

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTEMIO GAPASAN, ACCUSED-APPELLANT.

G.R. No. 110812. March 29, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

Artemio Gapasan appeals from the judgment* of the trial court in Criminal Case No. 9192 finding him guilty of the crime of rape.

On 5 March 1991, an information[1] was filed charging Artemio Gapasan with the crime of rape, committed as follows:

"That on or about November 8, 1990 at around 12:00 o'clock noon, at the vicinity near the Lapuyan river, Municipality of Lapuyan, Province of Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, through force or intimidation and with the use of a bladed weapon or hunting knife, did then and there, wilfully, unlawfully and feloniously succeed in having a sexual intercourse with Luvimin Sabang, a then seven-month pregnant woman, against the latter's will.

Contrary to Article 335 of the Revised Penal Code with the aggravating circumstance that the offense was committed in an uninhabited place which facilitated its commission."

When arraigned on 22 March 1991, accused-appellant assisted by counsel de oficio, pleaded not guilty to the charge.

In the trial that ensued, the prosecution presented the victim Luvimin Sabang as its sole witness. She testified that on 8 November 1990, at around 12:00 o'clock noon, she was walking along the Lapuyan river towards the public market in the Municipality of Lapuyan, Zamboanga del Sur, holding an umbrella in one hand as it was then raining. Artemio Gapasan suddenly approached from behind her and held her hand. She turned back and saw him wearing a mask and pointing a hunting knife at her. He told her not to shout. She struggled to be released and in the process, the mask fell off, revealing accused-appellant's face.

In the struggle, Gapasan dragged the victim towards the bushes. Then, he pushed her to the ground and ordered her to remove her panty. When she refused, he tore it and subsequently, he removed his short pants while in a kneeling position. He immediately inserted his penis inside her vagina and was able to have sexual intercourse with her amidst her struggles. She lost consciousness during the rape because of the excruciating pain she felt as she was then seven (7) months pregnant. When she regained consciousness, Gapasan was already putting on his short pants. Gapasan warned her not to tell anybody about the incident, or else, he would kill her. She stood up and slowly walked home. Upon reaching home, she reported the incident to her brother-in-law who was then at her house. When her husband arrived home from work, he learned about the incident and he brought her to Margosatubig Hospital for a check-up.

No other person witnessed the incident because the place of the rape was isolated, and it was raining at the time.

The locus criminis was 300 meters away from the victim's house and the public market was more than 500 meters from the victim's house.

The defense presented as its only witness the accused Gapasan. Gapasan's testimony consisted of mere denial and alibi. He claimed that in the morning of 8 November 1990, he was at the farm of his parents-in-law, taking care of his corn plants. The farm land is more or less two (2) kilometers from the Lapuyan river, where the crime allegedly took place. At noon of the same day, Gapasan returned to his house which is three (3) kilometers, more or less, from the Lapuyan river. Gapasan also testified that he met the complainant only at the municipal hall of Lapuyan, when the case was being investigated.

On 12 May 1993, the Regional Trial Court, Branch 18 of Pagadian City, rendered a decision,[2] the decretal portion of which reads —

"WHEREFORE, judgment is hereby rendered declaring the accused whose guilt has been proven beyond reasonable doubt convicted of the crime of rape committed by the use of force and intimidation and he is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim the amount of FORTY THOUSAND (P40,000.00) PESOS and the cost.

SO ORDERED."

Accused-appellant now seeks a reversal of the decision based on the following assignment of errors:

1. The lower court erred in giving credence to the lone testimony of Luvimin Sabang;
2. The lower court erred in disregarding the contention of the defense that the criminal case filed against the accused-appellant was motivated by the preexisting grudge and ill-will on the part of the Sabang clan against the family of accused-appellant;
3. The lower court erred in finding that the prosecution was able to prove the guilt of accused-appellant beyond reasonable doubt.

The first two (2) alleged errors will be discussed together as they are contingent on the resolution of the issue of credibility of witnesses.

The trial court found the victim's testimony to be "credible and persuasive," and her answers "straightforward and responsive indicating truth and credibility." [3]

On the other hand, the trial court declared that accused's statements were self-serving and they appeared not to have met the test of credibility.

