

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONRADO CABANA @ RANDY, ACCUSED-APPELLANT.

G.R. No. 127124. May 09, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision dated August 30, 1996 of the Regional Trial Court, Branch 76, San Mateo, Rizal,[1] finding accused Conrado Cabana guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, and to indemnify the complainant Zoraida Cabbah in the amount of thirty thousand pesos.

Accused Conrado Cabana @ Randy was charged with the crime of rape in an Information[2] dated October 13, 1994 which reads:

"That on or about the 22nd day of May 1994 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with a 16-year old girl, Zoraida Cabbah y dela Torre.

Contrary to Law."

Upon his arraignment, accused duly assisted by the counsel de oficio, Atty. Regino Garillo, entered a plea of not guilty.[3] Trial on the merits proceeded.

The prosecution presented the victim herself, Zoraida Cabbah, who testified that she knew accused Conrado Cabana being the second husband of her mother.[4] In 1994, she was residing at 37 Batuhan Street, Ampid, San Mateo, Rizal with her mother, step-father Cabana and her other siblings. In the evening of May 22, 1994, she was sleeping alone in her bed when she felt that somebody was touching her body. When she woke up she saw the accused undressing her.[5] She then fought back by kicking him and boxing his chest but the accused was just laughing at her and held her hands.[6] Accused then undressed himself and while he was inserting his organ to her organ, she was moving sideways but the accused was still able to penetrate her vagina and she felt so much pain[7] and blood came out from her private part.[8] She knew that the accused was the one who assaulted her because in the past, the accused would always touch her even during daytime.[9] On that fateful night, she was alone and that accused was the only one who later arrived in their house. After the incident, the accused gave her money and then left her. The following morning, May 23, she packed her things and went to the house of her aunt's friend named Jenny in Batangas and confided the incident to her who asked why she did not tell the incident to her mother.[10] On August 26, 1994, accompanied by her mother, Luzviminda dela Torre, she went to the CIS Provincial Office, Cainta, Rizal, and gave her statement on the incident. She signed the statement with the conformity of her mother which was marked as Exhibits "A" with sub-markings.[11] She only executed the sinumpaang salaysay on August 26, 1994 because she ran away from home and stayed with Jenny in Batangas for two months.[12] She confirmed having appeared before the PNP-CIS for examination as a result of which a

medico-legal certificate was issued. She likewise confirmed her appearance before the CIS where she filed her complaint as well as the criminal complaint which she signed duly assisted by her mother.[13]

Crime Investigator Oscar Coballes, Jr of the Rizal PNP-CIS, testified that he conducted the investigation of the complaint filed by Zoraida Cabbah against Conrado Cabana on August 26, 1994 and filed the case with the Municipal Trial Court, San Mateo, Rizal.[14] From his investigation, he learned that in the evening of May 22, 1994, while the complainant's mother was not at home as she was attending to the complainant's step-brother who was confined at the hospital, accused Conrado Cabana raped Zoraida Cabbah.[15] He reduced the complainant's testimony as well as the statement given by the complainant's mother into writing.[16]

Sr. Inspector Jesusa Nieves Vergara, medical officer of the PNP Crime Laboratory Service, Camp Crame since 1990, testified that on August 22, 1994, she performed physical examination on the victim to determine the physical signs of sexual abuse. She testified that the examination was composed of three parts; the first part of the examination was the examination of the whole body of the victim where she found an injury in the form of contusion on the sternal region or the center of the chest; and the other pertinent findings are those based on the examination of the genital or the sex organ revealing abrasion on the posterior fourchette where the labia minora or the inner lips unite posteriorly; She also found healed laceration on her hymen positioned at 3', 6' and 9 o'clock.[17] These findings were reduced into writing as medico legal report no. M-1198-94.[18] She said that the contusion at the external region of the victim's body could have been caused by the application of blunt force which could be in the form of a fist blow.[19] She explained that the lacerations in the victim's genital could have been caused by a forcible entry of a hard object.[20] She said that the lacerations were already healed meaning more than seven days prior to the examination had already lapsed when the injuries were sustained, which is compatible with the victim's allegation that she was sexually molested a long time prior to the examination.[21]

