

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CELERINO CASTROMERO, ACCUSED-APPELLANT.

*G.R. No. 118992. October 09, 1997*

Ponente: PANGANIBAN, J.

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### PANGANIBAN, J.:

Rape is consummated by the slightest touching of the lips of the female organ or of the labia of the pudendum. Complete penetration is not required. The rapist is likewise liable for the injury suffered by the rape victim as a result of her attempt to escape the assault.

#### The Case

This is an appeal from the August 17, 1994 Decision[1] of the Regional Trial Court, Fourth Judicial Region, Branch 10[2] stationed in Balayan, Batangas in Criminal Case No. 3509 finding appellant guilty of rape with serious physical injuries.

The Complaint[3] against Appellant Celerino Castromero reads:

“The undersigned offended party under oath accuses Celerino Castromero of the Complex Crime of Rape with Serious Physical Injuries, defined and penalized under Article 335, in relation to Article 48 and 263 of the Revised Penal Code, committed as follows:

That on or about the 6th day of February, 1993, at about 2:00 o’clock in the morning, at Barangay Tanggoy, Municipality of Balayan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife (balisong) and by means of force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge with the offended party Josephine Baon against her will and consent and as a consequence thereof, the said offended party suffered serious physical injuries which injuries required medical attendance and incapacitated her from performing her customary work for a period of more than ninety (90) days by jumping down through the window of her house.

Contrary to law.”

The Complaint[4] was treated as the Information with the approval of Provincial Prosecutor Carmelo Q. Quizon, after Fourth Asst. Provincial Prosecutor Rolando E. Silang added his sworn certification that a “preliminary investigation was conducted in accordance” with law. When arraigned on July 20, 1993, the accused-appellant, assisted by Counsel de Oficio Hermogenes De Castro, pleaded not guilty.[5]

After a pre-trial conference, trial ensued in due course. Subsequently, the trial court rendered the assailed Judgment, the dispositive portion of which reads:

“WHEREFORE, the Court finds the accused Celerino Castromero GUILTY beyond reasonable doubt of the

crime of Rape With Serious Physical Injuries and hereby sentences him to reclusion perpetua, to indemnify the victim Josephine Baon in the sum of P40,000.00, to pay Josephine Baon the sum of P20,378.95 representing actual damages and to pay the costs.

Considering that the accused is a detention prisoner, he shall be credited with the period of his detention during his preventive imprisonment.

SO ORDERED.”[6]

## The Facts

### Version of the Prosecution

The prosecution presented three witnesses, namely: (1) Josephine Baon, the victim; (2) her husband, Esmeraldo Baon, who testified on the medical expenses for the injuries his wife suffered because of the crime; and (3) Felipa Baon. The facts gleaned by the trial court from their testimonies are as follows:

“Felipa Baon is the mother-in-law of the alleged victim and was presented to prove circumstances of the incident which form part of the “res gestae.” She testified that the accused is her nephew because the accused’s father is her first cousin. On February 6, 1993 at around 2:00 o’clock in the morning while asleep in their house in Barangay Tangoy, Balayan, Batangas, she was awakened by a scream of her daughter-in-law whose house is situated just five (5) armslength away from theirs. When she came out to help her daughter-in-law (Josephine Baon), the latter was lying in front of the window so, she and her husband carried Josephine into their house. Thereat, Josephine related what happened to her. According to Josephine, the accused forcibly entered her room, placed himself on top of her and made his penis touch her vagina for several times. The accused was then holding a knife. When Josephine was able to free herself from the accused, she jumped out of the window where she fell into the ground. Thereafter, the assistance of Barangay Captain Codizal was sought who reported the incident to the police. Felipa Baon executed a sworn statement when investigated by one SPO2 William C. Dimaala in the Philippine Orthopedic Hospital where Josephine was confined for treatment.

The next witness was the private complainant who gave her testimony while lying on a bamboo bed. She averred that she knows the accused because the latter is the nephew of her mother-in-law. On February 6, 1993, at around 2:00 o’clock in the morning while asleep, she was awakened by the slam of the kitchen door. She rose and went out of the bedroom to check what happened and outside the room she met the accused. The accused pointed a knife at her and warned her not to shout or else she would be killed. She got scared.

The accused, while holding a knife on the right hand, embraced her behind the neck, kissed her cheek, and touched her breasts. Then he pulled her panty until the garter got loose and touched her private parts. Next, accused pulled down his jogging pants and brief. She kept herself still because of the accused’s threat to kill her. Accused then removed her skirt, placed himself on top of her, and tried to insert his penis into her vagina. Because of the accused’ movement sideways and her struggle, his penis touched her private parts.

