

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PATERNO VITANCUR Y BALINO, ACCUSED-APPELLANT.

G.R. No. 128872. November 22, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 9, Malolos, Bulacan, finding accused-appellant Paterno Vitancur y Balino guilty beyond reasonable doubt of rape committed against Evelyn Adalla and sentencing him to suffer the penalty of reclusion perpetua plus accessory penalties and to pay private complainant P30,000.00 as moral damages.

The information against accused-appellant reads as follows:

That on or about the 6[th] day of February 1995, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, intimidation and with lewd designs, have carnal knowledge of the offended party Evelyn Adalla against her will and without her consent.

CONTRARY TO LAW.[2]

Accused-appellant pleaded not guilty to the charge and so trial was held.

The facts of the case are as follows:

Complainant Evelyn Adalla, 25 years old, married with two children, was employed as a factory worker at the Tryco Pharmaceuticals Corporation (Tryco), in Brgy. San Roque, San Rafael, Bulacan. The company is engaged in the manufacture and marketing of veterinary and animal health products. Complainant was assigned to the company's re-packing section.

On February 6, 1995, there was no work at Tryco because there was a birthday celebration of its owner. Evelyn was placed in charge of the kitchen, serving food and drinks to the guests. At around 7 p.m., after she was through with her chores, she went to the basketball court to watch the basketball game in which her husband Virgilio Adalla, Jr. (Virgilio) played. After a while, Virgilio pulled out of the game as his team was already leading by 15 points and asked complainant to get his bag, which contained his clothes, from the second floor of the warehouse. He told her to bring the bag to the kitchen so that he could take a shower in the bathroom there.

Evelyn did as bidden. She proceeded to the warehouse.[3] As she entered the warehouse, she saw accused-appellant emerge from behind a pile of cardboard boxes on the ground floor. Accused-appellant, then 29 years old and married, was also employed at the repacking section of the company. Complainant asked him why he was there. But instead of replying, accused-appellant grabbed her by her right arm with his left hand and pulled her towards him. Then, with his right hand, he pointed a bladed weapon at her neck and threatened to kill her if she resisted his advances. Complainant noticed that he smelled of liquor. Accused-appellant dragged her to a dark place behind the pile of boxes. Then he embraced her and kissed her and fondled her private parts. Evelyn tried to

resist but she was boxed in the stomach. The blow sent her to the floor. She heard accused-appellant unzip his fly. Accused-appellant then forcibly removed her pants and panties. Accused-appellant went on top of her and separated her legs as he inserted his penis in her vagina. Accused-appellant again held the bladed weapon and poked it at her. Accused-appellant then made coital movements, all the while threatening complainant with harm if she made an outcry, until he ejaculated. Evelyn no longer resisted as she was afraid he might make good his threat. Besides, shouting for help would not do because of the noise outside. After he was through, accused-appellant stood up and warned complainant not to report the incident to anybody or else he would kill her and her husband. He threw her pants and panties at her and ordered her to dress up. Afterwards, accused-appellant left the warehouse.[4]

As soon as accused-appellant had left, Evelyn went out of the warehouse and ran towards the rest house. Her husband Virgilio, who had been looking for her, noticed her hair to be disheveled and her shirt torn at the buttonhole. Evelyn ran towards him and embraced him. When asked, Evelyn narrated between sobs what had happened. Virgilio seethed with anger and was about to go after accused-appellant, but he was stopped by complainant because accused-appellant had a bladed weapon.[5]

The matter was reported to Xavier Marlon Rivera (Marlon), the son of the owner of Tryco, who ordered the security guards to stop and apprehend accused-appellant.[6]

Accused-appellant was taken into custody by the security guards. Marlon said he then went to the main gate where he found accused-appellant nervously asking "Patawarin ninyo ako." ("Forgive me.")[7]

