

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, JHUN VILLALON Y ORDONO, ACCUSED-APPELLANT.

Ponente: BARZA, J.

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BARZA, J.:

Jhun Villalon appeals the Judgment[1] of the Regional Trial Court of Agoo, La Union, Branch 32, finding him guilty of Rape in relation to R.A. No. 7610.

The Information[2] charges Villalon, as follows:

“That on or about the 17th day of April 2010, in the Municipality of Aringay, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his cousin AAA[3], a minor child 14 years of age, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.”

During the arraignment on 14 June 2011, Villalon entered a plea of not guilty. The pre-trial conference was terminated on 28 June 2011, and trial on the merits ensued.

The prosecution presented the testimony of the victim, AAA, the mother, BBB, and Dr. Bernadette L. Lizada.

The prosecution's version of facts:

Born on 2 February 1996[4], herein victim, AAA, was fifteen (15) years old when presented to testify. She claims that on 17 April 2010, her cousin, herein accused, raped her. Their respective mothers are sisters. At 7:30 in the morning of the said date, the accused went to her and her family's house in San Benito Norte, Aringay, La Union. He invited AAA to gather mangoes in the mountain, which is about two (2) to three (3) kilometers away. It was the first time that AAA went with the accused to gather mangoes at the mountain. She left with the knowledge of her mother, BBB.

While at the mountains, AAA and the accused gathered mangoes. After doing this, the accused asked AAA to go with him to the higher part of the mountain.

While thereat, the accused invited AAA to have sex with him as she (AAA) will experience it later. At that moment, AAA felt like crying because the accused is her cousin and she is wondering why the accused told her that. AAA also felt nervous and wanted to come down the mountain but the accused held her hand.

With his two hands, the accused grabbed the left hand of AAA towards his body. In a standing position, the accused removed AAA's short pants and underwear. AAA tried to struggle away from the accused but the latter was strong. She was not able to free herself. Then the accused took off his pants and underwear while holding AAA's hands with his other hand. He then laid AAA down on the ground and started kissing her lips. AAA tried to avoid the kisses by moving her head. She also tried to wiggle her body. Then the accused laid on top of her and directed his penis to her vagina. AAA struggled so that accused's penis will not penetrate her vagina. The accused

was, however, successful in inserting his penis into her vagina. Accused pumped his buttocks while his penis was inside her vagina. After one minute, accused removed his penis from AAA's vagina. AAA noticed white substance come out of the accused's penis. The accused then threatened AAA not to tell anybody. AAA went down the mountain with the accused. Upon reaching her home, she just laid on the hammock. She did not tell anybody of what happened until after a month when she confessed to her mother, BBB.

BBB had a confrontation with the accused, who got angry because of the accusation of rape. During the confrontation, the accused wanted to hurt AAA. They then referred the matter to the barangay captain to report the incident. The barangay captain advised them to report the incident to the police station. BBB wanted to settle the matter with the barangay but the accused got angry at her and AAA. The accused's brother wanted AAA to be medically examined.

BBB accompanied AAA to the police station. They were investigated upon by Police Officer Satelyn Espiritu of the Aringay Police Station, who referred them to the La Union Medical Center for medical examination. The same police officers prepared the police report[5] and took their sworn statements.[6]

The medical certificate[7] reveals that AAA has multiple healed hymenal lacerations. Dr. Bernadette L. Lizada of the La Union Medical Center testified and confirmed the findings on the medical certificate. She also stated that the said lacerations could have been caused by insertion of any foreign object into the vagina. A foreign object can be any blunt object or even an erected penis. No identified spermatozoa however was found, but the victim was suffering from infection which could have been caused, among others, by sexual intercourse.

After the case had been filed, AAA and BBB were made to sign an affidavit of desistance[8], which they alleged they have been forced to do by BBB's sibling. AAA did not want to sign the affidavit as she even tried to hide from them. BBB later on decided not to file the affidavit of desistance because she wanted justice for her daughter.

For the defense, the accused Jhun Villalon testified.

