

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LADISLAO ABO Y DE ALDAY, ACCUSED-APPELLANT.

G.R. No. 107235. March 02, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Ladislao Abo y de Alday appeals from the decision of Branch 58 of the Regional Trial Court (RTC) of Lucena City in Criminal Case No. 86-439,[1] promulgated on 27 August 1992, finding him guilty of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to pay the offended party, Adelia Velasco de Chavez, the amount of P25,000.00 as indemnity, and to pay the costs.[2]

The information in Criminal Case No. 86-439, which the Provincial Fiscal of Quezon filed on 15 August 1986, reads as follows:

"The undersigned, accuses Ladislao Abo y de Alday (prisoner), upon complaint filed by the offended party, of the crime of rape, committed as follows:

That on or about the 13th day of May 1986, at Barangay San Agustin, Municipality of Tiaong, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, by means of force, threat, physical violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Adelia Velasco de Chavez, against her will."[3]

The judgment of conviction is based on the evidence for the prosecution as developed from the testimonies of Adelia Velasco de Chavez, barangay captain Armando Barcelona, and Dr. Vicente Umali. The trial court summarized the evidence thus:

"From the evidence thus presented, the Court finds that in the early afternoon of May 13, 1986 Adelia Velasco de Chavez, a married woman, was talking [sic] on her way home to Barangay San Jose, Tiaong, Quezon coming from Barangay Lalig of the same town. When she was near the boundary of Barangay San Agustin and Barangay San Jose, a man whom she later identified as herein accused, LADISLAO ABO, stopped ('hinarang') her and raped her. As she was walking, accused came from behind her and held her by the neck and forcibly dragged her to the bushes. She struggled but accused boxed her and she was hit on the right portion of her face, right chin and on the abdomen. Accused then removed her hanging pants and her panty and succeeded in inserting his organ inside the organ of Adelia de Chavez. To prevent accused from inserting his organ Adelia de Chavez tried putting her two legs close together but accused put his knee on the inside of her thighs and he was able to separate her legs and he then put himself on top of her and with her legs separated he succeeded to insert his organ inside the organ of Adelia de Chavez. While he was doing this, accused told Adelia de Chavez, 'pagbigyan mo ako kung hindi papatayin kita'. The place where this incident took place had coconut trees and banana trees. While it was not so forested, a person lying down could not be seen. The nearest house to the place is about half a kilometer away. After satisfying himself, accused got up and as Adelia de Chavez tried to get up accused kicked her at the side of her right thigh and told her he will kill her. As accused put on his shorts and moved a little away from her and turned his back on her, Adelia de Chavez was able to stand up, put

on her pants, without bothering to put on her panty, and ran away shouting. After running four to ten meters, she saw a person on a bike and asked for help. As the person she met is not known to her they parted ways when the accused was already gone and she proceeded to the house of Arsenio Arias nearby to ask for help. As Arsenio Arias was out at the time, Adelia de Chavez told the wife of Arsenio Arias that she was raped. When summoned, Arsenio Arias talked to Adelia de Chavez and she described her assailant [sic] to him as being well-built, tall and dark, round face with a scar on the right side of the face.

When medically examined shortly after by Dr. Vicente Umali, the Rural Health doctor of the municipality of Tiaong, Adelia de Chavez was found to have suffered a contusion with slight swelling on the right temporal region, slight contusion with hematoma on the anterior aspect of the neck, and a superficial linear abrasion 1 cm. long at the inferior border of the lower right mandible. As Adelia de Chavez is a married woman with three children, internal examination did not reveal significant information about sexual assault. The vaginal canal is lax and easily admits two fingers. Sarseanginous fluid was noted filling up the vaginal canal at the vicinity of the cervical opening, which may or may not be semen. No fresh bleeding or laceration was noted.

While she was being sexually assaulted, Adelia de Chavez was able to take a good look at her assailant [sic]. It was early afternoon and the visibility was good being broad daylight. While she then did not know his name she could recognize him if she will see him again. The following day she saw the assailant [sic] again. She was then with her sister-in-law on their way to an 'albularyo' (quack doctor) in Barangay San Jose when she saw him at the ricefield. It was to him that her sister-in-law asked about the way to the 'albularyo'. Adelia de Chavez told her sister-in-law that the person she talked with was the one who raped her. They forthwith returned home and Adelia de Chavez told her husband, Raymundo de Chavez, about seeing the person who raped her. A policeman was fetched and they, with the policeman, proceeded to the place where the assailant [sic] was seen and they brought him to the police station at the poblacion where Adelia de Chavez formally pointed to accused Ladislao Abo as the person who raped her. Having been identified and apprehended, Adelia de Chavez signed and filed a sworn complaint for rape against accused Ladislao Abo."[4]

