

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH BALBIN A.K.A. "PARKING"; ACCUSED-APPELLANT.

Ponente: SADANG, J.

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SADANG, J.:

This is an appeal from the Decision[1] dated June 13, 2012 of the Regional Trial Court of Tagudin, Ilocos Sur, Branch 25 in Criminal Case No. 1081-T finding accused-appellant Joseph Balbin alias "Parking" (hereafter, accused) guilty beyond reasonable doubt of the crime of rape as defined under Article 266-A and penalized under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353.

The Information[2] indicting accused reads:

"That on or about the 8th day of January, 2009, in the municipality of Suyo, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously rape one AAA,[3] 13 years old, by means of force and intimidation and against the latter's will and consent.

CONTRARY TO LAW."

At the arraignment on January 22, 2010, accused pleaded not guilty to the crime charged;[4] thereafter, pre-trial and trial ensued.

AAA testified that she was born on August 19, 1995[5] and is thirteen (13) years old.[6] Since she was in Grade 5, she has been residing in the house of Mila Lapastura (Mila), a blind woman.[7] Mila and her son Victor also lived in the house. The house was not fenced and had front and back doors but the back door had no lock.[8] She knows accused because he came to the house every afternoon. At around 8 PM on January 8, 2009, while AAA was preparing her bed on the second floor, accused suddenly entered her room. The light had been turned off[9] but AAA was able to identify accused's face by the light from downstairs that passed through the spaces on the bamboo floor. Accused covered AAA's mouth, threatened to kill her family, and boxed her on the stomach and she lost consciousness. When she came to at 6 AM the following day, AAA felt pain in her stomach and vagina and she noticed that her shorts and panty were a bit lowered. She took a bath and noted that her panty had blood stains. Because of accused's threats, AAA went about her usual tasks and did not tell Mila about what happened but all the while she felt dizzy. In February 2009, AAA did not menstruate. She had a menstruation in March 2009 which did not stop for one month. Mila's cousin, Rhoda Lapastura, brought AAA to the doctor for a check-up and the results of an ultrasound showed that AAA was pregnant. Due to her condition, AAA was transferred to the San Fernando Regional Hospital and a curettage ("raspa") was performed on her. It was then that AAA reported the incident to Noly Lapastura and to her family.[10] They went to the police station where she executed a sworn statement[11] (Exh. A) regarding the incident.

The testimony of the physician who examined AAA was dispensed with after the defense stipulated on the Medico-Legal Certificate[12] (Exh. C) and the ultrasound images[13] (Exh. D).[14] In its comment to the prosecution's offer of evidence, the defense stated that it has no objections to said exhibits as to their existence,

genuineness and due execution but averred that the documents do not prove rape and who committed it.

The defense filed a Motion for Leave of Court to File Demurrer to Evidence.[15] The trial court granted the motion and accused filed a Demurrer to Evidence.[16] However, the demurrer was denied in an Order[17] dated August 1, 2011 and the defense presented its witnesses.

Accused testified that he knows Mila because she is a neighbor and he used to go to her house once a week[18] because Victor would invite him to have a drink after they finished planting rice. He is aware that AAA stays in the house of Mila but did not know her personally. In the evening of January 8, 2009, he was in the house of his grandmother, Rosita Fabro (Rosita), attending the birthday party of her son, Moises Fabro. Rosita's house was about 800 meters[19] from the house of Mila. At 8:00 PM he was still in the house because Rosita would not allow him to go home as it was already late.

Accused denied that he went to Mila's house that night or that he entered AAA's room and boxed her. He came to know of the rape accusation against him only when the barangay captain, the policemen, and Victor came to his house to take him to the police station where he was investigated and thereafter released. After January 8, 2009 and before he was invited by the police, he was still able to see AAA in Mila's house when he went there to drink with Victor. He does not know why AAA was accusing him of rape.[20]

Anita Balbin, accused's wife, corroborated his story. Anita testified that on the night of January 8, 2009, she, accused, and their son Mark Jansen were in the house of Rosita for the birthday party of Moises Fabro. They arrived at 7:00 PM and the celebration ended at around 10:30 PM. After the party, they slept in the house because Rosita would not allow them to leave as it was already late and it was raining hard. The other guests left because their houses were nearby. They went home at 7:00 AM the next day.[21] Anita admitted that she was invited to the celebration to help in serving the food but she insisted that her husband was always beside her.[22]

