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THIRD DIVISION

[G.R. Nos. 136870-72. January 28, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILSON SALVADOR** *y* **GAGARIN,** *accused-appellant.*

SYNOPSIS

Accused was found guilty beyond reasonable doubt of one (1) count of rape but was acquitted of subsequent charges of rape filed by his niece because these were already consensual.

On appeal, appellant claimed the trial court failed to appreciate that the victim did not offer any resistance and that what occurred was consented sexual intercourse; and that there was a two (2)-year delay in reporting the acts charged which rendered the truth of her charge doubtful.

The Supreme Court affirmed his conviction on appeal, ruling: that the evidence is clear that accused forced Myra to have sexual intercourse with him, *viz*: the victim was cowed into submission because of the knife poked at her right neck by the accused who is also her uncle; she was warned not to shout or else accused will kill her. Thus, the delay in the report of the rape incidents cannot be taken against the victim. The "sweetheart theory" hardly deserves any attention because the accused failed to present proof of the alleged romantic relationship. Finally, the ensuing voluntary relationship between the accused and the victim does not cure the force and intimidation which accused employed in the initial act constituting one charge for rape.

SYLLABUS

1. **CRIMINAL LAW; RAPE; FORCE AND INTIMIDATION; PRESENT IN FIRST SEXUAL ENCOUNTER.** — The evidence is clear that accused forced Myra to have sexual intercourse. . . The victim was cowed into submission because of the knife poked at her right neck by the accused. She was also warned: *"saan ka nga agriyao ta no agriyao ka patayin*

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ka," translated: "Don't shout or else I will kill you." Furthermore, the fact that the accused is the uncle of the victim bolsters the presence of intimidation. It was found by the trial court that the victim looked upon the accused as her father. For a young lass from the province, this circumstance is sufficient to shut her up and give in to the whims of the accused.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REPORTING RAPE INCIDENTS DUE TO THREATS OF PHYSICAL VIOLENCE DOES NOT INDICATE A BASELESS CHARGE; CASE AT BAR.** — The silence of the victim for a period of time does not necessarily indicate a baseless and fabricated charge. This Court has often ruled that delay in reporting rape incidents in the face of threats of physical violence cannot be taken against the victim. Rape victims prefer to suffer in private than reveal their ordeal to the public and suffer the humiliation and simultaneously risk the rapists' making good the threat to hurt them.

3. **CRIMINAL LAW; RAPE; "SWEETHEART THEORY"; ACCUSED MUST PRESENT EVIDENCE TO PROVE A ROMANTIC RELATIONSHIP; CASE AT BAR.** — The defense of consensual intercourse merits no consideration. The accused has the burden of establishing by convincing proof his affirmative defense of an alleged romantic relationship. The "sweetheart theory" hardly deserves any attention when an accused does not present any evidence, such as love letters, gifts, pictures and the like to show that indeed, he and the private complainant were sweethearts. In the case at bar, the accused was unable to present even an iota of proof to substantiate his claim that he and the complainant are sweethearts.

4. **ID.; ID.; ENSUING VOLUNTARY RELATIONSHIP DOES NOT NEGATE RAPE CHARGE IF THE FIRST SEXUAL ENCOUNTER WAS DUE TO FORCE; CASE AT BAR.** — We likewise agree with the argument of the Office of the Solicitor General that even if the trial court acquitted the accused of the subsequent acts of sexual intercourse on the ground that these were already consensual, the ensuing voluntary relationship does not cure the force and intimidation which appellant employed in the initial act constituting one charge for rape. Well-entrenched is the principle that each act of rape

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is considered separate and distinct from one another. Thus, even if the subsequent acts of sexual intercourse between the accused and the complainant were to be considered as consensual, still this does not negate the fact that their first sexual encounter due to force, constitutes a ground for one charge of rape.

