

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN CONTIC Y GUIDANGEN, ACCUSED-APPELLANT.

Ponente: COSICO, J.

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COSICO, J.:

Before us is an appeal from the decision dated February 8, 2005 of the Regional Trial Court, Branch 62 of La Trinidad, Benguet in Criminal Case No. 98-CR-3169 finding herein accused-appellant Allan Contic guilty beyond reasonable doubt of the crime of rape.

The Facts

Accused-appellant Allan Contic y Guidangen was charged with the crime of rape as defined under Article 266-A and penalized under Article 266-B of the Revised Penal Code, as amended[*], via an information[1] that reads in part –

“That on or about the 15th day of September 1998, at Central Beckel, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one JENNIFER COPILING Y ARTEMIO, against the latter’s will and consent.

“That in the commission of the crime, the aggravating circumstance of nighttime is present the same having been purposely sought to facilitate the commission of the crime.

“CONTRARY TO LAW.”

Contic pleaded “not guilty” upon arraignment. After pre-trial, trial on the merits ensued.

The material facts, as found by the trial court, are as follows –

“The prosecution has established these facts:

“After watching TV with Lalyne Lasaten in the house of the Dalpasens that night of 15 September 1998, Jennifer Copiling, a thirteen year old girl, using an umbrella walked home under the rain. She entered by the back door of their house which was not locked, closed the door behind her, and left it unlocked as she expected her mother, Mary Ann, to be home shortly as she visited a neighbor. Near their house, there was a light coming from the house of their neighbor. She changed to her long T-Shirt – like a duster – and went to sleep. She was roused from her sleep when she heard heavy footsteps inside the house. Thinking that it was her father she called aloud, ‘Papa, Papa,’ but there was no answer. Before she knew it, a man went on top of her. At first, Jennifer did not know the man who rode on her. With all her might, she struggled, wiggled, pushed, and kicked to release herself from the hold of the man on top of her. It was dark in the room, so she could not recognize her attacker. Then the man spoke: ‘Huwag kang iimik.’ It dawned to her that the voice she heard was very familiar which was that of Allan Contic whom she knew pretty well way back as the Contics and Copilings have been neighbors for a long time. But then she was not so sure if it was really Allan Contic. She continued to struggle and grapple with the man. Jennifer cried out ‘tulungan dak’ -- help me. She continued to move from left to right then she shouted again: ‘tulungan dak’ – help me. With both hands, she scratched the face of

the man. The man boxed her stomach and left eye. She felt pain. The man inserted her three fingers into her mouth but she bit them. The man ‘lallalo nga nagungit’ – he became angrier – and with both hands strangled her, and said: ‘tumahimik ka, papatayin kita’ – keep quiet or I will kill you. As they grappled, they fell on the floor.

