

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESTEBAN ARLEE ALSO KNOWN AS "BOY ISING", ACCUSED-APPELLANT.

G.R. No. 113518. January 25, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

Before the Court is an appeal interposed by Esteban Arlee alias "Boy Ising" from the decision[1] of the Regional Trial Court, Branch 17[2] in Cavite City, finding him guilty of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua under Article 335 of the Revised Penal Code.

In the Complaint, dated June 5, 1992, Analyn M. Villanueva, a mental retardate, assisted by her mother, Luningning M. Villanueva, charged accused-appellant with rape, alleging:

"That sometime in or about the month of October, (sic) 1991, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused – ESTEBAN ARLEE a.k.a. BOY ISING, armed with a bladed weapon, by means of force and intimidation, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge of the complainant ANALYN DE MESA VILLANUEVA, a mental retardate, against her will.

CONTRARY TO LAW."[3]

In his motion dated October 26, 1992,[4] accused-appellant sought to defer his arraignment pending resolution of his petition for reinvestigation[5] before the City Prosecutor's Office. The said motion of the defense was denied[6] by the trial court, when it upheld the assertion of Asst. City Prosecutor Elizabeth Silapan-Diesmo that the accused-appellant was not entitled to a reinvestigation because he evaded service of the subpoenas[7] by purposely making himself scarce in the indicated address.

Thus, the lower court directed the arraignment of accused-appellant on Nov. 25, 1992,[8] and after he entered a plea of NOT GUILTY, trial ensued resulting in the assailed decision, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Esteban Arlee a.k.a. Boy Ising guilty beyond reasonable doubt of rape and he is hereby sentenced to reclusion perpetua, to indemnify the offended party in the amount of P50,000.00 and to acknowledge and support the offspring who is declared to be his as a result of this offense and to pay the costs."[9]

From the evidence for the People, it can be gathered that:

Complainant Analyn Villanueva and the accused-appellant were neighbors at A. Del Rosario Street, Caridad, Cavite City.[10] Analyn, who merely finished grade two,[11] was twenty-six years old but with a mental capacity of a eight-year old child.[12]

Sometime in October 1991, while Analyn was about to fetch water at the foot of the bridge[13] in their place,

accused-appellant Esteban Arlee alias "Boy Ising" called her.[14] When Analyn approached him, he pointed a knife at her side[15] and brought her to his nearby house. After stripping Analyn of her clothes and undressing himself, accused-appellant laid on top of her[16] and succeeded in having sexual intercourse with her. During that night, Analyn was raped by accused-appellant several times.[17] Thereafter, accused-appellant warned her not to tell the police what he did to her; otherwise, he would stab her (Analyn).[18]

Soon after accused-appellant perpetrated the bestial acts, Analyn began to show signs of pregnancy such as morning sickness, which caught the attention of her mother, Luningning Villanueva, who, with nary a clue as to the fate which befell her daughter, thought that Analyn was merely suffering from ulcer.[19]

As months passed, Analyn's belly started to swell,[20] a development which did not escape the observation of her mother. When asked about her bulging stomach,[21] Analyn readily confessed to her mother that Boy Ising was responsible therefor. Analyn then narrated her horrific experience in the hands of accused-appellant.

On April 7, 1992, Dr. Floresto Arizala, Jr. of the National Bureau of Investigation (NBI) conducted a physical examination on Analyn. Dr. Arizala's medical report embodied in Living Case No. MG – 92 – 313,[22] reported:

- "1. No extragenital physical injuries noted on the body of the subject at the time of examination.
2. Old healed hymenal laceration present.
3. Probable signs corresponding to second trimester of pregnancy present.

REMARKS:

Pregnancy test done on April 7, 1992 showed positive results."

