PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS TANAIL Y BORBE, ACCUSED-APPELLANT.

G.R. No. 125279. January 28, 2000

Ponente: PARDO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-125279/

PARDO, J.:

Accused Jesus Tanail y Borbe has appealed from the decision[1] of the Regional Trial Court, Bulacan, Branch 17, Malolos, finding him guilty beyond reasonable doubt of rape punished under Article 335 of the Revised Penal Code, and sentencing him to reclusion perpetua and to pay the victim Marites S. dela Cruz the sum of fifty thousand (P50,000.00) pesos, as moral damages and fifty thousand (P50,000.00) pesos, as exemplary damages.

On March 25, 1994, Bulacan Assistant Provincial Prosecutor Lucita E. Marcelo filed with the Regional Trial Court, Bulacan, Branch 17, Malolos, an information, on complaint of minor Marites S. dela Cruz, assisted by her mother Narcisa S. dela Cruz, charging Jesus Tanail y Borbe with rape, committed as follows:

> "That on or about the 5th day of October, 1993, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife, did then and there wilfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd designs, have carnal knowledge of the offended party, Marites S. dela Cruz against her will.
>
> "Contrary to law."[2]

On January 9, 1994, policemen of Malolos, Bulacan apprehended accused Jesus Tanail y Borbe. When arraigned on April 26, 1994, accused entered a plea of not guilty.[3] Trial ensued.

The antecedent facts are as follows:

Between 9:00 and 10:00 in the morning of October 5, 1993, while thirteen-year (13) old Marites S. dela Cruz was watching television inside their house at Ligas, Malolos, Bulacan, accused-appellant Jesus Tanail y Borbe, knocked at the door and requested that he be allowed to watch television. Marites was alone because her mother, Narcisa, was washing clothes at the Villapa residence in Guiguinto, Bulacan while her father, Rosendo was out in the field, farming. Since she was familiar with accused who was occupying a small room adjacent to the kitchen of their house, she opened the door and let him in.[4]

Once inside the house, accused Jesus Tanail immediately closed the door and pointed a kitchen knife at Marites. He took off her panties, tied her hands and feet, placed a rag inside her mouth and brought her inside her room.[5]

In her room, accused-appellant told Marites to kneel on top of the bed. He ordered her to bend with her chest touching the bed and had sexual intercourse with her in a "dog-style" manner. Marites was ordered to kneel on top of her bed, while the accused was behind her, standing. Her face was touching the bed and her buttocks were raised. In this position, the accused spread her legs and inserted his penis into her vagina.[6] Though Marites felt pain when the accused inserted his penis into her vagina, she could not shout because her mouth was gagged.[7]

After the sexual assault, accused Jesus Tanail untied Marites' hands and feet and threatened her that she would be killed if she told anyone about the incident. Out of fear, she did not tell her parents.

Marites was repeatedly raped by the accused thereafter.[8] It only stopped when her parents came to know about the rape sometime in January of the following year.

Narcisa S. dela Cruz, mother of the victim, was working at the Villapa residence in Masagana, Sta. Rita, Guiguinto, Bulacan on January 7, 1994 when her sister-in-law Viring fetched her because Marites was not feeling well. Marites was then tending the store of Viring in Plaridel, Bulacan. They immediately brought Marites to the County Hospital in Sabang, Plaridel, Bulacan where they learned that she was pregnant. When she confronted her daughter to ask who was responsible for her pregnancy, Marites told her that it was accused Jesus Tanail. Thereafter, they went to the Malolos police station and filed a complaint. [9]

Narcisa knew accused Jesus Tanail very well because he was renting the room adjoining the kitchen of their house, for which reason he was treated like a family member. She knew the accused to be married with two children, and his family was in Bicol.

On January 11, 1994, Marites was medically examined by Dr. Dominic Aguda of the National Bureau of Investigation, San Fernando, Pampanga. The genital examination revealed that the pubic hair was thick, the labia majora and labia minora or the lip-like portion of the outer covering was coaptated or covered up the opening of the vaginal canal and the fourchette or the opening of the vaginal canal was still tight. The hymen was thin and had an old lacerated wound at 2:00 and 10:00 o'clock.[10]

Dr. Aguda said that the laceration of the hymen could have been caused by the forcing of a hard object like an erect penis or a finger. The injury must have been inflicted a month or more before the examination was conducted and could have been the result of repeated sexual intercourse because the laceration was deep. When Marites underwent physical examination, she was 13 to 14 weeks heavy with child.[11] On May 3, 1994, Marites gave birth to a baby boy.