“Summoning all her remaining strength, she tried to remove the choking hold with both her hands but could not. The man banged her head several times on the floor. The man boxed her stomach several times and her eyes. She got dizzy but she kicked Allan and momentarily freed herself. She tried to get up and run, but the man caught her left foot and hand. The man pulled her out of the house. She resisted by clinging on anything she can hold on but failed. The man continued to pull her towards the bath cum toilet, which was about two meters from the house. There was a light coming from the house of a neighbor, Marjorie Freala. It was then that she saw the face of the man, her attacker. It was Allan Contic. The voice she heard earlier was confirmed. As the rain poured, Allan removed her panty (Exhibit L) which was with a sanitary napkin (Exhibit M) as she was then having her menstrual period. Allan pushed her and ‘binugbubugbog nak’ – he mauled me. Allan boxed her thighs many times and she felt pain. She felt so weak and could no longer shout for help. She was then exhausted and helpless. Allan raised her long T-shirt, and kissed her breast and face. Jennifer kept moving, pushing and kicking. Allan held both her hands pulled down her panty. Allan said to her, ‘sige, ipasok na natin’ – let us put it in. Allan pulled down his pants and brief and inserted his penis into her vagina. She felt pain to a point where she became dizzy. Allan was ‘agkinudkinud’ – his buttocks moved up and down. When Allan was finished, he patted her face. She did not move and pretended to be dead. She was so weak but conscious. Allan turned her around such that her belly and face were on the mud. Allan pushed her face several times against the mud that she could hardly breathe and her face hurt. She raised her face and saw Allan enter their house. She stood up and ran to the house of the Dalpasens. She entered through the back door, and shouted: ‘Manang Lalyne, tulungan nak’ -- sister Lalyne, help me, and then she cried. Lalyne opened all the lights in the first floor and was shocked to see Jennifer who was wet; her eyes were blue and her nose bleeding. Lalyne asked Jennifer ‘apay anya nangyari kenka’ – what happened to you and Jennifer answered ‘ni rape nak’ – he raped me. Lalyne asked who raped her and Jennifer replied: Allan Contic. Lalyne called James Dalpasen, Jr., who with his two friends were on the second floor, and told him to go and look for Jennifer’s mother. The three boys left and went to fetch Mrs. Dalpasen who earlier went to bring food to a neighbor. Meanwhile, Lalyne escorted Jennifer to the bathroom and washed her. Lalyne noticed that Jennifer had no panty; that she had bruises and cuts on her body, that her eyes were swollen, that her left eye was black and blue, and that her nose was bleeding. After Jennifer’s quick bath, she left her wet brassiere (Exhibit J) and long T-shirt (Exhibit K) in the bathroom, and Lalyne escorted her to the living room. Lalyne loaned Jennifer fresh clothes to wear. While Jennifer was dressing up, Mrs. Dalpasen and Mary Ann, the mother of Jennifer, arrived. Mary Ann hugged Jennifer tightly and they both cried. Mrs. Dalpasen also cried. Mary Ann saw the swollen face of her daughter with one eye almost closed. Mary Ann asked her daughter who raped her; and Jennifer answered: Allan Contic. Mary Ann thought of bringing Jennifer to the hospital. But first, she went to their house to get a jacket for Jennifer. With the use of a flashlight as their electricity was disconnected, she saw three blankets on the floor, and as she lifted and placed them back on the bed, she saw a ball cap on the floor. She examined it. It bore the Nike logo, on the side was the words ‘Just do it’, and inside was the initials AGC. She took the ball cap. She saw and took the jacket of Jennifer. She retrieved the key placed on top of the table. As she carried the jacket and the ball cap, she took the key on the table and locked the door of their house and went back to the house of the Dalpasens.”[2]

Victim Jennifer, together with her parents, Mary Ann and Apolinario, and three other persons then went to the La Trinidad Police Station, where Apolinario talked to SPO1 Abansi and SPO1 Gines about what happened to Jennifer. They then proceeded to Benguet General Hospital for the treatment of Jennifer.

Dr. Vladimir V. Villasenor, Regional Chief of the Philippine National Police Crime Laboratory, Camp Bado Dangwa, was the one who conducted the medical examination of victim Jennifer and prepared Medico-Legal

Report No. M-143-98[3] embodying the results of the said examination. The report states that Jennifer sustained fourteen (14) different kinds of injury at different parts of her body. The results of the examination were also compatible with the averment on the girl's recent loss of virginity considering the lacerations in her vagina.

The defense had a different story to tell.

“Let us now shift to the defense.

