

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE ALMANZOR Y ROXAS, DEFENDANT-APPELLANT.

G.R. No. 124916. July 11, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an automatic review of the Decision, dated March 15, 1996, of the Regional Trial Court, Branch 66 of Makati City in Criminal Case No. 94-3602 finding accused-appellant Rene Almanzor y Roxas guilty beyond reasonable doubt of the crime of Forcible Abduction with Rape and sentencing him to suffer the supreme penalty of death.

On the basis of the sworn complaint of Sally Roxas, the Information charged accused-appellant with forcible abduction with rape committed as follows:

That on or about the 11[th] day of March 1994, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously abduct, take and carry away the herein complainant while walking along Makati Avenue, Ayala Center, Makati, Metro Manila near Landmark Department Store on her way to Jollibee, Greenbelt Branch, where she works as a service crew, by means of force, violence and intimidation, to wit: by introducing himself as a Marikina police, poking a handgun on the left side of the complainant's body, and then pulling her and forcing her to board inside the front passenger seat of the accused' car and threatening to shoot her and brought her to a secluded area within Makati, where said accused at gunpoint and intimidation, ordered herein complainant to undress by taking off her T-shirt, pants and panty, and by means of force, violence and intimidation, succeeded in having sexual intercourse with her against her will.

Contrary to law.[1]

At his arraignment, accused-appellant, with the assistance of counsel, pleaded not guilty.

The prosecution's evidence, based mainly on the testimony of the complainant, Sally Roxas, established the following:

On March 11, 1994, at 5:45 in the morning, Sally Roxas, then seventeen (17) years old, was on her way to work in Jollibee Greenbelt in Makati City. She was new in her job as she was hired only four days before. She was walking along Makati Avenue in front of the Ayala Museum when a car suddenly stopped beside her. The car was headed towards Pasay Road. The man who drove the car told Sally not to be afraid. He introduced himself as a Marikina policeman showing her an identification card. At his query, Sally gave him her name. He initially did not believe her but she showed him her Jollibee nameplate.[2]

The man then told Sally to ride his car so he could take her to her workplace. Sally at first refused since Jollibee Greenbelt was already close by. However, the man poked a gun at her. Fearing for her life, Sally obliged and boarded his car. The man immediately drove on. They passed by Jollibee Greenbelt and Sally told the man that she would get off there but he just told her to shut up.[3]

The man just kept on driving. Sally did not shout for help because she was afraid as the man was carrying a gun. While the car was moving, the driver ordered Sally to undress. She refused and begged him to bring her to work. The man told her not to be hardheaded and poked his gun at her. Sally could not do anything but obey him. She took off her t-shirt and bra. He then ordered her to remove her pants and panty as well.[4]

Thereafter, the man stopped the car. Sally could not recall the exact place because at the time, she had been in Makati for only a week. She described the place as sparsely populated and with buildings that are not so tall. The man removed his pants and underwear. He then reclined Sally's seat and lay on top of her. He spread her legs and inserted his penis into her sexual organ. Sally begged for his mercy but he continued to poke his gun at her. He said that it would just take a short while.[5]

After he was finished, the man moved back to the driver seat. Sally threatened to file a complaint against him. The man again poked his gun at her saying, "babalikan kita." He instructed her to put on her clothes while he dressed up also. According to Sally, he was wearing black pants and red polo shirt. The man drove his car. Just a few minutes later, he slowed down the car and ordered Sally to get off. Since he did not bother to stop the car, Sally almost fell from the car. Sally tried to grab the identification card that he showed her but the man was able to recover it.[6]

Sally proceeded to her place of work because her cousin, Carlos Abellanosa, also worked there. It was already 6:20 in the morning. She was sobbing as she told her cousin that she wanted to go home. Abellanosa asked what was wrong but Sally did not want to confide in him immediately because there were a lot of people. Upon the advice of her cousin, Sally donned her uniform and did her work. She found it difficult, however, to concentrate.[7]

During their break time, Sally recounted to Carlos what happened to her. After telling their manager about Sally's ordeal, she asked permission to go home. The manager instructed Sally to have herself examined by a doctor. Sally and Abellanosa went to the San Lorenzo Medical Clinic but the doctor there told them that he could not examine Sally as they did not have the proper equipment. He referred her to the Ospital ng Makati.[8]

