PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN LADRILLO, ACCUSED-APPELLANT.

G.R. No. 124342. December 08, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

It is basic that the prosecution evidence must stand or fall on its own weight and cannot draw strength from the weakness of the defense.[1] The prosecution must demonstrate the culpability of the accused beyond reasonable doubt for accusation is not synonymous with guilt. Only when the requisite quantum of proof necessary for conviction exists that the liberty, or even the life, of an accused may be declared forfeit. Correlatively, the judge must examine with extreme caution the evidence for the state to determine its sufficiency. If the evidence fails to live up to the moral conviction of guilt the verdict must be one of acquittal, for in favor of the accused stands the constitutional presumption of innocence; so it must be in this prosecution for rape.

Jane Vasquez, the eight (8) year old complaining witness, could not state the month and year she was supposedly abused by her cousin Edwin Ladrillo. She could narrate however that one afternoon she went to the house of accused-appellant in Abanico, Puerto Princesa City, which was only five (5) meters away from where she lived. There he asked her to pick lice off his head; she complied. But later, he told her to lie down in bed as he stripped himself naked. He removed her panty and placed himself on top of her. Then he inserted his penis into her vagina. He covered her mouth with his hand to prevent her from shouting as he started gyrating his buttocks. He succeeded in raping her four (4) times on the same day as every time his penis softened up after each intercourse he would make it hard again and insert it back into her vagina. After successively satisfying his lust accused-appellant Edwin Ladrillo would threaten to "send her to the police" if she would report the incident to anyone.[2]

Sometime in 1994 Salvacion Ladrillo Vasquez, mother of Jane, noticed that Jane had difficulty urinating and kept pressing her abdomen and holding her private part. As she writhed in discomfort she approached her mother and said, "Ma, hindi ka maniwala sa akin na ‘yung uten ni Kuya Edwin ipinasok sa kiki ko” (Ma, you won’t believe that Kuya Edwin inserted his penis into my vagina).[3] Perturbed by her daughter’s revelation, Salvacion immediately brought her to their church, the Iglesia ni Kristo, where she was advised to report to the National Bureau of Investigation (NBI). At the NBI Salvacion was referred to the Puerto Princesa Provincial Hospital so that Jane could be physically examined.

Dr. Danny O. Aquino, the examining physician, reported in his medico-legal certificate that Jane had a "non-intact hymen."[4] He later testified that a "non-intact hymen" could mean either of two (2) things: it could be congenital, i.e., the victim was born without a fully developed hymen,[5] or it could be caused by a trauma, as when a male organ penetrated the private organ of the victim.[6]

On 3 February 1995 Jane Vasquez with the assistance of her mother Salvacion Ladrillo Vasquez filed a criminal complaint against accused-appellant Edwin Ladrillo.

The defense is anchored on alibi and denial. Accused-appellant claims that in 1992, the year he allegedly raped Jane as stated in the Information, he was still residing in Liberty, Puerto Princesa City, and did not even know Jane or her mother at that time. That it was only in 1993, according to him, that he moved to Abanico, Puerto Princesa City. To corroborate his testimony, the defense presented as witnesses, Wilfredo Rojas and Teodoro Aguilar, both of whom were neighbors of accused-appellant in Liberty, Puerto Princesa City. They testified that in 1992 accused-appellant was still their neighbor in Liberty and it was only in 1993 when accused-appellant and his family moved to Abanico.[7]

Edito Ladrillo, accused-appellant's father, testified that his family lived in Abanico for the first time only in 1993; that when he and his sister Salvacion, mother of Jane, had a quarrel, he forbade his son Edwin from attending church services with Salvacion at the Iglesia ni Kristo, which caused his sister to be all the more angry with him; and, the instant criminal case was a means employed by his sister to exact revenge on him for their past disagreements.[8]

The trial court found accused-appellant Edwin Ladrillo guilty as charged, sentenced him to reclusion perpetua, and ordered him to indemnify Jane Vasquez the amount of P100,000.00, and to pay the costs.[9] Thus, the court rationalized -

> The crux of accused's defense is that he was not in the place of the alleged rape in Abanico, Puerto Princesa City when this allegedly happened. He denied committing the crime of rape against the young girl, Jane Vasquez. After having carefully examined and calibrated the evidence on record, the Court is convinced more than ever that the accused Edwin Ladrillo indeed repeatedly raped or sexually abused Jane Vasquez, a girl who was then only five (5) years old. This Court has no reason to doubt the veracity of the testimony of Jane Vasquez given the straightforward clarity and simplicity with which it was made. It is highly improbable that a young, 8-year old girl would falsely testify that her own cousin, the accused herein, raped her. She told her mother: "Ma, hindi ka maniwala sa akin na ang utin ni Kuya Edwin ay ipinasok sa kiki ko." Jane also described that after the intercourse and as the penis of the accused softened, the latter would make it hard again and then inserted it again into her vagina and this was made four (4) times. Jane's testimony has all the characteristics of truth and is entitled to great weight and credence. The Court cannot believe that the very young victim is capable of fabricating her story of defloration.

