

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY ALCOVENDAS Y HULATON, ACCUSED-APPELLANT.

Ponente: ROMILLA-LONTOK, J.

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ROMILLA-LONTOK, J.:

Before Us on intermediate appeal is the Decision dated February 17, 2004 of the Regional Trial Court of Caloocan City, Branch 128, in Criminal Cases Nos. C-57922-23, convicting the appellant of the crime of Rape in Relation to RA 7610, and sentencing the accused to suffer two (2) penalties of death by lethal injection. The dispositive portion is as follows:

“WHEREFORE, finding the accused Jimmy Alcovendas guilty beyond reasonable doubt of the crime of Rape on two counts, he is hereby sentenced to suffer two (2) death by lethal injection. He is further order to indemnify the offended party the sum of fifty thousand for each offense charged as moral damages.

The Warden of Caloocan City is hereby ordered commit the person of accused Jimmy Alcovendas to the National Bilibid Prison to serve his sentences.

Let the entire record of this case be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED.”

Facts antecedent to the appeal are as follows:

Appellant Jimmy Alcovendas was charged with two (2) counts of Rape, in two separate informations which read as follows:

“Crim. Case no. C-57922:

That sometime during the month of August, 1999, in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the paternal uncle of Elina Alcovendas, with lewd design and by means of force and intimidation employed upon the person of one Elina Alcovendas y Quinto, a minor of 11 years of age, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge with said Elina Alcovendas Y Quinto, against the latter's will and without her consent.

Contrary to law.

Crim. Case No. C-57923:

That on or about the 20th day of September, 1999, in Caloocan city, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the paternal uncle of Elina Alcovendas, with lewd design and by means of force and intimidation employed upon the person of one Elina Alcovendas y Quinto, a minor of 11 years of age, did then and there wilfully, unlawfully and feloniously lie and have carnal knowledge with said Elina Alcovendas Y Quinto, against the latter's will and without her consent.

Contrary to law.”[1]

The accused when arraigned pleaded not guilty. Pre-trial and trial were set.

The prosecution presented seven witnesses, namely: Elina Alcovendas, Gina Tarinting, Ernesto Alcovendas, Feliciano Aguilar, SPO4 Eugene De Dios, Estelito Estrella and Dr. Arnel Marquez.

Elina Alcovendas, a daughter of spouses Ernesto and Andrea Alcovendas born on October 10, 1998 (Exhibit "F"), is a student enrolled in Marillac. Accused Jimmy Alcovendas is a brother of Ernesto.[2]

In the evening of September 20, 1999, Elina was left at home with her two (2) younger siblings. Her mother was at the house of an elder sister. Her father was at work. Accused fetched her to take care of his child. Upon reaching Jimmy's house, he closed the door and undressed Elina who boxed and kicked him. The accused was armed with a bolo. Accused made her lie down. He inserted his penis inside her vagina ("yung ari niya inilagay niya sa ari ko"). He kissed her on the lips. He threatened Elina not to tell anyone about the incident. Elina went home and cried.[3]

The next day she told her mother about what happened. She was advised not to tell her father for fear that he might kill Jimmy. Elina told a friend, Ate Gina, who accompanied her to report the incident to the barangay officials of their place.

She spoke of another incident of rape committed on her by Jimmy in August, 1999.[4]

Ernesto Alcovendas is Elina's father. Sometime in October, 1999, Elina told him that Jimmy sexually molested her. Elina related the incident to her Ate Gina on account of Jimmy's threats to kill her. He confronted Jimmy about the matter but the latter denied the accusation.[5]

Gina Tarinting, another prosecution witness, testified that Elina was entrusted to her by Ernesto as a companion so Elina temporarily stayed with her.

