Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 88724 April 3, 1990

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
CEILITO ORITA alias "Lito," defendant-appellant.

The Office of the Solicitor General for plaintiff-appellee.
C. Manalo for defendant-appellant.

MEDIALDEA, *J.:*

The accused, Ceilito Orita *alias* Lito, was charged with the crime of rape in Criminal Case No. 83-031-B before the Regional Trial Court, Branch II, Borongan, Eastern Samar. The information filed in the said case reads as follows (p. 47, *Rollo*):

> The undersigned Second Assistant Provincial Fiscal upon prior complaint under oath by the offended party, accuses CEILITO ORITA *alias* LITO of the crime of Rape committed as follows:
>
> That on March 20, 1983, at about 1:30 o'clock in the morning inside a boarding house at Victoria St., Poblacion, Borongan, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, above named accused with lewd designs and by the use of a Batangas knife he conveniently provided himself for the purpose and with threats and intimidation, did, then and there wilfully, unlawfully and feloniously lay with and succeeded in having sexual intercourse with Cristina S. Abayan against her will and without her consent.
>
> CONTRARY TO LAW.

Upon being arraigned, the accused entered the plea of not guilty to the offense charged. After the witnesses for the People testified and the exhibits were formally offered and admitted, the prosecution rested its case. Thereafter, the defense opted not to present any exculpatory evidence and instead filed a Motion to Dismiss. On August 5, 1985, the trial court rendered its decision, the dispositive portion of which reads (pp. 59-60, *Rollo*):

> WHEREFORE. the Court being morally certain of the guilt of accused CEILITO ORITA @ LITO, of the crime of Frustrated Rape (Art. 335, RPC), beyond reasonable doubt, with the aggravating circumstances of dwelling and nightime (*sic*) with no mitigating circumstance to offset the same, and considering the provisions of the Indeterminate Sentence Law, imposes on accused an imprisonment of TEN (10) YEARS and ONE (1) DAY, *PRISION MAYOR*, as minimum to TWELVE (12) YEARS *PRISION MAYOR*, maximum; to indemnify CRISTINA S. ABAYAN, the amount of Four Thousand (P4,000.00) Pesos, without subsidiary imprisonment in case of insolvency, and to pay costs.
>
> SO ORDERED.

Not satisfied with the decision, the accused appealed to the Court of Appeals. On December 29, 1988, the Court of Appeals rendered its decision, the dispositive portion of which reads (p. 102, *Rollo*):

> WHEREFORE, the trial court's judgment is hereby MODIFIED, and the appellant found guilty of the crime of rape, and consequently, sentenced to suffer imprisonment of *reclusion perpetua* and to indemnify the victim in the amount of P30,000.00.
>
> SO ORDERED.

On January 11, 1989, the Court of Appeals issued a resolution setting aside its December 29, 1988 decision and forwarded the case to this Court, considering the provision of Section 9, paragraph 3 of Batas Pambansa Blg. 129 in conjunction with Section 17, paragraph 3, subparagraph 1 of the Judiciary Act of 1948.

The antecedent facts as summarized in the People's brief are as follows (pp. 71-75, *Rollo*):

