

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GONZALO PENASO @ “LULU”, ACCUSED-APPELLANT.

G.R. No. 121980. February 23, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the judgment of the Regional Trial Court of Tagbilaran City, Branch 1, in Criminal Cases Nos. 6775, 6787, 6788, and 6789, promulgated on March 10, 1995, finding appellant Gonzalo Penaso guilty of rape in Criminal Case No. 6775, and imposing upon him the penalty of reclusion perpetua while acquitting him in the other cases. The fallo reads:

"PREMISES CONSIDERED, in Criminal Case No. 6775, the Court finds the accused GONZALO PENASO guilty of the crime of Rape punished under Article 335 of the Revised Penal Code and hereby sentences him to suffer an imprisonment of Reclusion Perpetua, with the accessories of the law and to pay the cost(s).

"The accused Gonzalo Penaso is hereby ordered to indemnify the complainant Basilisa Lacar in the amount of Fifty Thousand Pesos (P50,000.00) representing indemnity and moral damages, without subsidiary imprisonment in case of insolvency.

"It appearing that the accused Gonzalo Penaso has undergone preventive imprisonment he is entitled to the full time of his preventive imprisonment to be deducted from his term of sentence if he has executed a waiver otherwise he will only be entitled to 4/5 of the time he has undergone preventive imprisonment to be deducted from the term of sentence if he has not executed a waiver.

"In Criminal Cases Nos. 6787, 6788 and 6789 the accused Gonzalo Penaso is hereby ACQUITTED of the crimes charged, with cost(s) de officio.

"SO ORDERED." [1]

The facts of this case, as culled from the records, are as follows:

On April 16, 1990, private complainant, assisted by her mother Rosalina Lacar, filed with the 8th Municipal Circuit Trial Court of Candijay-Anda, Bohol, a complaint for multiple rape, docketed as Criminal Case No. 372, stating:

"That on the 16th of November 1989 at about 9:00 in the morning more or less, particularly in the house of the accused Gonzalo Penaso, when I, the victim Basilisa Lacar was there to borrow a book from my classmate which (sic) is the daughter of the accused, did then and there, willfully, unlawfully and feloniously (sic) with the use of superior strength (sic) and intimidation, pulled me forcibly and boxed my abdomen and once in the state of almost unconscious have carnal knowledge and to the effect caused me to bleed for he had broken through my virginity, and threatens me of killing if I tell of what had happened, to my parents, and repeated the same to my person with the same threats one week after, and repeated on the third and fourth time on the month of January 1990 in the fear that he might kill me once I told everything to my parents, and as a result of his devil(ish) act caused me to have an unwanted pregnancy of an unwanted child, to the damage and

prejudices to myself and to my parents.

"ACT CONTRARY TO LAW."[2]

Following the preliminary investigation on April 25, 1990, the municipal circuit court issued an order for the arrest of the accused who, by then, had left Bohol for Misamis Oriental.

Meanwhile, on July 10, 1990, appellant was arrested in Magsaysay, Misamis Oriental, for illegal possession of firearms. Notwithstanding the warrant of arrest for rape against him, he posted bail for the case for which he was arrested, and then he disappeared.

On July 16, 1990, private complainant gave birth to a baby boy.

In August 1990, private complainant filed three additional complaints for rape with the circuit court, docketed as Criminal Case Nos. 397,[3] 398,[4] and 399.[5] These rapes allegedly took place in November and December 1989. She likewise amended her complaint in Criminal Case No. 372, limiting it to just one charge of rape allegedly committed on November 16, 1989.[6]

On August 27, 1990, the Provincial Prosecutor of Bohol filed an information for the first rape complained of, to wit:

"That on or about the 16th day of November, 1989, in the municipality of Candijay, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs using force and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with the offended party one Basilisa Jugarap Lacar, a 15 years old girl, against her will and without her consent, to the damage and prejudice of the offended party and her parents in the amount to proved during the trial.

