

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL DIOPITA Y GUZMAN, ACCUSED-APPELLANT.*G.R. No. 130601. December 04, 2000*

Ponente: BELLOSILLO, J.

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RAFAEL DIOPITA y GUZMAN appeals from the Decision of the Regional Trial Court of Davao City finding him guilty of Robbery with Rape, imposing upon him the penalty of reclusion perpetua and ordering him to pay the victim, Dominga Pikit-pikit, P8,500.00 for actual damages and P50,000.00 for moral damages.[1]

Culled principally from the testimonies of Dominga Pikit-pikit and PO3 Steve dela Cruz, the inculpatory facts follow: At about 9:00 o'clock in the evening of 16 April 1995 complaining witness Dominga Pikit-pikit, 24 years old, was walking towards Emiville Subdivision, Diversion Road, Sasa, Davao City, on her way home from work. Suddenly, a man appeared from behind, looped his arm around her neck and warned her not to shout or else she would die.[2] The man then dragged her through the banana plantation towards the cornfields where the plants were a meter high and far apart.[3] When Dominga shouted for help, the man pushed her to the ground and punched her on the stomach saying, "Leche ka, why are you shouting? What do you want me to do, make you unconscious?"[4]

Dominga Pikit-pikit got a good look at the man, who turned out to be accused-appellant Rafael Diopita y Guzman, as he sat on her thighs and proceeded to divest her of her belongings - ladies watch, bracelet, ring with russian diamonds, wedding ring and P1,000.00 cash. With the full moon shining on his face, the victim clearly saw Diopita place the items on the right pocket of his shorts.[5]

Thereafter, accused-appellant Diopita announced his desire to have carnal knowledge of Dominga. Forthwith, he pulled up her t-shirt and unfastened her brassiere. He also loosened her belt, unzipped her pants and struggled to pull it down, nearly ripping her zipper. Annoyed at the tightness of her pants, Diopita hit her and ordered her to help him pull them down.[6] Dominga, fearing for her life and thinking of Diopita's punches, obeyed. She pulled her pants to her hips. Then accused-appellant forcibly pulled them down further and got irritated in fact when he was told that she was wearing a girdle and panty. In frustration, he punched her repeatedly and kept on muttering, "Why is this very tight? What kind of panty is this?" Finally, he succeeded in pulling the girdle and panty down.[7]

Accused-appellant Diopita then took off his shorts. He kissed the victim, lasciviously caressed her breasts, bit her nipples, and fornicated with her. As he was sexually assaulting her, Dominga made desperate struggles and frantic calls for help but her efforts proved futile until he finally satiated his lust. He then warned Dominga not to tell anyone and that should he hear that she told anybody about the incident he would shoot her to death. Then he dressed up and left, walking casually to the opposite direction of the subdivision before disappearing in the darkness.[8]

Exhausted, Dominga slowly stood up, put on her clothes and walked away in the direction of her house. Finding it

locked, she asked help from her neighbors who called the police. Thereafter, Dominga was brought to Precinct No. 4 of Sasa, Davao City, where SPO1 Stephen Batacan entered her complaint in the police blotter. Later, she was examined by Dr. Floranne Lam-Vergara at the Davao Medical Center who found her "positive for spermatocytes." [9]

PO3 Steve dela Cruz, who was on duty at the Intelligence and Investigation Section, made a follow-up on the case. He went to the victim's house and interviewed her between the hours of 1:00 o'clock and 3:00 o'clock in the morning of the following day, 17 April 1995. Dominga gave a description of the suspect and his possible whereabouts. [10] Acting on that information, PO3 dela Cruz went to the scene of the crime to investigate and there he recovered a colored white/yellow, size ten (10) slipper. Since the victim earlier disclosed that the suspect headed north after committing the crime, he proceeded to that direction where he came upon four (4) houses about fifteen (15) to fifty (50) meters away from the scene of the crime. A back-up team was called and they rounded up all the residents therein. Afterwards, four (4) men who fitted the description of the suspect were invited to the police station for questioning. They were Placido Laput, William Silvano, Vicente Silvano and accused-appellant Rafael Diopita y Guzman. [11]

At about 6:00 o'clock in the morning of 17 April 1995, the police invited Dominga to identify the suspect at the police station. Thereat, Dominga saw the four (4) men in a police line-up and readily pointed at accused-appellant. [12] The police then had him try on the recovered slipper; it easily fitted him. [13] Thus, Diopita was detained while the others were released.

