

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL FUERTES Y OCAMPO, ACCUSED-APPELLANT.

G.R. No. 126285. September 29, 1998

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Rodel O. Fuertes was charged in Criminal Case No. 370-94 of the Regional Trial Court of Olongapo City, Branch 72,[1] with the crime of rape committed against a minor after the effectivity of Republic Act No. 7659.

The information therefor alleges:

"That on or about the tenth (10) day of July 1994, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Jacklyn Lee Anas, a minor below 12 years old, against the latter's will and consent.

CONTRARY TO LAW.[2]

At his arraignment, appellant pleaded not guilty to the indictment filed against him.[3] After due trial, the court a quo rendered a decision[4] on April 16, 1996 finding appellant guilty beyond reasonable doubt as charged, sentencing him to suffer "imprisonment of thirty (30) years and one (1) day to forty (40) years of reclusion perpetua," and ordering him to indemnify the offended party in the sum of P50,000.00 as moral damages and to pay the costs of the criminal suit.

In limine, we take this opportunity to call the attention of the judicial and prosecutorial authorities of the need for greater prudence in the drafting of accusatory pleadings by being more accurate in the terminology employed therein. Here, for instance, the indictee is charged with raping "a minor below 12 years old." Aside from the grammatical lapse, the phrase referring to a minor below twelve years of age could obviously include a minor below seven years of age. Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, when the victim is a child less than seven years of age, the death penalty shall be imposed; hence the penalty of reclusion perpetua imposable on the rapist of a minor under said amended provision applies only where the victim is seven years old or over but under twelve years of age. While the imprecision in the present information does not constitute a reversible error, since the same is correctable by a bill of particulars, that ambiguity can spawn delay in the normal course of the proceedings if technical but dilatory objections are resorted to under such an opening therefor.

Coming back to the case at bar, the prosecution tried to prove the criminal liability of appellant through the testimonies of Marites Anas,[5] Jacklyn Lee Anas[6] and Dr. Mary Ann Abad,[7] supplemented by relevant documentary evidence. Anthologized from the evidence thus presented by the People, the case presents the factual antecedents which follow.

At the time of the incident, the victim in this sordid drama, Jacklyn, was a forth grade student and was almost ten years old, having been born on September 9, 1984. On the night of July 10, 1994, she was sleeping alone on the floor inside their rented house at Apitong Street, Purok 6, Old Cabalan, Olongapo City. Her mother, Marites Anas, left earlier in the afternoon to go to work at the "Iron Eagle" as a pool watcher. The house wherein Jacklyn and Marites lived is owned by one Mila Pamugas who lives in the house adjacent thereto.

In the middle of her sleep, Jacklyn woke up when she became aware of the presence of someone crawling near her. The trespasser, who was already naked at this point, kissed Jacklyn on the neck and went on top of her. Thereafter, the intruder forcefully removed her clothes and inserted his penis into her vagina. Jacklyn cried and resisted but did not call for help as her molester warned her not to shout, otherwise he would kill her.

After a while, the assailant lay beside Jacklyn and asked her if she knows him. Jacklyn recognized her attacker as herein appellant whom she had seen drinking with the sons of Mila Pamugas three times before the incident. After Jacklyn answered appellant in the affirmative, appellant gave his name to Jacklyn and left.

On the following day, Marites arrived at around six thirty in the morning and saw her naked and taciturn daughter. When Jacklyn did not answer her repeated queries, Marites examined her daughter and found kiss marks[8] on the latter's neck. After further and persistent questioning from Marites, Jacklyn finally told her mother that Rodel Fuertes raped her. Marites then checked Jacklyn's lower body and discovered blood stains and pubic hair on her daughter's panty.

Marites immediately went to their barangay captain to report the incident and, upon advice of the latter, she brought her daughter to the Olongapo City General Hospital for physical examination. The medico-legal certificate[9] thereafter issued by Dr. Abad pertinently disclosed the following findings:

NECK: (+) erythema posterior neck 0.5 x 1 cm.
lateral 0.5 x 1 cm.

GENITALIA: normal looking external genitalia, hymen not intact, Negative (-) pubic hair, (+) multiple fresh lacerations at 2, 3, 5, 7, 10 and 11 o'clock positions.

(+) pubic hair and blood stained - panty

Smears show occasional gram (+) cocci singly in pairs and few puscells
Negative (-) spermatozoa

Dr. Abad later explained on the witness stand that the lacerations she found on Jacklyn's hymen could have been caused by the insertion of a male organ into the latter's vagina.

From the hospital, mother and daughter went to the police headquarters to give their respective statements[10] surrounding the incident and to file a complaint against appellant. The records show that Jacklyn was then only nine years and ten months old[11] when she was sexually molested.