Dr. Arizala concluded that Analyn was fairly developed, conscious, cooperative, incoherent, ambulatory subject with "moderate facies".[23] The medico-legal officer testified in open court that Analyn was a mental retardate, incoherent and non-responsive to proper inquiries.[24]

Accused-appellant theorized that he could not have possibly done the offense charged sometime in October 1991 because as early as May 8, 1991[25] or five (5) months prior to the commission of the crime complained of, he had already left the place where the incident supposedly happened. Due to a misunderstanding with his common-law wife, he transferred residence to Dalahican Street, about two kilometers away from the site of the crime.[26]

Corroborating the theory of accused-appellant, Felicitas Paloma, common-law wife of accused-appellant for the past sixteen years,[27] testified that they used to live together in a "barong-barong"[28] at 489 Int. A. Del Rosario Street, with three rooms. One room was rented out to a certain Dennis Rosal and family and the other room to Rostia Reyes and her child.[29] On May 8, 1991,[30] accused-appellant left her due to a misunderstanding. Felicitas declared that accused-appellant could not have raped the victim, Analyn, in their house as she and their tenants were always present thereat.[31]

The third defense witness, Mrs. Anita Santiago, barangay captain of the community where both the Villanuevas and accused-appellant lived, also corroborated the testimony of accused-appellant and his common-law wife, that the house in which the offense was allegedly committed was rented out to boarders, at the time.[32]

In rejecting accused-appellant's defense of denial and alibi, the trial court gave full faith and credit to the testimony of the victim, Analyn. Thus, it found accused-appellant guilty beyond reasonable doubt of the crime charged.

Dissatisfied with the decision a quo, accused-appellant found his way to this Court via this appeal, contending that:

- The trial court gravely erred to go to trial without the mandatory preliminary investigation (sic);
- The trial court gravely erred to convict the accused instead of acquitting him beyond reasonable doubt (sic);
- The trial court gravely erred when it adjudged the accused liable of the civil aspect of the charges (sic);[33]

In this appeal, accused-appellant makes capital of the fact that the subpoenas[34] dated April 23, 1992 and April 29, 1992, respectively, directing submission of counter-affidavits for purposes of preliminary investigation, were not received by him since the same were sent to his former residence at A. Del Rosario Street and not to Dalahican Street where he moved to.[35] Accused-appellant therefore, maintains that he was deprived of his right to a preliminary investigation.

Accused-appellant posited that he could not have sexually assaulted Analyn in their small house at A. Del Rosario Street considering that his common-law wife was always in the same house with some boarders.[36] He likewise theorized that he could not have sired Analyn's child because in a span of twenty (20) years after cohabiting with four different women, he was not able to impregnate any of them.[37]

Accused-appellant theorized further that the real culprit in the impregnation of Analyn was the latter's father who was sexually abusing Analyn on a regular basis. According to accused-appellant, it was widely-known in the neighborhood where he used to live.[38]

Accused-appellant's assertions are barren of merit.

The first assigned error deserves scant attention considering that subpoenas were sent to accused-appellant twice and both were returned unserved with the annotation: "Subject person has gone into hiding according to his former neighbor." [39] Contrary to what accused-appellant theorized upon, a preliminary investigation was actually conducted by Prosecutor Diesmo, who based her finding of a prima facie case on the evidence adduced by the complainant. Such procedure is sanctioned by Rule 112, Section 3 (d) which reads:

Section 3. Procedure.- Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

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(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall base his resolution on the evidence presented by complainant.

It is then decisively clear that the accused-appellant was not deprived of the right to a preliminary investigation. Neither did the trial court err in refusing to grant a reinvestigation since to do so would unnecessarily hamper the proceedings and just delay the disposition of the case.

In *Mercado vs. Court of Appeals*, [40] this Court reiterated the rule that the New Rules on Criminal Procedure "does not require as condition sine qua non to the validity of the proceedings (in the preliminary investigation) the presence of the accused for as long as efforts to reach him were made, and an opportunity to controvert the evidence for the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics."

What is more, accused-appellant applied for bail [41] and voluntarily submitted himself for arraignment, [42] after his motion to defer the arraignment was denied. [43] Consequently, he is deemed to have effectively waived his right to a preliminary investigation and it is now too late in the day to raise the issue on appeal.