Accused-appellant was brought to the police station where he was detained. The incident was recorded in the police blotter. Evelyn and Virgilio were investigated. The investigation, however, was not completed because Evelyn was still in a state of shock and could not narrate what happened to her. They were advised to return the following day for the continuation of the investigation. Virgilio then took Evelyn to a hospital in Baliuag, Bulacan for examination, but she was not given one because the doctors in the said hospital did not want to testify in court.[8]

In the morning of February 7, 1995, Virgilio and Evelyn returned to the police station. They were referred to Camp Olivas, San Fernando, Pampanga, where Evelyn was examined by Dr. Edgardo O. Gueco of the Philippine National Police.[9] Dr. Gueco prepared a medico-legal report which contained the following findings:

GENERAL AND EXTRA-GENITAL:

Physical Built: Regular built

Mental Status: Coherent female subject

Breast: Hemispherical in shape with dark brown areolae and nipples from which no secretion could be pressed out.

Abdomen: Flat and firm.

Physical Injuries: No external signs of recent application of any form of trauma.

GENITAL:

Pubic Hair: Moderate growth

Labia Majora: Full, convex and slightly gaping.

Labia Minora: Dark brown and hypertrophied.

Hymen: Reveals curunculae myrtiformis

External Vaginal Orifice: Offers moderate resistance to the introduction of the examining index finger.

Vaginal Canal: Narrow with flattened rugosities.

Cervix: Normal in shape and consistency.

Peri-Urethral and Vaginal Smears: Positive for the presence of spermatozoa.

REMARKS: Subject is in non-virgin state physically.

Findings compatible to a recent sexual intercourse.[10]

Evelyn and Virgilio then returned to the police station in San Rafael, Bulacan and gave their sworn statements.[11]

Accused-appellant denied the charges against him. He claimed he and Evelyn had been lovers since 1992. According to him, he courted Evelyn and, although she was already married, Evelyn fell in love with him. He narrated how one evening, when her husband was away, Evelyn invited accused-appellant over to the conjugal residence. When accused-appellant arrived in the house, Evelyn allegedly embraced and kissed him, and they made love. From then on, they had been having their trysts at the conjugal residence of complainant and her husband whenever the latter was away, usually between 8 to 9 p.m. Accused-appellant testified that after Evelyn had her second child, they would have sex whenever they worked overtime at the company. Evelyn allegedly told him that her love for her husband had faded because the latter's organ was small.

On February 6, 1995, at around 7 p.m., accused-appellant said he was in front of the rest house when Evelyn signaled to him to meet her inside the warehouse. Accused-appellant proceeded to their place of assignation. He said he asked Evelyn if she was not afraid of having sex with him when her husband was around, but Evelyn kissed him and took off her blouse. Accused-appellant, therefore, undressed, and they had sexual intercourse, which lasted about five minutes. Then, Evelyn left.

As he was leaving the place, he met Virgilio but they did not greet each other. Then, he heard Virgilio confronting Evelyn, asking her where she had been. Evelyn told Virgilio that she was just at the rest house. Virgilio did not believe her and said that he searched for her in the rest house, but she was not there. Virgilio accused Evelyn of having come from a rendezvous with someone else. For this reason, the two had an altercation. As Virgilio dragged Evelyn towards the second floor of the warehouse, accused-appellant took the chance to get out and returned to the rest house.[12] A co-worker, Cristopher Absalon, later told him that Evelyn wanted to see him at the kitchen.[13] When he went to meet Evelyn, she told him that she had admitted to Virgilio their relationship. After a while, he saw Virgilio talking to Marlon.[14]

Accused-appellant said he was then apprehended by the security guards of Tryco. Marlon came and asked him to go with him to the police. When he asked him if he had done anything wrong, Marlon boxed and slapped him causing him to fall on his knees. Then, Marlon tied accused-appellant's hands and took him to the police station.[15]

On November 12, 1996, the trial court rendered its decision finding accused-appellant guilty of rape. The dispositive portion of the its decision reads:

WHEREFORE, in the light of the evidence adduced and the laws/jurisprudence applicable thereon, judgment is hereby rendered finding accused PATERNO VITANCUR y BALINO guilty beyond reasonable doubt of the crime of rape as charged in the Information and sentencing him to suffer the imprisonment of reclusion perpetua, plus the accessory penalties prescribed by law, and to indemnify private complainant EVELYN R. ADALLA in the amount of P30,000.00 as moral damages. Costs de oficio.