Accused-appellant contends in this appeal that the trial court erred in: (a) not giving credence to his defense that at the supposed time of the commission of the offense he was not yet residing in Abanico, Puerto Princesa City, and did not know the complainant nor her family; (b) finding him guilty of rape considering that the prosecution failed to prove his guilt beyond reasonable doubt; (c) not finding that the prosecution failed to sufficiently establish with particularity the date of commission of the offense; (d) giving great weight and credence to the testimony of the complainant; and, (e) failing to consider the mitigating circumstance of minority in imposing the penalty of reclusion perpetua, assuming for the sake of argument that indeed the crime of rape was committed.[10]

A careful study of the records sustains accused-appellant's plea that the verdict should have been one of acquittal.

Preliminarily, the crime was alleged in the Information to have been committed "on or about the year 1992" thus -

> That on or about the year 1992 at Abanico Road, Brgy. San Pedro, Puerto Princesa City x x x x the said accused, with the use of force and intimidation did then and there willfully, unlawfully, and feloniously have carnal knowledge with the undersigned five (5) years of age, minor, against her will and without her consent.

The peculiar designation of time in the Information clearly violates Sec. 11, Rule 110, of the Rules Court which requires that the time of the commission of the offense must be alleged as near to the actual date as the information or complaint will permit. More importantly, it runs afoul of the constitutionally protected right of the accused to be informed of the nature and cause of the accusation against him.[11] The Information is not

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sufficiently explicit and certain as to time to inform accused-appellant of the date on which the criminal act is alleged to have been committed.

The phrase "on or about the year 1992" encompasses not only the twelve (12) months of 1992 but includes the years prior and subsequent to 1992, e.g., 1991 and 1993, for which accused-appellant has to virtually account for his whereabouts. Hence, the failure of the prosecution to allege with particularity the date of the commission of the offense and, worse, its failure to prove during the trial the date of the commission of the offense as alleged in the Information, deprived accused-appellant of his right to intelligently prepare for his defense and convincingly refute the charges against him. At most, accused-appellant could only establish his place of residence in the year indicated in the Information and not for the particular time he supposedly committed the rape.

In United States v. Dichao,[12] decided by this Court as early as 1914, which may be applied by analogy in the instant case, the Information alleged that the rape was committed "on or about and during the interval between October 1910 and August 1912." This Court sustained the dismissal of the complaint on a demurrer filed by the accused, holding that -

> In the case before us the statement of the time when the crime is alleged to have been committed is so indefinite and uncertain that it does not give the accused the information required by law. To allege in an information that the accused committed rape on a certain girl between October 1910 and August 1912, is too indefinite to give the accused an opportunity to prepare for his defense, and that indefiniteness is not cured by setting out the date when a child was born as a result of such crime. Section 7 of the Code of Criminal Procedure does not warrant such pleading. Its purpose is to permit the allegation of a date of the commission of the crime as near to the actual date as the information of the prosecuting officer will permit, and when that has been done any date may be proved which does not surprise and substantially prejudice the defense. It does not authorize the total omission of a date or such an indefinite allegation with reference thereto as amounts to the same thing.

Moreover, there are discernible defects in the complaining witness' testimony that militates heavily against its being accorded the full credit it was given by the trial court. Considered independently, the defects might not suffice to overturn the trial court's judgment of conviction, but assessed and weighed in its totality, and in relation to the testimonies of other witnesses, as logic and fairness dictate, they exert a powerful compulsion towards reversal of the assailed judgment.

First, complainant had absolutely no recollection of the precise date she was sexually assaulted by accused-appellant. In her testimony regarding the time of the commission of the offense she declared -

> Q: This sexual assault that you described when your Kuya Edwin placed himself on top of you and had inserted his penis on (sic) your private part, when if you could remember, was (sic) this happened, that (sic) month?
>
> A: I forgot, your Honor.
>
> Q: Even the year you cannot remember?
>
> A: I cannot recall.

