

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO CASTANEDA Y SALES, ACCUSED-APPELLANT.

G.R. No. 114972. January 24, 1996

Ponente: PUNO, J.

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PUNO, J. :

Accused-appellant Fernando Castañeda y Sales was charged with and convicted of Robbery with Rape by the Regional Trial Court of xxx.[1] He was sentenced to suffer the penalty of reclusion perpetua, and ordered to pay private complainant P50,000.00 as moral damages and P200.00 representing the stolen money.[2]

The Information for Robbery with Rape filed against the accused-appellant states:

“That on or about June 12, 1992, in xxx, and within the jurisdiction of this Honorable Court, accused Fernando S. Castañeda armed with a knife, and with intent to gain and by means of violence and intimidation on the person, did then and there, willfully, unlawfully and feloniously take from AAA, who was then in her house the sum of P200.00, belonging to said AAA by poking a knife at complainant’s throat, to the damage and prejudice of the aforesaid AAA, in the sum of P200.00, that on the occasion of the said robbery, herein accused, by means of violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of said AAA, against her will.

CONTRARY TO LAW. ”[3]

Accused-appellant pleaded not guilty and underwent trial.

The evidence shows that private complainant AAA is a married woman, a mother of three (3) minor children, and a vegetable vendor. She resides with her family in xxx. She was usually left at home with her children as her husband pastured ducks in the province of xxx.[4]

The crime at bar happened in the evening of June 12, 1992. Private complainant was at home with her children. The moon was then bright and her house was lighted with three (3) kerosene lamps. At about 10:00 p.m. , she exposed ampalaya leaves to dewdrop outside her house. The leaves must be peddled fresh in the market the following day. She was hanging the last bundle when she noticed, at a distance of five (5) meters, a person walking towards her house.

Private complainant sensed danger. She was alone as her husband was in xxx. Her children were asleep. Her neighbors were some twenty (20) meters away. She shouted. In no time, the intruder grabbed private complainant, pulled back her hair with his left hand, and poked a knife at her neck with his right hand. He demanded money. She told him there was none. He reiterated his demand and out of fear, private respondent indicated that her money was inside the “aparador” in her house. The man forcibly dragged her to the house.

Inside the house, private complainant was made to open the “aparador. ” With the light of the three (3) lamps, she clearly saw the face of the man through the mirror of the “aparador’s” upper portion.[5] She handed her money to

him, two hundred pesos (P200. 00) in all. The measly amount disappointed the man. He led her outside the house and at knife point, ordered her to pull down her pants. She refused and pleaded: “Huwag naman, may mga anak ako, may asawa ako, maawa ka naman.”[6] The man responded by pressing harder the knife at her throat, and ordering her to perform sexually perverted acts. After a while, the man was able to penetrate her womanhood.[7]

His lust sated, the man warned her: “Do not tell anybody about this incident, if you report the matter to anybody, I will come back and kill you.”[8] He disappeared into the darkness. Private respondent woke up her children and sought help from BBB and his wife, CCC. The house of BBB is forty (40) to forty-five (45) meters away from her house. She recounted her ordeal to them but sealed her lips about the threat. BBB, in turn, summoned Barangay Captain Ponciano Cunanan and Councilman Rodolfo Manaloto. She retold her story to the barangay officials, who decided to report the matter to the police authorities.

It was 11:00 p.m. The barangay officials walked with private complainant to the police headquarters in xxx. On their way, she saw a man wearing red shorts and white striped shirt passing in front of a lighted house near the boundary of barangays xxx and xxx. She recognized the man as the one who robbed and raped her. She pointed him to BBB.[9] They confronted the man who turned out to be accused-appellant. He was invited to the police station and clamped in jail.

The following morning, June 13, 1991, private complainant went to the xxx Municipal Station and again identified accused-appellant as the culprit. Chief of Police Benito Sicat prepared the necessary Police Blotter Report.[10] Dr. Ramiro Rodriguez of the xxx Hospital examined private complainant. His report showed that her organ suffered “superficial abrasion at 9 position, congestion at 3 position. ”[11] Three days after, private complainant executed a sworn statement narrating her revolting experience. In that statement, she again identified accused-appellant.[12]

Accused-appellant is a farmer working for Fernando Garcia.[13] He told a different story. He claimed that when the offense was committed he was at a different place. On June 12, 1992, he allegedly attended the birthday party of Garcia’s son held at the latter’s house in xxx. He arrived there at 5:00 p.m. He cleaned the house, served “pulutan” to the guests, and then joined their beer drinking. The party ended at 12:00 p.m.

