

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY BANELA Y ARCEGA, ACCUSED-APPELLANT.

G.R. No. 124973. January 18, 1999

Ponente: MELO, J.

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MELO, J.:

When a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. And so long as her testimony meets the test of credibility and unless the same is controverted by competent physical and testimonial evidence, the accused may be convicted on the basis thereof.

This principle guides the Court in resolving this appeal from the amended decision rendered on December 21, 1995 by the Honorable Augusto T. Parco, Presiding Judge of Branch 39 of the Regional Trial Court of the Fifth Judicial Region stationed in Daet, Camarines Norte, finding accused-appellant guilty of the crime of rape and disposing:

WHEREFORE, premises considered, finding Ricky Banela y Arcega guilty beyond reasonable doubt of the crime of rape which is defined and punished under Article 335 of the Revised Penal Code (prior to its amendment by RA 7659) and in the absence of any mitigating or aggravating circumstance, he is hereby sentenced to reclusion perpetua, to indemnify the offended party Marilou Alfonso, the sum of P50,000.00, and to pay the costs.

SO ORDERED.

(p. 33, Rollo.)

Accused-appellant's conviction for said crime arose from an Information reading as follows:

The undersigned Provincial Prosecutor upon complaint of the offended party and assisted by the Social Worker Officer Vilma Garcia hereby accuses RICKY BANELA Y ARCEGA of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code, committed as follows:

That on or about 12 o'clock midnight of October 7, 1993 at Market Tienda No. 3, Daet Public Market, municipality of Daet, province of Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused by using force and intimidation unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with one Marilou B. Alfonso, a girl of 14 years old against the will of the latter to her damage and prejudice.

CONTRARY TO LAW.

(p. 9, Rollo.)

The factual background of the imputed felony, as summarized by the Solicitor-General in the appellee's brief, is as follows:

The incident occurred on October 7, 1993...

Shortly before midnight Marilou, was asked by her father to pick up the latter's clothes in Barangay Mantagbac, Daet, Camarines Norte, after which they were to proceed to the latter's house in Moreno District, (p. 4, TSN, Oct. 21, 1994).

After getting the clothes, Marilou started on her way home. Along the route, she passed by Summer Place, a restaurant located in the Daet Public Market (p. 4, TSN, Oct. 21, 1994). She entered the restaurant and decided to stay a while to listen to her favorite music played in a jukebox (p. 6, TSN, Oct. 21, 1994). While enjoying the music, she noticed appellant, Norlito Cereno and two other men having a drinking spree inside the restaurant (p. 6, TSN, Oct. 21, 1994). After the tune ended, Marilou left Summer Place (p. 7, TSN, Oct. 21, 1994). She resumed her trek home, passing through the fruit stalls near the public market. Looking back, she saw appellant and his companions trailing her (pp. 7-8, TSN, Oct. 21, 1994). She quickened her pace. The men chased her and eventually caught up with her. Appellant accosted her and asked where she was going; to which she replied that she was going home (p. 8, TSN, Oct. 21, 1994). All of a sudden, appellant's companions grabbed her arms while appellant covered her mouth. They dragged her back to where she came from stopping right behind Summer Place (pp. 8-10, TSN, Oct. 21, 1994). Two of appellant's companions firmly held Marilou's arms. One of them forced Marilou to lie down on her back (p. 10, TSN, Oct. 21, 1994). Norlito Cereno then tore off the victim's red shirt and removed her white short pants, bra, and panty. Marilou cried and struggled with all her might to free herself but she was easily overpowered by brute force (pp. 11-12, TSN, Oct. 21, 1994). Norlito Cereno stripped and placed himself on top of Marilou (pp. 12-13, TSN, Oct. 21, 1994). As appellant held Marilou's legs, Norlito Cereno succeeded in having sexual intercourse with her (p. 12, TSN, Oct. 21, 1994). After Norlito had satisfied his lust, appellant took his turn and likewise had sexual intercourse with Marilou. He covered her mouth with his hand and threatened to kill her if she reported to the police (pp. 14-15, TSN, Oct. 21, 1994). After appellant, the third malefactor attempted to have sexual intercourse with Marilou but failed when several security guards on foot patrol arrived at the scene after hearing the victim's cries (p. 15, TSN, Oct. 21, 1994). Avoiding a confrontation, the culprits hurriedly fled into the dead of night (p. 15, TSN, Oct. 1, 1994).