Maricar Saydoquien (Maricar) testified that she and AAA are former best friends. Sometime in 2009, she learned that AAA was allegedly raped and underwent curettage. At that time, she and AAA were no longer on speaking terms but AAA asked one of her relatives to call for Maricar. She went to Mila's house and asked AAA to tell the truth. AAA narrated that one night, while she was sleeping, she heard footsteps coming to her room and the person who entered boxed her and she lost consciousness. However, AAA did not say who attacked her. Mila then talked to Maricar and told her that if a policeman asks her about what happened to AAA, she should state that it was the accused who did it. Maricar felt bothered by her conscience so she refused to become a witness. She admitted that Anita is her aunt but denied that she is testifying for accused because they are relatives.[23]

On June 13 2012, the court a quo promulgated the assailed Decision, the fallo[24] of which reads:

WHEREFORE, in view of all the foregoing, this Court finds the accused JOSEPH BALBIN alias "PARKING" GUILTY BEYOND REASONABLE DOUBT of the crime of Rape defined and penalized under Paragraph 1, Subparagraph 13, in relation to Article 226-B of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua and to pay AAA the amount of P75,000.00 as civil indemnity and P50,000.00 as moral [sic] damages.

SO ORDERED.

Hence, this appeal[25] wherein accused alleges that:[26]

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

RULING

The appeal is not meritorious.

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. The gravamen of rape is carnal knowledge of a woman against her will or without her consent.[27]

The elements of rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended, are: (1) the offender is a man who had carnal knowledge of a woman; and (2) he accomplished such act through force or intimidation upon her; or she is deprived of reason or otherwise unconscious; or she is under 12 years of age or is demented.[28]

Because of its intimate nature, rape is usually a crime bereft of witnesses and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. When the victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof.[29]

AAA testified on the assault on her womanhood thus:

Q:

And what happened at about 8:00 p.m. on January 8, 2009?

A:

While I was preparing my bed for me to sleep Parking suddenly entered my room, ma'am.

x x x x x x x x

Q:

How were you able to identify that it was Parking who entered your room?

A:

I saw his face because there was light downstairs, ma'am.

x x x x x x x x

Q:

And when Parking arrived in your room, what did he do?

A:

He covered my mouth, ma'am.

x x x x x x x x

Q:

And what did Parking say when he covered your mouth?

A:

When I talked about it, he will kill my family, ma'am.

x x x x x x x x

Q:

And then after he covered your mouth what did Parking do next?

A:

He boxed me ma'am (witness is pointing to her stomach).

Q:

And was it painful when he boxed you?

A:

Yes ma'am I lost my consciousness.

Q:

And then what happened next?

A:

I do not know ma'am because I lost my consciousness that night.

Q:

And when did you regain your consciousness?

A:

Six a. m. ma'am

Q:

On the following morning?

A:

Yes, ma'am

Q:

And what did you observe in your clothes?

A:

My shorts were lowered a bit ma'am

Q:

How about your panty?

A:

Also lowered a bit, ma'am

Q:

And what did you feel?

A:

Painful, ma'am.

Q:

What is painful?

A:

My stomach which he boxed and my vagina (mabagbagi)

x x x x x x x x

Q:

And what happened afterwards when your shorts and panty have been lowered a bit?

A:

I took a bath and I saw that my panty has bloodstain ma'am.

x x x x x x x x

Q:

Did you have your menstruation on January 8, 2009?

A:

No, ma'am.

x x x x x x x x

Q:

How about in March 2009 do you have your menstruation?

A:

Yes ma'am.

Q:

And what happened to your menstruation?

A:

The blood coming out did not stop ma'am.

Q:

How long was your menstruation then?

A:

One (1) month, ma'am.

x x x x x x x x

Q:

Did you go to the doctor then?

A:

Yes ma'am

x x x x x x x x

Q:

What happened when you had your check-up?

A:

They conducted an Ultra-sound and they told me that I am pregnant

Q:

Aside from Parking did you have intercourse with any other man?

A:

None ma'am.[30]

We agree with the trial court that AAA's testimony is credible, straightforward, and categorical. It is also consistent with and corroborated by the Medico-Legal Certificate, dated April 30, 2009, issued by Dr. Lovelyn D. Manongdo which states these findings:

Speculum Exam: (+) old, healed hymenal lacerations at 6 & 9 o'clock position

Internal Exam: Cervix admits tip, uterus small, unremarkable adnexae

Transvaginal UTZ: Anteverted normal sized, uterus, thickened bleeding endometrium with mixed echoes, cannot totally rule out retained products of conception, normal ovaries[31]

It bears emphasis that when the offended parties in rape are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by the trial if the matter about which they testified is not true.[32] Furthermore, when the victim's testimony of her violation is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[33] The Medico-Legal Certificate clearly shows that AAA had old healed hymenal lacerations. Lacerations in the hymen whether healed or fresh are the best physical evidence of forcible defloration.[34]