Due to intoxication, he walked farther than his house and reached the bridge that separates Barangay xxx from xxx.[14] He was trying to breath fresh air when the barangay officials accosted him. He met the private complainant for the first time and was surprised when she implicated him in the crime. He, however, overheard that the authorities were supposed to arrest a person named Llarves. After he identified himself, they forced him to go to the police station.

Fernando Garcia and his brother-in-law Eduardo Garcia corroborated accused-appellant’s alibi. They affirmed that on June 12, 1992, accused-appellant served “pulutan” to their guests and joined them in drinking beer grande.[15] They added that accused-appellant stayed at the birthday party from 5:00 p.m. . until the television stations signed-off. Eduardo declared that he and accused-appellant left the party together.[16]

Rodolfo David, a barangay tanod at Barangay xxx, was one of those who responded to the private respondent. He claimed that private complainant told him that she could not identify the person who robbed and molested her. She described the criminal to be tall, thin, with a tie around his head, and that the suspect belonged to the Llarves family.[17]

PO3 Leoncio Cuaresma testified that he investigated the private complainant.[18] At the investigation, private complainant stated that the weapon used by the criminal was a fan knife, or a “balisong.”

As aforesated, the trial court convicted the accused-appellant. In this appeal, accused-appellant contends:

“I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED- APPELLANT, FERNANDO CASTAÑEDA OF THE CRIME OF ROBBERY WITH RAPE DESPITE FAILURE ON THE PART OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE IDENTITY OF THE REAL CULPRIT.

II

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE EVIDENCE FOR THE PROSECUTION AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.”

We affirm the judgment of conviction.

Accused-appellant argues that his identity as the perpetrator of the crime was not established beyond reasonable doubt. He claims that private complainant did not immediately point to him as the culprit upon seeing him at the bridge dividing barangays xxx and xxx. She let him passed by and it was only as he was twenty (20) meters away, that she looked back at him and said, “It seems that is the person who raped me.”[19]

The argument lies on a faulty factual basis. Contrary to accused-appellant’s claim, the records show that immediately upon seeing a man coming to their direction, private complainant recognized him as the criminal and pointed him to BBB, and then to the barangay officials. Thus, she testified:

xxx xxx xxx

“Q : When you saw a person coming while you were in front of the house which was lighted, what happened?

A : When that person was coming, I was able to recognize him and said to BBB, BBB, that is the man, sir.”[20]

From her testimony, it is clear that on sight, private complainant immediately identified and pointed accused-appellant to Apolinar as the man who robbed and raped her. It is true that accused-appellant had already passed by private complainant when she pointed him to the barangay officials. But this happened because the barangay captain and his companions were walking ahead of private complainant and BBB. Moreover, it was not only during their chance encounter that private complainant identified the accused-appellant. An hour after the incident, she again identified accused-appellant. She once more identified accused-appellant at the xxx Police Headquarters the next day.

We have no doubt that private complainant had a good look at the physical features of accused-appellant. Private complainant had an early look at accused-appellant while he was walking on the way towards the former’s house. While the robbery was being committed, the lights coming from the three (3) kerosene lamps made it possible for private complainant to see accused-appellant’s face and clothes through the mirror of the “aparador” in the house. During the rape, private complainant was close to accused-appellant as is physically possible, for a man and a woman cannot be physically closer to each other than during a sexual act.[21] There is, therefore, no reason to doubt the accuracy of private complainant’s visual perception of accused-appellant as the criminal. Nor is there any reason to doubt her honesty of intention for there is no showing that she identified accused-appellant due to a corrupt motive.

Be that as it may, accused-appellant still contends that he was misidentified as barangay tanod David testified that the culprit was described by private complainant as tall, slim, and a Liarves. Allegedly, this description was given in the presence of barangay officials who were not called as witnesses by the prosecution. He charges the prosecution with suppression of evidence.

The contention cannot succeed. The rule on suppression of evidence cannot be invoked by accused-appellant

where the same evidence is available to him. In the case at bar, accused-appellant could have subpoenaed the barangay officials who allegedly heard the description of the culprit given by the private complainant. These barangay officials were not under the control of private complainant, a lowly housewife in barangay xxx. It is far fetched to accuse her and the prosecution of suppressing their testimonies.

Moreover, their testimonies could only be corroborative. In *People v. Lorenzo*,^[22] we held that the presumption laid down in Section 5(e), Rule 131 of the Rules of Court that “evidence willfully suppressed would be adverse if produced” does not apply when the testimony of the witness not produced would only be corroborative.