When she noticed that the accused was no longer holding the knife, she pushed him away. As she rose up, the accused grabbed her hands and was about to stab her. So, she immediately jumped out of the window. When she fell down, she yelled for help from her in-laws who responded and carried her to their house because she could not move her feet. She requested her mother-in-law to bring her to the emergency hospital because of the intense pain she was then suffering. Her in-laws reported the incident to the barangay captain who looked for the accused and to whom the accused surrendered.

From the emergency hospital, she was later transferred to the Philippine Orthopedic Hospital. Upon examination, it was found out that her spinal column was broken which required her to undergo surgical

operation. (Exhs. “E”, “E-1” to “E-5”).

On cross-examination, private complainant averred that it is her habit to sleep at night with lights on in and out of her room especially when her husband is not around. In the night of February 5, 1993 she slept with the lights on together with her children, namely: Joanna Marie and Romualdo. It was at around 2:00 o'clock the following morning when she was awakened by a slam of the door, reason for her to rise-up to check what happened and she met the accused just outside her room as she went out. The accused then pulled her and pointed a knife on the left side of her neck and touched her private parts while they were both standing with the accused in front of her.

When she was already lying down (upon the orders of the accused) the accused went on top of her embracing her with his right arm which also held a knife and touched her private parts. The accused tried to insert with his left hand his penis into her vagina.

As the knife was pointed at her, the accused warned her not to shout or she would be killed. It was the accused's left hand that touched her breast because his right hand held the knife. The accused used both hands in removing her panty with the knife still on his hand. The accused removed his jogging pants and brief and the knife was still pointed in her neck. When the accused tried to insert his penis, it touched her vagina as she put up resistance and as both of them moved sideways.

The next witness was Esmeraldo Baon, the husband of the offended party whose gist of the testimony relates to the civil aspect of the crime charged. He testified on the hospital and surgical expenses and cost of medicines incurred on account of the injury suffered by the offended party caused by her jumping out of the window. The witness also identified the receipts and other relevant documents in support of the expenses incurred. Although he claimed having incurred expenses in the amount of P242,198.00, the witness was able to present receipts covering P20,378.95 only (Exhs. “D-1” to “D-25”).[7]

#### Version of the Defense

Raising denial and alibi, the defense presented two witnesses in the person of Appellant Celerino Castromero and his wife Juliana. The appellant, through the Public Attorney's Office, narrated the following version of the facts:[8]

“Juliana Castromero testified that she is the wife of the accused. She said that at around 6 o'clock in the evening of February 5, 1993 she was with her husband (accused) and their three (3) children at their house in Tanggoy, Balayan, Batangas. They took their dinner. At about 7 o'clock of the same night her husband went out. Her husband returned before midnight and slept right away. She was awake till 1 o'clock because one of their children had a stomach ache. When she woke up at 5 o'clock in the morning, her husband was still sleeping. Her husband woke up at 6:00 A.M. After taking his breakfast, her husband went to his work in Dalig, Balayan, Batangas. Her husband is a threshing machine operator. While her husband was on his job, some policemen came to their house and were looking for him. Her husband was being suspected of entering other's (sic) dwelling. (TSN, pp. 2-8, April 7, 1994 and pp. 2-9, April 28, 1994)

Celerino Castromero testified that at around 6 o'clock in the evening of February 5, 1993 he took his supper together with his wife and children. At about 7 P.M. he left and played (or gambled) in a nearby house. At 11:30 P.M., he went home. After his arrival at their house, he went to sleep right away. He woke up at 5 o'clock of the following morning. He reported for work in Dalig, Balayan, Batangas being a threshing machine operator. When he went home at 12 o'clock noon, their barangay captain arrived and informed him that he was being suspected of having committed a crime. The police invited him to the police station. And at the police station, the police did not conduct any investigation. He was merely placed or locked up in the jail. He went to the police station, together with their barangay captain, to explain his side and not to surrender. He

denied vehemently to have committed any crime. (TSN, pp. 2-18, May 19, 1994).”

#### Error Assigned

The defense raises one error: “the court a quo erred in not acquitting the accused-appellant of the crime charged.”[9] Appellant denies the accusation against him and insists that he was inside his own house at the time of the alleged rape.

#### The Court’s Ruling

The appeal is not meritorious.