This Court finds no compelling reason to interfere with the findings of the trial court. The Court has consistently adhered to the policy that the findings of fact of the trial court are not to be disturbed on appeal unless the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance which, if considered, would have altered the result of the case.[4]

In the case at bench, the factual findings are borne by the records of the case. The victim's testimony is credible. The discrepancies in her statements only reveal that her testimony was not rehearsed, nor were her assertions fabricated. As correctly observed by the court a quo:

" no woman who is seven months pregnant would just fabricate a rape case against a person who had not harbored any ill feeling against her. While it is true, rape is hard to prove because the parties involved are only the actors and victim themselves nevertheless, the testimony of the victim her torn panty (Exhibit 'C'), and her soiled t-shirt (Exhibit 'D') and her sincerity and candor which appears free from suspicion are clear and

convincing proof to give weight on the victim's declaration who has suffered the consequence of the unlawful act."[5]

Accused-appellant argues that the inconsistencies in victim's testimony were "fatal" and "detrimental" to her story, to wit:

1. There are allegedly two (2) versions of the prosecution on the place of commission of the rape. In the affidavit submitted by the victim, she alleged that she was raped at the durian tree near the river. In her testimony at the trial, she alleged that she was raped in the river. In the second version, complainant would have been wet by the water, and yet no such allegation was made by the victim. In both versions, complainant could have been injured during the struggle, yet there was no allegation to that effect, nor was a medical certificate presented to prove any injury.

The variance in allegations on the place of commission of the rape, is more apparent than real. An examination of victim's testimony supports this view:

"Q

So, you again repeating [sic] your answer that the distance from your house to the market is 300 meters [sic] and now you declared that the distance from the durian tree to your house is 300 meters distance [sic] and the place where you were raped [sic] to the public market is very near?

A

My house to the public market place [sic] is more than 500 meters.

Q

You said to pass from your house to the public market is that the way where people passes [sic]?

A

Yes, sir.

Q

And when you were passing there were people also passing [sic] thereat [sic]?

A

No more sir.

Q

You mean in that particular time you were alone passing in that place?

A

Yes, sir.

Q

What is the distance of that trail to the river?

A

The tree is very near to [sic] the road and it seems that underneath the tree is quite isolated.

Q

And the distance of the durain [sic] tree to the river, what is the distance?

Interpreter As witness demonstrated it is just below the durian tree [sic] is already a river."[6]

It is clear from the above that the river and the tree are adjacent to each other. Hence, even if the victim in her affidavit and in her testimony gave different descriptions of the place of the rape, she was obviously referring to one and the same area where she was raped: "in the vicinity of a durian tree near the riverbank of the Lapuyan river". Considering the distance between the tree and the river, the inconsistency attributed to victim's description of the place of the rape becomes of little consequence and deserving of scant or no consideration.

With regard to the allegation of physical injuries, this Court has held time and again that the absence of physical injuries does not negate the commission of rape.[7] While there has been an allegation of struggles, they need not always produce physical injuries.

Non-presentation of a medical certificate or the physician who made the physical examination of the victim can not, in the least, affect the credibility of victim's testimony. The victim's testimony, standing alone, can be made the basis of accused's prosecution and conviction, if such testimony meets the test of credibility. In the case of *People v. Abo*,[8] the Court held:

" x x x The law does not require that the testimony of a single witness must be corroborated except where expressly mandated. 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."

Accused-appellant further argues that non-presentation of the medical certificate creates the presumption that if presented, it would be adverse to the prosecution. This Court disagrees. A medical certificate is not necessary to prove the commission of rape. It merely corroborates the testimony of the victim. It is a settled rule in evidence that presumption from suppression does not apply to corroborative evidence.[9] Hence, the non-presentation of the medical certificate, which is merely corroborative, does not give rise to the presumption that if presented, it would be adverse to the prosecution.

2. The victim testified that after she was raped, she arrived home in "less than 30 minutes,"[10] and narrated the incident to her brother-in-law who immediately went to the place of the crime. Accused contends it is incredible for victim's brother-in-law to have found him at the site of the rape more than thirty (30) minutes later when he (accused-appellant) knew too well that victim's relatives were bound to retaliate. Accordingly, the victim's statement was not in conformity with human experience, so states the accused-appellant.

The statement that the brother-in-law found the accused at the scene of the crime more than thirty (30) minutes after the victim was raped was not established by either party during the trial. Such statement was contained in the affidavit dated 12 November 1990 submitted by the victim's brother-in-law during the preliminary investigation. The affidavit, however, did not form part of the record of the case in the trial court inasmuch as the court *quo* did not order its production in the trial court. This is in accordance with Section 8, Rule 112 of the Rules of Court, which states:

"The record of the preliminary investigation whether conducted by a judge or a fiscal, shall not form part of the record of the case in the Regional Trial Court. However, the said court, on its own initiative or that of any party, may order the production of the record or any part thereof whenever the same shall be necessary in the resolution of the case or any incident therein; or shall be introduced as evidence by the party requesting for its production."