The accused, on the other hand, raised the defense of alibi, which was supported by the testimonies of Reynaldo Catibog[5] and Florencio Abo;[6] tried to cast doubts on his identification by the offended party, through the testimonies of Arsenio Arias,[7] Ernesto Dimaculangan,[8] Raul Umali,[9] and Patrolman Felino Noguera;[10] and sought to prove ulterior motives on Adelia's part by claiming that there was bad blood between him and her family because of a controversy concerning the irrigation of their ricefields and their political differences. The alleged ill motive was testified to by Florencio Abo, brother of the accused.[11]

In regard to his defense of alibi, the accused testified that he was working at a farm in San Jose, Tiaong, Quezon, in the afternoon of 13 May 1986, together with Erickson del Mundo, Reynaldo Catibog, and Florencio Abo. He went to the farm between 12 noon and 1:00 p.m. and left for home at past 5:00 p.m. He never left the farm before 5:00 p.m. When he reached his house, his wife informed him that somebody was raped and that the victim was in the house of Arsenio Arias. He changed his clothes, returned the shovel he had borrowed from Ernesto Sandoval, and proceeded to the house of Arsenio Arias to see the rape victim. On the way, he met the group of Andres de Chavez and his brothers-in-law. Andres informed him that his daughter-in-law, Adelia de Chavez, was raped and that they were on their way to the poblacion. He recognized Adelia de Chavez, who was then with the group standing beside Andres and who looked at him but did not show any reaction. After the meeting, he went home.

The following day, as he was working on the farm, he saw Avelina de Chavez and her daughter. Avelina asked him the way to the place of Eric and he showed her the way. About noon, his sister told him that he was being charged with rape, so he went home. The police went to his house to bring him to the station, but he told them that he would just change his clothes after which he would follow them to the police headquarters. Then he went to his uncle, Lauro Abo, who accompanied him to the police headquarters with Patrolman Miguel Abo, now deceased. At the police headquarters, he talked with Raymundo de Chavez, husband of Adelia de Chavez, who told him,

"Ikaw pala, dinagdagan mo pa ang galit ng aming pamilya." He was then brought to the investigation room with the spouses Raymundo and Adelia de Chavez where, in the presence of Patrolman Noguera and Patrolman Castillo, Adelia de Chavez pointed to him as the one who had raped her. He was investigated in the presence of Lauro Abo, a barangay councilman, and Patrolman Miguel Abo.[12]

Arsenio Arias testified that the offended party described the rapist to him as being well-built, tall, dark, and round faced with a 1-inch long scar on the right side. When he was about to go and look for the man so described, Ernesto Dimaculangan arrived and he (Arsenio) asked the offended party if the rapist was as big as Ernesto Dimaculangan to which she answered that the rapist was bigger.[13]

In convicting the accused, the trial court debunked his claim that the prosecution witnesses were motivated by ill will and that the identification of the accused was questionable:

"Right after, at the earliest opportunity, Adelia de Chavez fled from her assailant [sic] and reported and sought the help of the first person she saw, a passing person whose name she does not know riding on a bike. After the assailant [sic] had gone away, she went to the nearest house, the house of Arsenio Arias, and reported the incident and at the same time sought their help in apprehending the assailant [sic]. No motive could therefore be ascribed to the complainant in prosecuting the accused other than being aggrieved by the sexual assault against her committed by the accused.

....

While being raped, in broad daylight being in the early afternoon, complainant was able to take a good look at her attacker. While she did not know his name, she could recognize him if she will see him again. Indeed she recognized him when she saw him again the following day. That same day, consequent to her report to her husband, her attacker was brought to the police station of Tiaong, Quezon and there she formally pointed to the accused as the person who raped her."[14]

As to the alleged scar and the height of the accused compared to Ernesto Dimaculangan, the trial court said:

"Viewing the evidence in this case in its entirety, such inaccuracy of description is taken as mere minor inconsistencies insufficient to discredit the victim's claim that it is accused who raped her. The fact is that the victim had taken a good look at her attacker and readily recognized him when she saw him again the next day.

