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SECOND DIVISION

[G.R. No. L-42608. February 6, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **GAVINO TAMPUS *alias* JOVEN**, *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; COMMENCEMENT OF ACTION FOR RAPE; RULE.** — The filing in the city court of a complaint for rape signed by and sworn to before the fiscal by the victim and her mother is sufficient compliance with Article 344 of the Revised Penal Code and Section 4, Rule 110 of the Rules of Court, where such complaint is elevated to the Court of First Instance as part of the record, even if the information subsequently filed in the Court of First Instance is signed by the fiscal alone.

2. **ID.; EVIDENCE; COMPLAINT FORMING PART OF RECORD ELEVATED TO THE COURT OF FIRST INSTANCE IS A MATTER OF JUDICIAL NOTICE.** — A complaint for rape filed in the city court and elevated to the Court of First Instance as part of the record of the case should be presented in evidence. However, even if not offered in evidence, it is a matter of judicial notice.

3. **CRIMINAL LAW; RAPE; COMMISSION THEREOF, NOT NEGATED BY DELAY OF THE VICTIM IN DIVULGING FACT THAT SHE WAS RAPED.** — The delay of a thirteen-year old girl in divulging to her mother and the police the fact that she was raped may not be assigned by the accused as a circumstance casting reasonable doubt on his guilt, because a girl her age should not be expected to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately that she had been forcibly deflowered.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF COMPLAINING WITNESS IN RAPE CASE SHOULD NOT BE RECEIVED WITH PRECIPITATE**

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CREDULITY. — In a rape case the testimony of the complainant should not be received with precipitate credulity; and when conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of most value in judging matters of this kind. Complainant's positive, clear, and convincing testimony that the accused, a neighbor well-known to her, had raped her is sufficient to prove accused's guilt. It is unthinkable that a thirteen-year old victim could have fabricated the details and circumstances recited by her concerning the commission of the rape. The accused did not adduce any reason why she would pretend that she had been raped and then point to him as the author of that heinous offense. Here, we have a case of an artless and guileless barrio girl, a mere teenager who was not animated by any mercenary or dishonest motive in imputing rape to the accused.

APPERANCES OF COUNSEL

Maximo P. Amurao, Jr. for appellant.
Office of the Solicitor General for appellee.

D E C I S I O N

AQUINO, *J.*:

Gavino Tampus appealed from the decision of the Court of First Instance of Agusan del Norte, and Butuan City Branch I, convicting him of rape, sentencing him to *reclusion perpetua* and ordering him to pay complainant Bella Flores the sum of ₱12,000 (Criminal Case No. 386).

The perpetration of the alleged rape was tearfully recounted in court by Bella, the thirteen-year-old victim who finished the third grade. She testified that at about nine o'clock in the evening of June 11, 1972 she was in her house located in Sitio Mamaylan, Barrio Baan, Butuan City. Her companions were her younger brothers, two and five years old. Her mother and stepfather were in the hospital taking care of her sick brother and sister.

When Bella and her brothers were already in bed, she heard Gavino Tampus, 29, married, a *tuba* gatherer whose house was

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around one hundred fifty meters away and who was her nearest neighbor, calling and asking her to open the door. He said that he wanted to borrow the saw of her stepfather so that he could cut the bamboo which he was carrying and make containers (*sugong*) for *tuba*. Bella did not open the door. She told Gavino that her parents were not in the house.

Although Gavino was not welcome, he just the same entered the house by pushing the door made of bamboo. Its wooden lock was broken. Gavino, who was armed with a scythe, entered the sala. He got the saw and sawed the bamboo in the sala while Bella and her brothers watched him. He made six *tuba* containers.

After Gavino had finished the sawing operation, Bella told him to go home because she was sleepy but he refused to leave. He said that he was alone in his house because his wife was in the hospital. He slept on the bench in the sala. Bella placed the lamp near the door of her room. She and her brothers went inside the bedroom to sleep.

Later, or at about two o'clock in the morning (June 12), Bella was awakened because she felt that someone was on top of her. She knew that it was two o'clock because she heard the bell of the Triumph log pond announcing that hour. She saw Gavino, who was completely naked, moving his buttocks up and down into her sexual organ. She had no more panties. She did not know when her panties were removed. She tried to shout but her assailant covered her mouth with his hand. She struggled to free herself from his clutches but due to her physical inferiority she could not dislodge him.

As Gavino was unable to insert his penis into her organ he poked his two fingers into her vagina. That insertion caused her much pain. Gavino kissed her and touched her breasts. Thereafter, he was able to have carnal intercourse with her. She felt excruciating pain when his organ penetrated her private part. When his organ was inside her vagina, she felt as if there was hot water inside her vagina or that some "hot substance" was poured into it. After warning her that he would kill her

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and all the members of her family if what he did to her was revealed to other persons, Gavino returned to the sala. Bella was scared.

Bella cried until she fell asleep. About two hours later, she again felt that Gavino was on top of her. She had forgotten to wear her panties. Again, he kissed her and touched her breasts. He was moving his buttocks up and down (*kisikisi*). She wiggled and tried to prevent him from abusing her but her efforts were in vain. When she asked Gavino why he was ravishing her, he told her to keep quiet. After he had consummated the second assault, he left the house.

It was only on July 8, or twenty-seven days later, after her mother had returned to their home, that she confided to her parents that Gavino had raped her. It took her a long time to reveal the outrage because of the threat made by Tampus.