His version of facts is, as follows:

The accused confirmed that he and AAA are cousins as their mothers are siblings. In the morning of 17 April 2010, the accused was just in his home with his wife. He stayed home until the afternoon. On 10 April 2010, he invited AAA's brother to go with him to gather mangoes in the mountain but it was AAA who volunteered to go with him. His house is twenty (20) meters away from the house of AAA. The accused and AAA left the mountain at 9:00 o'clock in the morning that day. The two of them directly went to the highway to board a bus going to Caba to sell the mangoes.

Three weeks later, while playing basketball, AAA was surprised that he was being accused of raping AAA. The barangay captain tried to settle the case but the accused refused because he did not do anything wrong. A charge of rape was eventually filed against him. Accused suspects that it was AAA's stepfather who raped her. He also denies that some of their relatives tried to settle the case for him, except for an aunt.

On 29 February 2012, the trial court rendered judgment convicting Jhun Villallon of rape in connection with R.A. No. 7610, the dispositive portion of which reads:

“WHEREFORE, the Court finds accused Jhun Villalon y Ordono GUILTY beyond reasonable doubt of the crime of rape, and hereby sentenced him to suffer the penalty of reclusion perpetua and to pay AAA the amount of P75,000.00 as civil indemnity as moral damages.

SO ORDERED.”

Jhun Villalon, now accused-appellant, appeals to the Court upon the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH FORCE, VIOLENCE, THREAT AND INTIMIDATION AS ELEMENTS OF RAPE.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PRIVATE COMPLAINANT'S LACK OF CREDIBILITY.

According to the accused-appellant, the testimony of the victim in this case is improbable and insufficient to prove the crime of rape. The victim failed to prove actual resistance when she was not totally defenseless during the alleged rape. Physical force is also lacking in that the victim neither suffered from any bruises nor bore the marks of physical struggle after being raped on the ground. Accused-appellant likewise doubts AAA's credibility and finds it impossible that, as alleged, he threatened AAA after the rape incident. The unjustified delay in reporting the incident to her mother and the authorities should also be taken in favor of the accused-appellant.

The accused-appellant adds that the findings of the medico-legal is only corroborative in evidence. The compatibility between the age of the lacerations and the date of the alleged rape was not duly established and, thus, fatal because AAA underwent medical examination only a month after the alleged rape. The testimony of the medico-legal is incomplete in this regard.

The victim's lack of credibility is further strengthened by her own affidavit of desistance. Her failure to give a credible testimony is evidence of ill-motive and has likewise rendered her claim of force in signing the affidavit self-serving.

Accused-appellant also contends that alibi is probable under the circumstances, particularly in this case, when the testimony of the victim is not supported by physical evidence and medical findings.

In his Brief[9], the Solicitor General, for the State, prayed that the assailed Judgment be affirmed in toto. It is submitted that the appellant's guilt was proved beyond reasonable doubt. The prosecution was able to establish the elements of rape required under Article 266-A and accused-appellant's defense of denial is weak considering the positive identification of the accused-appellant of the prosecution witness. The affidavit of desistance of the victim likewise has no bearing on the criminal prosecution against the accused-appellant.

We resolve to affirm accused-appellant's conviction.

In this case, the Court finds nothing in the testimony of the victim, AAA, sufficient to reverse accused-appellant's conviction for rape. It is a settled doctrine that when it comes to credibility of witnesses, the findings of a trial court on such matter will not be disturbed unless the lower court overlooked, ignored, misapprehended or misinterpreted certain facts or circumstances which are so material such as to affect the outcome of the case.[10]

In this appeal, the accused-appellant argues that the testimony given by AAA is improbable and insufficient to convict him of the crime charged. Accused-appellant claims that AAA was not totally defenseless during the alleged rape so as to make her story of defloration credible. It is well to note, however, that such lack of resistance was amply explained by AAA, as follows:

“FISCAL:

Q

Why is it that you did not kick the accused nor you shouted at the time he held your hands?