SO ORDERED.[16]

Accused-appellant appealed, assigning the following errors as having been allegedly committed by the trial court :

- THE COURT ERRED, IN ORDERING THE TRIAL OF THE CASE, WITH HASTE, BY APPOINTING A COUNSEL DE OFICIO TO REPRESENT THE ACCUSED IN THE INITIAL TRIAL DESPITE THAT THE COURT HAS KNOWLEDGE THAT ACCUSED IS REPRESENTED BY COUNSEL DE PARTE ON SAID HEARING.

- THE COURT ERRED IN APPRECIATING FAVORABLY THE PROSECUTION EVIDENCE WITHOUT SCRUTINIZING WITH UTMOST CAUTION THE TESTIMONY OF THE COMPLAINANT AND HER WITNESSES DESPITE INCONSISTENCIES YET DENYING THE INTRINSIC VALUE OF THE DEFENSE EVIDENCE SUPPORTING HIS ACQUITTAL.[17]

The assignments of errors will be dealt with in the order they are presented.

First. Accused-appellant claims that the trial court hastily appointed a counsel de oficio to represent him, without his consent, during the initial trial on account of his counsel's absence. He argues that this is in violation of Art. 14 of the International Covenant of Civil and Political Rights to give him legal protection considering that he was charged with a heinous crime.[18]

This argument is untenable. Accused-appellant's counsel was duly notified of the initial presentation of the prosecution evidence. However, without any prior notice to the trial court or any motion for the cancellation of the said hearing, he failed to appear at the trial. It appears that in its desire to prevent any delay in the proceedings, the trial court appointed a counsel de oficio for accused-appellant. The latter proceeded to trial without making any comment or objection. He must therefore be deemed to have consented as to the temporary representation by said counsel, which was only for the purpose of the direct examination of private complainant. Contrary to accused-appellant's claim, the appointment of a counsel de oficio in his favor was very much in line with the trial court's duty to provide him the legal protection under the law he invoked, in view of the fact that his counsel de parte, despite due notice of the trial, failed to appear. Besides, such action by the trial court did not prejudice his defense considering that he was able to lengthily cross-examine private complainant.

Second. Accused-appellant contends that the public prosecutor should not have been allowed to ask further questions on direct from private complainant after he had terminated his examination-in-chief because he had no prior leave from the court to do so.[19] This is not correct. The records will show that the public prosecutor did ask for permission to continue his direct examination of private complainant and the trial court granted him permission to do so.[20]

Accused-appellant also points out the following: (1) there were no signs of the use of force on private complainant; (2) the bladed weapon which complainant claimed accused-appellant used in committing the crime was not presented in court; (3) there were inconsistencies regarding the place and the time private complainant was requested by her husband to get his belongings; (4) aside from private complainant and her husband, no other person testified having seen complainant with disheveled hair and a torn shirt; (5) that complainant stopped her husband from pursuing accused-appellant after the crime because the latter was armed is incredible considering her husband's position in the company; and (6) that accused-appellant smelled of liquor was a self-serving statement since it was not corroborated.

We find these allegations to be without merit. To begin with, it should be remembered that in rape it is usually only the victim who can attest to its occurrence.[21] That is why courts subject the testimony of alleged victims to strict scrutiny before relying on it for conviction of the accused.

In the case at bar, complainant described how accused-appellant, armed with a bladed weapon, threatened to kill her if she would not give in to his sexual demand. She was boxed in the stomach when she tried to resist. Although she did not see what the weapon exactly was, she knew it was a bladed weapon because it was pointed

at her neck. After the despicable incident, her husband, who had been looking for her, saw her hair disheveled and her shirt torn at the button hole. Accused-appellant said no one except her husband saw her condition. But if as accused-appellant claims, he and complainant had a tryst at the warehouse, it must really be that when her husband saw complainant's hair was dishevelled and her shirt partly torn, it was because that there were no facilities in the warehouse where she could have primmed up before rejoining her husband outside.