“In the morning of 15 September 1998, Allan Contic was in Beckel helping in the construction of the house of his brother, Ronald. After lunch, he went to Holy Ghost Hill, Baguio City, to check on a jitney owned by Roger Marzan then under repair in the shop of his uncle Bilo. For a while, he assisted his uncle Bilo. Then, Bilo told him to go and buy certain parts needed. He went to the PNB bank and withdrew the amount of P4,000.00 from their joint savings account. Instead of buying the parts, he proceeded to Gibraltar, Pacdal, Baguio City to get the tools he left in the house of his sister-in-law, Cathy Apaling and his aunt Hilda Josephine Ngolab. The nephew of his aunt to whom he gave his tools for safekeeping was not in the house. While he was waiting in the house of his sister-in-law, Stephen Danang, the godfather of Kerry his son, invited him to drink. He and Stephen began to drink San Miguel gin. Between them, they had consumed two bottles of 4 x 4 San Miguel gin and one third of the third bottle of 4 x 4 San Miguel gin. At about eleven o'clock in the evening, they stopped drinking and he begged leave to go home. It was raining then, and with the umbrella he brought with him, followed a path which was a short cut to reach the Ambuklao road. He was on the road after walking for about fifteen minutes. He continued to walk and stopped by a store which was still open and stayed there for about forty five minutes as he waited for a ride to go home to Beckel. Ordinarily, from Gibraltar to where he was then to Beckel he could hike the distance of about two kilometers in thirty minutes. Then, he continued to walk a little further until he was in front of the gate of the APTS Seminary. A vehicle approached from the opposite direction. He flagged the vehicle down thinking that it was a taxicab but the vehicle did not stop. After traveling some distance, the vehicle made a u-turn and proceeded back towards Beckel. The vehicle stopped at where he was and noticed that it was a police car. The driver of the police car alighted, approached him and said to him: ‘Apay nga rabrabiin ket adda ka pay laeng dita nga agwalang walang? Sumorot ka ketki kanya mi ta agawid ka met laeng no bigat’ -- Why are you still here, it is already nighttime and you are still loitering around. You better come with us and you go home tomorrow. He pleaded to walk home but instead the driver pulled him to the police car. Still with his umbrella, he climbed the police car and noticed two passengers seated in the police car. He recognized one of the two who was Nario or Apolinario Copiling whom he is well acquainted because he is married to Mary Ann Copiling, his neighbor in Beckel. He asked Apolinario where he came from but the latter remained quiet. They proceeded to the La Trinidad Police Station. He overheard a policeman asking Apolinario if he knew him and Apolinario said ‘wen’ – yes, and Apolinario continued to say ‘awan, haan nga am-amu diay ubing ko diay’ – my child does not know him. After having made to sit for about thirty minutes, two policemen brought him to the Benguet General Hospital, and entered a room where he was examined by Dr. Joey Ancheta. After he was examined by the doctor, the policemen escorted him to a room where there were patients. He did not recognize any of the patients inside the room. After ten minutes, he was brought back to the Police Station. He was then interviewed by a policeman, SPO1 Gines. After having been asked several questions, SPO1 Gines stood up and kicked him. He was then brought to a cell. Later, his picture was taken (Exhibit H-4). He was made to sign a paper and went through finger printing procedure. He admitted that the T-shirt (Exhibit P), the pair of Caterpillar shoes (Exhibit O), the Jacket (Exhibit N), the ball cap (Exhibit I) and the umbrella (Exhibit Q) were his. He was wearing the T-Shirt, the Jacket, and the Caterpillar shoes that evening when he was picked up by the police.

“He knew Jennifer Copiling very well long before 15 September 1998 and Jennifer knew him too. In fact Jennifer addressed him ‘manong Allan’. Before or on 15 September 1998, he had no quarrel or misunderstanding neither with Jennifer nor with Apolinario and Mary Ann, the parents of Jennifer. He did not know of any reason why Jennifer would charge him with the crime of rape.

“Adela Guidangen Contic, the mother of Allan said that his son, Allan, left their house in Beckel in the

afternoon of 5 September 1998 Allan told her that he will go to Gibraltar, Pacdal, Baguio City though it was drizzling. Allan took an umbrella (Exhibit Q) and left. He did not return home that evening. That same evening, Adela was up in keeping watch over her sick mother. Apolinario Copiling came to their house accompanied by two policemen. They were looking for his son Allan. With the use of a flashlight, they searched the house for Allan but he was not around. After fifteen minutes, they left even if it was raining hard.

“Catherine Apaling, the sister of Hilda, said that Stephen and Allan were on the first floor of her house drinking San Miguel gin on 15 September 1998. At about eleven o'clock in the evening, she told Allan and Stephen to stop drinking and told Allan to go home. After about fifteen minutes, though it was raining, Allan left. She observed that Allan was drunk and was too weak to move.”[4]

The Ruling of the RTC

In its judgment[5] dated February 8, 2005, the RTC declared herein accused-appellant guilty beyond reasonable doubt of the crime of rape. Thus, the dispositive portion of the said judgment reads:

“WHEREFORE, viewed from all the foregoing, the court finds ALLAN CONTIC y GUIDANGEN guilty beyond reasonable doubt of the crime of simple rape and sentences him to suffer the penalty of reclusion perpetua and all the accessory penalties provided under Article 41 of the Revised Penal Code, and to indemnify Jennifer Copiling the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity, the sum of Sixty Thousand Pesos (P60,000.00) as moral damages, and the sum of Twenty Five [Thousand] Pesos (P25,000.00) as exemplary damages.

“The accused ALLAN CONTIC y GUIDANGEN has been under preventive imprisonment during the course of the proceedings in this case, hence, he is given full credit of the entire duration of his preventive imprisonment.

“Pursuant to Administrative Circular No. 4-92-A of the Court Administrator, the Provincial Jail Warden of Benguet Province is directed to immediately transfer the said accused ALLAN CONTIC y GUIDANGEN to the custody of the Bureau of Corrections, Muntinlupa City, Metro Manila after the expiration of fifteen (15) days from date of promulgation unless otherwise ordered by this Court.

