

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RIZALDY CONDE Y CORTEZ, ACCUSED-APPELLANT.

G.R. No. 112034. January 31, 1996

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-112034/>

DAVIDE, JR., J.:

AAA was allegedly raped by accused-appellant Rizaldy Conde y Cortez[1] in the early morning of 31 October 1990. She reported the incident to the police authorities on that same day and then signed and swore to a complaint[2] for rape against the appellant before an Assistant City Prosecutor of xxx. The complaint was filed with the Regional Trial Court (RTC) of xxx on 2 November 1990, docketed as Criminal Case No. C-36045, and assigned to Branch 124 of the said court. The accusatory portion of the complaint reads as follows:

That on or about the 31st day of October 1990 in xxx. and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with one AAA, against the latter's will and without her consent.[3]

Trial on the merits ensued after the appellant entered a plea of innocence upon his arraignment.[4]

On 17 June 1992, the trial court rendered a decision[5] finding the appellant guilty beyond reasonable doubt of rape and sentencing him to suffer an imprisonment penalty of reclusion perpetua; to indemnify the victim, AAA, in the amount of P20,000.00; and to pay the costs.[6]

The evidence for the prosecution upon which the judgment of conviction is based is summarized by the trial court as follows:

At about 1:00 o'clock in the early morning of October 31, 1990, AAA, a 38 year old housewife was sleeping on a bed at the ground floor of her house located at xxx. As she was sleeping, AAA felt something hard penetrating her private organ. She suddenly woke up and found a man on top of her. She shouted at the man, "Sino ka?" The man whom she recognized but never saw before this incident, stood up and hurriedly put on his shorts and tried to flee from the house. AAA then put on her panty, which she wore when she slept the night before and which panty she found beside her on the bed, in order to run after the man. Just as the man was leaving the house by the front door, he was met by BBB, the sister of AAA, the two daughters of AAA named CCC and DDD and EEE, a male friend of CCC and DDD. The accused, in going out of the door managed to touch the thigh of CCC. At this point, EEE confronted the man and the two fought each other. CCC, DDD and BBB shouted for help. Several neighbors responded and assisted in apprehending the man who identified himself as Rizaldy Conde. The neighbors as well as her two daughters and EEE brought the accused to the house of Barangay Councilman Ben Silverio who was living nearby. Later on, Councilman Silverio brought the accused to the Police Station accompanied by AAA and her two daughters as well as EEE. On their way to the Police Station, the accused threatened to rape AAA again and the latter's two daughters once he was released.

Upon arrival at the xxx Police Station, the case was investigated by Corporal Alberto David. AAA executed a

sworn statement on this case at about 2:40 A.M. of the same day - October 31, 1990 (Exh. "A"). She had herself physically examined at the NBI Medico-Legal Office in the afternoon of October 31, 1990.[7]

The testimony of the private complainant was corroborated by her daughter, CCC,[8] who likewise executed a sworn statement on 31 October 1990.[9]

Dr. Bienvenido Muñoz, the Medico-Legal Officer of the National Bureau of Investigation (NBI) who physically examined the private complainant, made the following findings and conclusions:

GENITAL EXAMINATION:

Pubic hair, fully grown, abundant. Labia majora and labia minora, both gaping. Fourchette, lax. Vestibule, pinkish. Hymen, reduced to carunculae myrtiformis. Vaginal orifice, admits a tube, 3.5 cm. in diameter. Vaginal walls, lax. Rugosities, obliterated.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
2. Vaginal orifice wide (3.5 cm. in diameter) as to allow complete penetration by an average-sized, adult male organ in full erection without producing new hymenal injury.[10]

He further testified that it is possible for a woman to be raped while asleep and that if she has experienced childbirth several times, she may be raped even without being awakened.[11]

