

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL SAPINOSO Y AGUILA, DAVID RECREO Y SAPINOSO, ET AL., ACCUSED-APPELLANTS.

G.R. No. 122540. March 22, 2000

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PER CURIAM:

For sexually assaulting their victim, Noel Sapinoso, David Recreo, and Domingo Quila were charged with the crime of rape before the Regional Trial Court of the National Capital Judicial Region (Branch 167, Pasig City) on February 4, 1994, as follows:

That on or about the 28th day of January 1994, in the Municipality of Tagig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, by means of force and intimidation, with accused Domingo Quila acting with discernment, did then and there willfully, unlawfully and feloniously have carnal knowledge with Yolanda Partida y Imperio against her will and consent.

CONTRARY TO LAW.

(Original Record, p. 1.)

Upon arraignment, the three pleaded not guilty. Trial thereafter ensued, with the prosecution presenting as its witnesses victim Yolanda Partida, Medico-Legal Officer Dr. Rosaline Onggao, and the arresting officer SPO1 Steve Moore. The defense, on the other hand, presented Noel Sapinoso, David Recreo, and Domingo Quila, their employer Eustaquio Reformado (sometimes referred to as Eustaquio Reporsado), Col. Armando Paglinawan, Barangay Captain Ladislao Avila, and SPO1 Eufemia Mendoza.

On October 6, 1995, the trial court rendered the assailed decision, disposing:

WHEREFORE, the Court finds the accused Noel Sapinoso y Aguila, David Recreo y Sapinoso and Domingo Quila y Ringca all GUILTY beyond peradventure of doubt of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. 7659, and hereby sentences accused Noel Sapinoso and David Recreo, except Domingo Quila, to three (3) DEATH penalties to be executed at the date to be set and in the manner provided for by law; each of all the accused to indemnify the offended party Yolanda Partida in the amount of P50,000.00; for them to suffer all the accessory penalties provided for by law; and to pay the costs.

On the ground that accused Domingo Quila is a minor and appreciating in his favor such mitigating circumstance, he is hereby sentenced to suffer three (3) penalties of imprisonment ranging from Six (6) Years and One (1) Day of prision mayor, as minimum, to Fourteen (14) Years and Eight (8) Months and One (1) Day of reclusion temporal, as maximum.

SO ORDERED.

Under the present Rules of Court, an accused must explicitly appeal his conviction in cases where the penalty

imposed is not the supreme penalty of death. Domingo Quila did not appeal from the judgment rendered against him, the record being bereft of any mention thereof. His sentence, therefore, has become final and is now beyond review. Consequently, it is only the imposition of the death penalty upon Noel Sapinoso and David Recreo that is now before this Court for automatic review pursuant to article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659.

Accused-appellants contest their conviction, attributing to the trial court the following errors:

- THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE SUPPOSED POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANTS BY PRIVATE COMPLAINANT.
- THE TRIAL COURT ERRED IN IGNORING TESTIMONIAL AS WELL AS DOCUMENTARY EVIDENCES THAT MAKE ACCUSED-APPELLANTS' ALIBI AIRTIGHT.
- THE TRIAL COURT ERRED IN IGNORING TESTIMONIAL AND DOCUMENTARY EVIDENCES THAT RAISE REASONABLE DOUBTS THAT ACCUSED-APPELLANTS RAPED THE COMPLAINANT.

The prosecution's version of the background facts is as follows:

Yolanda Partida, a 15-year old barrio lass from Umingan, Pangasinan, was hired by Diosdado Castillo to work as a stay-in laundress at his residence in Tagig. Castillo's residence, parenthetically, also housed a shop for his stained glass business. Yolanda started working on December 11, 1993.

At around 6 P.M. on January 28, 1994, while Yolanda was lying on a folding bed located near the door of the shop, three men, later identified as Domingo Quila and accused-appellants Noel Sapinoso and David Recreo, suddenly barged in. Yolanda stood up at the intrusion, only to be boxed by Sapinoso, causing her to lose consciousness.

When Yolanda came to, she found Sapinoso on top of her. He was then inserting his penis inside her vagina, all the while poking a knife at her. Meanwhile, the two others stood by the side of the bed and watched. Yolanda felt pain at Sapinoso's insertion of his penis. After a while, she sensed Sapinoso ejaculate, which she described as "pinutok po niya yung kanya."

It was then Recreo's turn to mount Yolanda and he likewise ejaculated, while being watched by the other two. After Recteo, Quila took his turn. Getting on top of Yolanda, he ravaged her until he ejaculated. The three then departed, leaving Yolanda lying on the bed, unable to move because of the pain she felt coming from her private part.