5. REMEDIAL LAW; EVIDENCE; ADMISSIONS; OFFER OF SETTLEMENT CONSTITUTES AN IMPLIED ADMISSION OF GUILT; EXCEPTION; CASE AT BAR. — Lastly, the offer of settlement made by the relatives of the accused to Myra's father further militates against the innocence of the accused. Indeed, an offer of compromise by the accused in criminal cases, except those involving quasi-offenses or those allowed by law to be compromised, may be received in evidence as an implied admission of guilt. Undoubtedly, rape is not a quasi-offense. Thus, the testimony of Sisenando, complainant's father, that the relatives of the accused made two offers to settle with the knowledge of the accused, should be taken as an implied admission of the guilt of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PUNO, *J.*:

Before us is an appeal from the decision of the Regional Trial Court of Cauayan, Isabela, Branch 19, in Criminal Case No. 19-1191 promulgated on October 20, 1998, finding accused-appellant Wilson Salvador *y* Gagarin guilty beyond reasonable doubt of the crime of rape.[1]

The Information in Crim. Case No. 19-1191 states:

"That on or about the 30th day of August, 1995, in the municipality of San Mateo, province of Isabela, Philippines, and within the

[1] Accused-appellant was charged with three counts of rape but was acquitted in Crim. Cases Nos. 19-1189 and 19-1190.

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jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, and with lewd designs, did then and there, willfully, unlawfully and feloniously, lay (*sic*) with; and have carnal knowledge with (*sic*) one Myra S. Aucena, against her will and consent.

CONTRARY TO LAW."[2]

Accused pleaded not guilty upon arraignment and underwent trial.

It appears from the evidence that private complainant, Myra S. Aucena, is the niece of the accused, being the daughter of his older sister, Lydia Salvador. She was two years of age when her mother died in 1979. Her paternal grandparents brought her up in Manaoag, Pangasinan where she stayed until she finished her secondary education. After graduation from high school, the brothers of her late mother, namely, Maximo, Wenceslao and Nestor, all surnamed Salvador, offered to send her to college. It was agreed that she stay with her maternal grandmother, Priscila Salvador, at the latter's residence at Salinungan East, San Mateo, Isabela to facilitate her studies.[3] She transferred there around March 1995.[4]

Priscila's house consists of two stories. Priscila slept at the ground floor, while accused Wilson, Priscila's son and Myra's uncle, slept at the second floor. The second floor has only one room but is divided into two sleeping quarters by a collapsible divider. Myra used to sleep with her grandmother Priscila. However, in August 1995, she was advised by Priscila, who was then sick; to sleep upstairs to avoid being contaminated by her illness. Accused Wilson slept on a bed at one side while Myra slept on the bamboo floor at the other side of the divider.[5]

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[2] *Rollo*, pp. 54 and 85.

[3] TSN, Myra Aucena, December 11, 1997, pp. 3-5.

[4] TSN, Myra Aucena, January 26, 1998, p. 4; TSN, Wilson Salvador, June 16, 1998, pp. 4-7.

[5] TSN, Myra Aucena, January 26, 1998, pp. 5-9; TSN, Wilson Salvador, June 16, 1998, p. 9.

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Myra testified that in the early evening of August 30, 1995, she was awakened by a heavy weight on top of her. She recognized the person to be accused, Wilson, her uncle. She froze because the accused was poking a knife at her right neck, at the same time telling her "*saan ka nga agriyao ta no agriyao ka patayin ka*' (Don't shout or else I will kill you)."[6] Accused kissed all parts of her body while she was still dressed. Thereafter, still holding the knife with his left hand, accused removed her shirt, short pants, panty and bra with his right hand. He mashed her breasts, forcibly separated her two legs and succeeded in having sexual intercourse with her. Having been seized with fear, she was not able to do anything but cry after the accused was done with his bastardly act. This abuse was repeated on several occasions for over a year during her stay with her grandmother and the accused.[7]

Myra stopped living in the house of her grandmother when another uncle, Nestor Salvador, took her and brought her to his house in Calamagui, Ilagan, Isabela on January 19, 1997. On February 24, 1997, her father, Sisenando Aucena, fetched her from Nestor's house because his younger son, Luther John, suspected that something was wrong with her. While there, Sisenando noticed her pregnancy. Myra thus had to reveal the ordeal she underwent in the hands of the accused. She gave birth to Cherry May on June 20, 1997 as a result of the forced coitus.