The appellant, the lone witness for the defense, denied the charge of rape. He claimed that the night before the incident in question he had a drinking session with his brother and cousin at his home at xxx. He became too drunk that his brother had to hail a passenger jeepney for him to report to his employer, Major Edilberto Santos, Chief of the xxx Police Station. During the ride, he lost consciousness and could no longer recall what transpired thereafter.[12]

He only regained consciousness when he was being mauled by several persons in front of the house of the private complainant. The latter accosted and asked him what he was doing in front of her house. He apologized, but instead the private complainant struck a lighted cigarette on his face. He was eventually brought to the police station. There, he learned that he was being accused of raping the private complainant. He then requested that he be allowed to seek the help of his employer but to no avail.[13]

The appellant admitted that he had no idea why the private complainant whom he never met before would contrive the charge of rape. He surmised that his close association with his employer could be the source of envy of the investigating officer, P/Cpl. Alberto David, who happened to be a neighbor of the private complainant.[14]

The trial court rejected the version of the appellant noting that he had admitted to having been arrested while he was outside the residence of the victim in the early morning of 31 October 1990. It gave weight to the testimony of the private complainant and concluded that the fact that she immediately pushed the appellant upon waking up, tried to run after him, immediately reported the incident to the police authorities, and lost no time in having herself physically examined at the NBI Medico-Legal Office indicate her sincerity and enhance her credibility.[15]

In this appeal, the appellant imputes upon the trial court the following errors:

1. IN FINDING THAT THERE WAS RAPE IN THE INSTANT CASE;
2. IN GIVING CREDENCE TO THE PROSECUTION EVIDENCE PARTICULARLY THE TESTIMONIES

OF PRIVATE COMPLAINANT AAA AND CCC;

3. IN FINDING THAT THE EVIDENCE FOR THE PROSECUTION HAD ESTABLISHED BEYOND REASONABLE DOUBT THE GUILT OF APPELLANT FOR THE CRIME OF RAPE.[16]

The appellant asserts that the medico-legal findings negate the alleged rape in that nothing therein shows that there were manifestations of recent sexual intercourse or any indication that the private complainant suffered extragenital physical injuries. Considering that she has been separated from her husband since 1985 and, according to her, she never had any sexual intercourse with any man thereafter, it was improbable for her not to have been awakened when the appellant was on top of her or not to have sustained any injury after having fought and pushed the appellant while the latter's organ was in her private organ. Moreover, if indeed she was waiting for the arrival of her children, then she could not have been in deep sleep as she so alleged.

The appellant also points out inconsistencies between the testimonies in court and the sworn statements of the private complainant and her daughter CCC. For one, in their testimonies in court, they declared that when the appellant met CCC at the door while he was escaping, he stopped and mashed CCC's body from the chest downwards to the thigh - that fact was not mentioned in their sworn statements. For another, CCC testified that when she was mashed by the appellant she parried his hand and shouted, and then she, her sister DDD, her aunt BBB, and EEE pursued him; in her affidavit, however, she stated that while she, DDD, BBB, and EEE were walking along the alley leading to their house they were surprised to see a person hurriedly leaving their house and that EEE then blocked the man's path and boxed him.

Finally, the appellant submits that the testimony of the AAA and CCC that while they were on their way to the police station he threatened to kill and rape the private complainant and her daughter is incredible because after he was mauled, it would be "preposterous and highly contrary to human behavior and experience" that he "would still have the guts to threaten private complainant and her family."

In the Brief for the Appellee, the Office of the Solicitor General submits that the trial court committed no error in finding the appellant guilty beyond peradventure of doubt of the crime of rape but recommends that the indemnity be increased from P20,000.00 to P50,000.00 conformably with the present policy of this Court.

The common denominator of the assigned errors is the credibility of the principal prosecution witnesses. One of the highly revered dicta Philippine jurisprudence has established is that this Court will not interfere with the judgment of the trial court in passing on the credibility of opposing witnesses unless there appears in the record some facts or circumstances of weight and influence which have been overlooked, which if considered would affect the result of the case. The reason therefor is founded on practical and empirical considerations. The trial judge is in a better position to decide the question of credibility, since he has personally heard the witnesses and observed their deportment and manner of testifying.[17]

Our meticulous and dispassionate review of the evidence leads us to the conclusion that, except as to the amount of indemnity awarded to the private complainant, the trial court committed no error of fact or of law in its challenged decision.