Indeed, from her sworn statement before the police up to the time she testified in court, complainant remained steadfast in her claim that she was raped. She positively identified accused-appellant as the rapist. She held on to her testimony despite rigorous cross-examination by the defense counsel. She denied having an affair with accused-appellant. She explained that accused-appellant could have gotten pictures (Exhs. 6 and 7) of her and her second child from her husband who brought the pictures to the workplace to show to their co-workers in the factory.[22] The trial court found complainant to be truthful and credible in her testimony, as shown by the spontaneity with which she answered questions propounded to her.[23] We have no reason to disregard the trial court's evaluation of the credibility of complainant and other witnesses for the prosecution.

The fact that private complainant bore no evidence of any force used against her person is of no moment. The absence of any external sign of physical injury does not necessarily negate the occurrence of rape, proof of injury not being an essential element of the crime.[24] Complainant was threatened with harm. She was found to have sexual intercourse with accused-appellant through fear. Furthermore, there is medical authority to the effect that when force is applied to the stomach, no marks of violence may be detected.[25]

On the other hand, the medico-legal report contains a finding of the presence of spermatozoa in complainant's genitals confirming recent sexual intercourse. According to Dr. Gueco, sperm cells only have a life span of 48 hours inside the vaginal tract and private complainant was examined on the day following the crime.[26] The presence of spermatozoa in the complainant's private organ affirms the charge much more than words or anger alone can.[27] After all, complainant said the last time she had sexual intercourse with her husband was on February 1, 1995.[28]

The fact that the weapon with which complainant claimed she was intimidated by accused-appellant could not be presented in court could not impeach private complainant's credibility as the weapon is not essential to the prosecution of rape cases.[29] What is important is that because of force and intimidation, private complainant was made to submit to the will of accused-appellant. As stated in *People v. Maglente*,[30] the test is whether the threat or intimidation produces in the mind of a reasonable person fear that if she resists or does not yield to the desires of the accused, the threat will be carried out.

The alleged inconsistencies as to the time and place complainant was asked by her husband to get his belongings from the warehouse are more apparent than real. A perusal of the transcript of stenographic notes will show that complainant was asked by her husband at 5 p.m. on February 6, 1995 to get his bag from the warehouse. At that time, she was still in the kitchen. At around 7 p.m., when she went out to watch the game, her husband, who had pulled out of the game, asked her for his bag. Complainant then went to the warehouse, about 80 to 100 meters away, where accused-appellant was. There is thus no inconsistency in the testimony of complainant.

At any rate, the alleged inconsistencies do not relate to material points. They do not detract from the fact that private complainant was raped by accused-appellant, as she claimed.

Indeed, the testimony of private complainant deserves full faith and credit. No decent woman, especially one who is married, would, in her right mind, fabricate a story that could sully her reputation and bring shame and disgrace to herself and her family unless she is motivated by a desire to seek justice for a wrong committed against her.[31]

On the other hand, accused-appellant's claim that he and private complainant were paramours has no evidence to support it. No love letters, pictures, or other mementos of a relationship were presented to show that accused-appellant and complainant were indeed lovers.[32]

Accused-appellant presented a letter from a former co-worker at Tryco, Charina Magracia, to prove that he had sexual relations with private complainant. The letter was written to accused-appellant in jail. It reads:

Paring Patty

Bago ang lahat kamosta ka rin dyan kong kami naman ganon pa rin. Patty alam namin ang hirap na dinanas mo dyan lalo na sa pamilya mo. Alam namin na hindi toto-ong ni-rape mo yong Baba-e, dahil lang sa haka haka namin, lalo na ako ang tagal ko ng hindi kayo nakasama sa Tryco, iwan ko yong iba. At saka ngayon mo lang nasabi na malibog yong Baba-e na may nangyari na. Bakit no-on hindi mo naisip lahat yan. Kong sabagay huli na ang lahat. Patty alam kong lahat ang naranasan mo dyan sa lo-ob hindi kaya ganon 2x lang napakahirap. Piro pasinsya ka na sa akin kong ako lang mag-isa hindi ko kaya. Sinabe ko naman kay Tiya Aning hindi ko kaya kong ako lang mag isa. At saka huwag mo na akong isama hindi ko na alam ang mga nangyayari sa inyo. Isang taon na akong nawala sa Tryco. Pinabasa ko sa 3 yong sulat ni Maring Eden. Ang sagot kaya mo raw pasukan dapat kaya mo rin daw na labasan. Si Maring Yolly naman. Wala daw siyang alam. At si Ate Elma naman wala din daw siyang alam. Ako naman sa haka haka lang. At alam na alam ni Bulaw na kahit sa haka (2x) lang nasasabi ko sa kanya ang naramdaman ko at haka (2x) ko sa inyong dalawa ni Evelyn. Iwan ko lang kong naniniwala siya sa akon kong nasabi sa iyo. Tama yong sinabe mo na walang impusibli sa Diyos kaya ipanalangin na lang namin na makalabas ka dyan. Dahil talagang wala kaming itulong lalo na ako. Sana maintindihan mo kami. Lugar nila ito. May pamilya kami. Save nga kayo eh kami paano na. Huwag mo ng isipen na makapunta pa kami dyan. Wala na nga silang trabaho piro wala ng isip na bumisita sa iyo. Ayaw din niya syempre madamay sana maintindihan mo naman kami. Kasama ka namin sa aming panalangin, Kahit nga sa simbahan pinapabanggit ka ni Madam. Hanggang do-on lang nga talaga. Siguro lahat alam lahat ng mga kasamahan natin no-on na kahit sa pahalata-an lang na may relasyon kayo. Piro my gusto bang tumistigo wala kahit isa. Kahit nga taga dito eh walang lakas loob. Kami pa. Isipin mo naman yon. Sana naman ma-intindihan mo kami. Huwag ka na raw sumulat dito na may pangalan pa na nababanggit tulad no-ong 3 dahil wala daw silang alam. Itong sinulat ko hindi kay sarili ko lang ito. Ito rin ang sinabi nilang 3. Pasinsya ka na sa sulat ko magulo ang isip ko. Salamat.

Bulaw hindi mo ako masisi di ba lahat sinabe ko sa iyo. Hindi ako plastic sayo toto-ong tao ako. Hindi mo lang ako pinakinggan. Kamosta nalang kayong mag-ina.[33]

(Charina)

The letter proves nothing. It is based simply on the writer's conjectures (haka-haka) and could very well have been solicited by accused-appellant.

Nor does Cristopher Absalon's testimony have any probative value. His testimony showed that he was merely forced to testify for the defense. Apparently, this witness, being jobless, agreed to testify because he had been allowed by the brother of accused-appellant to stay with him in the latter's residence.[34] Accused-appellant's claim that complainant's husband tried to prevent Absalon from testifying is not true. What complainant's husband did was simply to advise him (Christopher Absalon) that if he did not want to testify, he need not talk about anything and just state that he did not know a thing about the incident. Thus, Virgilio S. Adalla's note to Absalon reads:[35]

CRIS,

NAKAUSAP KO NA SI BOSS JINGGOY.[36] SABI NIYA MAGUSAP-USAP DAW TAYO SA SUSUNOD NA LINGGO SA KANILA. (OCT. 1). SAMANTALA, KUNG AYAW MO RAW TUMISTIGO

HUWAG KA NA LANG MAGSALITA NG KUNG ANO MAN. SABIHIN MO WALA KANG ALAM KAHIT ANO.

INUMAN? SA LINGGO NA LANG.

ANO O.K.??