“Let a copy of this Judgment be furnished the Provincial Jail Warden of Benguet Province for his information, guidance and compliance.

“No pronouncement as to costs.

“SO ORDERED.”

The Present Appeal

Accused-appellant makes the following assignment of errors in his appeal brief–

- The trial court gravely erred in convicting the accused-appellant considering that the accused-appellant was not positively identified as the perpetrator of the crime;
- The trial court gravely erred in convicting the accused-appellant considering that his guilt has not been proven beyond reasonable doubt and moral certainty as to his guilt was not established; and
- The trial court erroneously convicted the accused-appellant by claiming solely that his defense is just one of alibi without taking into account the weakness of the prosecution’s defense.

This Court’s Ruling

After due study, this Court finds the instant appeal is bereft of merit. The trial court did not err in finding herein accused-appellant guilty beyond reasonable doubt of the crime of rape.

The Supreme Court has consistently observed the following guidelines in deciding rape cases: (1) to accuse a man of rape is easy, but to disprove the accusation is difficult even if the accused is innocent; (2) since rape usually involves only two persons, the testimony of the complainant must be examined with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merit and should not draw strength from the weakness of the evidence for the defense.[6] With the foregoing measures taken into account, we hold that the prosecution was clearly able to convincingly prove its case against the accused-appellant through the presentation of testimonial, documentary and object evidence. The following elements of the crime of rape were satisfactorily proved –

- the offender had carnal knowledge of the victim; and
- that such act was accomplished – through the use of force or intimidation, or when the victim is deprived of reason or otherwise unconscious, or when the victim is under 12 years of age.[7]

As sufficiently alleged in the information and convincingly established during the trial of the instant case, herein accused-appellant had carnal knowledge of victim Jennifer Copiling, then only a young lass of twelve years old, through the employment of force, threat and intimidation.

Victim Jennifer consistently narrated before the trial court her harrowing experience with the accused-appellant. She recounted how in the evening of September 15, 1998, the accused-appellant took advantage of his strength, and then succeeded in having carnal knowledge of her, against her will. Jennifer tried hard to free herself from the grasps of her assailant, but considering their relative strength, she failed to do so. The accused-appellant even boxed her on different parts of her body, rubbed her face against the mud and constantly hit her until she became weak, exhausted, and more incapable of resisting the sexual attack of the accused-appellant. The trial court noted that when Jennifer took the witness stand, she was calm and composed. Her answers to the questions propounded to her were forthright, straightforward, candid and without equivocation, unshaken by the rigid cross examination and unflawed by inconsistencies or contradictions on essential or material points.[8] The trial court further noted that in some instances, the victim was in the verge of tears while she was recounting her traumatic experience.

We find no cogency to deviate from the findings of the trial court. Settled is the rule that the trial court's findings on the credibility of witnesses and the facts must be given great weight on appeal, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[9] This is because it is the trial court which had the direct opportunity to observe the witnesses on the stand and to determine if they were telling the truth or not.[10] Moreover, this Court's own assessment of the records of the instant case persuades us to uphold the declarations of the trial court, and maintain the credibility accorded to the testimonies of the prosecution witnesses. It is also worthy to note that when the offended party is a young and immature girl, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability but also because of the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified were not true.[11]

The testimony of the victim on the rape committed against her by the accused-appellant was even corroborated by Dr. Vladimir V. Villasenor, a medico-legal officer, who declared that the results of her examination of the victim were compatible with the allegation of recent loss of virginity. The report of Dr. Villasenor likewise corroborated the victim's account that the accused-appellant employed force to enable him to consummate the sexual act with her.

Accused-appellant contends in his appeal brief that he was not positively identified as the perpetrator of the crime. He claims that the victim could not have identified him as her assailant given the allegation that it was dark in the room where she was first attacked by the malefactor. The only means by which the victim identified her assailant

was through his voice. He also argues that the effects of the physical abuse inflicted upon the victim could have prevented her from accurately identifying her assailant.