> Q: But is there any incident that you can recall that may draw to a conclusion that this happened in 1992 or thereafter?
>
> A: None, your Honor.
>
> Q: About the transfer of Edwin from Abanico to Wescom Road?
>
> A: I don't know, your Honor (underscoring supplied).[13]

In People v. Clemente Ulpindo[14] we rejected the complaining witness' testimony as inherently improbable for her failure to testify on the date of the supposed rape which according to her she could not remember, and acquitted the accused. We held in part -

> While it may be conceded that a rape victim cannot be expected to keep an accurate account of her traumatic experience, and while Regina's answer that accused-appellant "went on top of her," and that she continuously shouted and cried for five (5) minutes may have really meant that accused-appellant had carnal knowledge of her for five (5) minutes despite her shouts and cries, what renders Regina's story inherently improbable is that she could not remember the month or year when the alleged rape occurred, and yet, she readily recalled the incident when she was whipped by accused-appellant with a belt that hit her vagina after she was caught stealing mangoes.

Certainly, time is not an essential ingredient or element of the crime of rape. However, it assumes importance in the instant case since it creates serious doubt on the commission of the rape or the sufficiency of the evidence for purposes of conviction. The Information states that the crime was committed "on or about the year 1992," and complainant testified during the trial that she was sexually abused by accused-appellant in the latter's house in Abanico, Puerto Princesa City.[15] It appears however from the records that in 1992 accused-appellant was still residing in Liberty, Puerto Princesa City, a town different from Abanico, Puerto Princesa City, and had never been to Abanico at any time in 1992 nor was he familiar with the complainant and her family. He only moved to Abanico, Puerto Princesa City, in 1993.[16] It was therefore impossible for accused-appellant to have committed the crime of rape in 1992 at his house in Abanico, Puerto Princesa City, on the basis of the prosecution evidence, as he was not yet residing in Abanico at that time and neither did his family have a home there. The materiality of the date cannot therefore be cursorily ignored since the accuracy and truthfulness of complainant's narration of events leading to the rape practically hinge on the date of the commission of the crime.

The ruling of the trial court to the effect that it was not physically impossible to be in Abanico from Liberty when the crime charged against him was committed, is manifestly incongruous as it is inapplicable. The trial court took judicial notice of the fact that Liberty and Abanico were not far from each other, both being within the city limits of Puerto Princesa, and could be negotiated by tricycle in less than thirty (30) minutes.[17] But whether or not it was physically impossible for accused-appellant to travel all the way to Abanico from Liberty to commit the crime is irrelevant under the circumstances as narrated by complainant. Truly, it strains the imagination how the crime could have been perpetrated in 1992 at the Ladrillo residence in Abanico when, to repeat, accused-appellant did not move to that place and take up residence there until 1993.

To complicate matters, we are even at a loss as to how the prosecution came up with 1992 as the year of the commission of the offense. It was never adequately explained nor the factual basis thereof established. The prosecutor himself admitted in court that he could not provide the specific date for the commission of the crime -

COURT: Wait a minute. (To witness) How many times did your Kuya Edwin placed (sic) himself on top of you and inserted (sic) his penis to (sic) your private organ?

A: Four (4) times, your Honor.

COURT: You demonstrate that with your fingers.

A: Like this, your Honor (witness raised her four (4) fingers).

COURT:

Fiscal, did you charge the accused four (4) times?

PROS. FERNANDEZ: No, your Honor because we cannot provide the dates (underscoring supplied).[18]

Indeed, the failure of the prosecution to prove its allegation in the Information that accused-appellant raped complainant in 1992 manifestly shows that the date of the commission of the offense as alleged was based merely on speculation and conjecture, and a conviction anchored mainly thereon cannot satisfy the quantum of evidence required for a pronouncement of guilt, that is, proof beyond reasonable doubt that the crime was committed on the date and place indicated in the Information.

Second, neither did the testimony of Dr. Danny O. Aquino, the medico-legal officer, help complainant's cause in any way. In his medico-legal certificate, Dr. Aquino concluded on examination that complaining witness' hymen was not intact. When asked by the trial court what he meant by "non-intact hymen," Dr. Aquino explained that it could be congenital, i.e., natural for a child to be born with a "non-intact hymen."[19] However, he said, he could not distinguish whether complainant’s "non-intact hymen" was congenital or the result of a trauma.[20] When asked further by the public prosecutor whether he noticed any healed wound or laceration in the hymen, Dr. Aquino categorically answered: "I was not able to recognize (healed wound), sir," and "I was not able to appreciate healed laceration, sir."[21] The answers of Dr. Aquino to subsequent questions propounded by the prosecutor were very uncertain and inconclusive. To questions like, "Is she a virgin or not?" and "So you are now saying that Jane Vasquez was actually raped?" the answers of Dr. Aquino were, "I cannot tell for sure, your Honor." "That is a big probability," and, "Very likely."