Sally went home and narrated to her two aunts what she had been through. Her two aunts accompanied her to the Ospital ng Manila but they were told that the hospital did not have the necessary equipment to conduct the physical examination on Sally. They were instead given a referral slip to the National Bureau of Investigation (NBI). Since it was already late in the afternoon, Sally decided to go to the Makati Police Station and report the incident. After she gave her account of what happened, Sally was given a referral slip to the Camp Crame Crime Laboratory.[9]

The following day, or on March 12, 1994, submitted herself to a physical examination at the Camp Crame. She was examined by Dr. Jesusa Vergara. She was advised to give a physical description of the suspect so his cartographic sketch could be made. The Philippine National Police (PNP) cartographer furnished Sally with a copy of the sketch.[10] On March 22, 1994, she was fetched by a policeman who informed her that the authorities had arrested a man who looked similar to the one in the cartographic sketch. They proceeded to the police station and there she was made to identify the suspect from among the line up of around five (5) men. Sally identified accused-appellant as the one who raped her. Thereafter, she executed the affidavit and filed the complaint against him.[11]

When he testified, Abellanosa confirmed that when Sally reported to work on March 11, 1994, she was crying and that during their break, she confided to him that she was raped that morning by an unidentified man.

Dr. Vergara, the medico-legal officer who examined Sally, made the following findings in her report:

GENITAL

There is abundant growth of pubic hair. Labia majora are full, convex and gaping with the abraded labia minora presenting in between. On separating the same disclosed an abraded posterior fourchette and an elastic, fleshy-type and a congested hymen, with deep healed laceration at 7 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. xxx[12]

When she took the witness stand, Dr. Vergara explained that the "deep healed laceration at 7 o'clock" found in Sally's labia majora meant that she already had a previous sexual intercourse. Further, the "abrasion on the labia majora," "the abrasion on the posterior fourchette and congestion on the hymen" indicated that there was a forcible entry of a hard blunt object into Sally's sexual organ within twenty-four (24) hours prior to the date of examination.[13]

For his part, accused-appellant interposed denial and alibi. He testified that he was a managing consultant at the John Clemens Consultancy. He lived with his mother in Leon Guinto, Malate, Manila. On March 11, 1994, he woke up at 6:30 in the morning and had breakfast. He took a shower and then got dressed. He left the house at 7:15 in the morning to go to the Hyatt Regency Hotel where he was attending a two-day seminar being conducted by their company. The seminar started the day before, March 10, 1994, and he was a trainor thereat.[14]

Outside their house and before he got inside the car (a red Nissan Sentra 1988 model issued to him by his employer), accused-appellant met their neighbor, Mrs. Alice Guiamoy and her son Vincent. He greeted them. Going to the Hyatt, accused-appellant took Taft Avenue, turned right at the Manila Sanitarium and proceeded to Buendia. He turned left when he reached Roxas Boulevard and drove straight to the hotel. He arrived there before 8:00 in the morning. The seminar ended at 6:30 in the evening of the same day.[15]

In the morning of March 22, 1994, on his way to the UPGB to attend a seminar there, accused-appellant stopped by the gasoline station in Zobel Roxas Street in Makati. He instructed the attendant to fill the tank. Two men in civilian clothes approached him and asked if his name was Rene Almanzor. Accused-appellant responded in the affirmative. He was then told that he had to go to the police station because there was a complaint against him. Accused-appellant initially refused but a policeman suddenly boarded his car so accused-appellant had to obey him.[16]

He was ordered to drive to the Makati Police Station. Accused-appellant pleaded to be allowed to go to his office but the policeman said that they had to go straight to the police station. He was informed that there was a complaint against him. Later in the evening, Sally arrived at the police station. Accused-appellant, together with five (5) other men, was then made to stand in a line up. Sally singled out accused-appellant as the man who raped her.[17]

On cross-examination, accused-appellant admitted that aside from Sally, at least two (2) other women had filed similar criminal complaints against him. Maritess Magsino filed a complaint for acts of lasciviousness against accused-appellant before the Regional Trial Court, Branch 136 of Makati City. Suzette de Montano, on the other hand, likewise filed a complaint for rape against accused-appellant and which case was pending before the trial court in Manila. Like Sally, these women pointed to accused-appellant as their assailant.[18]