> Complainant Cristina S. Abayan was a 19-year old freshman student at the St. Joseph's College at Borongan, Eastern Samar. Appellant was a Philippine Constabulary (PC) soldier.
>
> In the early morning of March 20, 1983, complainant arrived at her boarding house. Her classmates had just brought her home from a party (p. 44, tsn, May 23, 1984). Shortly after her classmates had left, she knocked at the door of her boarding house (p. 5, *ibid*). All of a sudden, somebody held her and poked a knife to her neck. She then recognized appellant who was a frequent visitor of another boarder (pp. 8-9, *ibid*).
>
> She pleaded with him to release her, but he ordered her to go upstairs with him. Since the door which led to the first floor was locked from the inside, appellant forced complainant to use the back door leading to the second floor (p. 77, *ibid*). With his left arm wrapped around her neck and his right hand poking a "balisong" to her neck, appellant dragged complainant up the stairs (p. 14, *ibid*). When they reached the second floor, he commanded her to look for a room. With the Batangas knife still poked to her neck, they entered complainant's room.
>
> Upon entering the room, appellant pushed complainant who hit her head on the wall. With one hand holding the knife, appellant undressed himself. He then ordered complainant to take off her clothes. Scared, she took off her T-shirt. Then he pulled off her bra, pants and panty (p. 20, *ibid*).
>
> He ordered her to lie down on the floor and then mounted her. He made her hold his penis and insert it in her vagina. She followed his order as he continued to poke the knife to her. At said position, however, appellant could not fully penetrate her. Only a portion of his penis entered her as she kept on moving (p. 23, *ibid*).
>
> Appellant then lay down on his back and commanded her to mount him. In this position, only a small part again of his penis was inserted into her vagina. At this stage, appellant had both his hands flat on the floor. Complainant thought of escaping (p. 20, *ibid*).
>
> She dashed out to the next room and locked herself in. Appellant pursued her and climbed the partition. When she saw him inside the room, she ran to another room. Appellant again chased her. She fled to another room and jumped out through a window (p. 27, *ibid*).
>
> Still naked, she darted to the municipal building, which was about eighteen meters in front of the boarding house, and knocked on the door. When there was no answer, she ran around the building and knocked on the back door. When the policemen who were inside the building opened the door, they found complainant naked sitting on the stairs crying. Pat. Donceras, the first policeman to see her, took off his jacket and wrapped it around her. When they discovered what happened, Pat. Donceras and two other policemen rushed to the boarding house. They heard a sound at the second floor and saw somebody running away. Due to darkness, they failed to apprehend appellant.
>
> Meanwhile, the policemen brought complainant to the Eastern Samar Provincial Hospital where she was physically examined.
>
> Dr. Ma. Luisa Abude, the resident physician who examined complainant, issued a Medical Certificate (Exhibit "A") which states:
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> > Physical Examination — Patient is fairly built, came in with loose clothing with no under-clothes; appears in state of shock, per unambulatory.
> >
> > PE Findings — Pertinent Findings only.
> >
> > Neck- — Circumscribed hematoma at Ant. neck.
> >
> > Breast — Well developed, conical in shape with prominent nipples; linear abrasions below (L) breast.
> >
> > Back — Multiple pinpoint marks.
> >
> > Extremities — Abrasions at (R) and (L) knees.
> >
> > Vulva — No visible abrasions or marks at the perineal area or over the vulva, *errythematous* (*sic*) *areas noted surrounding vaginal orifice, tender,* hymen intact; no laceration fresh and old noted; examining finger can barely enter and with difficulty; vaginal canal tight; no discharges noted.

As aforementioned, the trial court convicted the accused of frustrated rape.

In this appeal, the accused assigns the following errors:

1) The trial court erred in disregarding the substantial inconsistencies in the testimonies of the witnesses; and

2) The trial court erred in declaring that the crime of frustrated rape was committed by the accused.

The accused assails the testimonies of the victim and Pat. Donceras because they "show remarkable and vital inconsistencies and its incredibility amounting to fabrication and therefore casted doubt to its candor, truth and validity." (p. 33, *Rollo*)

A close scrutiny of the alleged inconsistencies revealed that they refer to trivial inconsistencies which are not sufficient to blur or cast doubt on the witnesses' straightforward attestations. Far from being badges of fabrication, the inconsistencies in their testimonies may in fact be justifiably considered as manifestations of truthfulness on material points. These little deviations also confirm that the witnesses had not been rehearsed. The most candid witnesses may make mistakes sometimes but such honest lapses do not necessarily impair their intrinsic credibility (People v. Cabato, G.R. No. L-37400, April 15, 1988, 160 SCRA 98). Rather than discredit the testimonies of the prosecution witnesses, discrepancies on minor details must be viewed as adding credence and veracity to such spontaneous testimonies (Aportadera et al. v. Court of Appeals, et al., G.R. No. L-41358, March 16, 1988, 158 SCRA 695). As a matter of fact, complete uniformity in details would be a strong indication of untruthfulness and lack of spontaneity (People v. Bazar, G.R. No. L-41829, June 27, 1988, 162 SCRA 609). However, one of the alleged inconsistencies deserves a little discussion which is, the testimony of the victim that the accused asked her to hold and guide his penis in order to have carnal knowledge of her. According to the accused, this is strange because "this is the only case where an aggressor's advances is being helped-out by the victim in order that there will be a consumation of the act." (p. 34, *Rollo*). The allegation would have been meritorious had the testimony of the victim ended there. The victim testified further that the accused was holding a Batangas knife during the aggression. This is a material part of the victim's testimony which the accused conveniently deleted.

