

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WALTER ABORDO AND MIGUELA RUFIN, ACCUSED, WALTER
ABORDO, APPELLANT.**

G.R. No. 101187. July 23, 1993

Ponente: MELO, J.

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MELO, J.:

Accused Walter Abordo and Miguela Rufin were charged in Criminal Case No. 3634-O of the Regional Trial Court of the Eight Judicial Region (Ormoc City) with the crime of rape in a complaint which reads as follows:

That on or about the 17th of February, 1990, in Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused, WALTER ABORDO in conspiracy with MIGUELA RUFIN, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant herein, VILMA CABALLEJO, against her will, in the following manner, to wit: that it was MIGUELA RUFIN who took her from Isabel, Leyte, and brought her in one of the rooms of Hotel Don Felipe, and once inside, MIGUELA RUFIN let WALTER ABORDO inside and went outside together with her small daughter, leaving VILMA CABALLEJO inside with WALTER ABORDO who succeeded in raping her.

In violation of Article 335, Revised Penal Code, Ormoc City, June 6, 1990.

s/t/ VILMA CABALLEJO

(Complainant)

(p. 3, Rollo.)

Upon arraignment, Walter Abordo pleaded not guilty. Accused Miguela Rufin was not apprehended and has remained at large up to the present time. Trial proceeded with regard to Abordo only.

On April 8, 1991, the trial court rendered a decision, disposing:

WHEREFORE, decision is hereby rendered finding the accused WALTER ABORDO guilty beyond reasonable doubt of the crime of RAPE defined and penalized under Art. 335 of the Revised Penal Code. There being no aggravating nor mitigating circumstances, the Court imposes upon the accused the sentence of RECLUSION PERPETUA and to indemnify the private offended party, VILMA CABALLEJO the sum of P25,000.00, and to pay the costs. (p. 24, Rollo.)

Dissatisfied, Abordo has interposed the instant appeal and would seek reversal upon the following assigned errors:

I. THE COURT ERRED IN ACCEPTING THE TESTIMONY OF THE PRIVATE COMPLAINANT AS THE GOSPEL TRUTH WITHOUT EVEN AS MUCH AS SUBJECTING IT TO A CURSORY ANALYSIS, TOTALLY IGNORING FACTS AND CIRCUMSTANCES WHICH RENDER IT EXTREMELY IMPROBABLE, HIGHLY INCREDIBLE AND COMPLETELY UNBELIEVABLE.

II. THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT NOTWITHSTANDING THE FACT THAT THE TESTIMONY OF THE ALLEGED RAPE VICTIM VILMA AS FAR AS THE IDENTITY OF HER ALLEGED RAPIST IS NOT CLEAR AND CONVINCING.

III. THE LOWER COURT ERRED IN TOTALLY IGNORING THE TESTIMONY OF DEFENSE WITNESSES PRISCILLO MARTIN AND ANTONIO PEÑA WHICH MATERIALLY AND SUBSTANTIALLY CONTRADICTED THE TESTIMONY OF PRIVATE OFFENDED PARTY.

IV. THE COURT ERRED IN REJECTING THE MOTIVE OF THE PRIVATE OFFENDED PARTY IN NAMING THE ACCUSED-APPELLANT AS HER RAPIST. (pp. 1-2, Appellant's Brief; p. 41, Rollo.)

As found by the trial court, the facts of the case, which after a careful review of the record we find to be fully supported by the evidence, are as follows:

The evidence for the prosecution shows that in the morning of February 17, 1990 at Barangay Tubod, Isabel, Leyte, Miguela Rufin, one of the accused, went to the house of the private offended party, Vilma Caballejo, to ask permission from Vilma's mother to allow Vilma to accompany her (Miguela) and her 8-year old daughter to Ormoc City. Miguela Rufin was then a neighbor of Vilma at Brgy. Tubod. Vilma's mother gave her consent on condition that Miguela would defray her expenses. From Brgy. Tubod the three (3), Miguela Rufin, her 9-year old daughter Bebet and the private offended party, went first to Poblacion Isabel, Leyte, to the bus terminal of Isabel, Leyte. They took an LBC transportation to Ormoc City. They arrived Ormoc City at noontime and they took their lunch at a carenderia located inside the bus terminal of Ormoc City. While they were taking their lunch a man approached their table and sat with them and also ate with them. This man and Miguela Rufin talked in English and the private offended party did not understand what they talked about. The private offended party identified that man as the accused, Walter Abordo and this Miguela Rufin as the same Miguela Rufin who is also an accused in this case and who has fled and who has remained a fugitive from justice.

