

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO BANGUIS Y NOTUIL, ROMEL FRANCISCO Y MAPUTI,
RENNY JUMALON, ALLAN JUMALON, GILBERT ARAÑAS AND CARLOS
ENTERONE, ACCU...**

G.R. No. 121626. June 26, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

On November 8, 1993, a complaint[1] for rape was filed by Chelly Caliso against Rolando Banguis, Romel Francisco, Renny Jumalon, Allan Jumalon, Gilbert Arañas and Carlos Interone with the Regional Trial Court of Iligan City. The complaint was later amended[2] on June 8, 1994 impleading Jerry Alfante and Alfredo Flores. The amended complaint reads:

“That on or about November 3, 1993, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, by means of force and intimidation, did then and there took turns in having carnal knowledge and sexual intercourse with Chelly S. Caliso against her will.

“Contrary to and in violation of Article 335 of the Revised Penal Code.”

On November 26, 1993, prior to the amendment, accused Rolando Banguis and Romel Francisco were arraigned and separately entered pleas of not guilty. Accused Allan Jumalon and Alfredo Flores were later arraigned on August 18, 1994; both likewise entered pleas of not guilty. The other accused remained at-large.

Thereafter, trial ensued.

To buttress her complaint, Chelly Caliso, then only thirteen (13) years of age, testified that at about six o'clock in the evening of November 3, 1993, she went to fetch water at the public faucet located at the back of the church in Purok 2, Maria Cristina, Iligan City. As she was loading water into her container, accused Rolando Banguis approached Chelly and introduced himself. He asked Chelly's name which the latter gave. After the introductions, Rolando signaled his friends to join them. Accused Romel Francisco approached her and, in turn, summoned the rest of his companions, namely, the other accused Renny Jumalon, Allan Jumalon, Gilbert Arañas, and Carlos Interone, who emerged from the church. Thereafter, Rolando told the group that he will go ahead to the copra drier. After Rolando left, Romel went to Chelly, drew a knife and pointed it at Chelly's neck, threatening her, “Do not shout, if you will not go with me, I will kill you.”[3] Chelly was then brought to the copra drier which was about 100 meters from the public faucet. On their way, they met Jerry Alfante and Alfredo Flores. When they arrived at the copra drier, Carlos asked, and Romel gave him, the knife. Romel went outside the copra drier. Thereafter, Carlos ordered Chelly to lie down on a bamboo bed placed against the wall. Chelly refused but Carlos pushed her down, pointed the knife at her neck and threatened to kill her. Then, Rolando undressed himself, forcibly took off Chelly's pants, went on top of her and inserted his organ into her vagina. After satisfying his lust, Rolando punched Chelly's chest three times rendering Chelly unconscious. When she

regained consciousness, Chelly found herself still lying on the bamboo bed. Jerry Alfante and Alfredo Flores told her to dress up and run away because their companions will surely kill her. Despite the pain, Chelly did what she was told and fled the copra drier. Rolando and his companions, who stood about ten meters away from the copra drier, chased her. Chelly managed to outdistance her pursuers and sought refuge at her Ate Emma Cainila's house. Rolando and the others gave up the chase. Chelly narrated to Emma her harrowing experience.[4]

On November 5, 1993, Chelly and her cousin Emma went to the Iligan Police Station to report the incident.[5] Thereafter, they proceeded to the Gregorio Lluch Memorial Hospital where she was physically examined by Dr. Imelda Garcia. The examination showed that the vaginal canal admits two (2) fingers with slight tenderness and slight pain. The two hymenal lacerations were noted at 5:00 o'clock and 9:00 o'clock positions. There was also a linear abrasion, approximately 2 x 2 cm. at Chelly's right knee.[6]

All the accused denied having committed the crime. Their only defense is alibi, i.e., when Chelly Caliso was allegedly brought to the copra drier, none of them was at the public faucet, but in different places.