When Elina was staying with her, she attempted to take her back to her family because she was hurting her children but Elina cried "Ayoko, ayoko, Ate, kasi nirape ako ni Uncle Jimmy." Elina told her the sexual molestations started since she was seven (7).[6]

Dr. Arnel Marquez, the Medico-Legal Officer of the PNP Crime Laboratory, Camp Crame, Quezon City, identified the Medico-Legal Certificate (Exhibit "E") issued by Dr. Jonathan Saranillo in connection with the medical examination on Elina. Said certificate states of healed laceration of the hymen at 6:00 and 9:00 o'clock positions and contains the finding that the "subject is in non-virgin state physically."

Estelito Estrella testified that Elina was accompanied by her father when they lodged a complaint against accused at the barangay. Jimmy was invited for questioning during which Elina identified him to have been molesting her.[7]

Feliciano Aguilar, a psychologist from DSWD conducted therapy on Elina. He averred that while Elina was still capable of testifying, she was depressed and emotionally disturbed.

After the prosecution has rested, Jimmy Alcovendas presented his defense.

Jimmy Alcovendas denied raping Elina Alcovendas on August 1999 and on September 20, 1999. He said he was at his place of work in Ortigas, on the latter date of the alleged commission of rape, while he was at his house when the rape of August 1999 occurred.[8]

He alleged that he and his brother had a misunderstanding when he hit the latter with a piece of wood, as he would often go to his house drunk and armed with a knife. This is the reason for lodging false charges of rape against him.[9]

He further testified that when his brother visited him in the city jail, the latter informed him of his intention to desist because his other children told him that it was actually a neighbor, Rolly, who molested Elina Alcovendas.[10]

The trial court convicted the accused of the charges.

The accused appealed and assigned the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE CRIME OF RAPE WAS SUFFICIENTLY ESTABLISHED IN CRIMINAL CASE NO. C-57922.

II

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

Rape is not a simple physical violation-it debases a woman's dignity, leaving a stigma on her honor and scarring her psyche for life.[11] It is highly inconceivable that a young and innocent girl would concoct a tale of defloration if it was not true.

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force and consent becomes immaterial not only because force is not an element of statutory rape, but the absence of a free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven.[12]

The narration of Elina on the rape of September 20,1999 was straightforward, categorical and unflawed by any material or significant inconsistency that she was abused. Despite relentless cross-examination by the defense counsel, Elina remained steadfast, candid and never wavered in her testimonies as to the material facts of the case. The candid narration of the victim of how she was raped bears the earmarks of credibility. She testified as follows:

“Q. When your uncle Jimmy Alcovendas came to fetch you in the evening of September 20, 1999, what did he do to you if any?

A. He held me in my hands and he brought me in their house.

Q. Did you ask him why he was brining (sic) you in their house?

A. No, sir.

Q. Did he talk to you why he was bringing you to their house?

A. No, sir.

Q. And when you arrived at the house of your uncle Jimmy, was thre (sic) anyone in the house of your uncle Jimmy?

A. None, sir.

Q. And when you were inside the house of your uncle Jimmy, what did he do to you if any?

A. He closed the door and then he undress me.

Q. Did he talk to you before he undressed you?

A. No, sir, he just undressed me.

Q. When he undressed you, what did you do if any?

A. I fought back.

Q. How did you fight back?

A. I boxed him, sir.

Q. What did he do when you boxed him?

A. Nothing sir, he just continued in his undressing.

Q. Did he threaten you?

A. Yes, sir.

Fiscal Ralar to Witness -

Q. How did your uncle Jimmy threaten you?

A. He was carrying with him a bolo and he told me not to report to anybody.

Q. And you said that your uncle Jimmy undressed you?

A. Yes, sir.

Q. After your uncle Jimmy undressed you, what did he do next?

A. He made me lie, sir.

Q. And when your uncle Jimmy made you lie, what did he do next?

A. He inserted his penis into my vagina.

“Yung ari niya ay inilagay niya sa ari ko.”

Fiscal Ralar -

May we request that the answer in tagalog be retained in the transcript.

