquittal.[6]

A close scrutiny of the transcripts of the proceedings shows that the supposed flaws or inconsistencies bear on relatively minor points and, even taken as a whole, they fail to debunk the gravamen of the accusation that appellant *had carnal knowledge* of the complainant *through force or intimidation.*

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[4] *People vs. Artemio Invencion*, G.R. No. 131636, March 5, 2003.

[5] *People vs. Colisao*, G.R. No. 134526, December 11, 2001, 372 SCRA 20, 30, citing *People vs. Padilla*, 301 SCRA 265, 275 (1999); *People vs. Calayca*, 301 SCRA 192, 200 (1999); *People vs. Mengote*, 305 SCRA 380, 393 (1999); *People vs. Reñola*, 308 SCRA 145, 161-162 (1999); *People vs. Juntilla*, 314 SCRA 568, 581 (1999); *People vs. Hivela*, 314 SCRA 815, 823 (1999).

[6] *People vs. Artemio Invencion, supra.*

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Neither are we persuaded by appellant's claim that he and Gloriphine are sweethearts and that what transpired between them that early dawn of May 4, 1993 was a consensual sex. He presented witnesses who declared that they saw Gloriphine sitting on his lap on May 4, 1993; and that in another occasion, they saw him coming out of her house at 12:00 o'clock midnight.

We are not convinced. A "sweetheart defense," to be credible, should be substantiated by some documentary or other evidence of the relationship — like mementos, love letters, notes, pictures and the like.[7] Here, no such evidence was ever presented by appellant.

Assuming that appellant and Gloriphine are sweethearts, it does not mean that he could not rape her. Such a relationship is not a guaranty that he will not assault and tarnish that which she holds so dearly and trample upon her honor and dignity. Indeed, a sweetheart can be forced to engage in sexual intercourse against her will.[8]

Considering that appellant committed the crime with the use of a firearm, a deadly weapon, the penalty imposable upon him is *reclusion perpetua* to death, pursuant to Article 335 of the Revised Penal Code, quoted earlier. Corollarily, Article 63 of the same Code provides:

"Art. 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

"In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

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[7] *People vs. Flores*, G.R. No. 141782, December 14, 2001, 372 SCRA 421, citing *People vs. Sale*, 345 SCRA 490 (2000).

[8] *People vs. Francisco Sorongon*, G.R. No. 142416, February 11, 2003.

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2. *When there are neither mitigating nor aggravating circumstances in the commission of the deed, the* ***lesser penalty*** *shall be applied.*

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation." (emphasis supplied)

In *People vs. Alfredo Baroy*,[9] we held: "Where no aggravating circumstance is alleged in the information and proven during the trial, the crime of rape through the use of a deadly weapon may be penalized only with *reclusion perpetua*, not death."

In the present case, there is neither aggravating nor mitigating circumstance that attended the commission of the crime. Thus, the trial court correctly imposed upon appellant the lesser penalty of *reclusion perpetua*.

With respect to the civil liability of the appellant, we observe that the trial court awarded the victim only ₱30,000.00 as civil indemnity. The prevailing jurisprudence is that where, as here, the death penalty is not imposed, the victim should be entitled to ₱50,000.00 as indemnity *ex delicto*. Such award is mandatory upon the finding of the fact of rape.[10]

We likewise award the victim moral damages which, in line with current jurisprudence, is fixed at ₱50,000.00 without need of pleading or proof of basis thereof.[11] This is so because the anguish and the pain she has to endure are evident. In our

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[9] G.R. Nos. 137520-22, May 9, 2002.

[10] *People vs. Escano*, G.R. Nos. 140218-23, February 13, 2002; *People vs. Arizapa*, G.R. No. 131814, March 15, 2000, 328 SCRA 214.

[11] *People vs. Alfredo Baroy, supra; People vs. Salalima*, G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 192.

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culture, which puts a premium on the virtue of purity or virginity, rape stigmatizes the victim more than the perpetrator.[12] In addition, exemplary damages of ₱25,000.00 is awarded to her because the rape was committed with the use of a deadly weapon. In *People vs. Sorongon*,[13] we held:

"Likewise, the award of exemplary damages is justified. The circumstance of use of a deadly weapon was duly alleged in the information and proven at the trial. In *People vs. Edem* (G.R. No. 130970, February 27, 2002), we awarded exemplary damages in the amount of ₱25,000.00 in a case of rape committed with the use of a deadly weapon."

WHEREFORE, the appealed Decision dated August 5, 1996 of the Regional Trial Court, Branch 7, Bayugan, Agusan del Sur, in Criminal Case No. 634 is hereby *AFFIRMED with MODIFICATION* in the sense that appellant JOEL AYUDA is ordered to pay complainant Gloriphine Seno ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

SO ORDERED.

Puno (Chairman), Panganiban and *Carpio, JJ.*, concur.

Corona, J., is on leave.

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[12] *People vs. Baway*, G.R. No. 130406, January 22, 2001, 350 SCRA 29; *People vs. Banela*, G.R. No. 124973, January 18, 1999, 301 SCRA 84.

[13] *Supra*, citing *People vs. Edem*, G.R. No. 130970, February 27, 2002.