"Acts committed contrary to the provisions of Article 335 of the Revised Penal Code as amended by Republic Act(s) 2632 and 4111."[7]

The case was docketed as Criminal Case No. 6775 in the RTC of Tagbilaran City and raffled to Branch 1 of said court.

On September 3, 1990, the Provincial Prosecutor filed with the RTC three additional informations docketed as Criminal Cases Nos. 6787, 6788, and 6789. Except as to the dates of the incidents complained of, the informations in these three cases were virtually identical to the information in Criminal Case No. 6775.

On April 17, 1991, appellant was arrested in Magallanes, Agusan del Norte.

On May 5, 1991, appellant escaped from his police escort in Cebu City while being transported from Agusan del Norte to Bohol.[8]

In March 1993, police operatives in Cagayan de Oro City finally apprehended appellant.

When arraigned, appellant pleaded not guilty to the four counts of rape. The cases were consolidated and trial on the merits ensued. Appellant raised the defenses of denial and alibi.

After trial, the court summarized its factual findings as follows:

"a) That on November 16, 1989 at 9:00 o'clock in the morning at the house of the accused Gonzalo Penaso (Criminal Case No. 6775) the complainant Basilisa Lacar who was then fifteen years old knocked at the door of the house of the aforementioned accused Gonzalo Penaso who opened the door and upon inquiry whether his daughter, who was a classmate of complainant, was present which the latter told the complainant that her (sic) daughter was in the kitchen when in fact and in truth his daughter was out;

"b) That the accused Gonzalo Penaso forcibly pulled the complainant Basilisa Lacar and pushed her into the bamboo bed and boxed the abdomen of the complainant Basilisa Lacar and subsequently took off her panty and inserted his penis into the vagina of the complainant Basilisa Lacar causing it to bleed;

"c) That the accused Gonzalo Penaso warned the complainant Basilisa Lacar not to report to her parents otherwise he would kill her;

"d) That the complainant reported the incident to her parents after the accused Gonzalo Penaso escaped to avoid being arrested;

"e) That the second, third and fourth rape incidents were committed in the same place in the vicinity of Cogtong Elementary School;

"f) The defense witnesses and the accused Gonzalo Penaso vehemently denied the rape charges and interposed the defense that four men impregnated the complainant Basilisa Lacar;

"g) The first charge of rape was committed at the house of the accused Gonzalo Penaso at Cogtong, Candijay, Bohol;

"h) The second, third and fourth charges of rape were allegedly committed in the afternoon at the same premises near the Cogtong Elementary School." [9]

The trial court convicted appellant in Criminal Case No. 6775 and sentenced him to reclusion perpetua.

Hence, this appeal with the sole assignment of error, as follows:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT GONZALO PENASO BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

In his brief, appellant assails the trial court for giving credence to private complainant's account and disregarding his alibi. He submits that the rape charges against him are fabricated.

In rape cases the issue, more often than not, is the credibility of the victim. Rape is generally unwitnessed and very often the victim is left to testify for herself. Her testimony is most vital and must be received with the utmost caution. [10] When a rape victim's testimony is straightforward, unflawed by any material or significant inconsistency, then it deserves full faith and credit and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction. [11]

In assessing the credibility of witnesses, we are guided by the following doctrinal principles:

(1)

The reviewing court will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the results of the case;

(2)

The findings of the trial court respecting the credibility of witnesses are entitled to great respect and even finality as it had the opportunity to examine their demeanor when they testified on the witness stand; and

(3)

A witness who testified in clear, positive, and convincing manner and remained consistent on cross-examination, is a credible witness. [12]

Applying these guidelines, we find no reason to disturb the trial court's assessment of private complainant's

credibility. Appellant has shown no reason whatsoever for us to doubt her testimony. The records show that private complainant testified as to her ravishment in a categorical, straightforward, spontaneous, and frank manner. She positively identified appellant as her rapist. She was consistent in her narration of how she was dragged inside appellant's house, boxed into submission, and ravished.[13] We find that private complainant did not waiver in her account of her harrowing experience under intense and grueling cross-examination[14] Absent any showing that the trial court's assessment of her credibility was flawed, we are bound by its findings.[15]