We find no cogent reason to depart from the well-settled rule that the findings of fact of the trial court on the credibility of witnesses should be accorded the highest respect because it has the advantage of observing the demeanor of witnesses and can discern if a witness is telling the truth (People v. Samson, G.R. No. 55520, August 25, 1989). We quote with favor the trial court's finding regarding the testimony of the victim (p 56, *Rollo*):

> As correctly pointed out in the memorandum for the People, there is not much to be desired as to the sincerity of the offended party in her testimony before the court. Her answer to every question profounded (*sic*), under all circumstances, are plain and straightforward. To the Court she was a picture of supplication hungry and thirsty for the immediate vindication of the affront to her honor. It is inculcated into the mind of the Court that the accused had wronged her; had traversed illegally her honor.

When a woman testifies that she has been raped, she says in effect all that is necessary to show that rape was committed provided her testimony is clear and free from contradiction and her sincerity and candor, free from suspicion (People v Alfonso, G.R. No. 72573, August 31, 1987, 153 SCRA 487; People v. Alcid, G.R. Nos. 66387-88, February 28, 1985, 135 SCRA 280; People v. Soterol G.R. No. 53498, December 16, 1985, 140 SCRA 400). The victim in this case did not only state that she was raped but she testified convincingly on how the rape was committed. The victim's testimony from the time she knocked on the door of the municipal building up to the time she was brought to the hospital was corroborated by Pat. Donceras. Interpreting the findings as indicated in the medical certificate, Dr. Reinerio Zamora (who was presented in view of the unavailability of Dr. Abude) declared that the abrasions in the left and right knees, linear abrasions below the left breast, multiple pinpoint marks, circumscribed hematoma at the anterior neck, erythematous area surrounding the vaginal orifice and tender vulva, are conclusive proof of struggle against force and violence exerted on the victim (pp. 52-53, *Rollo*). The trial court even inspected the boarding house and was fully satisfied that the narration of the scene of the incident and the conditions therein is true (p. 54, *Rollo*):

> . . . The staircase leading to the first floor is in such a condition safe enough to carry the weight of both accused and offended party without the slightest difficulty, even in the manner as narrated. The partitions of every room were of strong materials, securedly nailed, and would not give way even by hastily scaling the same.

A little insight into human nature is of utmost value in judging rape complaints (People v. Torio, et al., G.R. No. L-48731, December 21, 1983, 126 SCRA 265). Thus, the trial court added (p. 55, *Rollo*):

> . . . And the jump executed by the offended party from that balcony (opening) to the ground which was correctly estimated to be less than eight (8) meters, will perhaps occasion no injury to a frightened individual being pursued. Common experience will tell us that in occasion of conflagration especially occuring (*sic*) in high buildings, many have been saved by jumping from some considerable heights without being injured. How much more for a frightened barrio girl, like the offended party to whom honor appears to be more

> valuable than her life or limbs? Besides, the exposure of her private parts when she sought assistance from authorities, as corroborated, is enough indication that something not ordinary happened to her unless she is mentally deranged. Sadly, nothing was adduced to show that she was out of her mind.

In a similar case (People v. Sambili G.R. No. L-44408, September 30, 1982, 117 SCRA 312), We ruled that:

> What particularly imprints the badge of truth on her story is her having been rendered entirely naked by appellant and that even in her nudity, she had to run away from the latter and managed to gain sanctuary in a house owned by spouses hardly known to her. All these acts she would not have done nor would these facts have occurred unless she was sexually assaulted in the manner she narrated.

The accused questions also the failure of the prosecution to present other witnesses to corroborate the allegations in the complaint and the non-presentation of the medico-legal officer who actually examined the victim. Suffice it to say that it is up to the prosecution to determine who should be presented as witnesses on the basis of its own assessment of their necessity (Tugbang v. Court of Appeals, et al., G.R. No. 56679, June 29, 1989; People v. Somera, G.R. No. 65589, May 31, 1989). As for the non-presentation of the medico-legal officer who actually examined the victim, the trial court stated that it was by agreement of the parties that another physician testified inasmuch as the medico-legal officer was no longer available. The accused did not bother to contradict this statement.