The rape was consummated even before the private complainant was awakened. According to her, she was awakened at the time when something hard - the appellant's penis - had penetrated her private organ. The entry or penetration was thus accomplished while she was still asleep. She may be considered to be unconscious then, for sleep is the "natural usu. regular suspension of consciousness during which the powers of the body are restored,"[18] or "a natural or artificially induced state of suspension of sensory and motor activity."[19] Under Article 335 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman who is, *inter alia*, unconscious. The said Article 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:

xxx xxx xxx

2. When the woman is deprived of reason or otherwise unconscious; and x x x

This Court has held that carnal knowledge with a woman who is asleep constitutes rape.[20]

We find undeserving of any consideration, for being purely speculative, the appellant's contention of improbability or impossibility that the private complainant was unable to wake up before the penetration of a male organ into her private organ since she could not have been sound asleep for she was expecting her children to arrive home and that she has had no sexual contact since 1985.

Neither is there any merit in his view that since the private complainant has had no sexual contact since 1985 it was unlikely that she would not suffer any injury in her private parts or any other part of her body. The absence of genital injury was satisfactorily explained by the medico-legal officer. The private complainant had already given birth to three children, and her hymenal opening is quite wide; thus, no new injury on her hymen could be caused by rape. The absence of any injury can also be explained by the fact that he did not retaliate when the private complainant pushed him upon waking up. The evidence disclose that when he was pushed by her he just stood up, hurriedly put on his shorts, and tried to flee. He did not put up a fight.

Nor are we persuaded by the appellant's claim of inconsistencies between the testimonies and the sworn statements or affidavits of the private complainant and her daughter CCC. The claim is based on the erroneous theory that whenever a witness discloses in his testimony in court facts which he failed to state in his affidavit taken ante litem motam, then an inconsistency exists between the testimony and the affidavit. There can be an inconsistency if what the witness has disclosed in his affidavit is contrary to that he disclosed in his testimony in court, but not when what he has stated in open court are but details or additional facts not mentioned in the affidavit. Being taken ex-parte, affidavits are almost always incomplete and often inaccurate, sometimes from partial suggestion or for want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject. Their infirmity as a species of evidence is a matter of judicial experience. They are generally considered to be inferior to the testimony given in open court.[21]

Besides, the witnesses were never confronted by the defense counsel on the alleged inconsistencies. Section 13, Rule 132 of the Rules of Court provides for the procedure of impeaching witnesses by evidence of inconsistent statements. It reads:

SEC. 13. How witness impeached by evidence of inconsistent statements. - Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.

Finally, even assuming that what the appellant had pointed out are indeed inconsistencies, they are on trivial or minor matters. It is settled that such inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole or detract from the witnesses' testimony; on the contrary, they even tend to strengthen rather than weaken the credibility of the prosecution witnesses because they erase the suspicion of a rehearsed testimony.[22]

The appellant's attack on the testimony of the prosecution witnesses regarding the threat he made while on their way to the police station is entirely irrelevant. In any event, his justification why he could not have made such threat fails to persuade.

We thus find futile all the attempts of the appellant to raise doubts on the testimonies of the private complainant and her daughter CCC. He has not even provided any improper motive why the said witnesses would falsely impute upon him the commission of rape. All that he could surmise is that P/Cpl. Alberto David, the police investigator who conducted the investigation in this case, is a neighbor of the private complainant. Yet, when asked on direct examination what that has to do with the filing of the charge of rape, the appellant merely answered that he did not know. Thus:

Q (ATTY. PACIS)

So if David is a neighbor of the complainant, what is the material connection of his being a neighbor to this fabricated charge according to you because you are denying this charge?