Sisenando Aucena, the father of Myra, testified as to the efforts of Dolores Ramones, Panting Manuel, Sangguniang member Pulig, Sangguniang member Fermin, Nestor Salvador, Santiago Manguba, Maura Salvador, Angelito Manguba and Kagawad Dominador Bonalos, relatives of the accused, to seek a compromise agreement or settlement of the case of the accused. They first offered to give the land supposed to be inherited by his (Sisenando's) children. They also offered to

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[6] TSN, Myra Aucena, December 11, 1997, p. 8.

[7] TSN, Myra Aucena, December 11, 1997, pp. 6-9; December 22, 1997, pp. 3-11; January 26, 1998, pp. 9-15.

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give the land that was supposed to be inherited by Wilson Salvador. However, the relatives did not comply with their promise so the settlement did not materialize.

Accused-appellant denied the rape charge and alleged that it was Myra who seduced him and that what occurred was consented sexual intercourse as they shared a romantic relationship. He claimed that it was Myra who first came to his bed to sleep with him in the month of July 1995. He scolded her but eventually, they developed mutual love for each other and thus had numerous consented sex. He also denied knowledge of the offer of compromise of his relatives. He allegedly did not authorize them to enter into any settlement with Sisenando.[8]

As aforestated, the trial court rendered a joint decision convicting the accused on one count of rape committed on August 30, 1995, and acquitting him from the two other counts committed on September 6, 1995 and October 4, 1996, the dispositive portion of which states:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered:

1. Finding the accused guilty beyond reasonable doubt of the crime of rape committed on 30 August 1995 and charged in Criminal Case No. 19-1191, and sentencing him to suffer the penalty of *reclusion perpetua*, and to indemnify the offended party, Myra S. Aucena in the amount of ₱200,000.00; and

2. For failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, acquitting him from the offense charged in Criminal Cases Nos. 19-1189 and 1190.

Costs against the accused.

SO ORDERED."[9]

From this decision, the accused-appellant interposed the present appeal, raising the following assignment of errors:

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[8] TSN, Wilson Salvador, June 16, 1998, pp. 9-10, 12-13 and 15-18.

[9] Original records, p. 116; *Rollo*, pp. 55, 70 and 87.

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"I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE SINCE NO FORCE WAS EMPLOYED IN THE COMMISSION OF THE CRIME.

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT."[10]

The appeal has no merit.

At the time the acts were committed by the accused, rape was punished under Article 335, paragraph 1 of the Revised Penal Code. It can be committed "by having carnal knowledge of a woman under any of the following circumstances:

a.) Through force, threat or intimidation;

x x x x x x x x x."

The gravamen of rape is carnal knowledge of a woman against her will or without her consent.[11]

Appellant argues that the trial court erred when it failed to appreciate the fact that the victim did not offer any resistance against the alleged sexual assault made by the accused-appellant. He contends that during the act, the victim never shouted for help nor created any commotion that could have aroused her grandmother into coming to her aid. These circumstances, according to him, "show that no force was employed by the accused" and that what happened "was the product of two (2) persons freely and voluntarily consenting to each other's advances."[12]

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[10] *Rollo*, p. 53.

[11] *People vs. Ponsica*, G.R. Nos. 137661-63, July 4, 2002, citing *People vs. Cariño*, 362 SCRA 292 (2001).

[12] *Rollo*, p. 60.

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We disagree. The evidence is clear that accused forced Myra to have sexual intercourse. She testified:

"Atty. Garcia:

Q: While the accused was having sexual intercourse with you, did you not resist him?
A: Yes, sir, I resisted.

Q: How did you resist your uncle?
A: I boxed him, sir.

Q: With your resistance, was your uncle successful in having sexual intercourse with you?
A: Yes, sir."[13]

It is also shown that the victim was cowed into submission because of the knife poked at her right neck by the accused. She was also warned: "*saan ka nga agriyao ta no agriyao ka patayin ka*," translated: "Don't shout or else I will kill you."[14]

Furthermore, the fact that the accused is the uncle of the victim bolsters the presence of intimidation. It was found by the trial court that the victim looked upon the accused as her father.[15] For a young lass from the province, this circumstance is sufficient to shut her up and give in to the whims of the accused.

