

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AQUILINO PADUNAN ALIAS “QUILIN”;
ACCUSED-APPELLANT.**

G.R. No. L-40621. August 21, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from a decision of the Court of First Instance of La Union, Branch III at Agoo, convicting Aquilino Padunan of the crime of rape. The decision which was promulgated on January 28, 1975, has the following dispositive portion:

"WHEREFORE, the Court finds the accused Aquilino Padunan alias Quilin, guilty beyond reasonable doubt, of the offense of Rape and hereby sentences him to suffer reclusion perpetua (life imprisonment) and pay the costs."

An amended complaint for rape against Aquilino Padunan was filed in the Municipal Court of Caba, La Union, on December 11, 1965, by Estrella Ismael Vallejo. A preliminary investigation, first stage, was conducted by the court but the accused waived the second stage and so the case was elevated to the Court of First Instance. There the following information was filed:

"The undersigned Assistant Provincial Fiscal accuses Aquilino Padunan, alias Quilin, of the crime of Rape committed as follows:

"That on or about the 29th day of November, 1965, in the Municipality of Caba, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and taking advantage of his superior strength and by means of violence and intimidation, did then and there wilfully, unlaw-fully and feloniously have carnal knowledge of the complainant, Estrella Ismael Vallejo against her will and consent.

"That in the commission of the crime charged, the following aggravating circumstances were present:

1. By taking advantage of night time;
2. That the crime was committed in an uninhabited place;
3. That the accused was previously con-victed for Unjust Vexation in Criminal Case No. 253, Municipal Court of Caba; and
4. That the accused was previously punished for Theft in Criminal Case No. 359, Municipal Court of Caba."

It is to be noted that while the case was initiated as early as December, 1965, it was decided by the trial court only in January, 1975, or after a lapse of almost ten years. In the meantime, it had gone thru the following judges: Damian L. Jimenez, Arsenio Alcantara, Santiago Ranada, Eliodoro E. Marasigan, Javier Pabalan and Antonio G. Bautista who wrote the decision.

The People's version of the facts is as follows:

"At about 3:00 o'clock in the early morning of November 29, 1965, complainant Estrella Ysmael Vallejo, then 15 years of age, arrived by train from Manila at the railroad station of Caba, La Union (pp. 18-19, t.s.n., Sept. 3, 1970, Trinidad). While waiting for her uncle, Sating Runas, whom she expected would meet her, appellant approached and talked with her (pp. 19, 43, t.s.n., Id.). She knew appellant very well because during her fifth and sixth grades at the Caba Elementary School, she used to see him whenever she passed by his house to get water for her plants in school (p. 58, t.s.n., Id.). Appellant told her that he would escort her home upon instructions of her uncle (pp. 19, 43, t.s.n., Id.).

"Thereafter, appellant carried her baggage and together they proceeded towards her house, passing along the railroad tracks. It was a moonlight night (p. 44, t.s.n., Id.). As they walked, appellant engaged her in a conversation (p. 19, t.s.n., Id.). Afterwards, appellant told her to wait because he was going to urinate, but she continued on her way. Suddenly, appellant grabbed her long hair and wound it around her neck (pp. 19, 47, t.s.n., Id.). She shouted and fought back. She scratched appellant on the face (pp. 47-49, t.s.n., Id.). Appellant held her hands, twisted them behind her back and then pushed her against the trunk of an acacia tree. Complainant struggled to free herself and kicked appellant. Appellant pushed her face to the ground. With a handkerchief, Exhibit "C", he tied her hands behind her. Then he turned her over, kissed her and mashed her breast (pp. 19-20, 46-47, 50, t.s.n., Id.). Appellant pulled down her panty which was torn in the process. He strapped the panty across her mouth and tied it at the back of her head (pp. 54-55, t.s.n., Id.). Appellant boxed her stomach and thighs several times (pp. 21, 23, t.s.n., Id.). Again, he pushed her to the ground, face up. He lay on top of her, inserted his penis into her sexual organ and commenced the coital act. She felt pain. Even in her weakened condition, she tried to avoid the appellant. Because her hands were tied behind her back she could hardly move. Her strength began to ebb and her efforts to save her honor failed as the appellant, maddened by his bestial desire, consummated the sexual act (pp. 21-24, 55, t.s.n., Id.). She began to cry.