After taking their lunch, Miguela Rufin brought her daughter and the offended party to Hotel Don Felipe while the accused Walter Abordo remained at the Carenderia. Miguela Rufin checked in at the hotel and they were given a room. A little while after they went inside the hotel room, Miguela Rufin left the room leaving her daughter and the private offended party inside the room. Miguela told the private offended party that she left something and she would be back soon. When Miguela Rufin came back she was already with her co-accused, Walter Abordo. Miguela Rufin took her daughter and left the room while Walter Abordo went inside the room. The private offended party tried to leave the room but Walter Abordo immediately locked the door and held the private offended party and pulled her towards him and towards the bed. Her hands were pinned by the body of the accused. She shouted for help. She called for her Nang May (Miguela) but her mouth was covered and she was threatened by the accused that he would choke her to death if she shouted for help. She struggled to free herself from the accused but the accused was too strong for her. Finally, the accused succeeded in his carnal desire. He penetrated her. She felt pain, fear and anguish. She lost consciousness. When she regained her consciousness she found the accused still lying beside her. She was too weak, too afraid and trembled in fear. The accused mounted on her again, penetrated her again for the second time. Then Miguela Rufin knocked the hotel door and the accused got off from the bed and put on his clothes. The offended party put on her clothes, too. Then Walter Abordo opened the door and Miguela went inside and brought her down the hotel. They left the accused, Walter Abordo inside the hotel room. Before they left, the accused (Walter Abordo) warned her (offended party) that if she would tell anybody of what happened, he would kill her. She was too weak, terrified and confused that she did not tell anybody of what happened to her until on March 6, 1990 when she finally confessed to her mother the ordeal she suffered in Ormoc City that February 17, 1990 afternoon. Upon learning, her parents told the offended

party's grandfather, Meleton Dumagsa of what happened and the latter advised them to file a case in court. At that point in time, the private offended party did not know the name of her rapist.

On March 8, 1990 the private offended party was brought by her parents and her grandfather to the PNP Station of Isabel, Leyte; they were advised to have her examined by a physician. They went to see the doctor but the doctor refused to examine her because the incident happened on February 17, 1990 and examining her on March 8, 1990 only had no more probative value. They went back to the police station. On their way back to the police station that March 8, 1990 morning, they met the accused Walter Abordo near the municipal hall building of Isabel, Leyte. The offended party pointed to her Lolo the accused as her rapist and her Lolo recognized the accused to be a member of the Sangguniang Bayan of Isabel, Leyte, named Walter Abordo. Upon hearing this, the accused told her "Don't implicate me because, I have nothing to do", then went up the municipal hall. They went back to the office of the Chief of Police and while there, her lolo was fetched by somebody who told him that the Municipal Mayor of Isabel, Leyte wanted to see him in his office. A while later her lolo returned and brought her to the office of the Municipal Mayor, Atty. Priscilo Martin, where the Mayor propounded at her some questions. The accused Walter Abordo denied any commission of the act he was being accused of and the Mayor just advised the offended party to file a case in Court. (pp. 13-14, Rollo.)

The issues raised by appellant may be reduced to only one: Whether the testimony of the offended party deserves full credence as against that of the defense witnesses.

The rule to which this Court has consistently adhered is that findings of fact of the trial court are not to be disturbed on appeal unless there are substantial facts and circumstances which the trial court had overlooked and which, if properly considered, might affect the result of the case (*People vs. Brioso*, 37 SCRA 336 [1971]). Where only the credibility of witnesses is raised on appeal, the long-standing rule is for the appellate tribunal to give due respect to the assessment of the facts made by the trial court, as said court had the opportunity not only of receiving the evidence but also of observing the conduct and demeanor of the witnesses while testifying (*People vs. Sales*, 44 SCRA 489 [1972]).

A perusal of the decision of the trial court shows that the trial court made a scrupulous, meticulous, and sedulous evaluation of the evidence. Searched as we have the record, we find no fact or circumstance of weight or significance that would impair the correctness and validity of the findings of fact and conclusion of the trial court.