The defense denied the charge and invoked alibi. Accused-appellant claimed that between 8:30 to 12:00 o'clock in the evening of 16 April 1995 he was with his wife Flora, son Ryan and fellow Jehovah's Witnesses Roger Custorio and Ruben Suarez at the house of Eulalio Nisnisan for an informal Bible session upon the invitation of Juan Nisnisan. [14] Accused-appellant also claimed that during those hours, he never left the place. Flora, Roger, Ruben, Eulalio and Juan corroborated his alibi and testified on his good moral character as a ministerial servant of their faith.

On 18 June 1997, the trial court formally rejected his defense of alibi and convicted him of the crime charged; consequently, accused-appellant is now before us on appeal. The trial court ruled -

Alibi is a weak defense because it can easily be fabricated that it is so easy for witnesses to get confused as to dates and time. The precision with which the witnesses for the defense, who are his co-members in the Jehovah's Witnesses, quoted the respective hours when the participants in the Bible sharing session supposedly arrived is, at best, self-serving and deserves scant consideration because of the facility with which it may be concocted and fabricated.

On the other hand, private complainant Dominga Pikit-Pikit positively identified Rafael Diopita as the person who robbed and raped her on April 16, 1995. She testified in a clear, straightforward and convincing manner and no ill-motive on her part had been shown to have prompted her to testify falsely. The failure of the defense to attribute any ill-motive on the part of Pikit-Pikit to pin responsibility on Diopita adds more credence to complainant's testimony.

In a long line of cases, it has been held that the defense of alibi cannot prevail over the positive identification of the accused by the victim. Pikit-Pikit testified that she was able to see the face of her attacker because the moon was shining brightly that evening. This Court takes judicial notice of the fact that in the month of April 1995 the full moon came out on April 15, 1995, a day before the date of the crime.

We affirm his conviction; the guilt of accused-appellant has been established by the evidence beyond reasonable doubt.

First. Complaining witness Dominga Pikit-pikit positively and categorically identified accused-appellant as her assailant, first during the police line-up where she singled him out from among the four (4) suspects and, later during the trial where she pointed at accused-appellant as the one who robbed and sexually molested her -

Q: Where did you go?

A: To the Police Station, there were four persons who lined up for identification.

Q:

And then?

A:

First, when I arrived, I peeped behind the place where there were four persons lining up. After that I went to the place where they were receiving visitors and I saw the four persons who were there already and lined up.

Q:

And then?

A:

After that the police told me to identify the person who molested me, and I pointed to that person there (witness pointing to the accused whom she previously identified).[15]

From the circumstances of this case, it cannot be denied that complaining witness Dominga Pikit-pikit had a good look at the face and physical features of accused-appellant during the commission of the crime. While the robbery was in progress, the moonlight sufficiently illumined his face and clothes, thus making it possible for private complainant to identify him.[16] During the rape, private complainant was as close to accused-appellant as was physically possible, for a man and a woman cannot be more physically close to each other than during a sexual act.[17] Victims of criminal violence naturally strive to know the identity of their assailants and observe the manner the crime was perpetrated, creating a lasting impression which may not be erased easily in their memory.[18] There is therefore no reason to doubt the accuracy of private complainant's visual perception of accused-appellant as the criminal. Nor is there any reason to doubt her honesty of intention for there is no showing that she implicated accused-appellant due to an evil or corrupt motive.