Bereft of any factual basis, this Court cannot speculate as to what actually occurred after the brother-in-law reached the scene of the crime.

Accused-appellant contends that the victim's brother-in-law should have been presented to attest to the allegation that accused-appellant was still at the scene of the crime after the rape.

The absence at the trial of the brother-in-law's testimony does not belie the fact that there was indeed rape. Hence, his testimony becomes immaterial since its purpose would only be to corroborate to facts which occurred after the rape, when he was already chasing the accused. The presentation of a witness is not necessary where his testimony would have focused only on the circumstances subsequent to the rape.[11]

Other inconsistencies in the victim's testimony discussed by accused-appellant are also minor inconsistencies which were raised only in a desperate attempt to cloud the otherwise clear and uncorrupted assertions of the victim.

Accused-appellant argues that the charge of rape was motivated by a preexisting grudge between the Sabang clan and the family of accused-appellant. But accused-appellant has failed to convince this Court that the victim merely concocted a tale of rape against him because he refused to support a relative of victim's husband during the 1988 elections. As well pointed out by the Solicitor General:[12]

"It is incredible, to say the least, for a woman of unsullied reputation, married and seven (7) months pregnant to fabricate a rape case and allow herself to undergo the expense, trouble, inconvenience of a public trial, suffer the scandals, embarrassments and humiliation such action would indubitably invite, as well as allow an examination of her private parts and all for the sake of politics. Moreover as confirmed by appellant himself, the Sabangs did not file another case against any other person belonging to a different political camp."

It is unbelievable that accused-appellant could be singled out for revenge by victim's family because of his refusal to support the candidate of victim's family. It is equally incredulous to say that accused-appellant had been accused by somebody who personally had no grudge against him. This is stretching one's imagination a little too far.

Anent the issue that the guilt of accused has not been proven beyond reasonable doubt, suffice it to say that the law requires only moral certainty or "that degree of proof which produces conviction in an unprejudiced mind." [13] Proof beyond reasonable doubt does not mean such certainty as to exclude the possibility of error.

The guilt of the accused has sufficiently been proven in this case. The prosecution's evidence consisted of the testimony of the victim, which the trial court ruled as credible and persuasive; physical evidence consisting of the torn panty and muddy t-shirt she was wearing when she was raped, and the t-shirt used by accused to cover his face. In *People v. Sacabin*, [14] this Court had occasion to rule that:

"Physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses."

On the other hand, evidence for the defense consisted of accused-appellant's testimony. As regards his defense of alibi, it is a fundamental rule in criminal law that alibi is an inherently weak defense. Uncorroborated by other witnesses, accused's defense of alibi should be completely disregarded. Accused Gapasan was not able to prove that he was not present at the scene of the crime at the time of its commission. Moreover, he was unable to prove that it was physically impossible for him to be at the scene of the crime when it was committed.

Under these circumstances, coupled with the fact that the victim positively identified the accused as the perpetrator of the crime, the Court must, without doubt, affirm the trial court's conviction.

WHEREFORE, premises considered, the judgment of the trial court convicting accused-appellant for the crime of

RAPE is hereby AFFIRMED in all respects. Costs against the appellant.

SO ORDERED.

Davide, Jr., Bellosillo, Quiason, and Kapunan, JJ., concur.

[*] Penned by Judge Fausto H. Imbing, Regional Trial Court Branch 18, Pagadian City.

[1] Information filed by First Prosecutor Andres T. Nacilla, Original Records, p. 1.

[2] Rollo, p. 14.

[3] Rollo, p. 13.

[4] People v. Sulte, G.R. No. 109881, 18 May 1994, 232 SCRA 421.

[5] Rollo, p. 13.

[6] TSN, 29 April 1992, pp. 23-25.

[7] People v. Florendo, G.R. Nos. 106100-01, 2 March 1994, 230 SCRA 599.

[8] G.R. No. 107235, 2 March 1994, 230 SCRA 612.

[9] VI MORAN, Rules of Court, 41 (1980).

[10] TSN, 29 April 1993, p. 35.

[11] People v. Saguban, G.R. No. 96287, 25 April 1994, 231 SCRA 744.

[12] Rollo, pp. 79-80.

[13] People v. Bacalzo, G.R. No. 89811, 22 March 1991, 195 SCRA 557.

[14] G.R. No. L-36638, 28 June 1974, 57 SCRA 707.

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