

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WINSTON DE GUZMAN, ACCUSED-APPELLANT.

G.R. No. 122740. March 30, 1998

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Winston de Guzman was charged before the Regional Trial Court of Mati, Branch 5, Davao Oriental[1] with the crime of rape in an information docketed as Criminal Case No. 2584, and which alleged:

That on or about June 9, 1994, in the Municipality of Governor Generoso, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one JOVELYN A. GERAM, a (sic) against her will.[2]

Appellant pleaded not guilty when arraigned on the aforequoted indictment on September 5, 1994,[3] and the case then went to trial.

The evidence for the prosecution reveals that 14-year old complainant, Jovelyn A. Geram,[4] was alone in their residence at Barangay Monserrat, Governor Generoso, Davao Oriental when the crime was committed in the afternoon of June 9, 1994 by appellant who had managed to gain entry into the house.

Complainant was sleeping at around two o'clock that afternoon when she was awakened by the weight of something on top of her. Upon opening her eyes, she saw herein appellant naked and sitting on her thighs. Complainant instinctively tried to shout for help but appellant covered her mouth and nose with his hand and warned her not to resist or she would be killed. A struggle between the two ensued thereafter. The strength of appellant and the strain of complainant's efforts at resistance took its toll on the latter, causing her to feel weak and faint.

On recovering her senses, complainant discovered that she was already undressed and she saw blood on her vagina. She also noticed some white fluid on her abdomen and thighs. Complainant felt pain on her genitals and other parts of her body. Appellant was no longer around, and the hapless complainant was left crying over the tragedy which had befallen her.

In the evening of the same day, a neighbor, Florami Bayno, arrived in the house of the Gerams to watch television. Complainant went with Florami when the latter went home. They proceeded to the house of Mauricia and Hugo Bayno, close friends of the Gerams and Florami's parent's-in-law. In front of the couple, complainant recounted her ordeal at the hands of appellant.

In the morning of June 10, 1994, complainant went to the house of another neighbor, Genesis Delgado, and confided her misfortune to the latter. Later, she went to the house of the Baynos and waited for her parents who were in Barangay Tambo attending to their fishing enterprise. Complainant's mother, Evelyn Geram,[5] arrived shortly thereafter. Mother and daughter could only cry as the latter related the incident to the former.

Complainant and her mother subsequently went to the barangay captain of Monserrat who advised them to report the matter to the police authorities of Sigaboy, Governor Generoso. After complainant had narrated the incident to the police, she and her mother proceeded to the municipal hospital for the physical examination of the former.

Dr. Divina Lopez,[6] a resident physician of the Municipal District Hospital of Governor Generoso, issued a medical certificate detailing the result of her examination of complainant, as follows:

FINDINGS:

1) Positive (+) BLOOD CLOTS BOTH ON LABIA MINORA

2) POSITIVE (+) RUPTURED HYMEN

3) REDNESS AROUND THE VULVAR AREA[7]

Prosecution witness Genesis Delgado[8] declared that he saw appellant going inside the house of complainant on June 9, 1994 at around two o'clock in the afternoon. Apparently, appellant entered through the kitchen door at the rear portion of the house. Two hours later, appellant went out of the house through the same kitchen door. Delgado noticed all of these while he was watching television inside their house located just beside the Gerams' residence.

Later, at the rebuttal stage, Enecita[9] dela Cruz Torion,[10] a teacher in Monserrat Elementary School, also testified that she saw appellant, together with two companions, sitting at the front porch of the house of the Gerams at about one o'clock in the afternoon of June 9, 1994. Enecita was then on her way from the school which was located in front of the house of the Gerams.

The defense of appellant is denial and alibi. Aside from the intrinsic weakness of this shopworn excuse, we are not persuaded to grant any credence thereto since the facts relied on to make out appellant's story obviously appear too pat as to have clearly been contrived. The only persons presented to corroborate appellant's story are his own parents, despite the availability of other persons whose lack of relationship to him would not have engendered suspicion of connivance.

Appellant,[11] who is also a resident of Monserrat, asserted before the trial court that he was in Davao City at the time of the commission of the felony. He allegedly went there on June 6, 1994 with his mother to attend to his sister-in-law who was confined in the Davao Medical Center due to an incomplete abortion.[12] After sister-in-law was discharged from the hospital in the afternoon of June 8, they went to the house of Christy, his sister who was residing at Sasa, Davao City. He stayed in the house and cleaned it the whole day of June 9. At 4:30 in the morning of June 10, he and his mother left Davao City for Monserrat, arriving at their house between 8:30 and 9:00 A.M.