The Court very well considers that a woman who had just been subjected to such a traumatic experience of being sexually assaulted, especially where the evidence of the force used against her was visibly reflected by the contusions, hematoma and abrasions on her face and neck, could not be expected to give a more elaborate and detailed description of her attacker. Most certainly, a woman being sexually assaulted could not be in a position to accurately measure the height of her attacker."[15]

Unable to accept the judgment, the accused appealed. He ascribes to the trial court the commission of the following errors:

"I. IN FINDING THE DEFENDANT-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE NOTWITHSTANDING THE FACT THAT THE TESTIMONY OF THE ALLEGED VICTIM IS NOT ONLY UNCORROBORATED BUT IS INCONSISTENT WITH HUMAN EXPERIENCE AND BEHAVIOR;

II. IN VIEWING THE INACCURACY OF THE DESCRIPTION GIVEN BY THE ALLEGED VICTIM AS A 'MERE MINOR INCONSISTENCY' INSUFFICIENT TO DISCREDIT THE ALLEGED VICTIM'S CLAIM THAT IT WAS DEFENDANT WHO RAPED HER;

III. IN NOT BELIEVING THE TESTIMONY OF APPELLANT AS CORROBORATED BY HIS WITNESSES; AND

IV. IN OBVIOUSLY RELYING ON THE INHERENT WEAKNESS OF THE DEFENSE RAISED, I.E. ALIBI, THAN ON THE SUPPOSED STRENGTH (OR LACK OF IT) OF THE EVIDENCE FOR THE PROSECUTION IN CONVICTING THE DEFENDANT- APPELLANT."[16]

We are, once more, called upon to consider the following well-entrenched principles in rape cases:

1. An accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
2. In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and
3. The evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[17]

We have carefully examined the records of this case and have assiduously gone over the testimonies of the witnesses. We are satisfied that the prosecution's evidence established the guilt of the accused with moral certainty. Hence, the assigned errors cannot be accorded acceptance.

The first assigned error has no legal and factual basis. The law does not require that the testimony of a single witness must be corroborated except where expressly mandated.[18] The weight and sufficiency of evidence is determined not by the number of the witnesses presented but by the credibility, nature, and quality of the testimony. It is settled that the testimony of a lone prosecution witness, if credible and positive, is sufficient for conviction.[19]

Contrary to the accused's claim, we do not find the conduct of the victim to be "inconsistent with human experience and behavior." What she did before, during, and after she was raped was in accord with human experience and behavior. She resisted with all the strength she could to prevent the rape, pleaded for mercy, and yielded to his lust only after she was threatened with death.[20] Thereafter, she ran away, shouted for help, and, in the house of Arsenio Arias, narrated the incident to Arias' wife. Later, she submitted herself to an examination of her private parts by Dr. Umali and reported the incident to the police authorities. After she again saw the accused the following day, she confided to her sister-in-law that he was the rapist and when they reached their house, she told her husband about it. They immediately reported the matter to a policeman who then brought the accused to the police station where she spontaneously pointed to him as the rapist.[21]

There is nothing in the second assigned error which would discredit the testimony of the victim. We find no substantial inaccuracy in her testimony describing the accused as having a scar on his face and agree with the trial court that the inaccuracy is on a minor point. It must be stressed that the victim did not personally know the accused. Nevertheless, as stated above, there was spontaneity in her recognition of the accused as her rapist. She did not, as well, hesitate to point to him as the rapist at the police station. The accused admitted this fact when he testified in court. But he did not testify that he protested the accusation or that he immediately told the policeman present that the accusation was false. That accusation, if untrue, naturally called for a denial. Then too, he further testified on direct examination that he was confronted by the victim's husband, Raymundo de Chavez, at the police station:

"Q What was your conversation all about at the police headquarters with Raymundo de Chavez?

A He told me that 'ikaw pala, dinagdagan mo pa ang galit ng aming pamilya.' You have added anger to my family."

Yet the accused did not immediately deny that he raped Raymundo's wife. He feebly answered thus:

"Q And what did you say to Raymundo Chavez?

A I asked him, what make [sic] him angry to me.

Q What was the answer of Raymundo de Chavez?

A He did not speak, ma'am."[22]

This, again, was an occasion that naturally called for an immediate denial from the accused if indeed he was not the rapist. Section 32, Rule 130 of the Rules of Court provides:

"An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him."