Accused-appellant also argues that if he was the criminal, he should not have immediately returned to the situs of the crime.^[23]

Again, we are not persuaded. Although flight from the scene is an indication of guilt, the act of returning to the situs of the crime does not a converso indicate innocence. It is no longer strange for smart criminals to return to the scene of the crime to stunt suspicion. As we observed in *People vs. Ocampo*,^[24] the fact that this form of reverse psychology does not happen as often as flight, does not mean that it can never take place. Moreover, accused-appellant was too inebriated at that time. He had been drinking beer for six (6) hours. In that state of drunkenness, accused-appellant cannot be expected to be lucid and logical in his movements.

Accused-appellant further capitalizes on private complainant’s failure to put up any resistance at the time “she was sexually abused, when she noticed that the accused-appellant was no longer holding the knife which was previously poked at her neck.”^[25] He avers that “she could have taken advantage of that opportunity to run to her neighbor and asked for help as what she did when [he] left her.”^[26]

The records show that private complainant explained why she failed to run after accused-appellant laid down his knife. She declared:.

xxx xxx xxx

Q : When Fernando Castañeda tries to insert his organ to you by releasing the knife from his right hand, why don’t you run away from him?

A : How could I run. My hair was being forcibly pulled and I could not even move, sir. “^[27]

Moreover, the knife was still within the reach of accused-appellant and it would have been sheer folly for her to think of escaping unhurt and to leave her minor children at his mercy.

Accused-appellant also faults the prosecution for failure to present the knife and the stolen two hundred pesos (P200.00). He contends that their non-presentation “produces no other conclusion that [he was] not the one who robbed and raped the private complainant.”^[28] He also raises the inconsistent statement of private complainant on the kind of knife used, i.e. whether it was a fan knife or a balisong.”

The contentions merit scant consideration. The non-presentation of the two hundred pesos (P200.00) and the knife used by accused-appellant in intimidating private complainant is not fatal to the prosecution’s cause. The testimony of private complainant in this regard is credible and the failure of the authorities to recover the money and the knife and to present them as evidence cannot exculpate accused-appellant. Similarly, whether accused-appellant used a fan knife or a “balisong” in threatening private complainant has no legal significance. To be sure, there is little difference between a fan knife and a “balisong.” The fact that counts is that private complainant was threatened with a knife and its erroneous description does not erase the force and intimidation used by accused-appellant in committing the crime at bar.

Finally, we reject accused-appellant’s defense of alibi. It is his burden not only to prove that he was not at the

scene of the crime when it happened but also that it was impossible for him to be there at the time of the commission of the offense. By accused-appellant's own admission, he was within the vicinity of the crime on that fateful night. He was drunk, walked farther than his house, and crossed the bridge to breath fresh air. Likewise, Barangay xxx where accused-appellant allegedly spent seven (7) hours of the night of June 12, 1992, in Garcia's house is just three (3) kilometers away from the scene of the crime. It would only take fifteen (15) minutes by tricycle for accused-appellant to be at the situs of the crime. It was, thus, not impossible for accused-appellant to slip away from the house of Garcia and commit the crime without rousing suspicion from his companions who were also intoxicated.

IN VIEW HEREOF, the judgment of the trial court, finding accused-appellant guilty beyond reasonable doubt of Robbery with Rape, is AFFIRMED in toto. With costs against accused-appellant.

SO ORDERED.

Regalado (Chairman), Romero, and Mendoza, JJ., concur.

[1] Branch 66, Third Judicial Region, Honorable Josefina D. Ceballos, Presiding Judge.

[2] RTC Decision, p.10; Rollo, p.24.

[3] Rollo, p.5.

[4] TSN of June 21, 1993, p.9.

[5] Id., p.12.

[6] Id., p.16.

[7] Id., p.19.

[8] Id., p.21.

[9] Id., p.29.

[10] Exhibit "3".

[11] Exhibit "B".

[12] Exhibit "A".

[13] TSN of October 26, 1993, pp. 4-5.

[14] Id., p.13.

[15] TSN of September 21, 1993, p.21.

[16] TSN of October 11, 1993, pp.13-16.

[17] TSN of September 6, 1993, p.6.

[18] TSN of September 21, 1993, pp.6-8.

[19] Appellant's Brief, p. 12; Rollo, p.63.

[20] TSN of June 21, 1993, p.29.

[21] See People v. Manzano, G.R. No. 108293, September 15, 1995.

[22] G.R. No. 110107, January 26, 1995, 240 SCRA 624.

[23] Appellant's Brief, p.14; Rollo, p.65.

[24] G.R. No. 80262, September 1, 1993, 226 SCRA 1.

[25] Appellant's Brief, p.16; Rollo, p.67.

[26] Id., p.17.

[27] TSN of August 2, 1993, pp.39-40.

[28] Appellant's Brief, p.15; Rollo, p.66.

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