Aside from merely repeating the position of appellant, his father, Raul De Guzman,[13] tried to convince the trial court that he saw complainant in the afternoon of June 9, 1994. According to this witness, Jovelyn went to their store on that date to borrow a VHS cassette tape featuring "Robo Vampire." Appellant's mother, Violeta De Guzman,[14] also sought to support his story by claiming that it was her decision to bring appellant along to Davao City so that he could help minister to her daughter-in-law.

After considering the evidence of both the prosecution and the defense, the lower court gave credence to the testimony of Jovelyn and disregarded the defense of denial cum alibi presented by appellant.

The trial court considered the immediate revelation made by Jovelyn of the crime committed against her, and her steadfast efforts to bring her violator to justice, as indicative of the veracity of her charge. It rejected the defense

put up by appellant in light of the positive identification made by Jovelyn and the categorical declarations of the other prosecution witnesses placing him within the vicinity of the locus criminis at the time of the commission of the crime.

Accordingly, appellant was sentenced to suffer the penalty of reclusion perpetua, to indemnify Jovelyn in the amount of P40,000.00, and to pay the costs.[15]

Appellant now pleads for the reversal of the judgment of the trial court, contending that said court erred in giving credence to the testimony of Jovelyn and in finding him guilty on the basis thereof.[16]

Appellant adverts to the fact that complainant stated in her complaint[17] and in her testimony[18] given during the preliminary investigation that he committed the crime of rape through the application of odorous chemicals over her nose and mouth which caused her to sleep. This fact was not repeated by complainant in the trial court but she merely claimed the crime was consummated by appellant through force and intimidation. Such inconsistency, according to appellant, destroys Jovelyn's credibility, thus warranting a reversal of the lower court's judgment of conviction.

The records disclose that at the trial, counsel for appellant tried to utilize the testimony of complainant given in the preliminary investigation before Judge Rodolfo A. Castro to impeach her through statements therein supposedly different from what she gave in court.[19] Alluding to her answer to Judge Castro's questions numbered 28 and 29,[20] appellant's counsel asked complainant if she first reported the rape to one Dioneson Bayno. Complainant duly corrected that statement and clarified that it was Mauricia and Hugo Bayno whom she first told about the incident.[21]

However, complainant was never confronted during the proceedings in the trial court with her answers allegedly given in the same testimony at the preliminary investigation regarding appellant's resort to sleep-inducing chemicals. In fact, no sub-markings for such particular answers as exhibits were made in the records of her testimony in the preliminary investigation, much less offered by the counsel of appellant for that purpose during the trial of the case.

It is universally accepted that a witness cannot be impeached by evidence of contradictory or prior inconsistent statements until the proper foundation or predicate has been duly laid by the party against whom said witness was called.[22] The American rule on laying the predicate is embodied in Rule 132 of our own Rules of Court, to wit:

SEC. 13. How witness impeached by evidence of inconsistent statements. - Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.

Although the whole record of the testimony of complainant at the preliminary examination was offered in evidence by the defense and admitted by the trial court,[23] complainant cannot now be discredited through any of her extrajudicial statements which were not brought to her attention during the trial. Thus, it has been held that granting *arguendo* the alleged contradictions, previous statements cannot serve as bases for impeaching the credibility of a witness unless his attention was first directed to the discrepancies and he was then given an opportunity to explain them.[24]

In *People vs. Resabal*,[25] this Court explicitly ruled that the mere presentation of the prior declarations of a witness without the same having been read to the witness while he was testifying in court is insufficient for the desired impeachment of his testimony. As explained therein, the apparent contradiction between the declarations

of the witness before the former justice of the peace court and those before the then court of first instance was insufficient to discredit him since he was not given ample opportunity, by reading to him his declarations before the lower court, to explain the supposed discrepancy.

The rule which requires a sufficient foundation to be first laid before introducing evidence of inconsistent statements of a witness is founded upon common sense and is essential to protect the character of a witness. His memory is refreshed by the necessary inquiries, which enables him to explain the statements referred to, and to show that they were made under a mistake, or that there was no discrepancy between them and his testimony.[26]

It would be unjust to complainant at this stage to be declared an incredible witness as a result of the unauthorized procedure adopted by appellant. It is evidentiarily proscribed to discredit a witness on the bases of purportedly prior inconsistent statements which were not called to the attention of that witness during the trial, although the same are supposedly contained in a document which was merely offered and admitted in its entirety without the requisite specifications.

Through such a somewhat underhanded recourse, a party can expediently offer in evidence at the trial the whole document containing allegedly variant statements and then point out much later on appeal the supposed contradictory statements which were not specified, intentionally or otherwise, in the same trial. That sub silentio gambit would necessarily deprive a witness of the chance to explain the seeming divergencies, which is the paramount consideration of the rule mandating the laying of the proper predicate.