Summing up, the arguments raised by the accused as regards the first assignment of error fall flat on its face. Some were not even substantiated and do not, therefore, merit consideration. We are convinced that the accused is guilty of rape. However, We believe the subject matter that really calls for discussion, is whether or not the accused's conviction for *frustrated* rape is proper. The trial court was of the belief that there is no conclusive evidence of penetration of the genital organ of the victim and thus convicted the accused of frustrated rape only.

The accused contends that there is no crime of frustrated rape. The Solicitor General shares the same view.

Article 335 of the Revised Penal Code defines and enumerates the elements of the crime of rape:

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

Carnal knowledge is defined as the act of a man in having sexual bodily connections with a woman (Black's Law Dictionary. Fifth Edition, p. 193).

On the other hand, Article 6 of the same Code provides:

> Art. 6. *Consummated, frustrated, and attempted felonies*. — Consummated felonies as well as those which are frustrated and attempted, are punishable.
>
> A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.
>
> There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

Correlating these two provisions, there is no debate that the attempted and consummated stages apply to the crime of rape. Our concern now is whether or not the frustrated stage applies to the crime of rape.

The requisites of a frustrated felony are: (1) that the offender has performed all the acts of execution which would produce the felony and (2) that the felony is not produced due to causes independent of the perpetrator's will. In the leading case of *United States v. Eduave*, 36 Phil. 209, 212, Justice Moreland set a distinction between attempted and frustrated felonies which is readily understood even by law students:

. . . A crime cannot be held to be attempted unless the offender, after beginning the commission of the crime by overt acts, is prevented, against his will, by some outside cause from performing all of the acts which should produce the crime. In other words, to be an attempted crime the purpose of the offender must be thwarted by a foreign force or agency which intervenes and compels him to stop prior to the moment when he has performed all of the acts which should produce the crime as a consequence, which acts it is his intention to perform. If he has performed all of the acts which should result in the consummation of the crime and voluntarily desists from proceeding further, it can not be an attempt. The essential element which distinguishes attempted from frustrated felony is that, in the latter, there is no intervention of a foreign or extraneous cause or agency between the beginning of the commission of the crime and the moment when all of the acts have been performed which should result in the consummated crime; while in the former there is such intervention and the offender does not arrive at the point of performing all of the acts which should produce the crime. He is stopped short of that point by some cause apart from his voluntary desistance.

Clearly, in the crime of rape, from the moment the offender has carnal knowledge of his victim he actually attains his purpose and, from that moment also all the essential elements of the offense have been accomplished. *Nothing more is left to be done by the offender, because he has performed the last act necessary to produce the crime*. *Thus, the felony is consummated*. In a long line of cases (People v. Oscar, 48 Phil. 527; People v. Hernandez, 49 Phil. 980; People v. Royeras, G.R. No. L-31886, April 29, 1974, 56 SCRA 666; People v. Amores, G.R. No. L-32996, August 21, 1974, 58 SCRA 505), We have set the uniform rule that for the consummation of rape, perfect penetration is not essential. Any penetration of the female organ by the male organ is sufficient. Entry of the labia or lips of the female organ, without rupture of the hymen or laceration of the vagina is sufficient to warrant conviction. *Necessarily, rape is attempted if there is no penetration of the female organ* (People v. Tayaba, 62 Phil. 559 People v. Rabadan et al., 53 Phil. 694; United States v. Garcia: 9 Phil. 434) *because not all acts of execution was performed*. *The offender merely commenced the commission of a felony directly by overt acts*. Taking into account the nature, elements and manner of execution of the crime of rape and jurisprudence on the matter, it is hardly conceivable how the frustrated stage in rape can ever be committed.

Of course, We are aware of our earlier pronouncement in the case of People v. Eriña 50 Phil. 998 [1927] where We found the offender guilty of frustrated rape there being no conclusive evidence of penetration of the genital organ of the offended party. However, it appears that this is a "stray" decision inasmuch as it has not been reiterated in Our subsequent decisions. Likewise, We are aware of Article 335 of the Revised Penal Code, as amended by Republic Act No. 2632 (dated September 12, 1960) and Republic Act No. 4111 (dated March 29, 1965) which provides, in its penultimate paragraph, for the penalty of death when the rape is attempted or *frustrated* and a homicide is committed by reason or on the occasion thereof. We are of the opinion that this particular provision on frustrated rape is a dead provision. The Eriña case, *supra*, might have prompted the law-making body to include the crime of frustrated rape in the amendments introduced by said laws.