The accused also contends that the delay of two (2) years in reporting the acts charged "rendered the truth of her charge doubtful."[16]

Again, we do not agree. The silence of the victim for a period of time does not necessarily indicate a baseless and fabricated charge.[17] This Court has often ruled that delay in reporting

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[13] TSN, December 22, 1997, p. 9.

[14] TSN, Myra Aucena, December 11, 1997, p. 8.

[15] *Rollo*, p. 67; TSN, Wilson Salvador, June 16, 1998, p. 16.

[16] *Rollo*, p. 61.

[17] *People vs. Villanueva*, G.R. Nos. 146464-67, November 15, 2002.

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rape incidents in the face of threats of physical violence cannot be taken against the victim.[18] Rape victims prefer to suffer in private than reveal their ordeal to the public and suffer the humiliation and simultaneously risk the rapists' making good the threat to hurt them.[19] Myra explained why she opted to suffer in silence, *viz*:

"Atty. Garcia:

Q: Those things did to you by your uncle, did you report them to any authorities?
A: Because I was afraid then, sir, I did not report.

Q: Why were you afraid?
A: Because of his threat to kill me, sir."[20]

"Atty. Labog:

Q: You felt sorry for what happened to you the first time, August 30, 1995?
A: Yes, sir.

Q: But you did not tell this experience you had on August 30, 1995 to your *lola*?
A: No sir, because I was afraid.

Q: You were afraid of the accused?
A: Yes, sir.

x x x x x x x x x

Atty. Garcia:

Q: You said that you did not tell your *lola* (about) what happened to you on the night of August 30, 1995, why were you afraid?
A: Because of the threat of my uncle that he is going to kill me and my brother, sir.

Q: When did he make the threat?
A: After having sexual intercourse with me, sir."[21]

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[18] *People vs. De Leon,* 332 SCRA 37 (2000).

[19] *Supra* note 17, citing *People vs. Ardon,* 354 SCRA 609 (2001) and *People vs. Alvero,* 329 SCRA 737 (2001).

[20] TSN, Myra Aucena, December 22, 1997, p. 12.

[21] TSN, Myra Aucena, January 26, 1998, pp. 16 and 21-22.

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The defense of consensual intercourse merits no consideration. The accused has the burden of establishing by convincing proof his affirmative defense of an alleged romantic relationship.[22] The "sweetheart theory" hardly deserves any attention when an accused does not present any evidence, such as love letters, gifts, pictures and the like to show that indeed, he and the private complainant were sweethearts.[23] In the case at bar, the accused was unable to present even an iota of proof to substantiate his claim that he and the complainant are sweethearts. This was brought out in his cross-examination:

"Atty. Garcia:

Q: You said that you have this relationship as sweethearts to (*sic*) the complainant Myra Aucena, is it not?
A: Yes, sir.

Q: Before you became sweethearts, you courted her, of course?
A: Our relationship just developed, sir.

Q: Yes, but before that relationship developed, of course you courted her?
A: I did not court her, it was (*sic*) just developed, sir.

Q: When did you start to have this sweethearts (*sic*) relationship with Myra?
A: Last week of July 1995, sir.

x x x x x x x x x

Q: At (*sic*) this duration of time from July 1995 to January 1997, you as sweethearts with Myra, do you have momentous remembrance given by each other in consideration of being a (*sic*) sweethearts?
A: None, sir.

Q: But you know of course the birthday of Myra?
A: Yes, sir, January 17.

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[22] *People vs. Cepeda*, 324 SCRA 290 (2000); *People vs. Barcelona*, 325 SCRA 168 (2000).

[23] *People vs. Palma*, 308 SCRA 466 (1999).

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Q: Likewise you know the year?
A: January 17, but I cannot remember the year, sir.

Q: So that (during) the duration of your sweethearts (*sic*) with Myra from July 1995 to January 1997, you celebrated her birthday 1996 and 1997 when she was with you?
A: Yes, sir.

Q: And during that this (*sic*) occasion as sweethearts, do you give (a) gift to Myra?
A: None, sir.

Q: How about Myra, does Myra knows (*sic*) your birthday?
A: Yes, sir.