In answer to the charge against him, appellant[12] claimed before the lower court that he was somewhere else at the time of the commission of the rape. He testified that he was in his residence located at 1938 National Highway, Old Cabalan, Olongapo City the whole evening of July 10, 1994. Allegedly with him at the time was one of his brothers. Appellant waited for his wife to arrive from work and when she came home at around nine o'clock in the evening, they ate their dinner.

Appellant stayed in the house until he had to go to another brother at 6 Arriola Street, Gordon Heights, Olongapo City to ask for money for his medicine. He left his house at around seven thirty in the morning of July 11, 1994. Thereafter, while he was talking with his brother, Napoleon, in front of the latter's house, a policeman and a purok

leader arrived and brought appellant to the police station.

Appellant declared on the witness stand that he had lived at 4-A Apitong Street, Old Cabalan, Olongapo City from 1972 to 1989. While residing at the said address, appellant befriended the three sons of Mila. Even after he had transferred to his new dwelling at the National Highway, appellant would still visit the sons of Mila to drink softdrinks with them. He admitted that he only have to take one jeepney ride to reach Apitong Street from the National Highway. The commute takes about fifteen to twenty minutes.

To corroborate appellant's testimony regarding his arrest, the defense presented Napoleon Fuertes.[13] This witness declared that in the morning of July 10, 1994, two people arrived at his house to arrest his brother. One of them was a male barangay tanod while the other was a female who according to Napoleon, is the herein complainant. Even during his cross-examination, Napoleon asserted that it was on that date, July 10, that his brother was arrested.

In this appeal, appellant assigns three errors[14] on the part of the lower court in convicting him of rape. Simply stated, appellant faults the trial court for concluding that he had been properly identified as the culprit and for disregarding his alibi.

After a careful study of the records, we are inclined to agree with the trial court that it was appellant who raped Jacklyn in the night of July 10, 1994. The principal witness for the prosecution clearly established, without doubt, the identity and guilt of appellant, Jacklyn, on her part, had enough time and opportunity to study the facial and physical features of her assailant.

During the rape, Jacklyn was as close to appellant as is physically possible. As we have heretofore, held a man and a woman cannot be physically closer to each other than during the sexual act.[15] This propinquity gave Jacklyn the opportunity to completely look at the face and other bodily attributes of appellant. In addition, instead of leaving immediately after satisfying his lust, appellant took his time by asking Jacklyn if she knows him. Jacklyn consequently had ample time and opportunity to ascertain the identity of appellant. These, coupled with Jacklyn's prior observation of appellant drinking with the Pamugas brothers, convince us that Jacklyn could not have been mistaken as to the identity of appellant.

Judicial experience shows that it is the natural reaction of victims of criminal violence to strive to observe the looks and faces of their assailants and recall the manner in which the crime was committed. Most often, the face and body movements of the assailants create a lasting impression on the victims which cannot be easily erased from their memories.[16]

It must be stressed that there was no showing that Jacklyn and her mother Marites had any improper or self-seeking motive to incriminate appellant in the present charge. Appellant himself stated that he did not know Jacklyn and Marites prior to the incident.[17] Since no ill motive could be attributed to Jacklyn for imputing such a grave offense against appellant, her identification of the latter should be given full faith and credit.[18]

We also note that Jacklyn's testimony was given in a simple and straightforward manner, indicating sincerity in the narration of events of the incident and veracity as to what actually happened. This conclusion of ours is based on the principle that a witness who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent is a credible witness.[19]

We find it unnecessary to interfere with the trial court's judgment on the trustworthiness of Jacklyn's testimony. There is nothing on record which might have been overlooked or misapprehended by the court a quo in its evaluation of the testimonies of witnesses. Without the need for citing authorities to that effect, we repeat the doctrinal rule that findings of trial courts are received on appeal with the highest respect because such courts have

direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not.

Likewise, we find no reason to overturn the conclusion of the trial court with respect to the alibi proffered by appellant. It is elemental that for alibi to prosper, the requirements of time and place must be strictly met.[20] This means that the accused must not only prove his presence at another place at the time of the commission of the offense but also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time.[21]

Appellant's alibi does not preclude his presence at the locus criminis. Considering that Apitong Street can be reached by a single jeepney ride from the National Highway within fifteen to twenty minutes, it was not physically impossible for appellant to have been at the situs of the rape when the same was committed.

We are not even convinced that appellant was at his residence at the National Highway at the time of the commission of the offense. Only appellant supported his own theory of alibi. Such self-serving declaration cannot prevail over the positive assertion of the complaining witness who clearly placed appellant at the scene of the crime at the time of the rape.[22] And, while he claimed that his brother and wife were with him on the night in question, they were not presented in court to corroborate his defense of alibi.

