

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RANDOLF MONTEALTO Y BOLDA, ACCUSED-APPELLANT.*G.R. No. 121765. March 14, 1997*

Ponente: REGALADO, J.

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Much has been written about rape as a dastardly and despicable offense which is universally condemned, and which in this country is declared as a heinous crime which could be punishable by death. That extreme legal retribution, however, cannot be imposed in the case at bar since, by the accident of time, the crime was committed before the reimposition of capital punishment in rape cases was authorized by law.

On March 30, 1993, an information for robbery with rape based on the sworn written complaint of the victim, AAA, was filed against accused-appellant Randolph Montalto and another unidentified co-accused in the Regional Trial Court, Branch xxx, xxx City. The particulars of the indictment charged appellant with having taken from the offended party the amount of P100.00 and of having carnal knowledge of her through force and violence on or about March 25, 1993.[1]

On June 15, 1993, appellant was duly arraigned and he entered a plea of not guilty. Since appellant was detained without bail, continuous trial was ordered and conducted. After the prosecution had presented its evidence, the defense filed a demurrer thereto but the same was denied by the court a quo, hence the defense presented its evidence. On October 26, 1993, judgment was rendered finding appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to serve the penalty of reclusion perpetua, with its accessory penalties, and ordering him to pay complainant P30,000.00 by way of moral damages.[2]

Appellant now seeks to overturn the judgment of the lower court, and submits in this appeal that the trial court had (1) pre-judged his guilt by reason of his defense of alibi, (2) failed to hold that the identification of appellant by the victim after the incident was highly suggestive, (3) given credence to the testimonies of the prosecution witnesses despite material and substantial inconsistencies, and (4) failed to acquit him despite the strength of his defense of alibi.[3]

The People's version of the case at bar was principally anchored on the testimony of the alleged rape victim, AAA, which likewise bore the imprimatur of the trial court in its factual findings. As culled from her testimony,[4] it appears that at around 8:30 in the evening of March 25, 1993, complainant was walking along xxx on her way home from school when a man, who later turned out to be herein appellant, suddenly appeared on the right side of the road and abruptly put his right arm around her neck with a knife pointed at her. Because of the suddenness of the event, her natural and instinctive reaction was to turn around and look at her attacker. It was then that she got a good look at his face and the long knife that was pointed at her neck, since the area was well illuminated.

Appellant told her not to move or make any noise while he dragged her away from the paved road toward a grassy area about 30 meters away. It was there where she saw that appellant had a companion who was waiting at that

grassy portion of the road. The man waiting was slim in build, in contrast to appellant, who is fat. The former instructed appellant to bring the victim farther away from the road.

When they were already at a considerable distance, the slim man took her bag and the P100.00 in her wallet, saying that he needed the money because his mother was sick. Thereafter, they asked her to lie down and, when she refused, appellant pushed her to the ground and tied her arms with the strap of her bag. Since appellant was no longer pointing the knife at her and was busy tying her up, she struggled and was able to stand up, but appellant punched her hard on the stomach, causing her to fall back to the ground.

Pressing her to the ground while pointing the knife at her, appellant then removed her panty, pulled up her skirt, unbuttoned her blouse and pushed up her brassiere. The slim man ordered her to spread her legs, but she refused. He then forcibly pulled her legs apart, mounted her, and started having sexual intercourse with her. Meanwhile, appellant knelt beside her, mashing her breasts and sucking her nipples.

After the slim person finished having sexual intercourse with her, he stood up and, almost immediately, appellant took his turn in having sexual intercourse with her. When she tried to stand up, she was again boxed on the stomach by him. After appellant was through, he stood up and put back her panty, skirt, brassiere and blouse. Thereafter, the lechers forcibly carried her towards xxx.

When they were at the edge of the road, she heard appellant suggesting to the slim man that they should kill her, but the slim man prevailed upon him to spare her life. Later, when she sensed that the two men were gone, she hurriedly stood up and ran home. At the entrance gate of their house she saw her aunt, BBB, and ran towards her and embraced her. When her aunt asked her what happened, she revealed that she was raped. Her mother, who came from behind a post a little distance away, joined them at that juncture.