The inconsistencies and contradictions pointed out by accused-appellant in the testimony of the victim are so trivial and minor to blunt the impact of the testimony of the victim, a young (17 years old), innocent, guileless, inexperienced barrio maiden. We cannot conceive of any evil motive, and the record reveals none, on the part of the victim to point an accusatory finger at accused-appellant other than her natural and rightful desire to vindicate her honor. She would not have risked being subjected to public humiliation and opprobrium nor would she have willingly undergone the rigors of a public trial where her disgrace of having been ravished would be unfolded had she not been actually raped. Her testimony on this point is straightforward and consistent and bears the attributes of credibility, and her identification of accused-appellant as her ravisher is positive and categorical. In fact, her recollection of accused-appellant's assault on her virtue was so vivid and gripping that she was in tears while testifying and she went into hysterics to such an extent that the trial judge was compelled to suspend the session twice. Her conduct and demeanor on the witness stand are not indicative of a scheming woman out to pin a fabricated accusation upon an innocent man, but rather are characteristic of an innocent woman-child outrageously defiled by a bestial malefactor.

That accused-appellant could impose his will upon the victim by violence and intimidation, there can be no doubt. As the trial court aptly observed: "The accused is about 5'4" tall, lean and obviously strong, while the offended

party is small, barely 4'6" tall and frail. By his physical superiority, the accused could do anything against the offended party physically." (p. 20, Rollo.)

Accused-appellant's defense of alibi, that at the time of the incident he was at Sitio Kawayan, Brgy. Bantigue, Isabel, does not merit serious consideration. An axiom reiterated by this Court time and time again is that alibi cannot prevail over positive identification (People vs. Esmael, 37 SCRA 601 [1971]; People vs. Talay, 101 SCRA 332 [1980]). When an accused is identified by clear, explicit, and positive testimony as the perpetrator of the offense, his defense of alibi cannot be entertained (People vs. Cardenas, 56 SCRA 631 [1974]). Accused-appellant was positively and categorically identified by the victim as the person who raped her, and she could not have been mistaken as to the identity of accused-appellant for nothing could be spatially closer than a rapist and his victim during the commission of the sexual assault. Accused-appellant's defense of alibi cannot thus overcome the positive testimony of the offended party (People vs. Amot, 37 SCRA 793 [1971]). The rationale why our courts reject the defense of alibi in the face of positive identification of the accused is its inherent weakness, the ease of its fabrication, the difficulty of checking or rebutting it (People vs. Bagasala, 39 SCRA 236 [1971]), and the frailty of human memory on dates (People vs. Mercado, 97 SCRA 232 [1980]) so much so that it is not uncommon for witnesses to get confused with dates (People vs. Molleda, 86 SCRA 667 [1978]).

Corroborative of the guilt of accused-appellant is the flight of his co-accused, Miguela Rufin, which signifies an awareness of guilt and a consciousness that she has no tenable defense to the rape charge (People vs. Flores, 23 SCRA 309 [1968]; People vs. Arenas, 198 SCRA 172 [1991]).

The delay of the victim in reporting the attack on her honor does not detract from the veracity of her charge. The delay of 17 days from the date the crime was committed up to the day she reported the crime to her mother cannot be considered as unreasonably long as to render her testimony suspect. A much longer delay of 35 days before the victim reported the sexual assault upon her was not considered unreasonable by this Court in People vs. Santiago (197 SCRA 556 [1991]). Furthermore, it is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threats on their lives (People vs. Raptus, 198 SCRA 425 [1991]), as accused-appellant had so threatened the victim in the case at bar, aside from shame.

Likewise, delay in the physical examination of a rape victim is not fatal to the prosecution; in fact, in rape cases, the medical examination of the victim or the presentation of a medical certificate is not essential to prove the commission of the rape as the testimony of the victim alone, if credible -- as we have so found the testimony of the victim in this case -- is sufficient to convict the accused of the crime (People vs. Dalinog, 183 SCRA 88 [1990]; People vs. Santiago, 197 SCRA 556 [1991]).

Under the facts of the case, as clearly established by the evidence on record, the elements of the crime of rape, that the offender had carnal knowledge of the complainant and that such act was accomplished by the use of force or intimidation, are manifestly present.

The trial court, therefore, correctly found accused-appellant guilty of rape. The civil indemnity, however, should be increased to P30,000.00 (People vs. Resano, 132 SCRA 711 [1984]; People vs. Torrevillas, 576 [1991]; People vs. Dabon, G.R. No. 102004, December 6, 1992).

WHEREFORE, the appealed decision is hereby **AFFIRMED** with the modification that the civil indemnity to be paid by accused-appellant to Vilma Caballejo is hereby increased to Thirty Thousand Pesos (P30,000.00).

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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