#### Credibility of Witnesses

In his brief, the appellant simply denies the charge of rape with serious physical injuries and insists on his alibi.[10] He also alludes to the following as indications of his innocence: he voluntarily went to the police station with the barangay captain;[11] he pleaded not guilty to the charge;[12] and he vehemently denied committing the crime.[13] Finally, he adds, “if a reasonable doubt exists, the verdict must be one of acquittal.”[14]

In deciding this appeal, we are guided by the following principles formulated specifically for the review of rape cases: (1) an accusation of rape, while easy to make, is difficult to prove and even harder for the person accused, though innocent, to disprove; (2) because rape, by its very nature, involves only two persons, the testimony of the complainant should be scrutinized with the greatest caution; (3) the evidence for the prosecution must stand or fall on its own merits and must not be allowed to draw strength from the weakness of the evidence for the defense.[15] On the other hand, the complainant’s credibility assumes paramount importance because her testimony, if credible, is sufficient to support the conviction of the accused.[16]

After a thorough review of the records in the case at bar, we see no reason to reverse the trial court’s factual finding and conclusion on the credibility of Josephine Baon’s testimony;[17] we are likewise unpersuaded by accused-appellant’s asseverations. “Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.”[18]

Josephine Baon’s testimony on how her honor was defiled by appellant that early dawn was clear, direct and honest.[19] Josephine never wavered in her account of the rape in spite of the long browbeating she received during her cross-examination.[20] Her identification of Appellant Castromero as her violator cannot be disputed because she personally knew appellant who, aside from being a neighbor, was also a relative of her mother-in-law. Moreover, she had the opportunity to identify her assailant, since the crime scene was illuminated by the lights inside and outside her room which she usually left on, specially in the absence of her husband as was the case that night.[21] Besides, it is inconceivable that complainant, a decent 26-year old married Filipina with two young children, would suffer the embarrassment of having to reveal intimate details of her violation and to undergo all the difficulties and indignities of a rape prosecution, if her sole motivation was not to have the real culprit arrested and punished for the outrage committed against her. Indeed, a rape victim “will not come out in the open if her motive [is] not to obtain justice.”[22] In any event, it was not shown that complainant had any ill motive to falsely testify against Accused Castromero. The accused himself and his wife Juliana both admitted during trial that they had no knowledge of any “bad blood” between them and Josephine Baon or her family.[23]

Hence, Josephine’s testimony, which we find credible and worthy of belief, is sufficient to convict the accused-appellant of the crime charged. The reliability and credibility of her testimony are bolstered by her

narration of the sordid incident immediately thereafter to her mother-in-law, Felipa Baon. Based on the foregoing, we are convinced that appellant sexually assaulted Complainant Josephine Baon.

Appellant Castromero's defense of denial and alibi is inherently weak and certainly insufficient to outweigh Josephine's positive and categorical assertion of her violation by the former.[24] Furthermore, "(f)or alibi to serve as basis for acquittal, it must be established with clear and convincing evidence. The requisites of time and place must be strictly met. Appellant must convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission." [25] Appellant's evidence falls far short of this requirement because his house, where he was allegedly sleeping at the time the crime was committed, was a mere fifty meters from the crime scene.[26] Hence, it was not at all physically impossible or even difficult for appellant to have been at complainant's home at the time of the crime. It seems to this Court that the defense of denial and alibi was routinely raised *faute de mieux*.

#### Was Rape Committed?

In determining whether the rape was consummated or merely attempted, we observe that in this case there was no complete or perfect penetration of the complainant's sex organ. The salient portions of her testimony are as follows:

Q While he was on top of you, what was he doing?

A He tried to insert his penis to my vagina.

Q When he was trying to insert his private part to your private part, what happened?

A His penis touched my vagina.

FISCAL CASTILLO:

May I request Your Honor, that the Tagalog word "Ang kanyang pag-aari ay lumapat sa aking pag-aari).

Q What happened next?

A Because of the movement sideways his penis touched my private parts." [27] (Underscoring supplied.)

On cross-examination, Eden stated further:

"Q Mrs. witness, you testified that while the accused was on top of you, he tried to insert his penis, did the accused insert his penis on your private part?

A Yes sir, the opening of my vagina was touched." [28] (Underscoring supplied.)

Felipa Baon, on the other hand, declared:

"Q When Josefina Baon asked your help and the first time you see (sic) her at that morning, what was her physical condition?

A She was lying in front of the window.

Q And what did she tell you if she told you anything?

A Josephine Baon told me that the accused forcibly enter her room and placed himself on top of her and the penis of the accused was made to touch the vagina for several times. 'Idinuldol ng idinuldol ang kanyang pag-aari sa harap ni Josephine Baon'." [29] (Underscoring supplied.)