The contentions are untenable. Victim Jennifer testified in court that she had known the accused-appellant for a long time, because they were neighbors since she was a young child.[12] Because of this relationship, she became familiar with the voice of the accused-appellant. Settled is the rule that the sound of the voice of a person is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years.[13] In addition, her claim that it was the voice of the accused-appellant that she heard was later confirmed when she saw the face of the accused-appellant with the help of fluorescent light coming from a neighbor's house.[14] The fact that Jennifer was weakened by the physical abuse employed against her could not have hindered her recognition of the accused-appellant because she was not rendered unconscious by the injuries. After the assailant had left, Jennifer was even able to seek the help of other people, albeit with difficulty, and recount her recent harrowing experience.

In assailing the decision of the RTC, accused-appellant also claims that the testimonies of the prosecution witnesses were attended by inconsistencies which, if considered, would show the weakness of the prosecution. These alleged inconsistencies pertained to the two (2) pieces of umbrella supposedly recovered from the accused-appellant, as well as the impossibility of the said accused-appellant to state "Sige! Ipasok na natin!" considering that he speaks in Ilocano and not in Tagalog. We are not persuaded. Contrary to the claim of the accused-appellant, the inconsistencies referred to could not justify his exoneration as they refer to mere minor details. Settled is the rule that discrepancies which refer to minor details outside the essential elements of the crime charged, may actually strengthen the witness' credibility as they erase the suspicion of a rehearsed testimony.[15] Moreover, it was not sufficiently established that the accused-appellant did not know at all how to speak Tagalog.

It also bears stressing that the accused-appellant failed to present any reason why the prosecution witnesses should falsely testify against him. Well-entrenched is the principle that where there is no evidence that the witnesses for the prosecution were actuated by improper motives, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[16]

Considering the foregoing, we therefore hold that the prosecution was able to strongly and convincingly prove the guilt of the accused-appellant beyond reasonable doubt. Given the strong evidence presented by the prosecution, accused-appellant's defense of alibi deserves scant consideration. Between alibi and positive identification, weight is given in favor of identification especially when it is categorical and consistent and without any showing of ill-motive on the part of the eyewitnesses to impute so grave a wrong on the accused.[17]

Moreover, settled is the rule that the defense of alibi must be established by positive, clear and satisfactory proof that it was physically impossible for the accused-appellant to have been at the scene of the crime at the time of its commission, and not merely that he was somewhere else.[18] Accused-appellant failed to discharge this duty. The trial court even noted that assuming that the distance between Beckel, where the crime was committed, and Gibraltar, where accused-appellant allegedly was in the evening of September 15, 1998, is two kilometers, it was not so far a distance that Allan could not have been physically present in the house of the Copilings on the fateful hour that the rape was committed.

The trial court therefore did not err in finding herein accused-appellant guilty beyond reasonable doubt of the crime of rape, and as a consequence thereof, sentencing him to suffer the penalty of reclusion perpetua and all the accessory penalties provided under Article 41 of the Revised Penal Code.

The order upon the accused-appellant to pay victim Jennifer Copiling the sum of P50,000.00 as civil indemnity

and P25,000.00 as exemplary damages is sustained. In line with current rulings, the amount of moral damages is however hereby reduced to P50,000.00.¹⁹

WHEREFORE, premises considered, the assailed decision of the Regional Trial Court, Branch 62 of La Trinidad, Benguet, is hereby AFFIRMED with MODIFICATION in that the award of moral damages is hereby reduced to P50,000.00.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[*] Pursuant to Republic Act No. 8353

[1] I Records, p. 1.

[2] Decision, pp. 3-5; III Records, pp. 703-705.

[3] I Records, p. 9.[4] Decision, pp. 10-12; III Records, pp. 710-712.[5] III Records, p. 701.

[6] *People v. Santos*, 405 SCRA 87 (2003).

[7] *People v. Ayuda*, 412 SCRA 538 (2003).

[8] Decision, p. 13; III Records, p. 713.

[9] *People v. Caritativo*, 403 SCRA 608 (2003).

[10] *People v. Evina*, 405 SCRA 152 (2003).

[11] *People v. Servano*, 406 SCRA 508 (2003).[12] TSN, February 23, 2000, p. 4.

[13] *People v. Tuppal*, 395 SCRA 72 (2003).

[14] TSN, May 29, 2000, pp. 9-11.

[15] *Santos v. People*, 395 SCRA 507 (2003).[16] *People v. Diaz*, 395 SCRA 52 (2003).

[17] *People v. Peralta*, 387 SCRA 45 (2002).[18] *People v. Pascual, Jr.* 382 SCRA 470 (2002).

[19] *People v. Malones*, 425 SCRA 318 (2004).

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