Moreover, accused and his wife testified that they are not aware of any reason for AAA to level a false accusation of rape against accused.[35] It is a well-entrenched jurisprudential rule that the credibility of a rape victim is augmented when she has no motive to testify against the accused or where there is absolutely no evidence which even remotely suggest that she could have been actuated by such motive.[36] Consequently, when AAA says that she was raped by accused, she says in effect all that would be necessary to prove that rape did take place.[37]

Accused points to AAA's admission that after she passed out, she did not know if accused removed her clothing,

or if he exposed his penis and mounted her, or kissed her or touched her vagina or any part of her body, or if his penis touched her vagina or any part of her body. He argues that AAA's testimony is therefore devoid of material and distinctive details that would establish carnal knowledge as an indispensable element of rape.

The contention does not persuade.

While there is no direct evidence that accused had carnal knowledge of AAA such is to be expected given the manner by which the crime was committed. Thus, AAA testified that she passed out after the accused boxed her on the stomach. However, as correctly found by the trial court, the rape was still shown by circumstantial evidence. Circumstantial evidence is sufficient for conviction if: a) there is more than one circumstance; b) the facts from which the inferences are derived are proven; and c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[38] A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[39]

AAA's testimony and the Medico-Legal Certificate have established an unbroken chain of events that proves, with moral certainty, that she was raped by accused. AAA stated that she recognized the accused as he suddenly entered her room, covered her mouth and threatened her. Accused then boxed her and she passed out. When she awoke the following morning she felt pain in her stomach and vagina and noticed that her shorts and panty had been lowered a bit and her panty had blood stains. The pain that AAA felt in her vagina is explained by the Medico-Legal Certificate which shows that she suffered hymenal lacerations which are consistent with sexual intercourse. AAA also categorically stated that she had never had any intercourse with other men.[40]

Accused cites the cases of *People v. Daganta*,[41] *People v. Arcillas*[42] and *People v. Sumarago*[43] in arguing his innocence. However, we are not convinced that these cases are on all fours with this case.

In *Daganta*, the accused was acquitted because the testimony of the victim was inconsistent with rape. It was ruled that the charge of rape "is whittled away even more by her testimony that right after she regained consciousness, nothing seemed to be amiss. She did not feel any pain in her vagina and there was no bleeding. Her clothes, although crumpled, had not been removed from her body." In *Arcillas*, there was no evidence of entrance or introduction of the male organ into the labia of the pudendum of the victim, hence, the Supreme Court ruled: "We are left to speculate on the matter. There is a possibility that appellant ravished private complainant and emitted his sperm into her genitalia while she was unconscious. However, an equal possibility exists that he did not violate her at all and the sperm cells were from some previous or later intercourse between the victim and her husband. We are thus constrained to resolve the doubt in appellant's favor." Finally, *Sumarago* involved five rapes that occurred on different dates where the first rape was alleged to have been committed while the victim was unconscious. As to the first rape, the Supreme Court ruled that carnal knowledge "cannot be presumed simply because (the victim) felt pain in her vagina when she regained consciousness, and that for over a period of time, the appellant warned her not to tell anybody." However, said ruling was premised on the fact that there was yet no finding of hymenal laceration or sexual intercourse. The victim was examined only after the fifth rape. Thus, the Supreme Court stated that carnal knowledge cannot be presumed simply because the victim felt pain in her vagina. In this case, AAA was raped only once and was thereafter examined and found to have sustained hymenal laceration.

Accused reiterates his defense of denial and alibi. He insists that he was at a birthday party being held in his grandmother's house when the rape occurred and his alibi was corroborated by his wife. We are not persuaded.

Denial and alibi are the weakest of all defenses because they are easy to concoct and fabricate.[44] To be believed, denial must be supported by a strong evidence of innocence; otherwise, it is regarded as purely

self-serving. Alibi, on the other hand, is rejected when the prosecution sufficiently establishes the identity of the accused.[45] Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[46] Where there is the least chance for the accused to be present at the crime scene the defense of alibi must fail.[47]

Accused's denial and alibi were not supported by strong evidence. Aside from his and his wife's bare statements there are no other evidence, testimonial or otherwise, to prove his defenses. He was not able to establish the physical impossibility of his presence at the locus crimini. The evidence shows that Rosita's house, where accused was allegedly attending a party on the night in question, was within walking distance from the house of Mila where the rape was committed.[48] Considering that accused was in Rosita's house starting at 7 PM, it was not impossible for him to have gone on foot to Mila's house during the birthday party. Anita's testimony that she was with the accused during the whole evening does not prove accused's alibi. She admitted that she served food during the party, hence, her attention was clearly divided and it is not outside the realm of possibility that accused had sneaked out of the party and went to the house of the victim. Consequently, accused's denial and alibi cannot prevail over the positive, candid and categorical testimony of AAA. As between the positive declaration of AAA and the negative statement of accused, the former deserves more credence.[49]