Fiscal Ralar to Witness-

Q. When your uncle inserted his penis inside your vagina, what did he do next?

A. He kissed me in my lips.

Q. What did he do next when he kissed your lips?

A. No more, sir.

Q. After your uncle inserted his penis into your vagina and kissed you, what did you do next?

A. I went home and when I arrived home, I cried.

Q. Before you went home, did your uncle Jimmy talk to you?

A. Yes, sir.

Q. What did he tell you?

A. That I should not report to anybody.”[13]

The defense anchored its appeal on the inconsistencies in the testimony of victim. However, such inconsistencies refer only to minor details and not to the essential facts of the crime. Such minor inconsistencies may even serve to strengthen her credibility as they negate any suspicion that her testimony is fabricated or rehearsed. Even the most candid of witnesses commit mistakes and make confused and inconsistent statements.[14]

The trial court found the testimony of complainant to be spontaneous and credible. She narrated the obscene details of her harrowing experience which no girl of tender age would have known unless she herself had

experienced it. Also, the quarrel between complainant's father and her uncle was not sufficient motive for the parents of Elina to lodge a serious charge of rape against appellant.

It bears stressing that "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." [15] The exact time or date of the commission of rape is not an element of the crime. What is decisive is that the prosecution has sufficiently proved that the appellant committed the crime charged. [16] Moreover, a close scrutiny of the records shows that the supposed flaws bear on relatively minor points and, even taken as a whole, they fail to debunk the gravamen of the accusation that appellant had sexually ravished the victim.

The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein. It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts, as there is hardly a witness who can perfectly remember the details of a crime. Human memory is not as unerring as a photograph. Thus, corroborative evidence in order to be credible need not coincide on all aspects. [17]

The defense also contended that the rape charge is a mere concoction of the father of the private complainant because of the alleged misunderstanding between the appellant and his brother when accused-appellant hit the latter with a piece of wood, as he would often go to his house drunk and armed with a knife.

This Court cannot give much credence to such posture of the defense because no member of a rape victim's family would dare to encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed. [18] There is nothing more unnatural than for a parent to use his offspring as an engine of malice, specially if it will subject a daughter to embarrassment and even stigma. [19]

Furthermore, the defense of the accused-appellant is only alibi and denial. Alibi and denial are among the weakest, if not the weakest, defenses in the criminal prosecution and are practically worthless against the positive identification made by the rape victim. [20] Elina positively identified the accused as the culprit.

In determining the guilt of the accused in rape cases, the Court is guided by the following considerations: (a) that an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense. It, likewise, bears stressing that in all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish his guilt beyond reasonable doubt. [21]

However, in Criminal Case No. C-57922, it was not proven beyond reasonable doubt by the prosecution that accused-appellant had carnal knowledge of Elina. Private complainant appeared to have vague recollection of the alleged sexual molestations occurring previous to September 20, 1999. All that Elina testified is that she had been sexually molested before September 20, 1999, but no other details were given as to the alleged rape.

It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. [22] In Criminal Case No. C-57922, the prosecution failed to present its side with clarity and persuasion.

Anent the penalty imposed by the trial court, a reading of the information filed against the accused-appellant alleged that he is the paternal uncle of Elina. However, such allegation is not enough to impose the penalty of death. The information must specifically state that the accused is related to the victim within the third civil degree

of consanguinity or affinity.

In *People vs Obrique*,^[23] the High Court ruled:

A reading of the information shows that the prosecution failed properly to allege the qualifying circumstance of relationship. The information merely states that the complainant is appellant's niece, without specifying that appellant was a relative by consanguinity within the third civil degree. In the case of *People v. Ferolino*, we ruled: In this case, the allegation that FERLYN is ANTONIO's niece is not specific enough to satisfy the special qualifying circumstances of relationship. If the offender is merely a relation — not a parent, ascendant, step-parent, or guardian or common law spouse of the mother of the victim — it must be alleged in the information that he is a relative by consanguinity or affinity [as the case may be] within the third civil degree. That relationship by consanguinity or affinity was not alleged in the informations in these cases. Even if it was, it was still necessary to further allege that such relationship was within the third civil degree.