Alice Guiamoy, accused-appellant's neighbor, testified that at 6:30 in the morning of March 11, 1994, she was outside her house cleaning. While she was doing her chore, she saw accused-appellant step outside their house. He greeted Guiamoy and asked her "kumusta po kayo?" Accused-appellant went back inside their house. A few minutes later, Guiamoy saw accused-appellant ride his car to go to work.[19] Another neighbor, Ma. Veronica Villamil, similarly testified that she heard the engine of accused-appellant's car being revved-up at around 6:30 in

the morning of March 11, 1994. She later saw accused-appellant driving out of their compound at around 7:00 in the morning of the same day.[20]

After the prosecution and defense presented their respective evidence, the trial court rendered judgment finding accused-appellant guilty of forcible abduction with rape and imposing upon him the supreme penalty of death. The dispositive portion of the trial court's decision reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding Rene Almanzor y Roxas guilty beyond reasonable doubt of the crime of forcible abduction with rape and the Court hereby sentences Rene Almanzor y Roxas to suffer, taking into consideration the absence of a mitigating or aggravating circumstances and Article 48 of the Revised Penal Code in relation to Article 335 of the same code, as amended, the penalty of Death and to pay Sally Roxas the sum of P50,000.00 as liquidated damages, P50,000.00 as moral damages and P50,000.00 as exemplary damages.

SO ORDERED.[21]

Through his counsel de oficio, accused-appellant subsequently filed his appeal brief alleging as follows:

ASSIGNMENT OF ERRORS

I

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT ON THE GROUND THAT HE WAS POSITIVELY IDENTIFIED BY COMPLAINANT.

II

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS POSITIVELY IDENTIFIED BY COMPLAINANT, THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT IN SPITE OF THE INCONSISTENCIES THAT TAINTED THE EVIDENCE FOR THE PROSECUTION.

III

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS POSITIVELY IDENTIFIED BY COMPLAINANT AND COMPLAINANT'S EVIDENCE WAS NOT TAINTED WITH CONSISTENCIES, THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT IN SPITE OF THE IMPROBABILITY OF THE MANNER BY WHICH THE RAPE WAS ALLEGEDLY COMMITTED.

IV

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS POSITIVELY IDENTIFIED BY COMPLAINANT AND COMPLAINANT'S EVIDENCE WAS NOT TAINTED WITH INCONSISTENCIES, THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT IN SPITE OF COMPLAINANT'S FAILURE TO OFFER ANY RESISTANCE DURING HER ALLEGED ABDUCTION, PRIOR TO AND EVEN DURING HER ALLEGED RAPE.

V

THE TRIAL COURT ERRED IN DISREGARDING THE DEFENSE OF ACCUSED-APPELLANT AS A MERE ALIBI.

VI

THE TRIAL COURT ERRED IN FINDING THAT THE COMPLEX CRIME OF FORCIBLE ABDUCTION WITH RAPE WAS COMMITTED IN THIS CASE.[22]

In determining the guilt of the accused in rape cases, the Court is guided by the following considerations: (a) that an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense.[23] The credibility of the complainant is, therefore, of vital importance, for in view of the peculiar nature of rape, conviction or acquittal of the accused depends almost entirely upon the word of the private complainant.[24]

Accused-appellant primarily assails the testimony of Sally, the complainant in this case. At the outset, he (accused-appellant) impugns Sally's positive identification of him as her assailant. Specifically, accused-appellant assails the police line-up where he was identified by the complainant claiming that police line-ups are inherently unreliable as they are "peculiarly riddled with innumerable dangers and variable factors." [25] Moreover, the identification of accused-appellant during the police line-up is allegedly inadmissible in evidence being a fruit of an illegal arrest and violative of accused-appellant's constitutional right to counsel.[26]

Accused-appellant likewise points to alleged inconsistencies and improbabilities in the prosecution's evidence. The alleged inconsistencies are:

1. In her sworn statement, complainant narrated that she was forced to enter the car of accused-appellant after the latter alighted from his car and pushed her inside. In her direct testimony, however, complainant averred that accused-appellant never alighted from the car during the abduction; [27]
2. In her sworn statement, complainant alleged that she was raped in a parking space located at the Ayala Complex in Makati. When she took the witness stand, complainant could no longer recall where the alleged rape took place. [28]