We also note the finding of the trial court that:

"...in the course of the first trial of the above-entitled Criminal Cases Nos. 6775, 6787, 6788 and 6789 the accused Gonzalo Penaso was smiling while the complainant Basilisa Lacar cried and was seriously and emotionally disturbed (as) characterized by anger as shown on her facial expression." [16]

A woman who says she has been raped, as a rule, says almost all that is necessary to signify that the crime has been committed.[17] More so, if she was crying throughout her testimony, for we have found the same to be a badge of truthfulness.[18]

Appellant argues that he could not have raped complainant on November 16, 1989 at about 9:00 O'clock in the morning, since the latter was attending classes at the Bohol School of Fisheries in Cogtong, Candijay, Bohol, while he was in Sun-oc, Ubay, Bohol making banana chips. Inasmuch as they were in separate places, the rape could not have taken place. His wife and another defense witness corroborated his testimony. The latter's testimony, was given scant consideration by the trial court, as said witness admitted receiving one hundred pesos (P100.00) from appellant's wife before testifying. Appellant further points to the testimony of his daughter, Jonalou Penaso, who was the victim's classmate, to the effect that the victim was attending classes with her at the Bohol Fisheries School at the time and date the rape took place, so it was impossible for the victim to have been at his house at that time.

We find complainant's testimony credible, while appellant's defenses of alibi and denial are lacking in truth and candor. Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony of the complainant.[19] Alibi is an inherently weak defense, which is viewed with suspicion and received with caution because it can easily be fabricated.[20] Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[21] We find that despite his stance that several persons watched him demonstrate how to cook banana chips in Ubay, Bohol in the morning of November 16, 1989,[22] appellant failed to present any disinterested witness to support his claim. For alibi to prosper, it is not enough that accused show he was elsewhere at the time the crime was committed, but there must also be clear and convincing proof that it was impossible for him to be at the locus criminis at the time of its commission.[23]

With respect to the appellant's claim that the victim was attending her classes at the time she was raped, we note that complainant's explanation that it was their vacant period,[24] was not rebutted by the defense. All told, we see no reason to depart from the rule that positive identification of the malefactor prevails over the defenses of alibi and denial.

Appellant insists that he did not get private complainant pregnant. He cites the testimony of defense witness Rafael Libres, a classmate of the victim, to the effect that complainant admitted to him that appellant had not caused her pregnancy. According to Libres, complainant identified either one Willy Guitano or a certain man from Sagumay, Candijay, Bohol as the possible father of her child. Appellant also points an accusing finger at private complainant's stepfather as a possible culprit. This attempt to impugn the victim's moral character by the appellant is self-serving and unsupported by the evidence. Furthermore, the question of who sired the victim's

child has no bearing here, for in rape cases, the identity of the father of the victim's child is not an issue, pregnancy not being an element of the crime.[25]

In a last-ditch effort to win an acquittal, appellant asked for a DNA test or blood test.[26] We find the motion futile. As held in one case:

"The issue of "DNA tests" as a more accurate and authoritative means of identification than eye-witness identification need not be belabored. The accused were all properly and duly identified by the prosecution's principal witness...DNA testing proposed by petitioners to have an objective and scientific basis of identification of "semen samples to compare with those taken from the vagina of the victim" are thus unnecessary or are forgotten evidence too late to consider now."[27]

Moreover, the records show that appellant escaped from his police escort while being transported to face charges, and then remained at large for two years. His claims of abduction by the members of the New People's Army or by relatives of the victim are both incredible and wanting in substantive proof, given his admission that he hid out for a while with a relative in Metro Manila.[28] Flight is an implied admission of guilt, and appellant's escape betrays both his guilt and his desire to evade responsibility.[29] A truly innocent person would naturally grasp the first available opportunity to defend himself and assert his innocence as to the crime imputed to him.[30]

The prosecution has proved beyond reasonable doubt the pertinent elements of the felony of rape as defined and penalized under Article 335 of the Revised Penal Code, namely: that appellant Gonzalo Penaso had carnal knowledge of the victim against her will and through the use of force and intimidation. No reversible error can be attributed to the trial court in finding appellant guilty of rape. Hence, his conviction must be upheld.