On the other hand, defense presented Luzviminda dela Torre, the mother of the victim, who testified that on May 22, 1994, she went to Caloocan BJ and P and came home at around 9:00 to 10:00 P.M. while the accused arrived home after driving his taxi at around 12:00 midnight to 1:00 A.M. of May 23, 1994.[22] Accused then slept beside her while Zoraida and her other children were sleeping on the other bed, the distance of which from their bed would allow a person to pass through.[23] She intimated that accused slept up to 4:00 A.M. and then went out to drive his taxi again. While her children was still asleep, she (Luzviminda) left the house at 8:30 A.M. and went to BJ & P.[24] When she came back at around 2:30 P.M., one of her daughters handed her a letter wherein she learned that Zoraida left their house and said not to look for her anymore as she had a problem.[25] On June 30, 1994, when Zoraida came back, she asked about her problem but Zoraida did not reply, so she just brought Zoraida to her sister's house in Camp Crame and since then Zoraida would visit them once or twice a week.[26] When Zoraida came to their house for a visit on August 21, 1994, she was sick and while she was resting, the accused arrived and when he saw Zoraida, he kicked and slapped her.[27] She went to PCC Camp Crame and reported the incident of physical injuries and acts of lasciviousness committed against her daughter by the accused. While Zoraida was being investigated in Camp Crame, she (Luzviminda) was outside the CIS office and after the investigation, she was called to affix her signature on the document without being made aware that the statement of Zoraida contained therein was already accusing Conrado Cabana of rape.[28] She signed the document not knowing the contents thereof because she was told that if she will not sign the document, she will be included in the complaint.[29] She also testified that her daughter executed an affidavit of desistance on July 5, 1995 which she and her daughter signed which they tried to give Fiscal Manodon who refused to accept it.[30]

Accused-appellant Conrado Cabana took the witness stand and testified that on May 21, 1994, he drove his taxi for 24 hours and returned home between 12:00 midnight to 1:00 A.M. of May 22, 1994, and then slept with Luzviminda dela Torre in their room.[31] Zoraida with her other siblings were sleeping in the other room which

was about two (2) arms length away from their room.[32] At around 4:00 A.M. of May 22, 1994, he drove his taxi again and later came back to their house and saw Luzviminda and his other children while Zoraida already went to school. He testified that from what he heard from Zoraida's testimony, she never said that he abused her but that he only hurt her on May 22, 1994.[33] He said that he scolded Zoraida because she ran away from home and when she answered back, he slapped her. He then had an argument with Luzviminda and the latter together with Zoraida decided to go home at Camp Crame.[34] He brought his other children to his mother's house so there will be someone to take care of them. He stated that they had never been together since the time Zoraida and Luzviminda left and stayed at Camp Crame.[35] He intimated that after Luzviminda called him up at his Bicutan office, he was arrested by CIS agents who arrived together with Luzviminda and he was brought to Karangalan Detachment.[36] He suggested that the case was filed against him because he often scolded Zoraida who frequently went out of their house.[37]

Zoraida Cabbah was once again called to the witness stand by the defense counsel as a hostile witness. She identified the affidavit of desistance (sinumpaang salaysay ng pag-uurong ng demanda) which she executed on July 5, 1995.[38] She said that this affidavit was not signed by the trial prosecutor because she was told that the other prosecutor should also be present.[39] The statement was already prepared before she testified on July 19, 1995. She reaffirmed and confirmed the contents of her affidavit of desistance and asked that her testimony of rape be withdrawn.[40]

On August 30, 1996, the trial court rendered its assailed decision finding accused guilty of the crime of rape. The trial court rationalized:[41]

"Complainant's testimony given in Court, nevertheless, has not been impeached. It is simple and straightforward, unshaken by the cross examination, and unflawed by any material inconsistency. It was voluntary as acknowledged even by complainant's mother herself. As such, it deserves credit.

Based on said testimony, the crime of rape was committed, there having been a penetration of complainant's private part. Even the slightest penetration consummates the crime of rape.

That herein accused was the person responsible for the rape is beyond doubt, his positive identification having been made by the complainant.

Moreover, complainant's allegations with respect to the said sexual assault are consistent with, as they find support in the findings of the medico-legal officer who examined her (complainant) and found the healed lacerations in her hymen which could have been caused by a forcible entry of a hard object, and which are, according to the doctor, compatible with the victim's allegations that she was sexually molested long time prior to the examination. Hence, the fact that complainant's examination was made approximately three months after the alleged date of the rape, would not negate nor render doubtful complainant's claim of rape.