"When appellant stood up he tied her feet with a piece of string and told her not to leave the place, otherwise he would kill her. Her half-slip (Exh. "D") which she wore was smeared with blood (Exh. "D-1") (pp. 24-25, 27, 56, 61, t.s.n., Id.). Then appellant ran away (p. 56, t.s.n., Trinidad). Subsequently, complainant was able to untie her feet (p. 28, t.s.n., Id.). She stood up and ran towards the house of her Nana Onang (Balbina Nillusgin), which was about 200 meters away (p. 29, t.s.n., Id.). It was almost half past 3:00 o'clock in the morning. With her panty still strapped across her mouth, she shouted the name of her Nana Onang who was awakened. She related to her how she was abused. Complainant's uncle and an auntie, Mr. Alfonso de Villa and Mrs. Conchita de Villa were immediately informed of the incident (p. 29, t.s.n., Id.). They went to the place where she was sexually assaulted. Complainant found her pair of earrings on the ground. The contents of her paper bag were scattered all over. She also found her overnight bag beside the river some distance away from the crime scene. Two days later, she found her handbag but the contents thereof consisting of P22.00, a nail cutter, a ballpen and other personal effects were missing (p. 30, t.s.n., Id.).

"That same morning (November 29, 1965) complainant, accompanied by her aunt, reported the incident to the Chief of Police of Caba, La Union. During the investigation, she told the Chief of Police that appellant whom she knew as "Mang Quilin, the driver", was the one who abused her (p. 31, t.s.n., Id.). After the investigation, the Chief of Police took her to the Provincial Hospital at San Fernando, La Union.

"At the provincial hospital, she was examined by Dr. Rufino Garcia (pp. 33, 39, t.s.n., Id.). Said doctor issued a medical certificate, Exhibit "A", dated December 2, 1965. According to him, the victim suffered fresh lacerations of the hymen at 6 and 7 o'clock, with bleeding on some parts which could have been due to sexual intercourse committed about the time stated by the complainant (pp. 5-6, t.s.n., Aug. 2, 1967, Nisperos).

"Several days later, complainant was called to the office of the Chief of Police to identify her abuser. In the presence of Municipal Judge Jose Salomon, the Chief of Police, appellant's wife, and her auntie, four persons were brought inside the room one after the other for her to identify. Appellant was not one of them. When the

fifth man was brought in, she immediately recognized him as her ravisher. In the heat of her anger, she got her slipper and threw it at the appellant (p. 33, t.s.n. Id.). The municipal judge made note of this incident, Exhibit "I" (pp. 69-70, t.s.n., Id.).

"As a result of this incident, complainant who was studying in the third year high school, failed to continue her studies because she was ashamed of what had happened to her (p. 34, t.s.n., Id.).

"Judge Crispin Peralta, the Municipal Judge of Caba, La Union since 1968, in compliance with the subpoena duces tecum issued by the trial court on the request of the prosecuting fiscal, presented in court certified true copies of the conviction of the appellant in Criminal Case No. 283 for unjust vexation (Exh. "L"). In the latter case appellant was convicted with his co-accused Benjamin Runas (pp. 86, 87, t.s.n., Trinidad)." (Brief, pp. 1-5.)

The accused interposed the defense of alibi.

Consuelo Picar Padunan, 42 years old and wife of the appellant, testified on March 24, 1972, in part as follows:

x x x x x x x x

"Q - Now on November 29, 1965 at around 3:00 o'clock in the morning, where were you?

A - I was at home.

Q - Who were with you in your home?

A - My husband.

Q - Aside from your husband who were with you in the house?

A - My children.

Q - How many children do you have?

A - Eleven.

Q - That night you said at 3:00 o'clock your husband was with you, now, before that 3:00 o'clock did you ever see whether your husband leave your house ?

A - No, he did not leave the house."

And on August 28, 1972, she also testified in part as follows:

"Q - Mrs. Padunan, you have already testified that your husband was in your house on November 28, 1965 at around 3:00 o'clock A.M. is that correct?

A - Yes.

Q - Now, before 3:00 A.M. did he ever leave your house?

A - No, sir.

Q - What is the calling or job of your husband?

A - He is a driver.

Q - That day, before 3:00 o'clock in the morning I mean November 28, did he work as a driver?

A - No sir.

Q - What did he do that day?

A - " nagsinglag" (he made coconut oil).

Q - How far is your house from the station of Caba ?

A - It's quite far.