In concluding that there is no conclusive evidence of penetration of the genital organ of the victim, the trial court relied on the testimony of Dr. Zamora when he "categorically declared that the findings in the vulva does not give a concrete disclosure of penetration. As a matter of fact, he tossed back to the offended party the answer as to whether or not there actually was penetration." (p. 53, *Rollo*) Furthermore, the trial court stated (p. 57, *Rollo*):

. . . It cannot be insensible to the findings in the medical certificate (Exhibit "A") as interpreted by Dr. Reinerio Zamora and the equivocal declaration of the latter of uncertainty whether there was penetration or not. It is true, and the Court is not oblivious, that conviction for rape could proceed from the uncorroborated testimony of the offended party and that a medical certificate is not necessary (People v. Royeras People v. Orteza, 6 SCRA 109, 113). But the citations the people relied upon cannot be applicable to the instant case. The testimony of the offended party is at variance with the medical certificate. As such, a very disturbing doubt has surfaced in the mind of the court. It should be stressed that in cases of rape where there is a positive testimony and a medical certificate, both should in all respect, compliment each other, for otherwise to rely on the testimony alone in utter disregard of the manifest variance in the medical certificate, would be productive of mischievous results.

The alleged variance between the testimony of the victim and the medical certificate does not exist. On the contrary, it is stated in the medical certificate that the vulva was erythematous (which means marked by abnormal redness of the skin due to capillary congestion, as in inflammation) and tender. It bears emphasis that Dr. Zamora *did not rule out* penetration of the genital organ of the victim. He merely testified that there was uncertainty whether or not there was penetration. Anent this testimony, the victim positively testified that there was penetration, even if only partially (pp. 302, 304, t.s.n., May 23, 1984):

> Q Was the penis inserted on your vagina?
>
> A It entered but only a portion of it.
>
> x x x x x x x x x
>
> Q What do you mean when you said comply, or what act do you referred (*sic*) to, when you said comply?

A I inserted his penis into my vagina.

Q And was it inserted?

A Yes only a little.

The fact is that in a prosecution for rape, the accused may be convicted even on the sole basis of the victim's testimony if credible (People v. Tabago, G.R. No. 69778, November 8, 1988, 167 SCRA 65; People v. Aragona, G.R. No. L-43752, September 19, 1985, 138 SCRA 569; People v. Taduyo, G.R. Nos. L-37928-29, September 29, 1987, 154 SCRA 349). Moreover, Dr. Zamora's testimony is merely corroborative and is not an indispensable element in the prosecution of this case (People v. Alfonso, *supra*).

Although the second assignment of error is meritorious, it will not tilt the scale in favor of the accused because after a thorough review of the records, We find the evidence sufficient to prove his guilt beyond reasonable doubt of the crime of consummated rape.

Article 335, paragraph 3, of the Revised Penal Code provides that whenever the crime of rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. The trial court appreciated the aggravating circumstances of dwelling and nighttime. Thus, the proper imposable penalty is death. In view, however, of Article 111, Section 19(1) of the 1987 Constitution and Our ruling in *People v. Millora, et al*., G.R. Nos. L-38968-70, February 9, 1989, that the cited Constitutional provision did not declare the abolition of the death penalty but merely prohibits the imposition of the death penalty, the Court has since February 2, 1987 not imposed the death penalty whenever it was called for under the Revised Penal Code but instead reduced the same to *reclusion perpetua* (People v. Solis, et al., G.R. Nos. 78732-33, February 14, 1990). *Reclusion perpetua*, being a single indivisible penalty under Article 335, paragraph 3, is imposed regardless of any mitigating or aggravating circumstances (in relation to Article 63, paragraph 1, Revised Penal Code; *see* People v. Arizala, G.R. No. 59713, March 15, 1982, 112 SCRA 615; People v. Manzano, G.R. No. L38449, November 25, 1982, 118 SCRA 705; People v. Ramirez, G.R. No. 70744, May 31, 1985, 136 SCRA 702).

ACCORDINGLY, the decision of the Regional Trial Court is hereby MODIFIED. The accused Ceilito Orita is hereby found guilty beyond reasonable doubt of the crime of rape and sentenced to *reclusion perpetua* as well as to indemnify the victim in the amount of P30,000.00.

SO ORDERED.

Narvasa, Cruz, Gancayco and Griño-Aquino, JJ., concur.