The same pronouncement was reiterated in the recent case of *People v. Esperanza*, where we found as fatally defective the allegation that the victim therein was the "niece" of appellant. We further said therein that even granting that the relationship within the third civil degree either of consanguinity or affinity was duly proved during the trial, the same cannot justify the imposition of the death penalty because to do so would deny appellant's constitutional and statutory right to be informed of the nature and cause of the accusation against him.

Appellant, therefore, can only be found guilty of simple rape and sentenced to suffer the penalty of reclusion perpetua.

Under Article 266-B of the Revised Penal Code, the penalty for statutory rape when the victim is under 12 years but over 7 years of age is reclusion perpetua. Moreover, the imposition of the penalty of death is now prohibited under Republic Act No. 9346.

Finally, the award of civil indemnity, in the amount of P50,000.00, which is in the nature of actual or compensatory damages, is mandatory upon a conviction for rape. The award of moral damages is automatically granted in rape cases without need of further proof other than the commission of the crime because it is assumed that a rape victim has actually suffered moral injuries entitling her to an increased amount of P50,000.00.^[24]

In addition, we award the amount of P25,000 as exemplary damages on the basis of the relationship of the appellant to the victim. Although relationship was not properly alleged, said fact was nevertheless proven during trial.^[25] The award is also imposed as a deterrent to people with perverse tendencies or aberrant sexual behavior, from sexually abusing their own kin.

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court as far as Criminal Case No. C-57923 is concerned is hereby **AFFIRMED** with **MODIFICATION** that the penalty is reduced to Reclusion Perpetua. In addition, he is ordered to pay Elina Alcovendas the sum of Fifty Thousand (P50,000.00) Pesos as civil indemnity, Fifty Thousand (P50,000.00) Pesos as moral damages and Twenty Five Thousand (P25,000.00) Pesos as exemplary damages.

Accused-appellant Jimmy Alcovendas is **ACQUITTED** in Criminal Case No. C-57922.

SO ORDERED.

Barrios, (Chairman) and Guariña, III, JJ., concur.

[1] Rollo, pp. 6-7

- [2] TSN, October 25, 2000, pp. 4-5.
- [3] TSN, February 12, 2001, pp. 4-6.
- [4] TSN, February 12, 2001, p. 6.
- [5] TSN, November 27, 2001, pp. 7-8.
- [6] TSN, April 16, 2002, pp. 6-7.
- [7] TSN, July 24, 2001, pp. 2-4.
- [8] Rollo, p. 44.
- [9] TSN, March 11, 2003, pp 3-4.
- [10] Ibid., p. 5.
- [11] People of the Philippines vs. Gutierrez, G.R. Nos. 147656-58, May 9, 2003.
- [12] People vs. Dimaano, G.R. No. 168168. September 14, 2005.
- [13] TSN, February 12, 2001, pp. 4-5.
- [14] People of the Philippines v. Alolod, 266 SCRA 154.
- [15] People of the Philippines vs. Colisao, 372 SCRA 20.
- [16] People of the Philippines vs. Abon, G.R. No. 130662, October 14, 2003, citing People vs. Invencion, G.R. No. 131636, March 5, 2003.
- [17] People of the Philippines vs Bulan, G.R. No. 143404, June 8, 2005.
- [18] People of the Philippines vs. Abangin, 297 SCRA 655
- [19] People of the Philippines vs. Balisnomo, 265 SCRA 98
- [20] People of the Philippines vs. Amado Isla, Jr., 382 SCRA 662.
- [21] People of the Philippines vs. Ulit, G.R. Nos. 131799-801, February 23, 2004.
- [22] People of the Philippines v. Divina, 391 SCRA 430, 435 (2002).
- [23] G.R. No. 146859, January 20, 2004.
- [24] People of the Philippines vs. Suarez, G.R. Nos. 153573-75, April 15, 2005.
- [25] People of the Philippines vs. Obrique, G.R. No. 146859, January 20,2004.

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