SABADO NG GABI
PUMUSLIT KA DIYAN
KASI AALIS TAYO
LINGGO NG UMAGA VSA

We have reviewed the records of this case, and we find no reason to overturn the trial court's evaluation of the evidence. Findings of fact of trial courts are entitled to great respect and are binding on us in the absence of showing of bias, partiality, or grave abuse of discretion on the part of the presiding judge, who had the advantage of observing the demeanor of the witnesses.[37]

However, the award of moral damages should be increased from P30,000.00 to P50,000.00 in line with our recent rulings. Such amount is automatically granted in rape cases without need of proof for it is assumed that the victim has suffered moral injuries entitling her to such an award.[38]

In addition, complainant should be paid civil indemnity. Moral damages are separate and distinct from the civil indemnity. In accordance with current rulings, accused-appellant should be ordered to pay the private complainant the amount of P50,000.00 by way of civil indemnity.

WHEREFORE, the decision appealed from is AFFIRMED with the MODIFICATION that accused-appellant Paterno Vitancur y Balino is ORDERED to pay complainant Evelyn Adalla the amounts of P50,000.00 as civil indemnity, plus P50,000.00 as moral damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge D. Roy A. Masadao, Jr.

[2] Rollo, p. 5.

[3] TSN (Evelyn Adalla), pp. 4-9, June 28, 1995; TSN (Virgilio Adalla, Jr.), pp. 14-35, Aug. 16, 1995.

[4] TSN (Evelyn Adalla), pp. 11-26, June 28, 1995.

[5] Id., pp. 26-29; TSN (Virgilio Adalla, Jr.), pp. 36-46, August 16, 1995.

[6] Id., pp. 29-30; Id., pp. 46-49; TSN (Marlon Rivera), pp 6-10, October 27, 1995.

[7] TSN (Marlon Rivera), pp. 11-13.

[8] TSN (Evelyn Adalla), pp. 31-34, June 28, 1995; TSN (Virgilio Adalla, Jr.), pp. 49-53, August 16, 1995.

[9] Id., pp. 35-37; Id., pp. 54-61.

[10] Exh. C.

[11] Exhs. A and N.

- [12] TSN (Paterno Vitancur), pp. 4-24, March 1, 1996.
- [13] Id., pp. 25-26; TSN (Cristopher Absalon), pp. 8-9, Feb. 16, 1996.
- [14] TSN (Paterno Vitancur), pp. 26-27, March 1, 1996.
- [15] Id., pp. 29-34.
- [16] Rollo, p. 35.
- [17] Brief for the Accused-Appellant, Rollo, p. 59.
- [18] Id., pp. 63-64.
- [19] Id, pp. 64-65.
- [20] TSN (Evelyn Adalla), p. 2, July 10, 1995.
- [21] People v. Abuan, 284 SCRA 46 (1998).
- [22] TSN (Evelyn Adalla), pp. 2-6, Aug. 14, 1995.
- [23] People v. Alquizalas, 305 SCRA 367 (1999).
- [24] People v. Abella, 315 SCRA 36 (1999).
- [25] People v. Mercado, 275 SCRA 464 (1997).
- [26] TSN (Dr. Edgardo Gueco), p. 12, Jan. 12, 1996.
- [27] People v. Malabago, 271 SCRA 464 (1997)
- [28] TSN (Evelyn Adalla), p. 43, June 28, 1995.
- [29] People v. Gastador, 305 SCRA 659 (1999).

[30] 306 SCRA 546 (1999).

- [31] People v. Roman, 314 SCRA 425 (1999).
- [32] People v. Palma, 308 SCRA 466 (1999).
- [33] Exh. 11. (Emphasis added)
- [34] TSN (Gabriel Vitancur), p. 10, Oct. 11, 1996.
- [35] Exh. 9.
- [36] Referring to Xavier Marlon Rivera.
- [37] People v. Dizon, 309 SCRA 669 (1999).
- [38] E.g., People v. Alba, 305 SCRA 811 (1999).

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