Accused Rolando Banguis claimed that he was at the Iligan-Balo-i terminal in Iligan City. The jeepney, where he was the conductor, after it was loaded with passengers, proceeded to Balo-i and they arrived thereat at around 7:30 in the evening. Thereafter, they loaded firewood and went to the jeepney owner's house to remit the day's collection. Then the jeepney proceeded to Linamon where accused Rolando alighted at Maria Cristina at around 9:00 o'clock in the evening and proceeded to the house of Ambrocio Jumalon to sleep.[7]

For his part, accused Romel Francisco averred that he was in his house at Maria Cristina the whole day of November 3, 1993 taking care of his younger sisters and brother.[8]

Accused Alan Jumalon, on the other hand, professed that he was working as a jeepney conductor from 5:00 o'clock in the morning till 7:00 o'clock in the evening of November 3, 1993. Thereafter, he went to his brother's house at Purok 4, Maria Cristina where he stayed until 8:30 in the evening. He then went home, slept and woke up at 4:30 the following morning.[9]

The accused's testimonies were corroborated by Josephine Suan, Paulina Oliveros, Elena Tiu and Irene Aranas, who all denied having seen Chelly Caliso at the public faucet and the accused at the copra drier.

After trial, the court on June 22, 1995, rendered a decision,[10] the dispositive portion of which reads:

"WHEREFORE, finding Rolando Banguis and Romel Francisco guilty of the crime of rape beyond reasonable doubt, the Court hereby sentences them to suffer the penalty of Reclusion Perpetua, with the accessory penalties of the law. They are further ordered to pay Chelly Caliso the amount of Fifty Thousand (P50,000.00) Pesos as moral damages, jointly and solidarily.

"On the other hand, accused Allan Jumalon and Alfredo Flores are hereby acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt. The City Warden or any person in custody of Jumalon and Flores are hereby ordered to release them immediately from receipt of this Decision unless held for any other case.

"In the meanwhile, let an Alias Warrant of Arrest be issued against the other accused, namely: Renny Jumalon, Gilbert Arañas, Carlos Interone, and Jerry Alfante for their immediate apprehension. Pending their arrest, let the case as far as the other accused are concerned be archived.

"SO ORDERED."

Only accused Rolando Banguis interposed this appeal. He contends:

"(T)hat the trial court erred in convicting him of the crime of rape despite insufficiency of evidence to prove

his guilt beyond reasonable doubt.”

Appellant simply dwells on the alleged inconsistencies in the testimonies of private complainant Chelly Caliso and her cousin Emma Cainila which allegedly “cast serious doubts as to its veracity.”[11]

Appellant makes capital of the fact that in the affidavit executed by Chelly at the Iligan City Police Station, she stated that it was Carlos Interone who pulled a knife and led her to the copra drier; while in her testimony in court she declared that it was Romel Francisco who pulled a knife and led her to the copra drier. Accused-appellant submits that the said inconsistency undisputably shows that no rape was ever committed.

The contention is totally without merit.

We have consistently ruled in a plethora of cases[12] that discrepancies between the statement of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex-parte affidavits are generally incomplete. Affidavits are generally subordinate in importance to open court declarations because they are oftentimes not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired in his affidavit and those made by him. This is so because affidavits are frequently prepared by the administering officer and cast in the latter's language or the latter's understanding of what the affiant had said, while the affiant frequently simply signs the affidavit after the same has been read to him.[13]

Moreover, the discrepancy in the affidavit and the testimony was sufficiently explained on the witness stand by Chelly:

“Q You stated in your direct examination that it was Rommel(sic) Francisco who went near your, pulled his knife and pointed at your neck and told you that he will kill you if you will not go with him?

A Yes, sir.

Q But in the statement of yours made before Police Officer Edgardo Mandalunes of the Iligan City Police Station, you stated that it was Carlos Interone who pulled his hunting knife and ordered you to follow them silently to the copra drier and who threatened to kill you if you will not follow?

A My answer was interchanged. It was Rommel(sic) Francisco who pointed the knife at me when we were at the faucet but in the copra drier it was Carlos Interone who pointed the knife.” [14] (Emphasis Ours)

Accused-appellant likewise faults Emma Cainila's failure to immediately report the incident to the police arguing that she is not the concerned relative she was pictured to be and that she concocted the rape in order to get back at accused Allan Jumalon.

We are not persuaded.