It is clear from the foregoing that the prosecution likewise failed to establish the medical basis for the alleged rape. The failure of Dr. Aquino to make an unequivocal finding that complainant was raped and that no healed wound or laceration was found on her hymen seriously affects the veracity of the allegations of the prosecution.

Third, from her testimony, complainant would have this Court believe that while she was being raped accused-appellant was holding her hand, covering her mouth and gripping his penis all at the same time. Complainant’s narration is obviously untruthful. It defies the ordinary experience of man. The rule is elementary that evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself.

And fourth, complainant reported the alleged rape to her mother only in 1994 or two (2) years after its occurrence.

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It hardly conforms to human experience that a child like complainant could actually keep to herself such a traumatic experience for a very long time. Perhaps it would have been different if she were a little older and already capable of exercising discretion, for then, concealment of the rape committed against her would have been more readily explained by the fact, as in this case, that she was probably trying to avoid the embarrassment and disrepute to herself and her family. Children, on the other hand, are naturally more spontaneous and candid, and usually lack the same discretion and sensibility of older victims of the same offense. Thus, the fact that complainant, who was only five (5) years old when the supposed rape happened, concealed her defilement to her mother for two (2) years seriously impairs her credibility and the authenticity of her story.

We are not unmindful of the fact that a child of tender years, like complaining witness herein, could be so timid and ignorant that she could not narrate her ordeal accurately. But the mind cannot rest easy if this case is resolved against accused-appellant on the basis of the evidence for the prosecution which, as already discussed, is characterized by glaring inconsistencies, missing links and loose ends that refuse to tie up. The rule that this Court should refrain from disturbing the conclusions of the trial court on the credibility of witnesses, does not apply where, as in the instant case, the trial court overlooked certain facts of substance or value which if considered would affect the outcome of the case; or where the disputed decision is based on misapprehension of facts.

Denial and alibi may be weak but courts should not at once look at them with disfavor. There are situations where an accused may really have no other defenses but denial and alibi which, if established to be the truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak.

Let it be made clear, however, that this opinion does not necessarily signify acceptance of accused-appellant's version of the incident. If complainant was indeed sexually abused, this view should not be considered a condonation of what was done, as it was indeed reprehensible. This only indicates that reasonable doubt has been created as to accused-appellant's guilt. Consequently, under the prevailing judicial norm, accused-appellant is entitled to acquittal. To reiterate, there is in his favor the constitutional presumption of innocence, which has not been sufficiently dented.

Rape is a very emotional word, and the natural human reactions to it are categorical: sympathy for the victim and admiration for her in publicly seeking retribution for her outrageous misfortune, and condemnation of the rapist. However, being interpreters of the law and dispensers of justice, judges must look at a rape charge without those proclivities and deal with it with extreme caution and circumspection. Judges must free themselves of the natural tendency to be overprotective of every woman decrying her having been sexually abused and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, judges should equally bear in mind that their responsibility is to render justice based on the law.[22]

WHEREFORE, the assailed decision of RTC-Br. 47, Palawan and Puerto Princesa City, is REVERSED. Accused-appellant EDWIN LADRILLO is ACQUITTED of rape based on insufficiency of evidence and reasonable doubt. Consequently, his immediate release from confinement is ORDERED unless he is otherwise detained for any other lawful or valid cause. Costs de oficio.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] See People v. Ulpindo, G.R. No. 115983, 12 April 1996, 256 SCRA 201.

[2] TSN, 22 June 1995, p. 41.

[3] Id., 6 July 1995, pp. 9-10.

[4] Exh. “A-2.”

[5] TSN, 22 June 1995, p. 11.

[6] Id., p. 17.

[7] Id., 13 July 1995, pp. 16-17.

[8] Id., 29 August 1998, pp. 4, 6, 14, 18.

[9] Decision penned by Judge Eustaquio Z. Gacott, Jr., RTC-Br. 47, Palawan and Puerto Princesa City, in Crim. Case No. 12209, promulgated 3 February 1995.

[10] Accused-appellant was only 18 years old when he allegedly committed the rape in 1992 (see TSN, 22 June 1995, pp. 27-28).

[11] Art. III, Sec. 14 (2), 1987 Constitution.

[12] 27 Phil. 421 (1914).

[13] TSN, 22 June 1995, p. 44.

[14] See Note 1.

[15] TSN, 22 June 1995, p. 39

[16] Id., 29 August 1995, pp. 4, 20-21; 13 July 1995, p. 6, 16-17.

[17] See Note 9 at p. 3.

[18] Id., 22 June 1995, pp. 45-46.

[19] Id., p. 10.

[20] Id., pp. 11-12.

[21] Id., pp. 13-14.

[22] People v. Godoy, G.R. Nos. 115908-09, 6 December 1995, 250 SCRA 676.

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