To consummate rape, perfect or complete penetration of the complainant's private organ is not essential. Even the slightest penetration by the male organ of the lips of the female organ, or labia of the pudendum, is sufficient.[30] In *People vs. Dela Pena*, [31] this Court held that "the mere touching of the external genitalia by a penis capable of

consummating the sexual act constitutes carnal knowledge.” Josephine’s testimony that appellant’s organ touched the opening of her vagina can lead to no other conclusion than that the appellant’s manhood legally invaded, however slightly, the lips of her private organ. Clearly, rape was consummated in this case. Because the sexual assault was perpetrated by force and intimidation, Appellant Castromero is thus guilty of rape pursuant to Article 335 of the Revised Penal Code.

In relation to the charge that rape was complexed with the crime of serious physical injuries, we stress the settled principle that a person who creates in another’s mind an immediate sense of danger that causes the latter to try to escape is responsible for whatever the other person may consequently suffer.[32] In this case, Josephine jumped from a window of her house to escape from Appellant Castromero; as a result, she suffered serious physical injuries, specifically a broken vertebra which required medical attention and surgery for more than ninety days. This being the case, the court a quo correctly convicted Appellant Castromero of the complex crime of rape with serious physical injuries.

WHEREFORE, the assailed Decision of the trial court is hereby AFFIRMED. However, the indemnity in favor of Josephine Baon is hereby INCREASED to fifty thousand pesos (P50,000.00) in line with current jurisprudence.[33]

SO ORDERED.

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

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[1] Rollo, pp. 17-29.

[2] Judge Franchito N. Diamante presiding.

[3] Rollo, pp. 5-6.

[4] Record, pp. 1-2.

[5] Ibid., p. 26. The appellant was however defended before this Court by the Public Attorney’s Office.

[6] Assailed Judgment, p. 13; rollo, p. 29.

[7] Decision, pp. 2-5; rollo, pp. 18-21.

[8] Appellant’s Brief, pp. 4-5; rollo, pp. 52-53.

[9] Ibid., p. 1; rollo, p. 49.

[10] Rollo, pp. 47-61.

[11] Appellant’s Brief, p. 12; rollo, p. 60.

[12] Ibid., p. 5; rollo, p. 53.

[13] Ibid., p. 10; rollo, p. 58.

[14] Ibid., p. 12; rollo, p. 60.

[15] People vs. Ramirez, G.R. No. 97920, pp. 11-12, January 20, 1997, per Panganiban, J.; citing People vs. Guamos, 241 SCRA 528, 531, February 21, 1995. See also People vs. Manansala, G.R. Nos. 110974-81, pp. 10-11, June 17, 1997, per Mendoza, J.

[16] People vs. Malabago, G.R. No. 108613, p. 14; April 18, 1997, per Panganiban, J.

- [17] See Decision, p. 12; rollo, p. 28.
- [18] *People vs. Pontilar, Jr.*, G.R. No. 104865, pp. 8-9, July 11, 1997, per Panganiban, J.
- [19] See TSN, pp. 3-7; November 23, 1993.
- [20] *Ibid.*, pp. 14-28.
- [21] *Ibid.*, pp. 14-15.
- [22] *People vs. Acabo*, 259 SCRA 75, 84, July 17, 1996, per Francisco, J.
- [23] TSN, p. 16, May 19, 1994 and TSN, p. 9, April 28, 1994.
- [24] *Ibid.*, pp. 82-83.
- [25] *People vs. Cañada*, 253 SCRA 277, 286, February 6, 1996, per Bellosillo, J.
- [26] Decision, p. 7; rollo, p. 23. See also TSN, p. 3, April 28, 1994 and TSN, p. 16, May 19, 1994.
- [27] TSN, p. 6, November 23, 1993.
- [28] *Ibid.*, p. 25.
- [29] *Ibid.*, p. 7, September 16, 1993.
- [30] *People vs. Aragona*, 138 SCRA 569, 578, September 19, 1985, per Cuevas, J. See Reyes, Luis B., J., *The Revised Penal Code: Criminal Law, Book Two*, p. 778, (1993).
- [31] 233 SCRA 573, 578-579, June 30, 1994, per Kapunan, J.
- [32] *People vs. Page*, 77 SCRA 348, 355, June 7, 1977, per Aquino, J.
- [33] *People vs. Eduardo Caballes*, G.R. Nos. 102723-24, June 19, 1997.

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