The security guards found Marilou totally naked, writhing in pain and blood oozing from her lips (pp. 5 and 6, TSN, Dec. 9, 1994). They brought her to a stall nearby and gave her a piece of cloth to cover herself (p. 6, TSN, Dec. 9, 1994). When asked by the guards what happened to her, she responded that she was raped (p. 6, TSN, Dec. 9, 1994). One of the security guards proceeded to the police station to report the incident (p. 7, TSN, Dec. 9, 1994). SPO3 Salvador Bamba, PO3 Teresita Montoya, and SPO1 Corpuz arrived and brought Marilou to the police station. Afterwards, she was brought to the Camarines Norte Provincial Hospital for examination (p. 9, TSN, December 9, 1994).

Meanwhile, in their search for the culprits whom they believed were lurking in the vicinity of Zabala Street and Vinzons avenue, the police finally found a suspect in the person of Norlito Nazareno whom they brought to the police station for investigation (p. 10, TSN, Dec. 9, 1994).

Dr. Marcelito Abas conducted an examination on the victim at about 1:55 in the morning of October 8, 1993 (See Exhibit A and p. 5, TSN, Oct. 20, 1994). The findings are as follows:

“xxx

Laceration at the hymen with minimal fresh bleeding at 5&7 o'clock;

xxx

REMARKS: Complains of pain on the right zygomatic area.”

(Exhibits A, A-2, A-3)

(pp. 95-97, Rollo.)

Accused-appellant pleaded not guilty to the crime charged. He testified that on October 7, 1993, about 12 o'clock

midnight, he was at Magang, Daet, Camarines Norte where he slept in the house of his aunt, Araceli Villamor. He averred that he slept at 8 o'clock that evening and learned of the case only when policemen came and brought him to the police station of Daet, Camarines Norte as a suspect in the rape of Marilou. He declared that he knew Norlito Cereno, alias Norlito Nazareno, a bystander at Daet Centro. He alleged that he was being charged for rape and not Norlito Nazareno because the wife of Nazareno is a friend of Marilou (tsn, June 21, 1995, pp. 2-28). The alibi did not impress the trial court.

Hence, the instant appeal, anchored on the catch-all argument that his guilt has not been proven beyond reasonable doubt.

The arguments advanced in the appeal mainly revolve on the issue of credibility. It is contended that Marilou could not have possibly made any positive identification of her assailants since she was sexually abused in an unlighted place. Accused-appellant further claims that in her direct examination, Marilou positively identified accused-appellant as the person who raped her, whereas in her "Salaysay" executed immediately after the incident, she failed to name him.

It is doctrinally settled that the assessment of the credibility of witnesses and their testimony is a matter best undertaken by the trial court because of its unique opportunity to observe the witness firsthand and to note the demeanor, conduct, and attitude under grilling examination. A trial court's findings on the credibility of witnesses carry great weight and respect and will be sustained by the appellate courts unless the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case (People vs. Castillo, Jr., 275 SCRA 753 [1997]; People vs. Cogonon, 262 SCRA 693 [1996]; People vs. Cura, 240 SCRA 234 [1995]). In the instant case, we see no cogent reason to depart from this established rule as accused-appellant has failed to present any substantial evidence which would merit a reversal of the findings of the court below.

The fact that the crime was committed in a dark and unlighted place does not cast doubt on the complainant's positive identification of the culprits. Marilou was able to clearly establish that she was raped by accused-appellant since she actually saw him lying on top of her. She felt his penis inserted into her sexual organ which caused her pain. Moreover, the face of accused-appellant was in full view of Marilou and very near her while he was covering her mouth and warning her not to report the matter to the police. Recognition was easy for she had known accused-appellant for sometime because they are neighbors in Mantagbac, Daet, Camarines Norte (October 21, 1994, pp. 3-4, 14-15).

The alleged inconsistency between Marilou's sworn statement or "Salaysay", and her testimony in open court is more apparent than real, brought about by the way the questions to Marilou were phrased. In her "Salaysay", she declared:

T:

Sino ang inirereklamo mo?

S:

Yun pong dalawang lalaki na hindi ko naman kilala, subalit kung makikita ay aking silang makikilala.

(Record, p. 5; Rollo, p. 55).

On the other hand, the relevant portion of her testimony in court is as follows:

Q:

Miss Witness, do you know the accused in this case in the person of Ricky Banela?

WITNESS: Yes, sir. I know him, sir. He is a resident of Mantagbac.

Q: Why do you know him?

A: He is our neighbor.

Q: Where?

A: Near the 'ermita' (chapel of Mantagbac)

Q: If he is present inside the courtroom can you point him out?

A: Yes, sir.

Q: Look around and if he is present, go near him and point him out.

A:

This one, sir. (Witness pointed to a person who when asked gave the name Ricky Banela).

(tsn, October 21, 1994, pp. 3-4).