Accused-appellant opines that the manner by which he allegedly abducted and raped complainant is incredulous. It is allegedly impossible to believe that, as recounted by complainant, accused-appellant was able to commit all the acts that he allegedly did, e.g., he conversed with complainant, showed her his Marikina police I.D., poked a gun at her, forced her to ride the car, continued driving, ordered her to undress, parked his car, removed his pants and brief, reclined the passenger seat, lay on top of complainant and raped her, in a matter of less than twenty (20) minutes. [29]

It is allegedly hard to imagine that the rape could take place inside a car where it would be difficult to consummate the sexual act given the cramped space. Likewise, Makati City, where the abduction and rape supposedly took place, is such a heavily populated area that complainant could not have been sexually abused there without being noticed by many people. [30] Accused-appellant harps on the fact that complainant did not tell her cousin about her ordeal immediately after it happened. Such conduct allegedly runs counter to the natural reaction of an outraged maiden despoiled of her honor. [31] Finally, there is allegedly no evidence on record to show that complainant put up any resistance to accused-appellant, shouted for help or even tried to flee the car.

The foregoing arguments proffered by accused-appellant fail to persuade.

Accused-appellant's allegation with respect to the conduct of the police line-up is futile. That he was without counsel at the time of the police line-up does not render the same irregular or invalid. The guarantees of Section 12(1), Article III of the 1987 Constitution, or the so-called Miranda rights, may be invoked only by a person while he is under custodial investigation. Custodial investigation starts when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements. A police line-up is not part of the custodial investigation; hence, the right to counsel cannot yet be invoked at this stage.[32]

It appears from the record that accused-appellant was not under custodial investigation when he was brought to the Makati police station. The police did not, as yet, interrogate him or elicit incriminating statements from him. He was brought to the police station to be presented, along with other men, to Sally and to be identified by her. The presence of counsel at that stage was not therefore necessary.

Moreover, it has been held that "in resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification, and (5) the suggestiveness of the identification procedure."[33]

Clearly, in this case Sally had the opportunity to take a good look at accused-appellant when the crime was committed. He approached her and introduced himself to her as a policeman. He coerced her into riding his car. He brought her to a vacant lot and there raped her while inside the car. Under the circumstances, Sally was unlikely to have forgotten his face. Further, she could not have mistaken him for another man.

It must be stressed that in convicting him for the crime charged, the trial court did not rely solely on Sally's identification of accused-appellant as her assailant during the police line-up. Rather, the trial court found Sally's testimony in court worthy of credence. Sally's testimony, including her identification of accused-appellant, was positive, straightforward and categorical:

ATTY. PEREZ:

On or about March 11, 1994, what was your occupation, if any?

WITNESS:

I was an employee of Jollibee.

ATTY. PEREZ:

How long were you then an employee of Jollibee?

WITNESS:

Less than one week, sir.

ATTY. PEREZ:

What was your job with Jollibee

WITNESS:

I am a counter staff, sir.

ATTY. PEREZ:

Where is this Jollibee located?

WITNESS:

It is located in Makati Greenbelt, sir.

ATTY. PEREZ:

Now, Sally Roxas, do you know the accused in this case?

WITNESS:

Yes, sir.

ATTY. PEREZ:

Why do you know the accused?

WITNESS:

I was able to remember his face, sir.

COURT:

Under what circumstance did you come to know the herein accused?

WITNESS:

I remembered his face because when he first asked me, I was looking at his face.

COURT:

Under what circumstance did the accused ask you?

WITNESS:

He asked me my name.

COURT:

Where did that happen?

WITNESS:

In Makati, sir.

COURT:

Where is that?

WITNESS:

In Makati Avenue, sir.

COURT:

Proceed.

ATTY. PEREZ:

You said that you first came to meet this accused . . . (interrupted)

COURT:

Just one more question now . . what were you then doing when the accused whom you claimed to have asked your name?

WITNESS:

I was on my way to my place of work.

ATTY. PEREZ:

What time was it when you were going to your work then?

WITNESS:

5:45 in the morning, sir.

ATTY. PEREZ:

When was this?

WITNESS:

March 11, sir.

ATTY. PEREZ:

What year?

WITNESS:

1994.

ATTY. PEREZ:

What time was it when it occurred?

WITNESS:

5:45 in the morning.

ATTY. PEREZ:

Sally, I want you to tell the Court step by step what actually happened on March 11, 1994 but before you do that, I would like to ask you if the accused is in the courtroom right now, will you be able to recognize him?