Q: And when you celebrated your birthday, Myra gave you (a) gift as a token of his (*sic*) love to you?
A: None, sir.

x x x x x x x x x

Q: And of course, as shown (*sic*) of your love and devotion with (*sic*) Myra, you even gave material love, money and other gifts?
A: Yes, sir.

Q: But Myra in return never gave you any gift?
A: None, sir.

Q: Even during (C)hristmas and (V)alentine's (D)ay, she never gave you any greeting card or any gift, is it not (*sic*)?
A: None, sir.

Q: During the duration of your sweethearts (*sic*) relationship from July 1995 to January 1997, she did not give you any love letter expressing her love to you?
A: None, sir."[24]

We likewise agree with the argument of the Office of the Solicitor General that even if the trial court acquitted the accused of the subsequent acts of sexual intercourse on the ground that these were already consensual, the ensuing voluntary relationship does not cure the force and intimidation which appellant employed in the initial act constituting one charge for

[24] TSN, Wilson Salvador, June 16, 1998, pp. 12 and 16-18.

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rape.[25] Well-entrenched is the principle that each act of rape is considered separate and distinct from one another.[26] Thus, even if the subsequent acts of sexual intercourse between the accused and the complainant were to be considered as consensual, still this does not negate the fact that their first sexual encounter due to force, constitutes a ground for one charge of rape.

Lastly, the offer of settlement made by the relatives of the accused to Myra's father further militates against the innocence of the accused. Indeed, an offer of compromise by the accused in criminal cases, except those involving quasi-offenses or those allowed by law to be compromised, may be received in evidence as an implied admission of guilt.[27]

Undoubtedly, rape is not a quasi-offense. Thus, the testimony of Sisenando, complainant's father, that the relatives of the accused made two offers to settle with the knowledge of the accused, should be taken as an implied admission of the guilt of the accused, thus:

"Atty. Garcia:

Q: Why did this group come to you on November 22, 1997?
A: They went to our house in order to settle the fault of Wilson Salvador.

Q: And you said they came to offer settlement, what did they offer?
A: The first offer is that they are going to give the land supposed to be inherited by my children.

Q: And you said that is the first offer, was there any other offer?
A: The second offer is that the land supposed to be inherited by Wilson Salvador be offered as payment.

Q: Did you come to know if these persons were authorized by Wilson Salvador to talk to you?
A: Before we had a conversation, I asked first if Wilson Salvador and his mother knows (*sic*) about their offer and they said yes.

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[25] *Rollo*, p. 104.

[26] *People vs. Esguerra*, 256 SCRA 657 (1996).

[27] Section 27, Rule 130 of the Revised Rules of Court.

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Q: With whom did you inquire (about) that information among the persons who came to you?
A: Nelson Salvador, sir."[28]

With regard the monetary award, law and justice dictate that upon the finding of the fact of rape, the award of civil indemnity *ex delicto* becomes mandatory. However, we find the trial court's award of ₱200,000.00 as excessive. Consonant with decided cases, we reduce the civil indemnity to ₱50,000.00.[29] We also grant ₱50,000.00 as moral damages, without need of proof,[30] and ₱25,000.00 as exemplary damages, to discourage abuse of young girls, especially by their relatives.[31]

IN VIEW WHEREOF, the decision of the Regional Trial Court of Cauayan, Isabela, Branch 19, in Criminal Case No. 19-1191, finding accused-appellant Wilson Salvador *y* Gagarin guilty beyond reasonable doubt of the crime of rape committed on August 30, 1995, and sentencing him to suffer the penalty of *reclusion perpetua* is AFFIRMED, with modification that the accused is ordered to pay the victim civil indemnity in the amount of ₱50,000.00, moral damages of ₱50,000.00, and exemplary damages of ₱25,000.00.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.*, concur.

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[28] TSN, Sesinando Aucena, January 26, 1998, p. 30.

[29] *People vs. Ferrer*, G.R. No. 139695, August 26, 2002.

[30] *People vs. Sitao*, G.R. No. 146790, August 22, 2002.

[31] *People vs. Ylanan*, G.R. No. 131812, August 22, 2002.