Neither has complainant's testimony given in court been weakened by her affidavit of desistance, which appears to have been executed under questionable circumstances. Investigator Coballes, Jr. alleged that complainant Zoraida told him that her mother was "makulit" so she will just desist. There is a strong probability that Zoraida did make that statement, as she had the opportunity to do so, her mother having admitted the fact that it was only Zoraida who was investigated at the CIS office.

Notably moreover, the affidavit of desistance was neither accepted nor signed by the trial prosecutor, an indicia of the Prosecutor's doubt on the veracity thereof and /or voluntariness of the execution thereof.

At any rate, the affidavit of desistance does not contain statements retracting and/or belying the earlier statement of complainant with respect to the rape. It simply contains the manifestation that she is no longer interested in

further pursuing the case against the accused Cabana without a tenable reason being given therefor.

Accused's defense is, on the other hand, undeniably weak. He admitted having been in their house the whole day of May 22, 1994, the date of the alleged rape. He alleged that he slept with his wife (complainant's mother) in their room while complainant slept in the next room which is 2 arms length, more or less, from their room. This is, however, belied by his own witness, complainant's mother, who alleged that complainant slept on the other bed beside their bed, with only a space between the two beds. Finally, accused' claim that he is now prosecuted for rape because he had scolded complainant who frequently left their house (naglalayas), is lame, to say the least. Competent evidence supporting complainant's allegations, as earlier noted, would belie any insinuation of concoction on complainant's part."

In this appeal, accused-appellant argues that the trial court erred in finding him guilty beyond reasonable doubt of the crime of rape.

Appellant contends that the trial court erred in finding that complainant Zoraida Cabbah positively identified him as the person who raped her saying that Zoraida's testimony varied on most vital points. He cites the testimony of Zoraida in the direct examination where she said that she was able to recognize the accused because he was the only one who later arrived in their house that fateful night; however, on cross examination, she said that she was asleep when he arrived but was awakened when he was already touching her. Thus it is argued that such contradiction does not refer to trivial matters but as to the identity of the accused himself, which detracts from the complainant's overall credibility. He further claims that if indeed the complainant was raped, it could have been another person because the room where she was allegedly raped was not lighted and she only considered the big built and the voice of the accused in identifying him as the perpetrator. Appellant claims that since he was not positively identified, Zoraida's testimony cannot be considered to be credible.

The Solicitor General recommends the affirmance of the judgment with the modification that the indemnity be increased from P30,000.00 to P50,000.00. He argues that Zoraida positively identified the accused as the one who raped her as she was fully awake when appellant started to touch her whole body and that she was certain that it was appellant who was touching her because she had been previously doing that to her. Anent the defense of alibi, it is pointed out that the accused testified that on that fateful night, he slept with his wife in their room which was about 2 arms length away from where victim Zoraida was sleeping, thus the accused was not able to prove that it was physically impossible for him to be at their house when the crime of rape was committed.

We affirm the conviction.

The main issue centers on the assessment of the credibility of the prosecution witness, Zoraida Cabbah.

It is well settled that in crimes against chastity, the testimony of the offended party should not be received with precipitate credulity.[42] The reason is because such charges are fairly easy to make and difficult to defend by the accused party who may be innocent.[43] Thus, we require proof beyond reasonable doubt to convict but it does not mean such degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[44] Since the participants are usually the only witnesses in crimes of this nature, the conviction or acquittal of the accused would virtually depend on the credibility of the complainant's testimony.[45] If found credible, the lone declaration of facts given by the offended party would be sufficient to sustain a conviction.[46]

The trial court gave full faith and credence to the testimony of victim Zoraida Cabbah which it found to be simple and straightforward in her narration of the incident. We find no reason to disturb this finding. As consistently held by the Court, the trial judge's evaluation of the testimony of a witness is generally accorded not only the highest

respect, but also finality, unless some weighty circumstance has been ignored or misunderstood which could change the result. Having had the direct opportunity to observe the witness on the stand, the trial judge was in a vantage position to assess her demeanor, and to determine if she was telling the truth or not.[47]

The alleged inconsistency in the testimony of Zoraida as to whether she was awake or not when the accused arrived in their house refers only to a minor detail which does not impair the credibility of her testimony. Zoraida, indeed, positively identified the accused as her ravisher, thus:

Q: You stated that on that night, you went to sleep and while sleeping, you noticed that somebody was touching your body. Is that correct?

A: Yes, sir.