With the procedural aspect tackled, the next to pass upon are the substantive issues raised.

In *People vs. Antido*,^[44] the Court declared that: 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 it; 2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and 3) the evidence of 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.

It also bears stressing that to warrant conviction in a case of rape, the victim's testimony must be clear and free from contradictions for the reason that in prosecuting offenses of this nature, conviction or acquittal virtually depends entirely on the credibility of the complainant's narration since usually, only the participants can testify as to its occurrence.^[45] Thus, more often than not, the issue in an indictment for rape, as in this case, is simply one of credibility. And as regards the credibility of witnesses, the Court usually defers to the findings by the trial court, absent a strong and cogent reason to disregard the same.

As a general rule, this Court does not unduly disturb the findings by the lower court on the credibility of witnesses. The determination by the said court on the matter is accorded great weight and respect here since it had the distinct advantage and singular opportunity to observe the witnesses during the hearing through the different indicators of truthfulness or falsehood.^[46] Sans any showing that certain facts of substance and significance have been overlooked or that the trial court's findings are arbitrary,^[47] the conclusions arrived at below must be respected and the judgment on the basis thereof affirmed.

In the case under scrutiny, the Court discerns no basis for departing from the oft-repeated rule mentioned above and for applying the exceptions thereto.

In affirming the judgment of the court of origin convicting accused-appellant, this Court is mindful of the doctrine that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she had indeed been raped, and if her testimony meets the test of credibility, as in the case under consideration, the rapist may be adjudged guilty solely on that basis.^[48]

During the trial, Analyn testified thus:

DIRECT EXAMINATION BY PROS. DIESMOS:

Q. ((sic) observed that you have a big tummy, what happened?

A. Boy Ising cohabited with me.

Q. This Boy Ising if he is inside this courtroom can you point to him?

A. (Witness pointing to a man who, when asked, identified himself as Esteban Arlee.)

Q. You said that Esteban Arlee was responsible for what appears to be pregnancy on your part, what did this person do to you?

A. (Witness demonstrating, her two forefingers touching each other.)

COURT:

Q. What do you mean by that?

A. "Titi, puki."

PROSECUTOR DIESMOS:

Q. Where did he do this to you?

A. Saksak dito. (Witness pointing to her side.)

Q. What is that he pointed to your side?

A. A knife.

Q. When did he do this, do you remember the date?

A. Gabi. (night)

Q. Where?

A. In the house of Boy Ising.

Q. Where (sic) there people when he did this to you?

A. None.

COURT:

Q. Why did you go to the house of Boy Ising?

A. I am fetching water.

PROSECUTOR DIESMOS:

Q. But was there water there?

A. I will get water at the foot of the bridge.

Q. How were you able to go to the house of Boy Ising?

A. He called me and asked me to go with him.

Q. After that incident, what did you do?

A. Boy Ising said not to tell it to the police.

Q. Did he tell you what he is going to do if you will report to the police?

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A. He is going to stab me.

xxx xxx xxx

Q. How many times did he do that to you?

A. Many times. (Witness showing her 10 fingers.)[49]

Like the court below, this Court gives places reliance on the testimony of Analyn. Affirmable is the following ratiocination:

"Considering her mental state, The Court, in her appearance on the witness stand, is convinced that complainant suffers from mental disability as claimed in view of her physical features and her manner of talking needs no further in depth study about the same. However, the way she answered questions propounded to her and which she readily understood, like her age and what happened which she demonstrated by the use of

her hands and fingers would more than convince the Court of her sincerity and truthfulness." [50]

Then too, the bare denials of accused-appellant cannot prevail over the positive testimony and categorical assertion of Analyn that he (accused-appellant) was the author of her predicament. Denial is inherently a weak defense. It cannot prevail over positive identifications. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Affirmative testimony like that of the victim is stronger than a negative one. [51]