Q - How many kilometers?

A - I do not know how many kilometers."

x x x x x x x x

"Q - What did your husband do that night of the 28th in your house ?

A - None.

Q - Did he sleep in your house that evening?

A - Yes.

Q - With whom did he sleep?

A - We, his family."

The accused who took the witness stand on January 16, 1973, testified in part as follows:

x x x x x x x x

"Q - On November 29, 1965 at around 3 A.M. do you remember where you were?

A - Yes sir.

Q - Where were you at the time?

A - I was sleeping.

Q - Where were you sleeping?

A - In my house sir.

Q - That 3 o'clock AM, November 29, 1965 did you go to the railroad station at Caba, La Union?

A - No sir.

Q - You were accused here for having raped a certain girl by the name of Estela Vallejo, have you ever met this girl?

A - No sir I do not know her."

x x x x x x x x

"Q - Do you have children?

A - Plenty of them sir.

Q - How many of them?

A - Thirteen (13).

Q - On that night of November 29, 1965 did you stay with your children?

A - I was in our house."

x x x x x x x x

"FISCAL:

Q - Do you remember the railroad station at Caba, La Union?

A - Yes sir.

Q - How far is your house in relation to the railroad station of Caba, La Union?

A - It is far sir.

Q - Will you kindly estimate the distance?

A - Less than one-half (1/2) kilometer.

Q - In relation to the railroad station what direction is your house?

A - East of the railroad station in Caba.

Q - As a driver could you tell the Court how many minutes more or less will you negotiate from your house to the railroad station?

A - I could not calculate.

Q - Why, could you tell the Court?

A - I have not tried walking from our house to the railroad station.

Q - Do you mean to tell us that since you are a resident of Caba you have not tried to walk from the railroad station to your house?

A - I have not.

Q - Could you tell or could you not estimate how many minutes to negotiate that distance?

A - I could not."

And Mercedes, the daughter of the appellant, who testified on March 29, 1973, said in part the following:

x x x x x x x x

"Q - Do you know a certain person by the name of Aquilino Padunan?

A - He is my father.

Q - Now you said you are 17 years old, in the year 1965 do you know more or less what was your age?

A - 10 years old.

Q - By the way who is your mother?

A - Consuelo Padunan.

"Q - What is the family name of your mother?

A - Picar.

Q - This Consuelo Picar is she the wife of Aquilino Padunan?

A - Yes, sir.

Q - In the night of November 28, 1965, do you remember where you were?

A - I was at the house.

Q - Who were your companions in your house?

A - My brothers and sisters, my father and mother.

Q - That night of November 28, 1965, do you know where your father was?

A - He was inside the house.

Q - Do you know whether that night when you were sleeping whether when you woke up whether he left the house?

A - I know he is sleeping because I went to urinate that time.

Q - What time precisely did you go to urinate that night?

A - Around 2:00 o'clock in the morning.

Q - You said 2:00 o'clock did you hear the passing of the train that night which usually passes Caba to the north that evening?

A - Yes, sir, because I was then urinating when the train passed.

Q - When you went to urinate did you open your eyes?

A - Yes, sir.

Q - That night did you have light in your house?

A - There was.

"Q - Why was there light in your house?

A - Where my mother and father slept.

Q - Do we understand from you that your father and mother have another room?

A - There is.

Q - And you, do you sleep with them?

A - No, sir, we slept side by side.

Q - When you woke up when you went to urinate upon returning did you see your father sleeping there?

A - Yes."

x x x x x x x x

"Q - So you all slept inside the house in one place?

A -Yes.

Q - There is no separate room in the house?

A - There is a room and there is no curtain, you could see outside where my father and mother slept.

Q - That day in the morning do you know if there is somebody who came to your house?

A - None.

Q - Do you know what happened whether your father was taken by somebody one day after November 28?

A - After two or three days somebody called my father.

Q - Did you ever ask why your father was taken?

A - No."

The appellant claims that:

"I . THE LOWER COURT ERRED IN NOT BELIEVING THE ALIBI OF THE ACCUSED-APPELLANT;
and,

"II. THE LOWER COURT ERRED IN NOT FINDING THAT THE OFFENSE OF RAPE BY FORCE WAS
NOT ESTABLISHED BEYOND REASONABLE DOUBT IN THE CASE AT BAR."

Both assignments of errors are not well-founded.