The police medico-legal officer examined Bella on July 27, 1972. He found that her labia majora and labia minora were coaptated and that there were "old deep hymenal lacerations" in her vagina at the three and one o'clock positions and an old superficial laceration at the eleven o'clock position. Her tight vagina admitted the examiner's index finger. The doctor concluded that Bella had lost her virginity long before the examination.

Bella's statement pointing to Gavino Tampus as the rapist was taken by a policeman on July 29, 1972 and sworn to before the fiscal on August 18, 1972. Her mother's statement was taken by the same policeman on August 10, 1972 and sworn to before the fiscal on September 4, 1972.

Bella and her mother filed in the city court on September 12, 1972 a verified complaint for rape against Tampus (p. 4, Record). Gavino Tampus was arrested on September 15, 1972. He did not appear at the preliminary investigation. The city court elevated the case to the Court of First Instance where on November 22, 1972 the fiscal filed against him an information for simple Rape. As already stated, he was convicted of rape.

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In this appeal, appellant's counsel *de oficio* contends that the trial court erred in assuming jurisdiction over the case and in giving credence to the evidence of the prosecution.

Appellant's first contention is based on the assumption that the criminal action in this case was commenced by the filing of an information. That assumption is wrong. As stated above, the victim and her mother filed the complaint for rape. They signed the *complaint* which was sworn to before the fiscal. That is a sufficient compliance with Article 344 of the Revised Penal Code and Section 4, Rule 110 of the Rules of Court. That complaint is a part of the record which was elevated to the Court of First Instance. It should have been presented in evidence but even if not offered in evidence, it is a matter of judicial notice. (*People vs. Savellano*, L-31227, May 31, 1974, 57 SCRA 320, 324).

Appellant's insinuation that the *information* should have been signed and sworn to by the complainant and her mother is not correct. It is not necessary for the complainant to sign and verify the information for rape filed by the fiscal. (*People vs. Cerena*, 106 Phil. 570).

Accused Tampus pleaded alibi as a defense. He testified that he was not acquainted with the victim and that at the time the rape was committed he was in Mainit, Surigao, around ninety kilometers away from Butuan City. His alibi was corroborated by his younger brother, Felix; his neighbor, Anastacio Narit, and his *tuba* customer, Antonia Abenoja.

The trial court in discrediting Gavino Tampus' alibi said that the testimonies of Felix Tampus, Narit and Abenoja do not inspire belief because of certain discrepancies therein Gavino Tampus did not explain why he was in Mainit, Surigao, on June 12, 1972. The circumstances of his stay in that town were not stated. No one from Mainit testified that he was really in that town when the rape was committed.

The delay of the complainant in divulging the alleged rape to her mother and the police is assigned by the appellant as a circumstance casting reasonable doubt on his guilt. The victim

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explained that she did not reveal to her mother immediately the grievous outrage committed against her because she was afraid that the appellant would make good his threat to kill her and the members of her family.

One should not expect a thirteen-year-old girl to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately that she had been forcibly deflowered. The reported cases on rape contain instances of young girls concealing for sometime the assaults on their virtue because of the rapists' threat on their lives.

Appellant's arguments assailing complainant's credibility were adequately confuted in the prosecution's brief. An unbiased appraisal of complainant's testimony leads to the conclusion that she had truthfully identified the appellant as the rapist. He was the neighbor of complainant girl and was well-known to her and her kid brothers. She had been to his house.

It is unthinkable that the thirteen-year-old victim could have fabricated the details and circumstances recited above concerning the commission of the rape. It may be asked: if she had not been abused by appellant Tampus, why would she frame him up, allow her private organ to be examined, leave the rustic peace and quiet of her barrio, undergo the trouble and shame of a public trial in the city, and answer embarrassing questions about her harrowing experience of having had an involuntary carnal intercourse? Tampus did not adduce any reason why the complainant would pretend that she had been raped and then point to him as the author of that heinous offense.

It is true that in a rape case the testimony of the complainant "should not be received with precipitate credulity; and when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of most value in judging matters of this kind" (*People vs. Fausto*, 51 Phil. 852, 856).

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"The books disclose too many instances of false charges of rape, attempted rape, and kindred offenses to permit the courts to enter a judgment of conviction of a crime of this nature without having in mind the possibility that the complaining witness may have been actuated by some sinister motive in bringing the charge" (*U.S. vs. Ramos*, 35 Phil. 671, 677).

Those judicious observations are not applicable to this case. Here, we have a case of an artless and guileless barrio girl, a mere teenager. She was not animated by any mercenary or dishonest motive in imputing rape to the accused. She had gone to court to bring to justice the satyr whose beastliness was the cause of her loss of chastity at an early age.

We hold that complainant's positive, clear and convincing testimony is sufficient to prove appellant's guilt. It was not overthrown by his alibi which his counsel *de oficio* did not care to mention at all in his brief. (See *People vs. Delfinado*, 61 Phil. 694 and *People vs. Dazo and Tiangzon*, 58 Phil. 420.) She testified at four hearings. She was subjected to a grueling cross-examination. She stuck to her testimony that appellant Tampus raped her.

The crime alleged and proven in this case is simple rape aggravated by dwelling. The penalty of *reclusion perpetua* was correctly imposed by the trial court (Arts. 63 and 335, Revised Penal Code).

WHEREFORE, the trial court's judgment is affirmed. Costs against the appellant.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., and *Santos, JJ.*, concur.