Accused-appellant's alibi that he was no longer residing at the place where the incident took place is certainly unavailing in view of his having been positively identified by Analyn as her violator. This conclusion is ineluctable in the absence of any reliable proof that it was physically impossible for him to have been at the locus criminis at the approximate time of commission of the offense since the two-kilometer distance between Dalahican and A. Del Rosario Streets did not discount his presence at the scene of the crime. [52]

The theory of accused-appellant that the father of the victim is the real culprit is anemic of evidentiary support. No witness was ever called by the defense to substantiate such assertion even as "concerned citizens" purportedly wrote to the barangay captain regarding the matter. [53]

As regards the intimation of accused-appellant that he is sterile, it is utterly devoid of any sustainable basis. The same could have been easily proven by the appropriate tests but the defense did not present the results of a sperm analysis performed at the Cavite Medical Center on March 17, 1993 [54] for the purpose of disputing the submission of the People that the child of Analyn is the fruit of accused-appellant's salacious conduct.

Similarly unconvincing is the argument advanced by accused-appellant that he could not have raped Analyn in the small house at A. Del Rosario Street, without any person noticing such happening because subject house was always occupied by his common-law wife and some boarders. This Court has encountered unlikely variations in the perpetration of rape committed in places many would consider as inappropriate. As held in more than one case, [55] lust is no respecter of time and place for rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where there are other members of the family.

Article 335 of the Revised Penal Code provides:

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

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

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Being a mentally retarded woman, twenty-six years of age, Analyn is in the same class as a woman deprived of reason or otherwise unconscious when she was raped by accused-appellant. Proof of force and intimidation is not required if the victim is "deprived of reason" or suffering from mental abnormality or deficiency since the same deprives the victim of the natural instinct to resist a bestial assault on her chastity and womanhood. It is well-settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does not require proof that the rapist used force or intimidation in having carnal knowledge of the victim. [56] Not only

that, as testified to by Analyn, the accused-appellant did employ force and intimidation by threatening her with a knife.

Neither is the Court persuaded by accused-appellant's submission that he cannot be required to acknowledge and support the child begotten by him with Analyn. In point is the following provision of the Revised Penal Code:

ART. 345. Civil liability of persons guilty of crimes against chastity. – Persons guilty of rape, seduction, or abduction, shall also be sentenced:

- To indemnify the offended woman;
- To acknowledge the offspring, unless the law should prevent him from so doing;
- In every case to support the offspring. (Underscoring ours)

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The aforecited provision of law is qualified by jurisprudence to the effect that "acknowledgment is disallowed if the offender is a married man, with only support for the offspring as part of the sentence." [57]

However, as opined in *People vs. Bayani*, [58] there is no more need for the prohibition against acknowledgment of the offspring by an offender who is married, because of the elimination by the Family Code of the distinctions among illegitimate children. No further positive act is required of the parent as the law itself provides the child's status as illegitimate. Therefore, under Article 345 of the Revised Penal Code, the offender in a rape case who is married should only be sentenced to indemnify the victim and support the offspring, if there be any.

Accordingly, accused-appellant has to support his illegitimate offspring, Alexis Villanueva. [59] The amount and terms of the support shall be determined by the trial court after due notice and hearing, taking into account the means or sources of income of accused-appellant. [60]

All things studiously considered, the Court affirms the finding of guilt appealed from. There being no modifying circumstance in attendance, the trial court correctly imposed the penalty of reclusion perpetua, with an award of P50,000.00 as indemnity ex delicto. In line with the prevailing jurisprudence, the victim should likewise be awarded P50,000.00 as moral damages.

WHEREFORE, the appealed judgment is AFFIRMED with the modification that accused-appellant ESTEBAN ARLEE alias BOY ISING is further sentenced to pay P50,000.00 as moral damages, in addition to the indemnity ex delicto awarded by the lower court.

Accused-appellant is also ordered to support his illegitimate child, Alexis Villanueva, in the amount to be fixed by the court a quo after due notice and hearing on the matter support. Costs against accused-appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] dated Nov. 10, 1993.