Q: And at the first moment that you noticed that somebody was touching you, you did not realize who was that person that was touching your body?

A: I recognized him, sir.

Q: Why were you able to recognize him?

A: Siya lang po ang gumagawa ng pambabastos sa akin, sir.

Q: And that was your only basis, because he was used in doing that things to you?

A: Yes, sir.

Court:

Q: Why, did you not see him?

A: I saw him, sir.

Q: While he was touching you, you could see him?

A: Yes, sir.

Q: How far was the accused from you or while he was touching you, how far was the accused from you?

A: He was seated at the bed while he was touching me, sir.

Q: Was the room lighted?

A: No, sir.

Q: So, how could you recognize him if the room was not lighted?

A: Because he has a big body, sir.

Q: Aside from having a big body built, is there anything else that could help you recognize him?

A: Nagsalita po siya na huwag akong magsusumbong sa mama ko, sir.

Q: And that voice was his voice?

A: His voice, sir.

Q: You are sure?

A: Yes, sir.

Q: Are you familiar with his voice?

A: Yes, sir.

Q: But it is possible that could be any other person?

A: No, sir.

Q: Why?

A: Lagi po niya akong hinihipuan, sir.

Appellant's contention that his identity had not been established by Zoraida deserves scant consideration. Although the room was not lighted, Zoraida was able to recognize the appellant by his big built and his voice when he uttered "Huwag kang magsusumbong sa mama mo". Accused-appellant had lived with Luzviminda (mother of the victim) and Zoraida for five years; thus such familiarity with the appellant being the common law spouse of her mother is sufficient for Zoraida to identify her ravisher. Moreover, this Court had repeatedly held that a man and a woman cannot be physically closer to each other than during the sexual act;^[48] Zoraida cannot be mistaken as to the identity of the appellant. Moreover, Zoraida testified that the accused had always touched her in the past that would show that he entertained prurient thoughts prior to the rape incident.

Appellant contends that Zoraida charged the accused only on August 26, 1994, three months after the alleged incident took place and only four days after the accused slapped and kicked her. It is claimed that such delay in reporting the incident created a doubt on the veracity of the victim's complaint.

We are not persuaded. The delay and initial reluctance of a rape victim to make public the assault on her virtue is neither unknown or uncommon.^[49] As held in the case of *People vs. Malagar*:^[50]

"Vacillation in the filing of complaint by rape victim is not an uncommon phenomenon. This crime is normally accompanied by the rapist's threat on the victim's life, and the fear can last for quite a while. There is also the natural reluctance of a woman to admit her sullied chastity, accepting thereby all the stigma it leaves, and to then expose herself to the morbid curiosity of the public whom she may likely perceived rightly or wrongly, to be more interested in the prurient details of the ravishment than in her vindication and the punishment of the rapist. In *People vs. Coloma* (222 SCRA 255) we have even considered an 8-year delay in reporting the long history of rape by the victim's father as understandable and so not enough to render incredible the complaint of a 13-year old daughter."

Zoraida was only sixteen years old when she was subjected to the lustful desires of the accused; thus she was understandably cowed into silence as the accused-appellant warned her not to tell her mother about the incident. No woman especially one of tender age, practically only a girl, would concoct a story of defloration, allow an examination of her private parts and thereafter expose herself to a public trial, if she were not motivated solely by the desire to have the culprit apprehended and punished^[51] to avenge her honor^[52] and to condemn a grave injustice to her.^[53]

We also cannot accept accused-appellant's insinuation of ill will on the part of the complainant, i.e. that he had slapped and kicked the complainant Zoraida four days before the filing of the complaint. We find it unnatural for a young sixteen year old girl to concoct a story of rape which would drag herself and the rest of her family to a lifetime of shame just because she resented the punishment of the accused. Zoraida's actuation immediately after the rape, i.e., that she packed her things and left their house the following morning and proceeded to the house of her aunt's friend and lived there for a month, supported the truthfulness of her charge. In fact, Zoraida's mother, Luzviminda, even corroborated Zoraida's testimony on this point when she said that Zoraida left on May 23, 1994, which was the day following the rape incident.