AAA immediately entered the house and washed herself for she felt something sticky inside her private parts. Accompanied by her mother and aunt, she went to the xxx Police Station and reported the incident. Policeman xxx, desk officer on duty at the xxx Police Station, affirmed in court that on the evening of March 25, 1993, at around 9:18 P.M., AAA, together with her mother and aunt, went to the police station and reported that she had been raped.[5]

During the course of the questioning of the victim she was asked what the rapists told her. She stated that one of the rapists told her in the Visayan dialect “Pasalamat ka, day, gui-rape ka lang, wala ka patya” (You should be thankful, Day, that you were only raped and not killed). This, according to PO-1 xxx, was their investigative lead. Because of the use of the dialect, they concluded that the perpetrator was a resident of or lived within the area.[6]

Her aunt, BBB, testified that at around 8:00 P.M. on March 25, 1993, while she was standing at the gate of their fence, she saw AAA, her niece, running towards her. AAA was crying when she embraced her. She was cold, shuddering and was very pale. When she asked her what was wrong, AAA told her that she had been raped. The victim then hurriedly ran towards their house and went in to wash herself. BBB further testified that she was with AAA’s mother who was partly hidden by the post of the fence such that AAA did not immediately see her. AAA’s mother was so shocked that she could not utter a word.[7]

The prosecution also presented Dr. xxx, a physician at the xxx Medical Center, who examined AAA on March 25, 1993 at around 10:00 o’clock in the evening. Based on the result of his physical examination, adduced in evidence by the prosecution as Exhibit “A”, [8] Dr. xxx told the court that the victim had scratch marks on her right shoulder, with bruises at the anterior chest and at the xiphilateral area. Further, the blouse that she was wearing at the time was soiled with dirt, and bloodstains were found on her underwear. Further examination of her genitalia revealed that, there was injury to the genital organ, the hymen had fresh lacerations at 5, 7, and 11

o'clock and hematoma at 3 o'clock. According to Dr. xxx, the injuries, lacerations and hematoma could have been caused by the penetration of a male organ into her genital organ.

There were no traces of spermatozoa, obviously because the victim had earlier washed her private parts. From the nature of the injury to the hymen, Dr. xxx concluded that the victim was a virgin at the time of the assault. He further declared that the claim of the victim that she was raped is substantiated and supported by his findings.[9]

On the other hand, appellant offered an expectedly different version. He claimed that on March 25, 1993, at around 5:00 o'clock in the afternoon, he was at home preparing kangkong for their sow and cleaning the pigpen. At around 6:00 o'clock, the sow started delivering her piglets which process, according to appellant, lasted till 10:00 o'clock that evening.

He further alleged that there were a number of people in their house during that time, namely, his mother, their neighbor Emilia Palec, and some men who were drinking tuba in front of their store. After the piglets were delivered, he claimed that he stayed inside the pigpen where he fixed the beddings of the piglets and installed a light bulb to keep them warm.[10]

To corroborate his alibi, the defense presented his mother, Rosario Montealto, who testified that appellant was at home from 5:00 o'clock in the afternoon up to 10:00 o'clock in the evening of that day, helping her out in the delivery of the piglets. She claimed that appellant never left the pigpen from 6:00 o'clock up to 10:00 o'clock in the evening of the day in question.

To further lend credence to the alibi of appellant, the defense secured and presented a sworn affidavit of the aforementioned Emilia Palec who attested to the fact that she was at the house of appellant on March 25, 1993 during the time when the sow was delivering her piglets. She further asserted in her affidavit that appellant was inside the pigpen from 6:00 to 10:00 o'clock in the evening of that day.[11] Aside from Ms. Palec, a certain Miguel Villanueva also executed a sworn affidavit attesting that he was drinking tuba in front of the store of the Montealtos, and that from the store he could see appellant, Ms. Palec and Ms. Montealto tending to their swine which at that time was delivering her piglets. He claimed in his affidavit that from 6:00 to 10:00 o'clock in the evening, he never saw appellant leave the pigpen.[12]

The prosecution presented a rebuttal witness to disprove those allegations of the affiants Palec and Villanueva. Witness Angelita Pepito, a resident of xxx City and a friend of Ms. Rosario Montealto, testified that she saw appellant, Randolph Montealto, and two other men at the side of xxx, a little distance away from the market; that it was more or less around 7:45 in the evening of March 25, 1993; and that she was sure it was appellant because he even greeted her and asked whether she was already on her way home.[13]

Another prosecution witness presented in the trial court was Lilia de Vera, the secretary of the hog raising project where Ms. Montealto got her sow, for the purpose of establishing the true date of the delivery of its piglets. Ms. de Vera declared as follows:

“Q. Now going over page 92 of Exh. “A” already marked by the prosecution, did you make th(ese) entries?