Her pain notwithstanding, Yolanda immediately reported the incident to her employer, Castillo, when the latter arrived later that night. At 12:25 A.M., Castillo and Yolanda went to the Tagig police station to report the incident. Acting on their complaint, SPO1 Steve Moore, PO2 Benito Suyat, and a police photographer accompanied the two back to Castillo's residence. Arriving at the scene at around 1 A.M, the group chanced upon the three accused conversing at the entrance of the vulcanizing shop where they worked. Then and there, Yolanda identified the three as her rapists, prompting the police escorts to arrest the trio.

Later that day, the police filed a letter-request with the Crime Laboratory Service requesting that Yolanda be medically examined. The medical examination, conducted by Dr. Rosaline Onggao on January 31, 1994, yielded the following results:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with pale brown

areola and nipples from which no secretion could be pressed out. Abdomen is flat and soft. There are injuries noted at the head and upper extremity:

1)

Abrasion, right zygomatic region, measuring 4 x 1.5 cm, 5 cm from the anterior line.

2)

Contusion, middle 3rd of the right forearm, measuring 1 x 1 cm, 2 cm lateral to its posterior midline.

3)

Contusion, distal 3rd of the right forearm, measuring 3.5 x 2 cm, 3 cm medial to, its posterior midline.

Subject complains of pain at the left lumbar region.

GENITALS:

There is moderate growth of pubic hair. Labia majora are full, convex and gaping with the pinkish brown and congested labia minora presenting in between. On separating the same is disclosed an abraded posterior fourchette and an elastic, fleshy-type hymen with deep healed lacerations at 3, 5 and 9 o'clock. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Subject is in non-virgin state physically.

Barring unforeseen complications, it is estimated that the above injuries will resolve in 8 to 10 days.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci but positive for spermatozoa.

(Original Record, p. 11)

For their part, accused-appellants Sapinoso and Recreo denied raping Yolanda, interposing the defense of alibi. They claimed that at the time of the incident, they were at the vulcanizing shop, which was located beside Castillo's house, attending to several customers. They presented their employer, Eustaquio Reformado, as well as Col. Armando Paglinawan, the owner of the lot on which the vulcanizing shop was built, to lend credence to their alibi.

After a thorough and painstaking review of the facts and record of this case, we find the appeal to be bereft of merit.

In rape cases, three well-known principles guide the Court, namely: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence of the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense (People v. Abrecinoz, 281 SCRA 59 [1997]). Likewise, when the complainant in a rape case, more so if she is a minor, testifies that she has been raped, she says in effect all that is necessary to show rape has been committed (People v. Rabosa, 273 SCRA 142 [1997]), the offended party most often being the only one available to prove

directly the commission of rape. The credibility of the complainant is, thus, of utmost importance, for the accused may be convicted solely on the basis of the complainant's testimony if the same meets the test of credibility (*People v. Antido*, 278 SCRA 425 [1997]).

In the case at bar, we find Yolanda's account to be forthright, truthful, and credible, she having convincingly narrated the details of how the accused took turns in ravishing her. In the words of the trial court, "Yolanda unerringly . . . recounted the harrowing experience she [underwent] at the hands of the three accused in forcing their carnal lust upon her (RTC Decision, October 6, 1995, p. 9)."

Moreover, the medical evidence on record corroborates Yolanda's testimony. According to her medical examination, Yolanda had abrasions on her right zygomatic region or cheek, contusions on her right forearm, and she complained of pain at her left waist. This is consistent with her narration that she was brutally attacked and violated by accused-appellants. More telling, the medical examination disclosed the presence of an estimated 2.5 to 5 cubic centimeters of spermatozoa in Yolanda's vagina (tsn, September 2, 1994, p. 9). It is settled in our jurisprudence that even the absence of spermatozoa and the fact that the hymen is still intact do not necessarily negate rape. In the case at bar, with more reason should the Court affirm accused-appellants' conviction where spermatozoa was found in the victim's sexual organ. The presence of sperm cells in Yolanda's violated organ affirms her charge of rape much more than words or anger alone could (*People v. Gomez*, 279 SCRA 688 [1997]).