Emma Cainila's failure to report the incident at once does not destroy the prosecution's case which is firmly built on Chelly's credible and convincing testimony. As aptly observed by the Solicitor General, Emma is not the person sexually abused, thus, any character flaw that Emma may have exhibited cannot, in the least, diminish Chelly's disclosure that she was raped by accused-appellant. Furthermore, Emma clarified that she did not report the crime earlier because Chelly was afraid to go out. She said:

“Q You did not attempt to report the matter to the police on November 4, 1993, at day time?

A No, Sir, because the child or Chelly was afraid to go out. She was afraid she would be killed.”[15]

After going over the records of the case and testimonies of the witnesses, we find no reason to disturb the findings of the trial court. For, the only issue here is credibility of the testimonies of the witnesses. The court a quo made the observation that:

“(Chelly Caliso’s) testimony appears credible as it was given in a natural, spontaneous and straightforward manner. Her gesture and demeanor on the witness stand especially on the cross-examination through which she was exposed, further strengthened her credibility. x x x.”[16]

On the other hand, the trial court branded the testimonies of the appellant and the defense witnesses as “incredible, fabricated, contrary to human experience and rehearsed.”

This Court accords the highest respect for the findings of the trial court on the issue of credibility of witnesses because the trial court is in a better position to decide the question, having heard the witnesses testify and observed their demeanor and deportment while testifying, absent any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[17]

The prosecution has sufficiently established that Chelly Caliso was raped by accused-appellant. The defense did not adduce any proof to show any improper motive imputable to Chelly Caliso to falsely implicate accused-appellant in such a grave crime. Chelly Caliso was new in Maria Cristina, Iligan City. She arrived only seven days before the incident. She does not know the accused-appellant or his companions. Thus, there was no reason for her to falsely accuse the accused-appellant.

We have consistently held that where there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or falsely implicate him in a heinous crime, the said testimony is worthy of full faith and credit.[18] Moreover, no woman, especially one of tender age, such as Chelly Caliso, would concoct a story of defloration, allow an examination of her private parts and expose herself to humiliation as a result of a public trial if she is not motivated solely by a desire to vindicate her honor.[19]

In contrast, the defense of alibi raised by the accused-appellant is not only weak but also unsubstantiated.

Alibi is one of the weakest defenses that can be resorted to by an accused not only because it is inherently weak and unreliable but also because it is easily fabricated.[20] For 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. The accused 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.[21]

Appellant failed to convince this Court that it was physically impossible for him to be at Maria Cristina, Iligan City on November 3, 1993. Appellant on cross-examination, testified that it takes only 15 minutes to travel from Balo-i terminal to Maria Cristina:

“Q Do you know what time was the last trip of the vehicle going to Balo-i that date when it left the terminal of Balo-i?

A Six o’clock.

Q Was it not five o’clock?

Q And this jeepney that had the route, plying the route Baloi-Iligan vice versa, passed Maria Cristina?

A Yes, sir.

Q As a matter of fact, Maria Cristina and Baloi Terminal, it would take the jeepney fifteen minutes to negotiate?

A Yes, sir.[22] (Emphasis Ours)

Thus, it was possible for the accused-appellant to be at Maria Cristina at the time the crime was committed.

In addition, we have noted numerous flaws in the testimony of appellant. As correctly observed by the trial court:

“x x x First, it is very unusual to wash the passenger jeepney when the same is parked at the terminal waiting for passengers. Second, he alighted and proceeded to the house of Ambrocio Jumalon, took his supper and slept there, despite the propinquity of their house which is only 200 meters away. Third, his claim that he is related to the Jumalons was belied by no less than his co-accused, Allan Jumalon, when the latter said that Banguis is not even their friend, as he is a mere acquaintance.

Not even the testimonies of the defense witnesses saved the day for accused-appellant. Their testimonies were equally incredible, fabricated, contrary to human experience and rehearsed. Thus the trial court said:

"First, Josephine Suan's story given on December 21, 1994, is too dubious to inspire belief. To remember the names of the persons in the public faucet in the evening of November 3, 1993, is quite unbelievable. Added to this is her naming of all the persons who rendered overtime works in all the copra driers. In fact, when she was asked of the distances as well as the number of houses in their locality, she replied immediately after the question is propounded which made the Court to comment that she is a very intelligent witness with a photographic memory. To the mind of the Court, however, this particular witness is rehearsed.