A

Because nobody will hear it anyway.

Q

About the kicking why did you not kick him?

A

Because he is stronger than me sir.”

x x x”[11]

Even if AAA did not shout for help, such would not diminish her credibility. It must be emphasized that there is no standard form of reaction for a woman, much more a minor, when confronted with a horrifying experience such as a sexual assault. The actions of children who have undergone traumatic experience should not be judged by the norms of behavior expected from adults when placed under similar circumstances.[12] The workings of the human mind under emotional stress are unpredictable; people react differently in such situations: some may shout; some may faint; some may be shocked into insensibility; others may openly welcome their intrusion.[13]

The accused-appellant next contends that there was no physical evidence of force and that the unjustified delay in the reporting of the rape incident should be taken in his favor.

In a case[14], the Supreme Court had the occasion to discuss these kinds of arguments by an accused in a rape case, as follows:

“A person accused of a serious crime such as rape will tend to escape liability by shifting the blame on the victim for failing to manifest resistance to sexual abuse. However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused. In cases where the rape is committed by a relative such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of violence. xxx

AAA’s conduct, i.e., acting like nothing happened, after being sexually abused by Pareja is also not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society’s expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim. One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress. Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances.

Likewise, AAA’s delay in reporting the incidents to her mother or the proper authorities is insignificant and does not affect the veracity of her charges. It should be remembered that Pareja threatened to kill her if she told anyone of the incidents. In *People v. Ogarte*, we explained why a rape victim’s deferral in reporting the crime does not equate to falsification of the accusation, to wit:

The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the

offenders' making good their threats to kill or hurt their victims." (citation omitted; emphasis supplied)

Also, while it is true that the accused-appellant did not threaten to kill AAA or the latter's family and that the alleged threat came after the sexual tryst, the same should not be dismissed as not of such character to cause intimidation on AAA.

In *People v. Sgt. Bayani*[15], it was explained that:

"It must be emphasized that force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point. So must it likewise be for intimidation which is addressed to the mind of the victim and is therefore subjective. Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is therefore enough that it produces fear – fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter x x x" (emphasis supplied)

It is well to note that after the accused-appellant invited AAA to have sexual intercourse with him, AAA felt nervous and wanted to go down the mountain.[16] She could not believe that the accused-appellant, who is her cousin, could say something like that to her. Such reaction of AAA should be considered as intimidation viewed in light of her perception and judgment at that time.

In another attempt to exonerate himself from the crime, accused-appellant argues that the compatibility between the age of the lacerations and the date of the alleged rape was not duly established, making the testimony of Dr. Lizada incomplete to create a time line of the incident.

The Court is not impressed. The Supreme Court held in the case of *People vs. Dreu*[17] that:

"Although the results of a medical examination may be considered strong evidence to prove that the victim was raped, such evidence is not indispensable in establishing accused-appellant's guilt or innocence. In *People vs. Docena*, we stated:

that there was no medical examination report presented, sign of resistance during the actual copulation, or proof of violence committed against MARGIE does not detract from our conclusion that she was raped. A medical examination is not indispensable in a prosecution for rape. Medical findings or proof of injuries, virginity, or an allegation of the exact time and date of the commission of the crime are not essential in a prosecution for rape." (citation omitted; emphasis supplied)

The Court likewise finds no reason to believe accused-appellant's alibi. For alibi to succeed as a defense, the following must be established by clear and convincing evidence:

1. The accused's presence at another place at the time of the perpetration of the offense; and
2. The physical impossibility of the accused's presence at the scene of the crime.[18]

As held in a case[19]:

"An alibi may be considered with favor only when established by positive, clear and satisfactory evidence. Significantly, where no one corroborates the alibi of an accused, such defense becomes all the weaker for this deficiency. Neither can plain denial, a negative and self-serving evidence stand against the positive identification and categorical testimony made by a victim of rape. A mere denial is seldom given greater evidentiary value than the testimony of a witness who creditably testifies on affirmative matters. All told, the proffered alibi of accused-appellant can not stand against the positive identification by the private complainant that he is the culprit. Basic is the rule that alibi which is easy to concoct can not prevail over the positive identification; what is more, appellant utterly failed to prove that it was physically impossible for him to be at

the scene of the crime at the approximate time of its commission. Consequently, accused-appellant's defense of alibi can not prosper. x x x”