Furthermore, we have held that the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge of rape. The fact that Yolanda immediately reported her ordeal to her employer and to the authorities strengthens this Court's belief that accused-appellants are, indeed, guilty of rape. As we held in *People v. Grefiel* (215 SCRA 596 [1992]):

Despite the outrage and the shame, she lost no time in reporting the incident to the barangay captain. In less than twelve (12) hours from the commission of the crime, she narrated the sordid details of her horrifying and harrowing experience in a statement given to the police authorities, submitted to a medical examination and signed a criminal complaint for forcible abduction with rape against the accused-appellant. Not only did these acts demonstrate courage of the highest order, they also enhance the complainant's credibility.

Likewise, in *People v. Jaca* (229 SCRA 332 [1994]), we said:

The credibility of the victim is further strengthened by the spontaneity of her act immediately after the incident. We note her courage in reporting the rape, unmindful of what the incident could do on her reputation in the barrio. We fully concur with the opinion of the lower court, viz.: "The fact that the offended party, after the beastly attack, immediately left her house to report the molestation against her honor, is a clear manifestation that she was indeed raped... Her immediate response (reporting the incident) carries the stamp of truth. This is a natural reaction of a virtuous woman who had just undergone sexual molestation against her will.

The veracity of Yolanda's charge cannot be, thus, doubted:

Likewise, accused-appellants have not shown any ill motive on the part of Yolanda to falsely accuse them of rape. Moreover, we hold it highly improbable for a woman, especially one of tender age, to concoct a brutal tale of ravishment, allow a gynecologic examination, and undergo the humiliation of a public trial if she is not motivated solely by a desire to have the culprits apprehended and punished (*People v. Antipona*, 274 SCRA 328 [1997]).

In their defense, accused-appellants claim that they were not positively identified by Yolanda to be her defilers. They contend that Yolanda was only prodded by her employer, Domingo Castillo, to point to them as the persons who raped her. In support, they cite Sapinoso's testimony, as follows:

Q:

You said you stayed at the shop up to 12:00, what happened after that?

A:

There were vehicle arrived with complainant and a police officer together with Domingo Castillo.

Q:

What happened to these people came to the shop?

A:

We were pointed to by the girl and Domingo Castillo said "Sige ituro mo."

Q:

What happen next, what did the girl do?

A:

She pointed us, David Recreo and Ariel Anoché, Domingo and myself.

(tsn, October 28, 1994, p. 21.)

As gleaned from Sapinoso's narration, Castillo's actions were limited to uttering "sige, ituro mo, not "sige, ituro mo sila." He did not specifically indicate accused-appellants as the persons to be pointed to. Absent specific persons pointed out as the ones to be identified, "sige, ituro mo" would be, at worst, an equivocal statement devoid of any sinister meaning, or at best, mere words of encouragement for Yolanda to identify her accused-appellants.

Accused-appellants also harp on the fact that when asked to describe the room where the incident happened, Yolanda, in her affidavit, initially answered "madilim" but later on changed the same to "maliwanag," allegedly upon the instigation of her employer. They contend that Yolanda could not have positively identified them if the room was dark.

Accused-appellant's arguments are puerile. Firstly, Yolanda positively identified accused-appellants as her assailants. Her testimony in open court as to the identities of the three was never rebutted by the defense. In fact, accused-appellant's counsel, during Yolanda's cross-examination, never grilled her on how she was able to identify accused-appellants. Grasping at straws, they would now belabor the fact that in her affidavit before the police, she changed her answer from "madilim" to "maliwanag." Accused-appellants should have questioned Yolanda's testimony in open court as to how she was able to identify her assailants, the same being superior to the affidavit she executed before the police, ex parte statements usually being incomplete and inaccurate due to partial suggestions or to want of specific inquiries (*People v. Oliva*, 282 SCRA 470 [1997]). Not having done so, they may not now remedy the same by questioning the affidavit she executed before the police.

Secondly, assuming *arguendo* that the room was dark, the same cannot be considered a hindrance to Yolanda's identification of accused-appellants as her attackers, for during the rape incident, they were as close to Yolanda as physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act (*People v. Yabut*, G.R. No. 133186, July 28, 1999). Moreover, the incident transpired at around 6 o'clock in the afternoon, at a time when there would still have been sufficient daylight to enable Yolanda to identify her attackers.

Likewise, accused-appellants' allege that the photographs taken of them by the police during the investigation were used to familiarize Yolanda with their faces. This is a self-serving conjecture scarcely deserving the

attention of this Court.

Under their second assignment of error, accused-appellants claim that they could not have raped Yolanda at 6 o'clock of January 28, 1994, as they were busy working at the Bicol Vulcanizing Shop at that time. They cite Col Paglinawan's testimony to the effect that he saw accused-appellants working at the shop from 5:30 P.M. to 7:20 P.M. of that day, he having visited the shop during that period. Paglinawan further stated that he did not leave the premises at any time during that period.