The appellant's alibi is not worthy of credence. By his own admission his house is less than half a kilometer or less than 500 meters from the Caba railroad station. But Paulino Runas who was the Chief of Police of Caba at the time the complaint against Padunan was filed testified that the distance between the latter's house and the railroad station is only 100 meters. In either case, the two are proximate to each other and the distance can be traversed by a few minutes walk. Accordingly, it was not physically impossible for Padunan to be at the scene of the crime when it was committed. His alibi is manifestly inadequate. For the rule is well-settled that alibi, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and verity. (People vs. Sagario , L-18659, June 29, 1965, 14 SCRA 468.)

The supporting testimony of his wife and daughter are for naught not only because they were naturally biased in his favor but also because he was positively identified by the complainant as the one who raped her. Thus on September 3, 1970, she testified in part as follows:

x x x x x x x x

"ATTY GENEROSA:

Q - Will you please tell the Honorable Court where were you on November 29, 1965?

A - I was at the train station at Caba, La Union.

COURT:

Q - What time was that?

A - 3:00 o'clock I was at the railroad station at Caba.

ATTY GENEROSA:

Q - How come that you were in the railroad station at that early morning of November 29, 1965 at 3:00 o'clock in the morning?

A - I alighted from the train coming from Manila. I am expecting a person to meet me.

Q - Then what happened when you said you were expecting a person to meet you?

A - While I was waiting for that person a man came and he said that he is going to escort me.

"Q - What did this man tell you?

A - He told me that he is going to escort me to my house because the station master who is my uncle told him to meet me and escort me to my house.

Q - And what happened after that man told you to escort you to your house?

A - After that he took my paper bag which is one of my baggages and the overnight bag and another bag being carried by me then we proceeded to our house.

Q - On your way to your house, will you please tell us what happened?

A - He was asking me what was my work. I told him I was only a maid working in Manila. Then he told me that he has also a daughter in Manila.

Q - During those conversation what happened next if any?

A - He said he told me that I will wait for him because he is going to urinate.

Q - And what happened after that?

A - I keep on walking I did not wait for him.

Q - And while you were walking, what happened next?

A - While I was walking he suddenly grabbed my hair because my hair was very long.

Q - And what happened?

A - And he tied my hair to my neck.

Q - You said he, who grabbed your hair, will you please tell?

A - Mr. Aquilino Padunan.

Q - If he is in Court, will you please point to him?

A - Witness pointing to the accused Aquilino Padunan, who is in Court.

" Q - After Mr. Aquilino Padunan grabbed your hair and tied around your neck, what happened next?

A - After he has tied my hair on my neck he took hold of my hands and put it on my back.

Q - And after that what happened?

A - Then he pushed me in a trunk towards an acacia tree.

Q - When he pushed you in that acacia tree, what happened next?

A - I was struggling against him.

Q - And when you said you were struggling what was Mr. Aquilino Padunan doing at that time?

A - He pushed me towards the ground face downward and tied my hands with long handkerchief.

Q - And when he tied your hands, what happened next?

A - Then he turned me upward my back on the ground.

Q - And when Mr. Padunan turned you upward and your back on the ground, what did Mr. Padunan do?

A - He kissed me and mashed my breast.

Q - And what did you do while Mr. Padunan kissed you and mashed your breast.?

A - I keep on struggling and I keep my face away from him because he is kissing me.

Q - And while on that situation, what more did Mr. Padunan do to you if there was anything?

A - He pulled down my panty.

Q - And when you said he pulled down your panty what did you do?

A - I keep on struggling but I could not move freely because my hands were tied.

Q - And after that what did Mr. Padunan do to you?

A - He boxed me on my stomach.

"Q - How many times did he box you on your stomach?

A - Several times.

Q - And when he boxed you what did he do more to you?

A - After that he lay on top of me.

Q - And when he laid on top of you, what did he do?

A - He inserted his private part into my private part but I could still feel it because I am still half conscious at that time.

Q - When you feel that his penis was on your private part, what did you do?

A - I wanted to avoid him but I could not move freely because my hands were tied and on that condition I could not move.

Q - And what did you feel if there was any when you said he inserted his private part?

A - I felt painful.

Q - When you felt the pain, what did you do when you feel the pain?

A - I forced to move his body away from me because he was still on top of me.

Q - And what happened next?

A - He was able to have a sexual intercourse with me."