WITNESS (A)

I do not know, sir.[23]

The absence of any improper motive on the part of the private complainant is further shown by other circumstances in this case. She did not know the appellant before the incident. After she woke up and came to know of the sexual assault, she immediately pushed the appellant and tried to run after him. She then reported the incident to the police authorities; executed a sworn statement; submitted herself to physical examination by a Medico-Legal Officer of the NBI; and subscribed and swore to a complaint for rape, which would necessarily result in her exposure to the ordeal of a public trial. The spontaneity of these acts clearly demonstrate her sincere desire to bring the appellant to justice.

The appellant's defense of denial, which is inherently weak, cannot prevail over the clear and positive testimony of the private complainant.[24]

We thus affirm the judgment of the trial court, subject to the modification of the indemnity. The award of P20,000.00 as civil indemnity to the private complainant is insufficient and is not in accord with the current policy of the Court. It should be increased to P50,000.00 in the light of the attendant circumstances in this case.

WHEREFORE, the instant appeal is DISMISSED and the challenged decision of Branch 124 of the Regional Trial Court of xxx in Criminal Case No. 0-36045 finding accused-appellant RIZALDY CONDE y CORTES guilty beyond reasonable doubt of rape is hereby AFFIRMED, with modification on the award of civil indemnity to the private complainant, AAA, which is hereby increased from P20,000.00 to P50,000.00.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Spelled Cortes in the complaint.

[2] Original Records, (OR), 2.

[3] Id.

[4] OR,7.

- [5] Id., 70-74; Rollo, 11-15. Per Judge Rene Victoriano
- [6] id., 74; Id., 15.
- [7] OR,70-71; Rollo, 11-12.
- [8] TSN.,23 August 1991,5-8.
- [9] Exhibit "E".
- [10] Exhibit "B".
- [11] TSN., 26 September 1991, 3-4.
- [12] TSN., 4 December 1991; 3-6.
- [13] Id., 3, 6-9.
- [14] TSN.,4 December 1991, 10-12, 17.
- [15] OR, 74; Rollo, 15, citing *People v. Tablizo*, 182 SCRA 739 [1990].
- [16] Rollo,44.
- [17] *People vs. Enciso*, 223 SCRA 675 [1993]; *People vs. De la Paz*, 224 SCRA 468 [1993]; *People vs. De la Cruz*, 229 SCRA 755 [1994]; *People vs. Lagrosa*, 230 SCRA 298 [1994]; *People vs. Garcia*, 235 SCRA 371 [1994]; *People vs. Tranca*, 235 SCRA 455 [1994]; *People vs. Comia*, 236 SCRA 185 [1994].
- [18] Webster's Third New International Dictionary [1986], 2140.
- [19] Benjamin Miller and Claire Keane, *Encyclopedia and Dictionary of Medicine and Nursing* [1972], 884.
- [20] *People vs. Dayo*, 51 Phil. 102 [1927]; *People vs. Corcino*, 53 Phil. 234 [1929]; *People vs. Caballero*, 61 Phil. 900 [1935].
- [21] *People vs. Patilan*, 197 SCRA 354 [1991]; *People vs. Marcelo*, 223 SCRA 24 [1993]; *People vs. Enciso*, supra note 17; *People vs. Co*, G.R. No. 112046, 11 July 1995.
- [22] *People vs. Jumamoy*, 221 SCRA 333 [1993]; *People vs. Caco*, 222 SCRA 49 [1993]; *People vs. Alib*, 222 SCRA 517 [1993]; *People vs. Pamor*, 237 SCRA 462 [1994].
- [23] TSN., 4 December 1991, 11-12.
- [24] *People vs. Antonio*, 233 SCRA 283 [1994]; *People vs. Macam*, 238 SCRA 306 [1994]; *People vs. Cobre*, 239 SCRA 159 [1994].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.