It was also established that in the afternoon of 14 May 1986, the victim was investigated by Patrolman Felino Noguera of the Police Force of Tiaong, Quezon. The investigation was reduced to writing in the form of a sworn statement.[23] Question No. 15 thereof and the victim's answer thereto read as follows:

"T: Ano ang mga palatandaang nakapagpatibay sa iyo na ito ngang si Ladislao Abo ang siyang gumahasa sa iyo?

Sagot: Dahilan po sa kanyang kulay at hugis ng mukha na may kaunting pilat sa kanang bahagi ng mukha, malalim ang kanyang baba na parang may guhit, ang kanyang boses ay kilalang-kilala ko at isa pa dahil alas 3:00 lamang ng hapon, humigit-kulang nuon, ay tandang-tanda ko ang mukha niya pati na ang katawan niyang medyo maskulado."[24]

Clearly, therefore, the victim's positive identification of the accused is beyond dispute. The accused attempted to cast doubt thereon, through the testimonies of his witnesses, Arsenio Arias, Raul Umali, and Ernesto Dimaculangan. Arias testified that the victim described the rapist as "well-built, tall and dark," with "a round face, with a scar on the face," and that when he asked her if the rapist was as big as Ernesto Dimaculangan who was near, she answered that the rapist was bigger. Thereupon, defense counsel requested the court that Ernesto and the accused be required to stand beside each other, which was granted. Then the said counsel and the court made the following observations:

"ATTY. CASCO:

In height, accused Ladislao Abo is shorter than Ernesto Dimaculangan and the body built of Ladislao Abo is smaller than that of Ernesto Dimaculangan.

COURT:

The Court observes Dimaculangan is very slightly taller but of broader shoulder."[25]

Ernesto Dimaculangan was presented by the defense to corroborate the testimony of Arsenio Arias that in the house of Arsenio Arias, the victim made a comparison between him and the accused.[26]

On rebuttal, the victim testified that she does not know Ernesto Dimaculangan and that she was not able to talk to Arsenio Arias in his house after she was raped.[27]

From the foregoing, it is clear that the alleged inconsistency made by the victim in describing the accused was based not on what she testified to in court, but on what the defense witnesses claimed was said by the victim after the incident. This involves the credibility of the witnesses rather than the accuracy of her testimony as to the description. The trial court was in a better position to pass judgment on the credibility of the witnesses, having

personally heard them when they testified and observed their deportment and manner of testifying. It is doctrinally entrenched that the evaluation of the testimony of witnesses by the trial court is received on appeal with the highest respect because it is the trial court that has the direct opportunity to observe them on the stand and detect if they are telling the truth or lying through their teeth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily.[28] The trial court gave full faith and credit to the victim's testimony and disregarded the claim of the accused's witnesses. We find no cogent reason to disregard such assessment.

Even granting that the victim described the accused to Arsenio Arias, the fact that the accused has no scar and is shorter and smaller than Ernesto Dimaculangan does not disprove her identification of the accused. A scar need not be permanent; an appearance of one could even be made as a cover-up in order to confuse witnesses. The accused did not testify that he never had a scar on his face. Also, if indeed she made a comparison between the accused and Ernesto Dimaculangan and she did declare that the former is taller than the latter, her imprecision is understandable since Ernesto is only "very slightly taller" than the accused. As a matter of fact, the presiding Judge and the counsel for the accused had differing observations on the height of the accused and Ernesto although they were made to stand beside each other in court. In short, the inconsistency between what she testified to in court and what she purportedly communicated to Arsenio Arias is on matters which even educated persons under normal conditions and with greater opportunity to make the observation might differ.

In any event, the scar and the height of the accused were not the victim's sole basis in identifying the accused. No less than Patrolman Felino Noguera, whom the defense presented as a witness, admitted that he saw the line on the chin of the accused which the victim described to him. Thus:

"ATTY. CASCO:

x x x

Q What can you say about his physical feature, as you have observed?

x x x

WITNESS:

None, mam, As I have observed him, he is normal and I was look [sic] for the scar or line on his face, mam.

ATTY. CASCO:

Q Did you find it?

A I cannot see any scar and the line was located as described, on the chin, mam.

ATTY. CASCO:

May we manifest your Honor that the line on the face, as pointed by the witness is a 'cliff chin' [sic]."[29]

More than anything else, the accused, through his own witness, Ernesto Dimaculangan, put to naught all his protestations and arguments against the identification made by the victim. Said witness candidly admitted on cross-examination that the rapist -- who is the accused -- brought him to court, thus:

"Q Who asked you to testify in this case?

A None, sir, nobody asked me to testify in this case.