[2] Presided by Judge Rolando Diaz.

[3] Rollo, p. 19.

[4] OR, pp. 63-64.

- [5] OR, pp. 60-62.
- [6] OR, Nov. 11, 1992, p. 71.
- [7] OR, pp. 35 & 36.
- [8] OR, Cert. Of Arraignment, p. 74.
- [9] Rollo, pp. 24-25.
- [10] TSN, July 8, 1992, p. 25.
- [11] Ibid., p. 7.
- [12] TSN, June 16, 1993, p. 3.
- [13] TSN, July 8, 1992, p. 9.
- [14] Ibid., p. 10.
- [15] Ibid., p. 8.
- [16] Ibid., p. 19.
- [17] Ibid., p. 11.
- [18] TSN, July 8, 1992, p. 10.
- [19] Ibid., p. 20.
- [20] Ibid., p. 28.
- [21] Ibid., p. 18.
- [22] OR, p. 33.
- [23] should be "retardate" as corrected by Dr. Arizala during direct examination and as noted by the trial court; TSN, Dec. 17, 1992, p. 7-8
- [24] TSN, Dec. 17, 1992, pp. 9-11.
- [25] TSN, August 18, 1992, p. 15.
- [26] Ibid., p. 9.
- [27] TSN, July 21, 1992, p. 5.
- [28] Ibid., p. 7.
- [29] Ibid., pp. 7-8.
- [30] Ibid., p. 7.
- [31] TSN, July 21, 1992, p. 10.
- [32] TSN, Aug. 18, 1992, p. 18.
- [33] Rollo, p. 47.
- [34] OR, pp. 35-36.

[35] Rollo, Appellant's Brief, p. 52.

[36] Ibid., pp. 58-59.

[37] Ibid., p. 46.

[38] Ibid., pp. 56-57.

[39] OR, p. 36.

[40] 245 SCRA 594; citing Rodis vs. Sandiganbayan, 166 SCRA 618.

[41] OR, p. 14.

[42] OR, p. 74.

[43] OR, pp. 71 & 72.

[44] 278 SCRA 425; citing People vs. De los Reyes, 203 SCRA 707; People vs. Tismo, 204 SCRA 535; People vs. Casinillo, 231 SCRA 777; People vs. Matrimonio, 215 SCRA 613; People vs. Lucas, 232 SCRA 537.

[45] People vs. Castillon, 217 SCRA 76.

[46] People vs. Alitagtag, G.R. Nos. 124449-51, June 29, 1999, citing: People vs. Quijada, 259 SCRA 191.

[47] People vs. Renola, G.R. No. 122909-12, June 10, 1999; citing People vs. Quejada, 223 SCRA 77.

[48] People vs. Arnan, 224 SCRA 37; citing People vs. Indaya, G. R. No. 90296, April 25, 1991 and cases cited therein.

[49] TSN, July 8, 1992, pp. 6-11.

[50] Decision, p. 6.

[51] People vs. Silvano, G.R. No. 127356, June 29, 1999 and cases cited therein.

[52] People vs. Alojado, G.R. No. 122966-67, March 25, 1999; People vs. Tulop, G. R. No. 124839, April 21, 1998

[53] Rollo, pp. 79-80.

[54] Rollo, p. 107.

[55] People vs. Manggasin, L-130599-600, April 21, 1999; citing People vs. Cura, 240 SCRA 234.

[56] People vs. Andaya y Flores, G. R. No. 126545, April 21, 1999.

[57] People vs. Emocling, 297 SCRA 214, citing People vs. De Guzman, 217 SCRA 395, People vs. Rizo, 189 SCRA 265, People vs. Luchico, 49 Phil. 689, People vs. Belandres and Mañacop, 85 Phil. 874.

[58] 262 SCRA 660.

[59] TSN, March 23, 1993, p. 3.

[60] Article 201, Family Code.

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