Complainant is undoubtedly the person best suited and mandated by the rule to explain the supposed differences in her statements. Without such explanation before us, whether plausible or not, we are left with no basis to evaluate and assess her credibility on the rationale that it is only when no reasonable explanation is given by a witness in reconciling his conflicting declarations that he should be deemed impeached.[27] As things stand before us and the court a quo, therefore, complainant's credibility remains unimpeached.

On the foregoing considerations, we confirm the validity of the doctrine articulated by the Court of Appeals in *Villaruel vs. Bascon*[28] that, unless the proper predicate is laid during the trial by calling the attention of a witness to his alleged inconsistent statements given outside of his testimony in court and asking him to explain the contradiction, the supposed inconsistencies cannot be pointed out on appeal for the purpose of destroying the credibility of the witness. This pronouncement was actually based upon and in line with the holdings of this Court in *Escosura*[29] and *People vs. Lim Quingsy*.[30]

We now take up the other document relied upon by appellant, that is, the complaint executed by complainant. A reading of the transcript of stenographic notes shows that said complaint was never introduced in evidence for the consideration of the trial court nor shown to complainant during the trial so that she could explain the alleged discrepancies in accordance with the foregoing rule. The complaint is not even included in the folder of exhibits as part of the documents admitted in evidence by the trial court. It is only attached to the original record of this case together with the other records of the preliminary investigation forwarded to the trial court. Under the revision in the 1985 Rules of Criminal Procedure, those records of the preliminary investigation do not form part of the record of the case in the Regional Trial Court.[31]

Again, it is undeniable that the proper basis was not laid for the impeachment of complainant through the statements contained in her complaint. Coupled with the basic principle that courts shall consider no evidence which has not been formally offered or whose purpose has not been specified,[32] the complaint cannot also be taken into account for impeaching complainant. If appellant was really prepared to attack complainant's credibility based on the statements in her complaint, he should necessarily have asked complainant about them during the trial, offered the complaint as his evidence, and specified the purpose for its submission. Appellant

utterly failed in all of these mandatory evidential requirements.

Hence, no impeaching evidence having been properly brought before it for its consideration during trial, the lower court was perfectly justified in disregarding the supposed inconsistent statements of complainant in her complaint and her testimony during the preliminary investigation. Her testimony at the trial, therefore, stands unassailed and entitled to full credit, together with the corroboration afforded thereto by the testimonies of the other prosecution witnesses, in stark contrast to the effete and puerile defense offered by appellant.

WHEREFORE, the judgment of the court a quo is hereby **AFFIRMED**, with the **MODIFICATION** that the indemnity to be paid by accused-appellant Winston de Guzman is increased to P50,000.00 in accordance with the present case law thereon.

SO ORDERED.

Melo, Puno, Mendoza, and Martinez, JJ, concur.

- [1] Presided over by Judge Ricardo M. Berba.
- [2] Original Record, 1.
- [3] Ibid., 38.
- [4] TSN, February 8, 1995, 2-43.
- [5] Ibid., January 27, 1995, 3-28.
- [6] Ibid., November 3, 1994, 5-25.
- [7] Exhibit A, Folder of Exhibits, 1.
- [8] TSN, November 3, 1994, 26-59.
- [9] Referred to as Aniceta in the decision of the lower court.
- [10] TSN, May 2, 1995, 4-18.
- [11] Ibid., April 26, 1995, 36-61.
- [12] Exhibit 6, Folder of Exhibits, 8.
- [13] TSN, March 20, 1995, 3-22.
- [14] Ibid., April 26, 1995, 6-34.
- [15] Original Record, 67.
- [16] Appellant's Brief, 1; Rollo, 51.
- [17] Original Record, 6.
- [18] Exhibit 3, Folder of Exhibits, 152-154.
- [19] TSN, April 26, 1995, 62.
- [20] Exhibit 3-A, Folder of Exhibits, 154.
- [21] TSN, February 8, 1995, 30-32.

[22] U.S. vs. Baluyot, 40 Phil. 385 (1919).

[23] TSN, April 26, 1995, 64.

[24] See People vs. Escosura, 82 Phil. 41 (1948).

[25] 50 Phil. 780 (1927).

[26] Conrad vs. Griffey, 57 US 38, 14 L Ed 835.

[27] See People vs. Relucio, et al., L-38790, November 9, 1978, 86 SCRA 227.

[28] CA-G.R. No. L-24588-R, February 6, 1962, 58 O.G. 41, 6699.

[29] Supra, fn. 24.

[30] 54 Phil. 88 (1929).

[31] Section 8, Rule 112, Rules of Court.

[32] Section 34, Rule 132, id.; People vs. Peralta, G.R. No. 94570, September 28, 1994, 237 SCRA 218; Republic vs. Sandiganbayan, et al., G.R. Nos. 112708-09, March 29, 1996, 255 SCRA 438.

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