Accused Jesus Tanail testified that he knew Marites and her parents because he and his relative Nelson Tanail were renting a small room adjacent to the kitchen of the house of the victim's family. He first came to Malolos, Bulacan in 1991 and was employed as a seasonal farmhand, spraying chemicals on mango trees.[12]

Accused denied that he raped Marites on October 5, 1993. He had friendly relationship with the victim's family and was treated like a family member.[13]

Interposing the defense of alibi, accused Jesus Tanail said that at about 7:00 in the morning of October 5, 1993, he went to the house of Aling Puleng, a quack doctor whose residence is just a tricycle-ride away from the residence of the victim, also located at Ligas, Malolos, Bulacan. He went there for treatment because his body was covered with wounds caused by the chemicals he used in spraying mango trees. Because he had to be bathe with the concoction of the quack doctor several times that day, he stayed thereat and left at about 7:30 in the evening.[14]

On May 7, 1996, the trial court rendered decision finding accused Jesus Tanail y Borbe guilty of rape. The court a quo rejected the accused's defense of denial and alibi. It said that this could not prevail over the positive identification of the accused. The evidence presented by the prosecution strongly established that the rape was committed and the accused was the one who committed it. Since at the time the offense was committed on October 5, 1993 Republic Act 7659 was not yet effective, the trial court did not apply the penalty prescribed under Article 335, Revised Penal Code, as amended. The dispositive portion of the decision reads:

> "WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of Rape under Article 335 of the Revised Penal Code and hereby sentences him to suffer the penalty of

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

reclusion perpetua and to pay Marites de la Cruz the following amounts:

"1) P50,000.00 as moral damages and

"2) P50,000.00 as exemplary damages

"SO ORDERED.

"Malolos, Bulacan, April 25, 1996.

"(Sgd.) TERESITA V. DIAZ-BALDOS
J u d g e"[15]

On May 20, 1996, accused Jesus Tanail y Borbe filed a notice of appeal with the trial court.[16]

In this appeal, accused-appellant contends that the trial court erred in finding him guilty of rape; that the principal witness, the victim, is not credible because her testimony is replete with inconsistencies. If she was a virgin when she was first raped on October 5, 1993, why was there no blood that oozed from her vagina? Accused could not have raped the victim if her feet were tied together. Lastly, he could not have fathered Marites' child because she gave birth on May 3, 1994, only seven (7) months after the alleged rape.

On the other hand, the Solicitor General maintains that the prosecution was able to prove the commission of rape beyond reasonable doubt and urged affirmation of the trial court's decision in toto.[17]

In scrutinizing the testimony of witnesses, decided cases have established the following doctrinal guidelines:

"First, the appellate court will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstances of weight and substance that would have affected the result of the case.

"Second, the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect and even finality since it had the opportunity to examine their demeanor as they testified on the witness stand; and

"Third, a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness."[18]

Guided by these principles, we see no reason to disturb the findings of the trial court. Contrary to the contention of the accused-appellant that inconsistencies materially affected the credibility of the witnesses, we rather view the minor inconsistencies as indicative of truth. Marites testified with candor and in a straightforward manner. In between sobs and tears, she recounted how she had been sexually abused by the accused in a "dog-style manner." The Court notes that the cross-examination of the victim had to be re- scheduled on several occasions because the victim was too emotionally disturbed to answer the questions propounded to her.[19]

As to the three-month delay in reporting the incident to her relatives, Marites explained that she was cowed by fear:

"ATTY. DELA CRUZ:

Q:

Now, after the alleged incident, what did you do on October 5, 1993 ?

A:

None, sir.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

Q:

But in the afternoon, what did you do?

A:

None also, sir.

Q:

You mean to say you just stayed in your house?

A:

Yes, sir.

Q:

You did not tell to [sic] anybody what happened to you on that date?

A:

No, sir.

Q:

Were you afraid or did you like what was [sic] happened to you?

A:

I was threatened that he will kill me if I will tell anybody of that, sir.

Q:

Have you threatened [sic] already by anybody?

A:

No, sir.

Q:

So, you have not experienced any before that alleged incident?

A:

I was fearful because of that threat, sir."[20]

"It is not uncommon for young girls to conceal for some time the assaults on their virtue because of the rapist's threats on their lives."[21] "Delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained."[22]

"In any case, the failure of the victim to immediately report a rape is not an indication of a fabricated charge."[23] The lapse of three (3) months prior to the criminal accusation for rape is not sufficient to show that the charge of rape is doubtful. In People vs. Coloma,[24] the Court declared that even a delay of eight (8) years is not a sign of fabrication.[25]

As to allegation that it was physically impossible for accused Jesus Tanail to have raped Marites in light of her testimony that her feet were tied together, we find this untenable. Marites demonstrated in court how she had been

sexually abused:

"Q:

And can you tell us, can you demonstrate before this Court the exact position, your position and that of the accused when the accused at that time was inserting his penis into your vagina?

"A:

Yes, sir.

"FISCAL:

May we make it of record, Your Honor, that the witness step down from the witness stand and assumed in kneeling position (demonstrating the position) and the accused was at her back at that time the witness was on top of her bed and the accused was down on the floor.

"Q:

How did the accused perform the assault?

"A:

He spread my legs, sir.

" Q:

How did the accused spread your legs when you were tied?

"A:

My face was touching the bed, sir.