A. Yes.

Q. When did you make th(ese) entries?

A. When the swine delivered the piglets.

Q. When?

A. March 26, 1993.

Q. What time did you make the entries?

A. I don't know the time.

Q. Was it in the morning that you ma(d)e the entries?

A. Two days after the delivery of the swine.[14] (Emphases supplied)

From that testimony of Ms. de Vera, it is quite obvious that, contrary to the story of appellant and his corroborating witnesses, the delivery of the piglets was not on the 25th but on the 26th of March. That documentary refutation of the date relied on by appellant, as the date of his alleged continuous presence in their house during the period of time when the crime was committed, necessarily and conclusively shattered his defense of alibi.

We reject the contention of appellant that the lower court prejudged his guilt because it anchored its decision on the generally accepted view that alibi is the weakest form of defense. The trial court, as can be seen from the above discussion, made an assiduous review and appreciation of the facts and evidence presented. The records show that it painstakingly considered the testimony of each and every witness and evaluated the credibility and weight of their allegations. We have done likewise and we affirm the correctness of its findings, all in addition to the jurisprudential rule which accords and enjoins respect for such conclusions of fact.

In direct contrast, the victim lucidly related the succession of events that transpired on March 25, 1993, from the time she was waylaid and dragged away from the road by appellant, followed by the physical and the sexual assaults on her by the two rapists, until her eventual release and dash to the safety of her home. All the events narrated by the victim were rich in details and with the spontaneity which convinced the court below that she was telling the truth. Even in the cross-examination after her testimony and during the second time she was called to the witness stand, she was unwavering, categorical and consistent all throughout.

Moreover, she was able to positively identify appellant through a yearbook that was shown to her by PO1 xxx. On this aspect, evidentiary support was afforded by Ricardo Paman who testified that, being the chairman of the Bantay-Bayan in xxx, he was asked by the police to help in the investigation of the complaint filed by the victim. In response to the request of SPO1 xxx to produce pictures of the "stand-by" or street loafers in xxx, he brought the yearbook of the xxx High School to xxx who, in turn, showed the pictures therein to the victim for possible identification of her assailants.[15] While she was thus scanning the pages, she chanced upon the picture of appellant,[16] whom she independently identified as one of the rapists.

We have repeatedly held that between a positive identification of the accused by the victim herself and an alibi, the former is to be given greater weight, especially when the victim has no motive to falsely testify against the accused.[17] Moreover, for alibi to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the crime scene at the time of the incident.[18] It is a time-honored principle in evidence that alibi cannot prevail over the positive identification of the victim, and that where there is no evidence that a prosecution witness was actuated by improper motives, the presumption is that he was not so actuated and that he would not prevaricate or cause damnation to one who had brought him no harm.[19]

We have scrupulously gone over the supposed inconsistencies catalogued by appellant and we are persuaded that there were no such substantial lapses. All told, the prosecution has successfully overcome the presumption of innocence vouchsafed to appellant who, on his part, has dismally failed to substantiate his pretense of innocence. However, the trial court, apparently for lack of corroboration by testimonial or expert evidence, was of the considered impression that appellant could be held guilty only of one crime of rape which he himself committed. We do not find in the record evidence beyond reasonable doubt with respect to the other rape committed by the

unidentified person or the robbery of P100.00, significantly because that other person was never apprehended nor the money recovered from appellant. We are inclined, therefore, to respect the position taken by the trial court.

ACCORDINGLY, the appealed judgment of the trial court is hereby AFFIRMED in toto, with costs against accused-appellant Randolph Montalto y Bolda.

SO ORDERED.

Romero, Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Original Record, 1.

[2] Ibid., 168; Judge xxx, presiding.

[3] Brief of the Appellant, 1; Rollo, 38.

[4] TSN, August 5, 1993, 50-107.

[5] Ibid., July 27, 1993, 3.

[6] Ibid., July 26, 1993, 34.

[7] Ibid., 22-23, 26-27.

[8] Original Record, 55.

[9] TSN, July 26, 1993, 8, 10, 12, 18.

[10] TSN, October 5, 1993, 15-16.

[11] Original Record, Exhibit 1, 130.

[12] Ibid., Exhibit 2, 133.

[13] TSN, October 5, 1993, 34.

[14] TSN, October 8, 1993, 43.

[15] TSN, July 27, 1993, 10-11.

[16] Ibid., August 5, 1993, 70-71.

[17] People vs. Casil, G.R. No. 110836, February 13, 1995, 241 SCRA 285.

[18] People vs. Morin, G.R. No. 101794, February 24, 1995, 241 SCRA 709; People vs. Umali, G.R. No. 76530, March 1, 1995, 242 SCRA 17.

[19] People vs. Ang Chun Kit, G.R. No. 109232, December 29, 1995, 251 SCRA 660.

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