In this case, the accused-appellant resides some 20 meters away from the house of the victim. The place in the mountain where the rape was committed is about 2 to 3 kilometers away from the house of the victim. There is, thus, no physical impossibility of accused-appellant's presence at the scene of the crime. He only alleged that he was home with his wife on 17 April 2010, which allegation is uncorroborated by any other evidence. The wife did not testify to lend credence to this assertion by the accused-appellant.

Regarding the affidavit of desistance executed by AAA, let it be stressed that such is regarded with suspicion as it can be easily obtained through intimidation, and attains no probative value in light of the affiant's testimony to the contrary[20], as in this case. The execution of the said affidavits was adequately explained by AAA and BBB during the trial. The said affidavits were prepared in the office of the defense counsel. AAA was only told by her auntie to sign the affidavit of desistance but it has been her decision to continue the prosecution of the case. BBB claims she was forced into signing it by her relatives without fully understanding the same, save for her sister's explanation that with the affidavit, BBB will only tell the court that the accused-appellant has no fault in this case. After signing the affidavits, BBB was given instruction to submit it to the Prosecutor's Office. It was only the secretary of the prosecutor who explained to her the contents of the affidavit written in English. As the prosecutor was not present, she left the Prosecutor's Office and did not come back anymore. She decided to pursue the case.

Thus, the retractions notwithstanding, the testimonies of the prosecution witnesses remain credible.

As aptly observed by the trial court and We quote:

“In *Junio vs. People*, 237 SCRA 826, the High Court declared that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the accused arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, AAA would suddenly turn around and declare that she is no longer interested in the prosecution of this case.

Retraction is an afterthought which should not be given probative value. Affidavit of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, and the Court has invariably regarded such affidavits as exceedingly unreliable x x x.

x x x. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.”

Considering the foregoing discourse, this Court holds that the evidence presented by the prosecution sufficiently establishes beyond reasonable doubt that accused-appellant Jhun Villalon raped AAA. The Court, thus, sees no reason in reversing the conclusions arrived at by the trial court.

WHEREFORE, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Abdulwahid (Chairperson) and Cruz, JJ., concur.

[1] Rollo, pp. 12-18

[2] Records, p. 1

- [3] Pursuant to Republic Act No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004” and its implementing rules, the real name of the victim, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People vs. Cabalquinto*, G.R. No. 167693, 19 September 2006
- [4] Exhibit “E” for the prosecution, Records, p. 97
- [5] Exhibit “C” for the prosecution, Records, p. 95
- [6] Exhibits “A” and “B” for the prosecution, Records, pp. 91-94
- [7] Exhibit “D” for the prosecution, Records, p. 96
- [8] Exhibit “2” for the defense, Records, p. 118
- [9] Rollo, pp. 83-103
- [10] *People vs. Patano*, G. R. No. 129306, March 14, 2003
- [11] TSN, August 16, 2011, p. 43
- [12] *People vs. Tecson*, G.R. No. 174098, September 12, 2008
- [13] *People vs. Mahinay*, G.R. No. 179190, January 20, 2009
- [14] *People vs. Pareja*, G.R. No. 202122, January 15, 2014
- [15] G.R. No. 120894, October 3, 1996
- [16] TSN, August 16, 2011, p. 12
- [17] G.R. No. 126282, June 20, 2000
- [18] *People vs. Banzuela*, G.R. No. 202060, December 11, 2013
- [19] *People vs. Marquez*, G.R. Nos. 137408-10, December 8, 2000, as cited in *People vs. Publico*, G.R. No. 183569, April 13, 2011
- [20] See *People vs. Acojedo*, G.R. No. 138661, November 19, 2001

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