Well-settled is the rule that alibi is an inherently weak defense which cannot prevail over the positive identification of the accused by the victim (*People v. Erardo*, 277 SCRA 643 [1997]). As discussed earlier, Yolanda was able to identify accused-appellants as the ones responsible for the assault on her chastity. Their alibi cannot, thus, exonerate them from liability. HTML

In addition to the positive identification made by Yolanda, accused-appellants' alibi place them at a vulcanizing shop adjacent to the scene of the crime. For alibi to prosper, the defendant must prove not only (1) that he was somewhere else when the crime was committed but (2) it must be likewise demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission (*People v. Baniel*, 275 SCRA 472 [1997]). The second element is wanting in this case. Although Paglinawan's testimony puts accused-appellants somewhere else when the crime was committed, it was not shown that they could not have been physically present at the scene of the crime at the time it was committed.

Moreover, Paglinawan's testimony is contradicted by Quila and accused-appellant Sapinoso in several respects, most especially as to his presence at the vulcanizing shop, thus casting doubt on the probative value of the same.

Paglinawan testified that:

Q:

I asked when did you start visiting your shop daily?

A:

First week of January, 1994, ma'am.

xxx xxx xxx

Q:

Why do you have to visit the shop regularly?

A:

Because I was informed that our shop will be demolish anytime so in anticipation for demolition I want to face out information as to where or what time or date it will demolish so I can face out information.

Q:

When in particular did you receive about the possible demolishment of your shop?

A:

Last week of December, 1993 I was informed by our purok leader, ma'am.

(tsn, April 21, 1995, p. 4-5)

Quila, however, testified:

Q:

How about this Col. Paglinawan, what time does he normally arrive at the shop?

A:

He seldom went on the shop but on that day, he was there at 5:30. (tsn, March 16, 1995, p. 30)

Likewise, accused-appellant Sapinoso testified, thus:

Q:

Does he [Col. Paglinawan] regularly report to the vulcanizing shop?

A:

Sometimes he arrive, sometimes not.

Q:

How many times does he drop at the vulcanizing shop in a week?

A:

About twice ma'am.

Q:

What particular day does he visits the shop? Does he have a particular or specific day he visits the shop?

A:

There is, ma'am.

COURT:

What day?

A:

Saturday, sir.

Q:

Saturday and only Saturday?

A:

Yes, ma'am.

(tsn, November 10, 1994.)

Accused-appellants Sapinoso and Recreo claimed that they both arrived in Manila from Bicol only on January 14, 1994, having stayed in Bula, Camarines Sur for ten years and two years, respectively, prior thereto. On even date, Eustaquio Reformado, Sapinoso's cousin, pointed out Paglinawan, the owner of the vulcanizing shop, to Sapinoso. According to their testimony, Sapinoso and Recreo started working at the shop the next day. Being newly-hired workers, Sapinoso and Recreo would have noticed the owner's presence if indeed, he visited the shop regularly, as per Paglinawan's testimony, more so that they were at the shop 24-hours a day. However, Quila and accused-appellant Sapinoso could only say that Paglinawan seldom passed by the shop. From January 15 to

January 28, Sapinoso could only pinpoint Saturday as the day Paglinawan would pass by.

Likewise, Paglinawan claimed that at 5:30 P.M. on said day, there were twenty customers who came, contradicting Sapinoso's testimony that there were only four customers present. All these render suspect Paglinawan's testimony that he was at the shop on January 28, 1994, which, incidentally, was a Friday. Plainly, accused-appellant's alibi is, in no manner, "airtight," as claimed by their counsel.

Accused-appellants, likewise, carp on the alleged impossibility of entry into Castillo's residence. They claim that the points of ingress and egress thereto were always padlocked, hence they could not have gained entry, especially since no sign of forcible entry was ever mentioned by Yolanda. It is a non sequitur to say that Quila and Recreo's observation to the fact that said doors were always padlocked proves that at the time of the incident, the same were locked. To rephrase a familiar rule in evidence, evidence that the doors were locked at one time is not admissible to prove that the same were padlocked at another time. It simply does not follow.

In their penultimate argument, accused-appellants make much capital out of Yolanda's statements as to which bed she was lying on when raped. During her direct examination, Yolanda said she was lying on a folding bed when accused-appellants barged in. On cross-examination, she testified that she was lying on a different bed and that Sapinoso set up a folding bed and raped her thereon. However, Yolanda would later insist that she was lying at the folding bed when the three barged in.