“On the part of Elena Tiu, her version is also highly preposterous. To visit her pig every 10:00 o'clock in the evening for more than ten (10) years is quite a story. Even a grade school pupil would not buy the idea. On top of this, she completely contradicted the story of Suan when she stated that nobody was working overtime at the copra drier on that evening of November 3, 1993.

xxx xxx xxx

“With respect to witness Irene Arañas, the Court viewed this with no probative value. Assuming that she fetched water on November 3, 1993, she did it at 5:30 o'clock (sic) in the afternoon and stayed there only for about two (2) minutes, while Chelly Caliso averred that she was at the faucet at 6:00 o'clock in the evening. What is doubtful is the claim that she fetched water at the upper faucet near the road because there was no water in the lower faucet due to low pressure. Being the mother of one of the accused, her testimony is considered by the Court as bias and self-serving.”

In fine, there is no doubt in the mind of this Court that accused-appellant is guilty of the crime charged. However, since accused-appellant was only seventeen years old, as evidenced by his birth certificate,[23] at the time of the commission of the crime, the privileged mitigating circumstance of minority should be considered in the imposition of the appropriate penalty.

Article 68 of the Revised Penal Code provides that if the offender is over fifteen but under eighteen years of age, the penalty imposable is the penalty next lower than that prescribed by law, but always in the proper period. The penalty prescribed by law for rape "committed with the use of a deadly weapon or by two or more persons is reclusion perpetua to death." Considering the minority of accused-appellant, the proper penalty should be reclusion temporal, which is the next lower penalty prescribed. There being no other modifying circumstances, the same should be imposed in its medium period, the duration of which is from 14 years, 8 months and 20 days to 17 years and 4 months. Under the Indeterminate Sentence Law, the minimum of the penalty is prision mayor, the penalty next lower in degree to reclusion temporal, the duration of which is from 6 years and 1 day to 12 years. Therefore, the proper penalty should be 9 years, 4 months and 1 day of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum.

WHEREFORE, modified as indicated above, the decision of the Regional Trial Court is hereby **AFFIRMED**.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and Mendoza, JJ., concur.

- [1] Complaint, p.1, Id.
- [2] Amended Complaint, Exh. "C," p. 67, Record.
- [3] TSN, August 18, 1994, p. 12.
- [4] TSN, Caliso, August 18, 1994, pp. 8-20; 28-51.
- [5] Affidavit, Exh. "B," p.5, Record.
- [6] Exh. "A", p. 11, Record.
- [7] TSN, January 17, 1995, pp. 5-11.
- [8] TSN, March 29, 1995, pp. 5-15.
- [9] TSN, February 1, 1995, pp. 6-9.
- [10] Pp. 130-145, Rollo.
- [11] Appellant's Brief, p. 8.
- [12] People vs. Leangsiri, 252 SCRA 213, January 24, 1996; People vs. Cañada, 253 SCRA 277, February 6, 1996; People vs. Tampon, 258 SCRA 115, July 5, 1996; People vs. Bayani, 262 SCRA 660, October 3, 1996; People vs. Laray, 253 SCRA 654, February 20, 1996.
- [13] People vs. Villanueva, 215 SCRA 22, October 21, 1992.
- [14] TSN, Caliso, August 18, 1994, pp.55-56.
- [15] TSN, Cainila, November 17, 1994, p.30.
- [16] Decision, p. 10.
- [17] People vs. Abordo, 258 SCRA 572; People vs. Galimba, supra.
- [18] People vs. Cristobal, 252 SCRA 508, January 29, 1996.
- [19] People vs. Aborado, 258 SCRA 572, July 11, 1996 ; People vs. Galimba, 253 SCRA 728, February 20, 1996; People vs. Esguerra, 256 SCRA 657, May 8, 1996.
- [20] People vs. Caguioa, Sr., 259 SCRA 403.
- [21] People vs. Querido, 229 SCRA 753, February 7, 1994 cited in People vs. Cañada, 253 SCRA 286, February 6, 1996.
- [22] TSN, January 17, 1995, p. 13.
- [23] Exh. "1," p. 113.

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