Earlier, on December 3, 1965, there was a confrontation between Estrella and Padunan before Judge Jose A. Solomon of Caba, La Union. In his testimony on October 8, 1970, Judge Solomon narrated the confront-ation as follows:

x x x x x x x x

"Q - On December 3, 1965, do you remember if you were in Caba?

A - Yes, sir.

Q - And in connection with this case Judge Solomon do you remember if you had conducted a confront-ation by the complaining witness Estrella Ysmael Vallejo and the accused Aquilino Padunan?

A - Yes.

Q - If you remember now Judge, do you remember if there was if you reduced into writing your confrontation of yours between the accused and the offended party?

A - Yes.

Q - If you could see that record, could you still recognize the same?

A - Yes.

Q - Showing to you this note appearing at the back of the affidavit, will you kindly inform the Court what note you had in connection with the confrontation?

A - This is my notation with respect to the confront-ation.

Q - And this signature appearing here Jose A. Solomon, whose signature is that?

A - My signature."

x x x x x x x x

"FISCAL:

Q - Who was identified by the complainant Estrella Ismael Vallejo at the time of the confrontation?

A - If you please allow me to read the notation and I can answer that.

Q - Yes, read it?

A - 'Note: On the morning of December 3, 1965, the wife of the accused requested that the offended party should identify the accused in person. So, the undersigned asked the Chief of Police to call for the offended party.

That morning in the office of the Chief of Police in the presence of the wife of the accused and the undersigned, the offended party was asked to point out the accused from among several individuals who were brought into the office one by one with the cooperation of the Chief of Police. When the accused, then under detention, was brought inside, the offended party immediately pointed to him as the offender and even hurled her slipper in his direction. Not only that, the offended party cried then and there."

I confirmed the truth of what I have noted and what I have read."

It is contended that rape by force was not established beyond reasonable doubt because Estrella who was then only 15 years old and presumably still a virgin could not have been entered so easily. But as Estrella testified, supra, she could not move freely because her hands were tied and she was boxed several times on the stomach. She also testified that prior to the rape the appellant tore her panty and stuffed it in her mouth. In such a condition she could not be expected to repel her assailant. Hence the facile penetration of her body.

The appellant attempts to attach importance to the fact that "there are certain claims made by her in her testimony which she did not mention in her affidavit (Exh. F)." Thus Estrella testified that she scratched the face of the appellant but did not say so in her statement; she testified that she was boxed on the stomach but nothing was mentioned in the affidavit that she had been boxed.

By their very nature, there can be no complete congruence between the affidavit in support of the complaint for rape and the testimony given during the trial on the merits - the latter is necessarily more extensive because the witness is exposed to questions propounded not only in direct but also in cross-examination and by the court as

well. Moreover, as Chief Justice Manuel V. Moran has said:

"There might, indeed, be contradictions between the testimony of some of the witnesses for the prosecution and their affidavits executed prior to the trial of this case, but such contradictions do not materially impair the intrinsic veracity of said witnesses, particularly when they have been satisfactorily explained. Generally, an affidavit is not prepared by the affiant himself. Omissions and misunderstandings by the writer are not infrequent particularly under circumstances of hurry or impatience. For this reason, the infirmity of affidavits as a species of evidence is much a matter of judicial experience. If the contradiction between the testimony of a prosecution witness and his affidavit executed prior to the trial of the case is not satisfactorily explained, the latter should prevail. Written words speak a uniform language. Oral recollection, in turn, could suffer from the treachery of memory or from coloring." (6 Moran, Rules of Court, 1970 ed. pp. 140-141.)

Be it noted that there are no contradictions between Estrella's affidavit and her oral testimony; there are merely statements made in the latter which were not made in the former.

Rape is penalized under Art. 335 of the Revised Penal Code with reclusion perpetua which is an indivisible penalty. The trial court has correctly stated that, "There being no mitigating circumstance, consideration of the alleged aggravating circumstances has become moot and academic."

The record does not show that the civil action for damages on account of the rape had been reserved. Accordingly, it is not inappropriate to award moral damages in this case conformably to Art. 2219 of the Civil Code.

WHEREFORE, the judgment sentencing the appellant to suffer reclusion perpetua is hereby affirmed; the appellant is further adjudged to pay Estrella Ismael Vallejo the sum of Ten Thousand (P10 ,000.00) Pesos as moral damages; and to pay the costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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