Q How did you come to know during the previous hearing that this case is scheduled for hearing?

A The rapist went to our house and asked me to go with him here, sir.

Q Who was that person?

A Ladislao Abo, sir.

Q And it was Ladislao Abo who shouldered your expenses and means?

A We alternately paid for food and transportation, sir."[30]

In an attempt to repair the harm caused by this damaging admission, counsel for the accused suggested on redirect examination a possible rectification, but, unfortunately, he failed because Ernesto just laughed and made an unresponsive answer. Thus:

"ATTY. CASCO:

A few re-direct, your Honor.

Q You said on cross examination that the person who told you that there will be a hearing last time was the rapist, what do you mean by that?

FISCAL BUSTONERA:

We will make it on record that the witness is laughing and cannot answer the question profounded [sic] by defense counsel, Your Honor.

WITNESS:

A I also spent for myself, madam."[31]

The prosecution established beyond doubt that the person who attacked Adelia Velasco de Chavez had carnal knowledge of her forcibly and against her will. Article 335 of the Revised Penal Code provides in part as follows:

"ART. 335. When and how rape is committed. -- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;"

Adelia positively identified the accused as her rapist. The third and fourth assigned errors, therefore, need not be discussed thoroughly. It may, however, be pointed out that the third assigned error involves a question of credibility of the witnesses for the defense. It is, as earlier discussed, an issue that is principally addressed to the trial court which had the opportunity to observe their deportment, demeanor, and manner of testifying and whose judgment thereon is entitled to the highest degree of respect.

As to the accused's alibi, we have ruled time and again that it is a weak defense for it is easy to concoct and fabricate; it cannot prevail over and is worthless in the face of the positive identification of the accused.[32]

The affirmance of the challenged decision is thus inevitable, except as to the indemnity which should be increased from P25,000.00 to P50,000.00, considering that the victim is a married woman with three children.

WHEREFORE, except as above modified with respect to the indemnity, the Decision of Branch 58 of the Regional Trial Court of Lucena City in Criminal Case No. 86-439 is AFFIRMED in toto, with costs against the accused-appellant LADISLAO ABO Y ALDAY in this instance.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Original Records (OR), 545-559; Rollo, 19-32. Per Judge Ludovico C. Lopez.

[2] Id., 559; Id., 32.

[3] OR, 2; Rollo, 5.

[4] OR, 552-555; Rollo, 25-28.

[5] TSN, 29 October 1991, 2-4.

[6] TSN, 21 January 1992, 5-8.

[7] TSN, 17 January 1991, 2-14.

[8] TSN, 24 January 1991, 3-6.

[9] TSN, 23 May 1991, 2-4.

[10] TSN, 4 July 1991, 4-9.

[11] TSN, 21 January 1992, op. cit., 11-14.

[12] TSN, 22 January 1991, 18-28.

[13] TSN, 17 January 1991, 3-9.

[14] OR, 556-557.

[15] OR, 557-558.

[16] Brief for Appellant, 1; Rollo, 67.

[17] People vs. De los Reyes, 203 SCRA 707 [1991]; People vs. Tismo, 204 SCRA 535 [1991]; People vs. Casinillo, 213 SCRA 777 [1992]; People vs. Matrimonio, 215 SCRA 613 [1992].

[18] See Article 114 (Treason), Revised Penal Code, which provides for the two-witness rule. A similar rule applied to subversion cases until the Anti-Subversion Act (R.A. No. 1700) was repealed by R.A. No. 7636.

[19] People vs. Francisco, 213 SCRA 746 [1992].

[20] TSN, 28 September 1989, 6-9.

[21] Id., 11-14.

[22] TSN, 22 January 1991, 27-28.

[23] Exhibits "1" and "C"; OR, 536-538.

[24] Exhibit "1-D."

[25] TSN, 17 January 1991, 10.

[26] TSN, 24 January 1991, 4-6.

[27] TSN, 20 February 1992, 2-3.

[28] *People vs. Santito*, 201 SCRA 87 [1991]; *People vs. Garcia*, 209 SCRA 164 [1992].

[29] TSN, 4 July 1991, 8-9.

[30] TSN, 24 January 1991, 6 (emphases supplied).

[31] TSN, 24 January 1991, 9.

[32] *People vs. Lee*, 204 SCRA 900 [1991]; *People vs. Buka*, 205 SCRA 567 [1992]; *People vs. Florida*, 214 SCRA 227 [1992].

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