Finally, considering that the crime was committed on January 8, 2009 and it is punishable with reclusion perpetua, the provisions of Republic Act No. 9346[50] must be applied. Section 3 of said law provides that "(p)ersons convicted of offenses punishable with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." [51]

WHEREFORE, the appeal is DENIED. The Decision dated June 13, 2012 of the Regional Trial Court, Branch 25, Tagudin, Ilocos Sur in Criminal Case No. 1081-T is AFFIRMED with MODIFICATION in that accused-appellant Joseph Balbin, alias "Parking," shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Record pp. 159-178.

[2] Id at 1.

[3] Pursuant to Section 44 of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing R.A. No. 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members, shall not be disclosed; see *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] Record, p. 33.

[5] Certification of the Office of the Civil Registrar of Suyo, Ilocos Sur (Exh. B), Id. at 13.

[6] TSN, March 14, 2011, p. 4.

- [7] Id. at 18.
- [8] Id. at 12.
- [9] Id. at 13.
- [10] Id. at 5-11.
- [11] Record, pp. 7-12.
- [12] Id. at 96.
- [13] Id. at 19-22.
- [14] Id. at 94-95.
- [15] Id. at 102.
- [16] Id. at 111.
- [17] Id. at 121-125.
- [18] TSN, September 5, 2011, p. 7.
- [19] Id. at 8.
- [20] Id. at 3-13.
- [21] TSN, February 8, 2012, pp. 2-5.
- [22] Id. at 7-9.
- [23] TSN, October 5, 2011, pp. 4-7.
- [24] Decision of RTC-Tagudin; *supra* note 1 at 177-178.
- [25] Record, pp. 179-180.
- [26] Rollo, p. 32.
- [27] *People of the Philippines v. Joseph dela Paz*, G.R. No. 177294, February 19, 2008.
- [28] *People of the Philippines v. Lito Bejic*, G.R. No. 174060, June 25, 2007.
- [29] *People of the Philippines v. Felix Morante*, G.R. No. 187732, November 28, 2012, citing *People v. Dion*, G.R. No. 181035, July 4, 2011, 653 SCRA 117, 133.
- [30] TSN, March 14, 2011, pp. 7-10.
- [31] Record, p. 96.
- [32] *People of the Philippines v. Jose Torellos*, G.R. No. 143084, April 1, 2003.
- [33] *People of the Philippines v. Radby Estoya y Mateo*, G.R. No. 200531, December 5, 2012, citing *People v. Dizon*, 453 Phil. 858, 883 (2003).
- [34] *People of the Philippines v. Alex Manallo*, G.R. No. 143704, March 28, 2003.
- [35] TSN, September 5, 2011, p. 6 and TSN, February 8, 2012, p. 9.

- [36] *People v. Manallo*, *supra*.
- [37] *People v. Samarago*, G.R. Nos. 140873-77, February 6, 2004.
- [38] Rule 133, Section 4, Revised Rules on Evidence.
- [39] *People of the Philippines v. Joseph Evangelio*, G.R. No. 181902, August 31, 2011.
- [40] TSN, March 14, 2011. p. 10.
- [41] G.R. No. 122339, August 4, 1999.
- [42] G.R. No. 126817, December 27, 2000.
- [43] G.R. Nos. 140873-77, February 6, 2004.
- [44] *People of the Philippines v. Porferio Masagca, Jr.*, G.R. No. 184922, February 23, 2011, citing *People v. Ayade*, G.R. No. 188561, January 15, 2010, 610 SCRA 246.
- [45] *Id.*, citing *People v. Trayco*, G.R. No. 171313, August 14, 2009, 596 SCRA 233.
- [46] *People of the Philippines v. Alberto Anticamara and Fernando Calaguas Fernandez a.k.a. Lando Calaguas*, G.R. No. 178771, June 8, 2011, citing *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.
- [47] *Id.*, citing *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 439.
- [48] TSN, September 5, 2011, pp. 9-10 and TSN, February 8, 2012, p. 7.
- [49] See *People of the Philippines v. Espinosa*, G.R. No. 138742, June 15, 2004, citing *People v. Medina, Sr.*, 404 SCRA 248 (2003).
- [50] "An Act Prohibiting the Imposition of Death Penalty in the Philippines" which took effect on June 30, 2006.
- [51] See *People of the Philippines, v. Doney Gaduyon*, G.R. No. 181473, November 11, 2013, citing *People v. Nachor*, G.R. No. 177779, December 14, 2010, 638 SCRA 317, 330-331.

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