WITNESS:

Yes, sir.

ATTY. PEREZ:

Will you please point him out to the Court?

WITNESS:

He is the one.

INTERPRETER:

Witness pointed to a male person inside the courtroom who when asked to tell his name . . . What is your name, sir?

ACCUSED:

Rene Almanzor.

INTERPRETER:

Stated that he is Rene Almanzor.

ATTY. PEREZ:

You said, Sally, that about 5:45 in the morning of March 11, 1994, you first came to know the accused.

WITNESS:

Yes, sir.

ATTY. PEREZ:

Please describe to us exactly how did the accused approached you?

WITNESS:

I was walking on my way to my place of work and the accused who was driving his car suddenly stopped beside me.

ATTY. PEREZ:

You said that the accused driving his car, suddenly stopped beside you, after that what happened?

WITNESS:

He opened the door of his car and told me not to be afraid of him because he is a Marikina policeman.

ATTY. PEREZ:

When the accused introduced himself to you as a Marikina policeman, was he inside the car or did he alight from it?

A. He was inside his car.

COURT:

Where were you from the car, was it on the right side of the car or the left side of the car?

WITNESS:

Right side of the car.

COURT:

In other words, you were on the right side of the car, which side is for the passenger?

WITNESS:

Yes, sir.

ATTY. PEREZ:

Will you be able to recall, Sally, the exact place where the accused's car stopped beside you?

WITNESS:

In front of Ayala Museum.

ATTY. PEREZ:

Where is Ayala Museum?

WITNESS:

In Makati Avenue, sir.

COURT:

To what direction was the car going?

WITNESS:

The car was going towards Pasay Road, sir.

ATTY. PEREZ:

Now, Sally, after the accused introduced himself to you as policeman, what happened after that?

WITNESS:

He told me not to be afraid of him and I believed him. In fact, he even showed me an I.D.

ATTY. PEREZ:

And after showing his I.D. to you, what did you do, if any?

WITNESS:

He asked me my name and I told him my real name but he did not want to believe. Then, he looked for my I.D.

ATTY. PEREZ:

Then, after asking your I.D. card from you, what did you do?

WITNESS:

I could not show him anything because I was not given any I.D. from Jollibee and I asked him to look at my nameplate instead.

ATTY. PEREZ:

Did you show him your Jollibee nameplate?

WITNESS:

Yes, sir.

ATTY. PEREZ:

After showing him your Jollibee nameplate, what happened after that?

WITNESS:

He got angry and accused me of lying.

ATTY. PEREZ:

After telling you that, what else happened?

WITNESS:

He told me to ride in his car and he will bring me to my place of work to find out if indeed I was working in Jollibee.

ATTY. PEREZ:

After telling you to get inside the car, did you get inside the car?

WITNESS:

Not immediately. I first had a talk with him. I told him that my place of work was quite near and I will just walk.

ATTY. PEREZ:

After telling him that, what happened?

WITNESS:

He insisted (nagpumilit) that I ride his car for him to bring me to Jollibee in order to prove that I was not lying.

ATTY. PEREZ:

What else did he do after that?

WITNESS:

He poked a gun at me because I was then near the door of his car and I could not do anything but to ride his car.

COURT:

You testified earlier that when the accused stopped his car beside you, you were on the right side of the car. Now, you testified later on that he pulled out his gun. You mean to say he remained seated on the left side of his car?

WITNESS:

Yes, sir.

COURT:

Is it not that during that time, there were already some people going to their work?

WITNESS:

No people were around at that time, sir.

ATTY. PEREZ:

Just for the record, Your Honor. I just want to make it of record that the witness is crying while testifying.

COURT:

Proceed.

ATTY. PEREZ:

Now, Sally, after getting inside the car of the accused, what happened?

WITNESS:

He drove his car.

ATTY. PEREZ:

After driving his car, what happened?

WITNESS:

We passed by the Jollibee Greenbelt and I told him that I'll alight there.

ATTY. PEREZ:

What was his response, if any?

WITNESS:

He told me not to be noisy and that I stop talking and just to follow his orders if I still wanted to live.

ATTY. PEREZ:

After telling you that, what did you do, if any?

WITNESS:

I could do nothing since he was poking his gun at me and he kept on driving his car and I didn't know the place anymore.

ATTY. PEREZ:

During the time that you were inside the car of the accused, did you shout for help?