In recent cases, this Court had the occasion to rule that inconsistencies between testimony in open court and sworn statements given to investigators do not necessarily discredit the witness since ex-parte affidavits are almost always incomplete. Sworn statements are generally considered to be inferior to the testimony given in open court (*People vs. Lazaro*, 249 SCRA 234 [1995]; *People vs. Layno*, 264 SCRA 558 [1996]; *People vs. Pontilar, Jr.*, 275 SCRA 338 [1997]).

Further, it is an oft-repeated rule that when there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused or to falsely implicate him in the commission of a crime, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence (*People vs. Sotto*, 275 SCRA 191 [1997]; *People vs. Casil*, 241 SCRA 285 [1995]; *People vs. Tabao*, 240 SCRA 758 [1995]). In the case at bar, accused-appellant was not able to show any improper ulterior motive on the part of complainant to falsely incriminate him in such a serious offense. Indeed, her only motive can well be to bring before the bar of justice the person who had abused her.

Moreover, in view of the intrinsic nature of the crime of rape, oftentimes the only evidence that can be offered to prove the guilt of the perpetrator is the testimony of the offended woman herself. Thus, her testimony, standing alone can be made the basis of conviction if such testimony meets the test of credibility (*People vs. Adora*, 275 SCRA 441 [1997]; *People vs. Ching*, 240 SCRA 267 [1995]; *People vs. Sanchez*, 250 SCRA 14 [1995]).

We have consistently held that when a woman testifies that she has been raped, she says in effect all that is necessary to show that the rape has been committed, and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof (*People vs. Adora*, 275 SCRA 441 [1997]; *People vs. Tabao*, 240, SCRA 758 [1995]; *People vs. Segundo*, 228 SCRA 691 [1993]). This is true in the instant case where the trial court found that there is clear, convincing, and competent physical and testimonial evidence to support a finding of guilt beyond reasonable doubt against accused-appellant.

Accused-appellant's all too familiar and banal defense of alibi cum denial does not inspire the slightest belief or consideration. This Court has unfailingly upheld the doctrine that alibi and denial cannot prevail over the positive

identification of the accused as the perpetrator of the crime (People vs. Narca, 275 SCRA 696 [1997]; People vs. Paredes, 264 SCRA 578 [1996]). For alibi to prosper the accused must prove not only that he was somewhere else when the crime was committed but he must likewise demonstrate that it was be physically impossible for him to be at the scene of the crime at the time of its commission (People vs. Baniel, 275 SCRA 472 [1997]; People vs. Ballabare, 264 SCRA 350 [1996]). Accused-appellant has failed to establish that it was physically impossible for him to have been at the crime scene when it happened. In fact, accused-appellant was in the same municipality (Daet, Camarines Norte) where the rape occurred (tsn, June 21, 1995, p. 2).

Accused-appellant is charged with rape under Article 335 of the Revised Penal Code, which reads:

Art. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation.

x x x

The crime of rape shall be punished by reclusion perpetua.

Whenever 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.

x x x

However, at the time Marilou was raped on October 7, 1993, the death penalty had yet to be restored as Republic Act No. 7659 which revived the death penalty took effect only on January 1, 1994. Hence, the maximum penalty imposable on accused-appellant is reclusion perpetua.

Originally, Marilou had filed a complaint not only against accused-appellant Ricky Banela but also against Norlito Nazareno (Record, p. 3). However, during the preliminary examination conducted by the Municipal Trial Court of Daet, Marilou declared that it was only accused-appellant who sexually abused her. Thus, Norlito Nazareno was dropped from the complaint per Order dated October 14, 1993 of said MTC (Record, p. 11).

Finally, we find it opportune to take note of the new policy adopted by the Court in the case of People of the Phil. vs. Senen Prades (G.R. No. 127569, July 30, 1998), pertaining to the award of indemnity and damages. The Court declared in the aforesaid case that “the indemnification for the victim shall be in the increased amount of P75,000.00 if the crime of rape is committed or effectively qualified by any of the circumstance under which the death penalty is authorized by the applicable amendatory laws.” However, in the case at bar, the crime of rape was committed in 1993, or before the effectivity of Republic Act No. 7659, the mandatory law restoring the death penalty. Hence, the civil indemnity to be awarded to the offended party shall remain to be P50,000.00.

Likewise, as declared in Prades, moral damages may additionally be awarded to the victim without the need for pleading or proof of the basis thereof has heretofore been the practice, to wit:

The fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages are too obvious to still require the recital thereof at the trial of the victim, since the Court itself even assumes and acknowledges such agony on her part as a gauge of her credibility.

WHEREFORE, on the foregoing premises, the decision appealed from is hereby **AFFIRMED**, including the award of P50,000.00 as compensatory damages, with the **MODIFICATION** that accused-appellant Ricky Banela is ordered to pay the additional amount of P50,000.00 as moral damages. No special pronouncement is made as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Martinez, and Pardo, JJ., concur.

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