Already a weak defense, alibi becomes even weaker by reason of the failure of the defense to present any corroboration.[23] It is essential that credible and tangible proof of physical impossibility for the accused to be at the scene of the crime be presented to establish an acceptable alibi.[24] We find none in this particular case.

In sum, alibi cannot be sustained where it is not only without credible corroboration, but also where it does not, on its face, demonstrate the physical impossibility of the accused's presence at the place and time of the commission of the crime.[25] Time and time again, we have ruled that the defense of alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime.[26] Since appellant was positively identified by the victim of the rape herself, whom we find to have harbored no vindictive feelings against him, appellant's defense of alibi must fail.[27]

We have held that, notwithstanding the provision of Republic Act No. 7659 specifying the duration of reclusion perpetua from 20 years and 1 day to 40 years, reclusion perpetua remains as an indivisible penalty without minimum, medium and maximum periods even after the operation of the law on December 31, 1997.[28] Republic Act No. 7659 simply restated existing jurisprudence when it fixed the duration of reclusion perpetua at twenty years and one day to forty years, but it did not intend, through such statement of its duration, to alter its original nature and classification as an indivisible penalty.

We also note that the trial court categorized its award of P50,000.00 to Jacklyn as moral damages. This is an inappropriate designation as the automatic award of P50,000.00 to rape victims refers to compensatory or actual damages.[29] Be that as it may, appellant is still liable to Jacklyn for moral damages. Although there is nothing in the records indicating the mental and physical sufferings of complainant after the rape, an additional award of moral damages is justified under our disposition in *People vs. Prades*,[30] holding that moral damages may be awarded to victims of rape notwithstanding the absence of proof of the basis for its award.

WHEREFORE, the judgment of the lower court convicting accused-appellant Rodel O. Fuertes of the crime of simple rape is hereby **AFFIRMED**, with the **MODIFICATION** that appellant shall serve the indivisible penalty of reclusion perpetua, or imprisonment from twenty years and one day to forty years, in accordance with the provisions of Article 27 of the Revised Penal Code, and pay the additional amount of P50,000.00 as moral damages to Jacklyn Lee Anas. The amount of P50,000.00 awarded to Jacklyn by the court a quo is maintained but should be considered as actual or compensatory damages. Costs against appellant.

SO ORDERED.

Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Martinez, Quisumbing and Purisima, JJ., concur.

Narvasa, C.J., and Mendoza, J., on official leave.

[1] Judge Eliodoro G. Ubiadas, presiding.

[2] Original Record, 1.

[3] Ibid., 12.

[4] Ibid., 138-151.

[5] TSN, August 3, 1994, 3-18.

[6] Ibid., February 20, 1995, 3-18; February 27, 1995, 2-14.

[7] Ibid., September 5, 1994, 3-11; March 13, 1995, 3-8.

[8] Exhibit B, Original Record, 72-A.

[9] Exhibit C, Ibid., 73.

[10] Exhibit D (for Marites), Original Record, 74; Exhibit E (for Jacklyn), Original Record, 75.

[11] Exhibit A, Ibid., 72.

[12] TSN, August 14, 5-25; November 13, 1995, 2-17.

[13] Ibid., December 11, 1995, 3-7.

[14] Appellant's Brief, 1; Rollo, 44.

[15] See *People vs. Castañeda*, G.R. No. 114972, January 24, 1996, 252 SCRA 247.

[16] *People vs. Dolar, et al.*, G.R. No. 100805, March 24, 1994, 231 SCRA 414.

[17] TSN, November 17, 1995, 7.

[18] See *People vs. Paule*, G.R. Nos. 118168-70, September 11, 1996, 261 SCRA 649.

[19] *People vs. Rosare*, G.R. No. 118823, November 19, 1996, 264 SCRA 398.

[20] *People vs. Tazo et al.*, G.R. Nos. 118099-100, 260 SCRA 816.

[21] *People vs. Alcantara, et al.*, G.R. Nos. 112858-59, March 6, 1996, 254 SCRA 384.

[22] *People vs. De Castro, et al.*, G.R. No. 98061, January 25, 1996, 252 SCRA 341.

[23] *People vs. Malimit*, G.R. No. 109775, November 14, 1996, 264 SCRA 615.

[24] *People vs. Paynor*, G.R. 116222, September 9, 1996, 261 SCRA 615.

[25] *People vs. Aliposa, et al.*, G.R. 97935 October 23, 1996, 263 SCRA 471.

[26] *People vs. Obzunar, et al.*, G.R. No. 92153, December 16, 1996, 265 SCRA 547.

[27] See *People vs. Cañada*, G.R. No. 112176, February 6, 1996, 253 SCRA 277.

[28] People vs. Gementiza, G.R. No. 123151, January 29, 1998.

[29] People vs. Victor, G.R. No. 127903, July 9, 1998.

[30] G.R. No. 127569, July 30, 1998.

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