WITNESS:

No, sir.

ATTY. PEREZ:

Why did you not shout for help?

WITNESS:

I was afraid because he was carrying a gun.

ATTY. PEREZ:

Will you be able to describe the car that was then being driven by the accused, Sally?

WITNESS:

I cannot remember what kind of car was that.

ATTY. PEREZ:

How about the car window of the car?

WITNESS:

It was tinted, sir.

COURT:

How about the color, do you still remember?

WITNESS:

No, sir.

ATTY. PEREZ:

When the accused told you to shut up and poked his gun at you, what did you do after that?

WITNESS:

I kept quiet and then he ordered me to undress.

COURT:

Where was the car at that time?

WITNESS:

I don't know what street was that.

COURT:

Do you think it was still in Makati?

WITNESS:

Yes, sir.

COURT:

How long had he been driving the car when he told you to undress?

WITNESS:

15 minutes, sir.

ATTY. PEREZ:

So, after telling you to undress, did you follow what he told you?

WITNESS:

No, sir.

ATTY. PEREZ:

What did you do, if any, after that?

WITNESS:

I begged him to bring me in my place of work because I will be late for my work.

ATTY. PEREZ:

After telling him that, what did you do, if any?

WITNESS:

He told me not to be hard headed and poked his gun at me and there was nothing that I could do but to undress.

COURT:

You mean to tell that you undressed inside the car?

A. Yes, sir.

ATTY. PEREZ:

When he told you to undress, what you were then wearing at the time?

WITNESS:

I was wearing T-shirt and pants.

ATTY. PEREZ:

After telling you to undress, what happened?

WITNESS:

I undressed because he poked a gun at me.

COURT:

What part of your dress did you take off?

WITNESS:

My T-shirt, sir.

COURT:

About your pants?

WITNESS:

I didn't want to put off my pants at first, sir.

ATTY. PEREZ:

After taking off your T-shirt, what happened?

WITNESS:

He asked me to remove my bra.

ATTY. PEREZ:

Did you remove your bra when he told you to remove your bra?

WITNESS:

Yes, sir.

ATTY. PEREZ:

After removing your bra, what happened next?

WITNESS:

He ordered me to remove my pants.

ATTY. PEREZ:

Did you remove your pants?

WITNESS:

Yes, sir because he was poking a gun at me.

COURT:

When he asked you to undress, first with your T-shirt, then with your bra then with your pants, was the car moving, was he driving or the car was parked?

WITNESS:

The car was moving, sir.

ATTY. PEREZ:

After removing your pants, Sally, what else did you do?

WITNESS:

He told me to remove my panty, sir.

ATTY. PEREZ:

Did you remove your panty?

WITNESS:

Yes, sir.

ATTY. PEREZ:

After removing your panty, what happened, Sally?

WITNESS:

He stopped the car.

ATTY. PEREZ:

Would you be able to recall what place or part in Makati did he stop the car?

WITNESS:

No, sir.

ATTY. PEREZ:

Why can't you remember the exact place where he stopped the car?

WITNESS:

Because I have never been in those streets, sir, because I have been in Makati for one week only.

ATTY. PEREZ:

By the way, Sally, please tell the Court exactly where were you seated during the time that you were inside the car of the accused?

WITNESS:

Beside the driver's seat.

ATTY. PEREZ:

After the accused stopped his car, what happened?

WITNESS:

He took off his pants together with his brief.

ATTY. PEREZ:

After the accused took off his pants and brief, what happened?

WITNESS:

He hold [sic] something in the seat so that the seat will slide down.

ATTY. PEREZ:

After the accused held something in the passenger's seat, what else did he do, if any?

WITNESS:

He lied on top of me.

ATTY. PEREZ:

Before lying on top of you, Sally, you said that the accused held something on the passenger's seat to make it slide downwards a little, what else did he do on the passenger's seat, if any, aside from that?

WITNESS:

He held the back portion of the passenger's seat so that it will recline a little.

ATTY. PEREZ:

After reclining the passenger's seat a little, what else did he do?

WITNESS:

He lied on top of me, sir.

ATTY. PEREZ:

After lying on top of you, what did the accused do?

WITNESS:

He spread my two legs.

ATTY. PEREZ:

After the accused spread your two legs, Sally, what did he do?

WITNESS:

He inserted his penis inside mine, sir.