Accused-appellant merely raises the defense of denial and alibi. Well settled is the rule that for alibi to be given credence and due weight, it must be shown that it was physically impossible for the accused to have been at the scene of the crime at the proximate time of its commission.[54] Alibi is an inherently weak defense and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim, who in a simple and straightforward manner, convincingly identified the appellant who sexually molested her. The record shows that accused admitted to be in their house the whole day of May 22,1994, the date of the alleged rape. He testified that he slept with his wife (the victim's mother) in their room while complainant slept in the next room which was 2 arms length away from their room. Appellant's own testimony showed that it was not impossible for him to be at the scene of the crime when it was committed. We find that the trial court did not err in giving credence to the testimony of Zoraida Cabbah that she was raped by the appellant.

Article 335 of the Revised Penal Code, as amended by RA 7659,[55] states that the crime of rape is committed when the offender has carnal knowledge of a woman by using force or intimidation. The penalty for rape is reclusion perpetua. Accordingly, we affirm the judgment of conviction rendered by the trial court.

Pursuant to recent jurisprudence, however, the civil indemnity granted by the trial court to the complainant in the amount of P30,000.00 is modified and is hereby increased to P50,000.00 and an additional amount of P50,000.00 for moral damages is likewise granted.[56]

WHEREFORE, the decision appealed from is hereby **AFFIRMED** , with the **MODIFICATION** that accused-appellant is ordered to pay the offended party the amount of P50,000 by way of indemnity and another P50,000.00 as moral damages or a total of P100,000.00.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

Purisima, J., abroad - no part.

[1] Criminal Case No. 2656, penned by Judge Jose C. Reyes, Jr.

[2] Record, p. 1.

[3] Records, p. 24.

[4] TSN, July 19, 1995, p. 3.

[5] Ibid, p.4.

[6] Ibid, p.5.

[7] Ibid.

[8] Ibid, p. 6.

[9] Ibid.

[10] Ibid, p. 7.

[11] Ibid, p. 8.

[12] Ibid, p. 9.

[13] Ibid, p. 10.

[14] TSN, September 13, 1995, p. 3.

[15] Ibid, p. 5.

[16] Ibid, p. 6.

[17] TSN, November 23, 1995, p. 3.

[18] Records, p. 71.

- [19] TSN, November 23, 1995, p. 5.
- [20] Ibid.
- [21] Ibid, p. 5-6.
- [22] TSN January 18, 1996, p. 5.
- [23] Ibid, p. 6.
- [24] Ibid, p. 7.
- [25] Ibid.
- [26] Ibid, p. 8.
- [27] Ibid, p. 8.
- [28] Ibid, p. 9.
- [29] Ibid, p.10.
- [30] Ibid, p. 11–12.
- [31] TSN, March 6, 1996, p. 3.
- [32] Ibid, p. 4.
- [33] Ibid, p. 5.
- [34] Ibid, p. 5.
- [35] Ibid, p. 6.
- [36] Ibid, p. 7.
- [37] Ibid, p. 8.
- [38] TSN, June 6, 1996, p. 3.
- [39] Ibid, p. 4.
- [40] Ibid, p. 5.
- [41] Rollo, pp. 19-21.
- [42] *People vs. Cabanela*, 299 SCRA 155 citing *People vs. Godoy*, 250 SCRA 676.
- [43] *People vs. Cabanela*, supra citing *People vs. Cartuano, Jr.*, 255 SCRA 403.
- [44] *People vs. Esquila*, 254 SCRA 140; *People vs. Ganguso*, 250 SCRA 268.
- [45] *People vs. Gallo*, 284 SCRA 590 citing *People vs. Rivera*, 242 SCRA 26.
- [46] *People vs. Gapasan*, 243 SCRA 53; *People vs. Bulaybulay*, 248 SCRA 601.
- [47] *People vs. Sanchez*, 302 SCRA 21, 45.
- [48] *People vs. Prades*, 293 SCRA 411; *People vs. dela Torre*, 272 SCRA 615; *People vs. Castaneda*, 252 SCRA 247.
- [49] *People vs. Montefalcon*, 243 SCRA 617.
- [50] 238 SCRA 512.
- [51] *People vs. Echegaray*, 257 SCRA 561; *People vs. Guibao*, 217 SCRA 64.
- [52] *People vs. Delovino*, 247 SCRA 637.
- [53] *People vs. Abendaño*, 242 SCRA 531.
- [54] *People vs. Base*, 196 SCRA 688.
- [55] RA 8353, The Anti-Rape Law of 1997 was not yet in effect.
- [56] *People vs. Maglantay*, 304 SCRA 272; *People vs. Gementiza*, 285. SCRA 478; *People vs. Prades*, 293 SCRA 411.

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