

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RONALD SUMAMPONG Y PARAJES, DONALD TE Y RANERIO,
AURELIO RIVAS Y VERANO AND JOVY ORELLO Y TORRALBA,
ACCUSED-APPELLANTS.**

G.R. No. 121378. May 21, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Accused-appellants Ronald Sumampong, Donald Te, Jovy Orello and Aurelio Rivas (at large) were indicted for the crime of rape before the Regional Trial Court of Davao City in an information which reads as follows:

"That on or about February 25, 1992, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and helping one another, by rendering complainant weak and semiconscious and depriving her of reason by making her drink liquor, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant against her will.

Contrary to law.”[1]

Upon arraignment on September 25, 1992, appellants pleaded not guilty to the offense charged. After trial on the merits, the court a quo,[2] rendered judgment on May 25, 1994 convicting appellants, the dispositive portion of which reads:

"WHEREFORE, in the light of all the foregoing considerations, this Court finds the accused: Ronald Sumampong y Parajes, of legal age, single, resident of Quezon Blvd., Davao City; Donald Te y Ranerio, of legal age, single, a resident of Quezon Blvd. and Jovy Orello y Torralba, a minor, a resident of Quezon Blvd., Davao City GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Art. 335, of the Revised Penal Code and accordingly order all accused, except Jovy Orello who appears to be under 18 years old at the time the offense was committed, to suffer the penalty RECLUSION PERPETUA with all the accessories provided by law. And as to the civil aspect of this case, the accused Ronald Sumampong and Donald Te are further ordered to each pay Annaliza Abella P50,000.00 by way of indemnity and another P50,000.00 as moral damages plus the cost.

Jovy Orello who was born on June 21, 1977 (Birth Certificate, p. 43, Records) is therefore extended the benefit of the privileged mitigating circumstance of minority and the application of the Indeterminate Sentence Law. Accordingly he is hereby sentenced to suffer EIGHT (8) Years and ONE (1) day of Prison Mayor as Minimum and FOURTEEN (14) years and EIGHT (8) Months, ONE (1) day of Reclusion Temporal as Maximum together with the accessories provided by law; also, accused's (sic) is further ordered to pay Annaliza Abella by way of indemnity the amount of P50,000.00 and P30,000.00 as moral damages.

SO ORDERED.”[3]

The prosecution's version of the incident follows:

On February 16, 1992, Annaliza Abella suffered head injuries when she fell from a jeepney in Toril, Davao City. In spite of her delicate condition, her mother left for Cotabato and entrusted her under the care of her godmother, Perpetua Vasquez, who resides in Quezon Boulevard, Davao City.

On February 25, 1992, after having breakfast, Abella went for a stroll in the neighborhood. At around 11:00 o'clock in the morning, while stopping by the house of Te, the latter emerged therefrom and befriended her. Te invited her to their house where he introduced her to his sisters. Thereafter, he proceeded to Rivas' house which is only seven (7) meters away from his residence.[4]

Upon his return, Te enticed Abella to go with him and visit Rivas which invitation the latter accepted. After she was introduced to Rivas, they took lunch together. At around 1:30 o'clock p.m., Sumampong and Orello arrived and subsequently engaged the others in a drinking spree which lasted until 5:00 o'clock p.m. At this juncture, Abella, feeling dizzy, after she was urged to drink two (2) shots of Tanduay rum allegedly for the sake of "pakikisama,"[5] rested on a bench. Realizing that Abella was tipsy, appellants brought her upstairs where she was made to lie down on the floor. Suddenly, she noticed that Sumampong pulled down her short pants and underwear. She resisted the latter's advances but, he nonetheless succeeded in consummating his bestial desires with the aid of Orello who grasped her hands while Te and Rivas forced her legs apart. Moments later, she passed out.

When Abella failed to return that evening, a search, led by Perpetua Vasquez, was conducted. In the course of the inquiry, a neighbor revealed that Abella was last seen in the house of Rivas. Forthwith, they proceeded to the said place and found Abella asleep on the second floor. With the aid of a fifteen-year old boy, Perpetua brought her back to their house.

On February 26, 1992, at 6:00 o'clock in the morning, after regaining consciousness, Abella narrated her ordeal to Perpetua who immediately brought her to the City Health Office. Medico-legal officer Danilo P. Ledesma testified that his findings, although showing no "external sign of violence,"[6] disclosed the presence of spermatozoa in her vagina, thus, confirming her story of defloration the previous night.

After the said examination was completed, Perpetua and Abella proceeded to the Sta. Ana Police Station to report the incident accusing appellants as the perpetrators of the offense charged. Acting on this information, the police immediately arrested the malefactors. However, only three of them were brought to trial as Rivas presumably went into hiding.

Appellants, on the other hand, merely proffered alibi as defense.