COURT:

While he was doing this on top of you, what did you do?

WITNESS:

I was asking for his mercy.

COURT:

What was his reply?

WITNESS:

He was poking his gun at me and told me that it will just take a short while.

ATTY. PEREZ:

Would you be able to recall, Sally, how long more or less was the accused lying on top of you?

WITNESS:

5 minutes, sir.

ATTY. PEREZ:

After the accused inserted his penis inside yours while poking his gun at you, what else happened?

WITNESS:

I was asking for his mercy, sir.

COURT:

After that what happened?

WITNESS:

He kept on pointing his gun at me.

COURT:

Then, what happened?

WITNESS:

After he was through (“pagkatapos niyang labasan”), he returned to his seat.

COURT:

About you, what did you do?

WITNESS:

I was crying, sir. I told him that I will file a complaint.

COURT:

What was his reply?

WITNESS:

He poke his gun at me and told me “babalikan kita.”[34]

Thus, the in-court identification made by Sally was more than sufficient to establish the identity of accused-appellant. Granting arguendo that there were irregularities in the conduct of the police line-up, as claimed by accused-appellant, the same did not foreclose the admissibility of the independent in-court identification.[35] Sally had absolutely no improper motive to implicate accused-appellant. In fact, she had not met accused-appellant until that fateful day of March 11, 1994 and did not even know his name until he was apprehended. The absence of ulterior motive in implicating the accused further bolsters the credibility of the complainant.[36]

The inconsistencies pointed out by accused-appellant are, to the mind of the Court, inconsequential. The perceived inconsistencies between Sally’s sworn statement and testimony on the matter of whether accused-appellant alighted from his car when he accosted Sally along Makati Avenue and where exactly in Makati the rape took place do not detract from her credibility as a witness. Neither inconsistencies on trivial matters nor innocent lapses affect the credibility of a witness. On the contrary, they may be considered badges of veracity or manifestations of truthfulness on material points in the testimony. Put in another way, minor inconsistencies even tend to strengthen rather than weaken the credibility of a witness because they erase any suspicion of rehearsed testimony.[37]

That there were discrepancies between Sally’s affidavit and her testimony is not at all unusual. The infirmity of affidavits as a species of evidence is a common occurrence in judicial experience. Affidavits are generally not prepared by the affiants themselves but by other persons who used their own language in writing the statements. Being ex-parte, they are almost always incomplete and often inaccurate, but these factors do not denigrate the credibility of witnesses. As such, affidavits are generally considered to be inferior to testimony given in court.[38]

Contrary to accused-appellant’s contention, the Court does not find it improbable that the rape was committed inside a car just parked in a lot in Makati City, a heavily populated area. The presence of people nearby does not always deter rapists from committing their odious act.[39] As the Court had aptly observed in previous rape cases

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x x x The evil in man has no conscience. The beast in him bears no respect for time and place, driving him to commit rape anywhere – even in places where people congregate such as parks, along the road side, within school premises, and inside a house where there are other occupants. Rape does not necessarily have to be committed in an isolated place and in fact be committed in places which to many would appear to be unlikely and high-risk venues for sexual advances.[40]

Moreover, that accused-appellant chose to perpetrate his lustful act inside the car is not quite unbelievable. Sexual intercourse in the cramped space of a car while perhaps uncomfortable is not improbable.[41] Time and again the Court has ruled that lust is no respecter of time and place.[42]

Accused-appellant faults the complainant for allegedly failing to offer any resistance. One of the essential elements of forcible abduction with rape, i.e., the acts must be against the will of the complainant, was thus allegedly not proven. This contention is untenable. Accused-appellant’s use of the gun provided sufficient intimidation to cow Sally into submitting to his lewd deeds. The Court has laid down the rule as follows:

The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if

the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.[43]

In this case, accused-appellant kept on poking his gun at Sally from the time when he ordered her to board his car up to the time when he molested her. Sally testified that she could not cry for help because she was afraid as accused-appellant was carrying a gun. Her failure to offer a tenacious resistance cannot thus be construed as consent but was borne out of genuine fear for her life.

All told, accused-appellant miserably failed to destroy the credibility of the complainant. In view of Sally's positive identification of accused-appellant as her assailant, his alibi must fail. Alibi is one of the weakest defenses.[44] For the defense of alibi to prosper, the accused must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[45] Accused-appellant claimed that he was in his house in Malate, Manila at the time of the commission of the rape. Said place is just a few minutes away from Makati City, the locus criminis. The distance between these two places did not render it impossible for accused-appellant to be at the scene of the crime. Accordingly, his alibi must necessarily fail.