We note, however, that the trial court awarded only P50,000.00 as indemnity and moral damages. Pursuant to current jurisprudence, the award of P50,000.00 as civil indemnity is mandatory upon the finding of the fact of rape.[31] In addition, moral damages amounting to P50,000.00 at the least should be imposed in rape cases involving young and immature girls between the ages of thirteen and nineteen, without need of further proof.[32]

WHEREFORE, the appealed judgment of the court a quo finding appellant Gonzalo Penaso guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua is hereby AFFIRMED, with the MODIFICATION that CIVIL INDEMNITY in the amount of FIFTY THOUSAND PESOS (P50,000.00) and MORAL DAMAGES also in the amount of FIFTY THOUSAND PESOS (P50,000.00) should be paid by appellant to private complainant, Basilisa Lacar. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.

Buena, J., on official leave.

[1] Records, p. 114.

[2] Id. at 1.

[3] Exhibit "B", Exhibit "3", Index of Exhibits, p. 2.

[4] Exhibit "C", Exhibit "4", Id. at 5.

[5] Exhibit "D", Exhibit "5", Id. at 8.

[6] Supra Note 1, at 63.

[7] Id. at 17.

[8] Id. at 41.

[9] Id. at 111-112.

[10] People v. Domogoy, et al., G.R. No. 116738, March 22, 1999, p. 11, citing People v. Casim, 213 SCRA 390 (1992).

[11] People v. Caratay, G.R. Nos. 119418, 119436-37, October 5, 1999, p. 8.

[12] People v. Vergilio Reyes, G.R. No. 113781, September 30, 1999 citing People v. Bañago, G.R. No. 128384, June 29, 1999.

[13] Records, p. 6-8.

[14] TSN, August 13, 1993, pp. 12-20; TSN, August 24, 1993, pp. 3-6.

[15] People v. Mengote, G. R. No. 130491, March 25, 1999, p. 8.

[16] Records, p. 108.

[17] People v. Tumala, Jr., 284 SCRA 436, 439 (1998).

[18] People v. Mosqueda, G.R. No. 131830-34, September 3, 1999, p. 10; People v. Bea, Jr., G.R. No. 109618, May 5, 1999, p. 5; People v. Maglantay, G.R. No. 125537, March 8, 1999, p. 7; People v. Ramos, 296 SCRA 559, 570 (1998).

[19] People v. Tabion, G.R. No. 132715, October 20, 1999, p. 18; People v. Accion, G.R. Nos. 122550-51, August 11, 1999, p. 11.

[20] People v. Hivela, G.R. No. 132061, September 21, 1999, p. 5.

[21] People v. Hivela, supra, citing People v. Burce, 269 SCRA 293 (1997).

[22] TSN, December 29, 1994, pp. 3-4.

[23] People v. Agunos, G.R. No. 130961, October 13, 1999, p. 9.

[24] TSN, August 13, 1993, p. 11.

[25] People v. Villaluna, G.R. No. 117666, February 23, 1999, p. 14; People v. Malapo, 294 SCRA 579, 588 (1998); People v. Sta. Ana, 291 SCRA 188, 214 (1998).

[26] Rollo, p. 116.

[27] Andal v. People, G.R. Nos. 138268-69, May 26, 1999, pp. 4-5.

[28] TSN, February 28, 1995, pp. 12-13.

[29] People v. Villanueva, 284 SCRA 501, 510 (1998).

[30] People v. Solis, 291 SCRA 529, 540 (1998).

[31] People v. Maglente, G.R. Nos. 124559-66, April 30, 1999, p. 36.

[32] People v. Batoon, G.R. No. 134194, October 26, 1999, pp. 8-9.

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