(Witness demonstrating again how it was done)

"FISCAL:

"We make it of record, Your Honor, that the head of the witness was on top of the floor and her buttocks was raised."[26]

"A girl of such age as the victim would not concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience, not to mention the trauma, of a public trial, unless she was in fact raped."[27]

Accused-appellant pointed out that contrary to her claim that the October 5, 1993 incident was the first time she had sexual intercourse, no blood oozed from her vagina. This is absolutely irrelevant. "Any prior sexual encounter (other than that with the alleged rapist) which could have resulted in hymenal lacerations is entirely immaterial, for virginity is not an element of rape under Article 335 of the Revised Penal Code."[28]

Accused-appellant would make an issue of the fact that Marites became pregnant and gave birth after seven (7) months, two (2) months short of the normal nine-month conception period. Thus, he claims he could not have sired her child. This contention is untenable. It is not unusual to give birth to a child prematurely.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The defense of alibi raised by accused-appellant to escape conviction for rape is also untenable. He claims that on October 5, 1993, he was at the house of a quack doctor seeking medical treatment.

For the defense of alibi to prosper, it "must be convincing enough to preclude any doubt on the physical impossibility of the presence of the accused at the locus criminis at the time of the incident."[29] Considering that the house of the quack doctor is just a tricycle-ride away from the house of the victim, it is not physically impossible for accused-appellant to have left the house of the quack doctor to rape the victim. The house of the victim and that of the alleged quack doctor are both located at Ligas, Malolos, Bulacan.

"As a rule, alibi is viewed with suspicion and received with caution, not only because it is inherently weak and unreliable, but also because it can easily be fabricated."[30] "Thus, as between a categorical testimony that has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail."[31]

Under Article 335 of the Revised Penal Code the crime of rape is punishable with reclusion perpetua to death committed with the use of a deadly weapon. In the instant case, the accused threatened the victim with a knife.

However, this penalty could not be imposed against accused-appellant because at the time the crime was committed, the 1987 Constitution proscribing the imposition of the death penalty was in effect. Republic Act No. 7659, imposing the death penalty, became effective only on December 31, 1993. Hence, the trial court properly imposed on accused-appellant the penalty of reclusion perpetua.

However, the monetary awards granted by the trial court should be modified. "Pursuant to prevailing jurisprudence indemnity ex delicto should be P50,000.00 without need of further proof, while moral damages for the pain and injury suffered by the victim should always be paid in the amount of P50,000.00."[32] The award of P50,000.00 as exemplary damages should be considered as civil indemnity ex delicto.

All told, the prosecution ably proved the guilt of the accused-appellant for rape beyond reasonable doubt. We affirm his conviction.

WHEREFORE, the Court AFFIRMS the appealed decision with MODIFICATION. The Court finds accused JESUS TANAIL y BORBE guilty beyond reasonable doubt of rape committed against Marites S. dela Cruz, defined and penalized under Article 335 of the Revised Penal Code, and sentences him to reclusion perpetua, with all the accessory penalties of the law, and to indemnify the victim Marites S. de la Cruz in the amount of P50,000.00 as civil indemnity, plus P50,000.00 moral damages.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

---

[1] In Criminal Case No. 1045, Decision dated April 25, 1996, Judge Teresita V. Diaz-Baldoz, presiding.

[2] Information, Rollo, p. 5.

[3] Trial Court Records, p. 11.

[4] TSN, August 11, 1994, pp. 117-121.

[5] TSN, ibid, pp. 122-123.

[6] TSN, ibid, p. 131.

[7] TSN, ibid, p. 126.

[8] TSN, ibid, p. 127.

[9] TSN, July 21, 1994, pp. 99-102.

[10] Exhibit E, Trial Court Records, p. 68.

[11] TSN, February 23, 1995, pp. 233-235.

[12] TSN, December 5, 1995, pp. 262-266.

[13] TSN, ibid, p. 268.

[14] TSN, ibid, pp. 272-274.

[15] Trial Court Decision, Rollo, p. 25.

[16] Notice of Appeal, Rollo, p. 27.

[17] Appellee's Brief, Rollo, pp. 67-83.

[18] People vs. Vergilio Reyes y Loresca, G. R. No. 113781, September 30, 1999, citing People vs. Bañago, G. R. No. 128384, June 29, 1999.

[19] Trial Court Records, p. 41.

[20] TSN, August 11, 1994, pp. 140-141.

[21] People vs. Ernesto Sacapaño, G. R. No. 130525, September 3, 1999.

[22] People vs. Efren Narido, G. R. No. 132058, October 1, 1999.

[23] People vs. Wilson Batoon, G. R. No. 134194, October 26, 1999.

[24] 222 SCRA 255, 263 [1993].

[25] People vs. Efren Narido, supra.

[26] TSN, August 11, 1994, p. 131.

[27] People vs. Wilson Batoon, supra.

[28] People vs. Ernesto Sacapaño, supra.

[29] People vs. Dominador Tabion, G. R. No. 132715, October 20, 1999.

[30] People vs. Dominador Tabion, supra.

[31] People vs. Efren Narido, supra..

[32] People vs. Vergilio Reyes y Loresca, supra, note 18.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.