The crime committed, however, is not the complex crime of forcible abduction with rape. Forcible abduction is absorbed in the crime of rape if the real objective of the accused is to rape the victim.[46] The facts on record clearly show that accused-appellant's intent was to have carnal knowledge with the complainant. Hence, the crime committed is simple rape.

The rape was committed with the use of a deadly weapon, a gun, for which Republic Act No. 7659 prescribes the penalty of reclusion perpetua to death. There being neither aggravating nor mitigating circumstance shown, accused-appellant should only be sentenced to reclusion perpetua, not death.

WHEREFORE, the Decision, dated March 15, 1996, of the Regional Trial Court, Branch 66 of Makati City in Criminal Case No. 94-3602 is hereby MODIFIED. Accused-appellant Rene Almanzor y Roxas is found guilty beyond reasonable doubt of the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code. The penalty imposed on him is REDUCED to reclusion perpetua. The damages awarded by the trial court are hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

[1] Rollo, p. 33.

[2] TSN, January 16, 1995, pp. 7-20.

[3] Ibid., pp. 21-23.

[4] Id., pp. 24-30.

[5] Id., pp. 31-35.

[6] Id., pp. 36-42.

[7] Id., pp. 43-49.

[8] Id., pp. 51-59.

- [9] Id., pp. 62-71.
- [10] Id., pp. 73-79.
- [11] TSN, January 20, 1995, pp.14-19.
- [12] Exhibit “D”; Records, p. 13.
- [13] TSN, February 8, 1995, pp. 46-49.
- [14] TSN, August 15, 1995, pp. 7-15.
- [15] Ibid., pp. 17-31.
- [16] Id., pp. 40-46.
- [17] Id., pp. 49-78.
- [18] TSN, August 22, 1995, pp. 17-25.
- [19] TSN, September 4, 1995, pp. 6-22.
- [20] TSN, October 5, 1995, pp. 9-14.
- [21] RTC Decision, March 15, 1996, p. 9; Rollo, p. 41.
- [22] Rollo, pp. 117-118.
- [23] People vs. Caingat, February 6, 2002; People vs. Mariano, 345 SCRA 1 (2000)
- [24] People vs. Blazo, 352 SCRA 100 (2001).
- [25] Accused-appellant’s Brief, p. 23.
- [26] Ibid., p. 24.
- [27] Id., pp. 41-42.
- [28] Id., p. 45.
- [29] Id., pp. 50-51.
- [30] Id., p. 53.
- [31] Id. p. 54.
- [32] People vs. Amestuzo, G.R. No. 104383, July 2001, pp. 7-8.
- [33] People vs. Navales, 337 SCRA 436 (2000); People vs. Teehankee, 249 SCRA 54 (1995).
- [34] TSN, January 16, 1995, pp. 10-37. Underscoring ours.
- [35] People vs. Pacistol, 284 SCRA 520 (1998); People vs. Lapura, 255 SCRA 85 (1996).
- [36] People vs. Murillo, 352 SCRA 105 (2001); People vs. Ulili, 225 SCRA 601 (1993).
- [37] People vs. Lenantud, 352 SCRA 549 (2001); People vs. Alfeche, 294 SCRA 352 (1998).
- [38] People vs. Lenantud, supra.; People vs. Mores, 311 SCRA 342 (1999).
- [39] People vs. Baway, 350 SCRA 29 (2001); People vs. Villanueva, 339 SCRA 482 (2000).

[40] People vs. Baway, supra.

[41] See People vs. Digma, 345 SCRA 185 (2000); People vs. Castro, 196 SCRA 679 (1991).

[42] People vs. Baway, supra.

[43] People vs. Loyola, 351 SCRA 263 (2001); People vs. Fraga, 330 SCRA 669 (2000).

[44] People vs. Murillo, 352 SCRA 105 (2001).

[45] People vs. Tolentino, 352 SCRA 228 (2001); People vs. Rabang, Jr., 315 SCRA 451 (1999).

[46] People vs. Rapisora, 350 SCRA 299 (2001); People vs. Sabredo, 331 SCRA 663 (2000).

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