Said inconsistency can be explained by the fact that Yolanda actually complained of having been raped on three separate occasions, on December 17, 1993, on December 20, 1993 and on January 28, 1994. As per her complaint-affidavit, it was actually on the occasion of the December 20 rape when Sapinoso set up a folding bed, not on January 28. It must, likewise, be kept in mind that Yolanda was only fifteen years old at the time she testified. It is not unnatural for inconsistencies to crop up in her testimony as she is more prone to error than an adult person (*People v. Esquila*, 254 SCRA 140 [1996]). In fact, we have held that "[p]rotracted cross-examination of a 16 year old girl not accustomed to public trial would produce contradictions which nonetheless would not destroy her credibility (*People v. Gozum*, 135 SCRA 295 [1985])."

Lastly, accused-appellants carp about the absence of fresh lacerations in Yolanda's hymen, asseverating that the presence of "deep healed lacerations" belie the allegation that Yolanda was raped three days prior to the physical examination conducted on her. Accused-appellant's averments completely overlook the doctrine that lack of fresh lacerated wounds do not negate sexual intercourse. From the foregoing disquisition, it is plain that the guilt of accused-appellants has been more than adequately proven by the prosecution.

In like manner, the prosecution successfully established conspiracy between accused-appellants. As the trial court succinctly put it:

Collective responsibility in this case has been established with certainty. At the time of the commission of the offense of rape, all the accused acted in concert showing that they had the same purpose and common desire and united in its execution. The simultaneous acts of the three (3) accused in entering the shop of Diosdado Castillo, which is attached to the residence and which serves as the sleeping quarters of Yolanda Partida; the infliction of physical harm on Yolanda Partida by accused Noel Sapinoso in the presence of David Recreo and Domingo Quila, with each of them alternately and one after the other successively ravishing Yolanda Partida, together with other circumstances, make evident a community of design to force their carnal design on Yolanda Partida against her will. It appearing that the accused acted in conspiracy with each other and cooperated with one another in commission of the offense, each is guilty as a principal not only of the rape committed by him but also of that of his co-accused.

(RTC Decision, pp. 12-13.)

Article 335 of the Revised Penal Code, as amended by R.A. 7659, provides that, "[w]henver the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

Death and reclusion perpetua are principal indivisible penalties. Article 63 of the Revised Penal Code provides the rules for the application of indivisible penalties. The pertinent provisions thereof reads:

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied

Article 14 of the Revised Penal Code states the following are aggravating circumstances:

xxx.....xxx.....xxx

- xxx that it be committed in the dwelling of the offended party, if the latter has not given provocation

Although Yolanda was raped in a house belonging to her employer Castillo, the same served as her residence, she being a stay-in laundress of Castillo. For all intents and purposes, the same constituted a dwelling as the term is used in Article 14(3) of the Revised Penal Code, it not being necessary, under the law, that the victim own the place. Be she a lessee, a boarder, a bedspacer, or a maid, the place is her home, the sanctity of which the law seeks to protect and uphold. Dwelling is considered an aggravating circumstance primarily because of the sanctity of privacy the law accords to human abode. According to one commentator, one's dwelling place is a sanctuary worthy of respect and that one who slanders another in the latter's house is more guilty than he who offends him elsewhere. Cuello Calon says the commission of the crime in another's dwelling shows greater perversity in the accused and produces greater alarm (People v. Monsayac, G.R. No.126787, May 24, 1999).

With the presence of one aggravating circumstance, i.e. dwelling, the law has made it inevitable that the greater penalty of death shall be applied.

With regard to the civil indemnity, recent jurisprudence has held that where the crime of rape is committed under circumstances where the death penalty, is authorized, the civil indemnity to be awarded to the victim is increased to P75,000.00 (People v. Bation, G.R. No. 123160, March 25, 1999). We also find it proper to award P50,000.00 as moral damages although proof of such entitlement was not presented (People v. Losano, G.R. No. 127122, July 20, 1999).

Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be accordingly imposed. Percuriam

WHEREFORE, premises considered, the judgment of the Regional Trial Court of Pasig in Criminal Case No. 104496 dated October 6, 1995 imposing three death penalties each on accused-appellants Noel Sapinoso and David Recreo is hereby AFFIRMED, with the MODIFICATION that accused-appellants Sapinoso and Recreo are each ordered to indemnify the victim Yolanda Partida in the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages, respectively for each count of rape.

No special pronouncement is made as to costs.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, JJ., concur.

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