Orello, fifteen (15) years old, an elementary student at the Rizal Elementary School, testified that on the day in question, he attended his classes from 7:00 o'clock to 12:00 o'clock in the morning and the afternoon session from 1:00 o'clock to 3:00 o'clock. Thereafter, he invited Rivas to play basketball with him and a certain Robert Sumampong. At around 5:00 o'clock and after playing two games, he repaired to his house to rest. Te, on the other hand, claimed that during his off-days as a painter, he assists his mother in selling food items at the Ecoland Bus Terminal in Matina, Davao City. He recounted that on February 25, 1991, he was with his mother at home at around 5:00 o'clock p.m. after coming from the said terminal and stayed thereat for the rest of the night. Sumampong merely declared that he was at home all day.

We affirm the conviction of appellants.

It is appellant's position that the crime, having been committed at about 6:00 o'clock in the evening and, being nowhere near the scene of the crime, they could not have possibly committed the charge ascribed to them.

We are not impressed with appellants' flimsy ratiocination. For alibi to be credible, the accused must, not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time.[7] Alibi is an inherently weak defense and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim who, in a natural and straightforward manner, convincingly identified the appellants as those who sexually violated her. On the contrary, the record shows that appellants and Abella live in the same residential district where their respective houses are situated several meters apart from each other. Thus, there was indeed no proof of physical impossibility for appellants to be at Rivas' house on the day the crime was committed. Moreover, appellants failed to accord sufficient motive for her to have cast so grave a charge against appellants if the same was untrue.

With regard to the carnal act, the same appeared to have been adequately established, not only by Abella herself, but likewise by Dr. Ledesma who examined the victim on February 26, 1992, viz.:

“Q

Did you see any external sign of violence on the body of the victim?

A

There was no extra genital physical injuries.

Q

What about the genitalia?

A

There were no signs of recent sexual assault but in my remarks in the semenology in which the discharge of the vagina was placed in a glass and was determined and it was found out there were sperm cells in the smear.

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“Q

It means what?

A She has (sic) recent sexual intercourse.

Q And the male had ejaculated?

A Yes, Your Honor.”[8]

Appellants further contend that Abella's narration of the incident was flawed, arguing that Rivas' house does not have a second storey as shown by the ocular inspection conducted by the trial court on June 3, 1993. The said court, however, declared otherwise. It ruled that the disputed second storey actually served as the ceiling of the first floor, the house being incomplete at the time. Evidence revealed that the cemented roof was accessible by an improvised stairway and the same was in fact used by occupants to dry their laundry.

More telling, however, is the testimony of Barangay 31-D President Romeo Pacabis who testified that, as neighbor of the appellants, he was familiar with the Rivas residence which he described as a two-storey house. He averred that a hut, with empty sacks as roofing,[9] was constructed in the second-storey which was frequently used by Rivas and his friends when engaged in a drinking spree. Further, he declared that sometime in April or May of 1992, a brother of Rivas dismantled the hut[10] presumably to make it appear that the crime charged could not have possibly been committed in such place. This notwithstanding, the Court has consistently held that “it is not necessary for the rape to be committed in an isolated place for rapists bear no respect for locale and time when they carry out their evil deed.”[11]

The trial court correctly found the appellants to have acted in conspiracy. Direct proof is not essential to show conspiracy as its existence may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that the accused had acted in unison with each other, evincing a common purpose and design.[12] In the event that conspiracy be proved, “the act of one becomes the act of all and each of the accused will thereby be deemed equally guilty of the crime committed.”[13]

In the case at bar, the records show that appellants were engaged in a drinking spree from 1:30 o’clock to 5:00 o’clock p.m. In the course of their conviviality, they persuaded Abella to take two (2) shots of liquor which eventually caused her to feel weak and sleepy. Consequently, she was brought upstairs and thereupon the appellants succeeded in forcing their lustful desires on her. “These acts manifestly disclose their joint purpose and design, concerted action and community of interest.”[14]

WHEREFORE, the appeal is DISMISSED and the decision of the trial court finding the appellants Ronald Sumampong, Donald Te and Jovy Orello guilty beyond reasonable doubt of the crime of rape committed against Annaliza Abella is hereby AFFIRMED, subject to the deletion of the award of moral damages for want of legal and factual basis. Costs against appellants.

SO ORDERED.

Narvasa, C.J. (Chairman), and Kapunan, JJ., concur. Purisima, J., on leave.

[1] Rollo, p. 6.

[2] Penned by Judge Leonor T. Sumcad.

[3] Rollo, pp. 37-38.

[4] TSN, December 8, 1992, p. 8.

[5] Ibid., pp. 11-12.

[6] TSN, November 26, 1992, p. 11.

[7] *People v. Alcantara*, 254 SCRA 384 (1996); *People v. Ligotan*, 262 SCRA 602 (1996).

[8] TSN, November 26, 1992, pp. 11-12.

[9] TSN, April 4, 1993, p. 11.

[10] TSN, April 29, 1993, p. 14.

[11] *People v. Leoterio*, 264 SCRA 608 (1996).

[12] People v. Bergonia, et al., G.R. No. 89369, June 9, 1997.

[13] People v. Gundran, 228 SCRA 583 (1993).

[14] People v. Fortich, G.R. No. 80399-404, November 13, 1997.

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