We do not subscribe to accused-appellant's contentions that the complaining witness hesitated to point at him during the police line-up, and that she was just forced by the police to choose him from among the four (4) suspects. The identification was made with such certainty by the complaining witness that even accused-appellant had to comment on it -

Atty. Galicia: What made you say she was hesitant to point at you? x x x x

Rafael Diopita: Because during that time, sir, when we confronted each other in the police station, she was looking at me when there were four of us there. So, I asked why x x x x[19]

The foregoing testimony belied the allegation of hesitancy on the part of Dominga Pikit-pikit to pinpoint accused-appellant during the line-up. His very own words project his guilt as well. Only the guilty experiences neurotic fear in the face of imminent discovery of his malefaction. His paranoia colors his interpretation of the events during the line-up. Consider accused-appellant's assertion that Dominga Pikit-pikit was forced by the police to point at him, and Prosecutor Esparagoza's objection thereto -

Sur-rebuttal of Atty. Galicia: Mr. Diopita, according to private complainant Dominga Pikit-pikit during her rebuttal testimony that she was not forced by the police to point at you when you were in the police station. What can you say to that?

Rafael Diopita: That woman hesitated to point at me but the police said you point at him.

Q: What made you say she was hesitant to point at you?

Prosecutor Esparagoza: The witness said "ITUDLO! ITUDLO!" (YOU POINT! YOU POINT!). He did not say he was the one pointed to, your Honor.[20]

Gleaned from the aforequoted testimony was the absence of suggestiveness in the identification process. There were four (4) men in the line-up and the police did not specifically suggest to Dominga to point particularly at accused-appellant. Not even the shodding of the slipper recovered from the scene of the crime could provide any suggestiveness to the line-up as it came after accused-appellant was already identified by Dominga Pikit-pikit.

Second. In light of this positive and direct evidence of accused-appellant's culpability, the trial court correctly discarded his defense of alibi. It is an elementary rule that alibi cannot prevail over the clear and positive identification of the accused as the very person who committed the crime. Moreover, in order to justify an acquittal based on this defense, the accused must establish by clear and convincing evidence that (a) he was in another place at the time of the commission of the offense; and, (b) it was physically impossible for him to be at the scene of the crime at the time it was committed.[21] This, accused-appellant miserably failed to do.

Accused-appellant admitted that at the time in question he was with his wife, son and fellow members of the Jehovah's Witnesses at the house of one Eulalio Nisnisan supposedly attending Bible studies, which is merely fifteen (15) to fifty (50) meters away from the crime scene. Considering the short and insignificant distance, it was not impossible for accused-appellant to surreptitiously slip away from the house of Nisnisan, commit the crime and then return without arousing the suspicion of his companions who were then busy with their Bible session. This is obviously the situation in this case and, taken together with the preceding considerations, we likewise reject this poor and discredited defense as did the trial court. Verily, even if the defense of alibi is corroborated by the testimony of the friends of accused-appellant, it deserves the barest consideration and will not be given weight if it would not preclude any doubt that he could have been physically present at the locus criminis or its immediate vecino at the time of its commission.[22]

Third. Perhaps aware of the crushing impact of complainant's positive identification of accused-appellant, the defense attacked the supposed inconsistencies and discrepancies in her testimony in a vain attempt to make it completely unreliable, claiming that: (a) the victim declared that the culprit wore short pants with a zipper, and he had no short pants with zipper; (b) the yellow slipper retrieved by the police did not belong to him as his slippers were colored blue, with his initials inscribed thereon; and, (c) the description given by complainant in the police blotter did not fit the physical appearance of accused-appellant.

We are not persuaded. Suffice it to say that these are mere trifles which do not detract from complainant's straightforward and consistent identification of accused-appellant as the one who robbed and raped her. Trivial inconsistencies do not shake the pedestal upon which the complainant's credibility rests. On the contrary, they are taken as badges of truth rather than as indicia of falsehood for they manifest spontaneity and erase any suspicion of a rehearsed testimony.[23] Furthermore, entries in police blotters should not be given undue significance or probative value for they are normally incomplete and inaccurate, sometimes from either partial suggestion or want of suggestion or inquiry.[24]

Fourth. We now deal with the more substantial arguments raised by accused-appellant in his brief. He tenaciously

maintains that it was impossible for him to have committed the crime charged since he is a person of good moral character, holding as he does the position of "Ministerial Servant" in the congregation of Jehovah's Witnesses, and that he is a godly man, a righteous person, a responsible family man and a good Christian who preaches the word of God.

We are not impressed. The fact that accused-appellant is endowed with such "sterling" qualities hardly justifies the conclusion that he is innocent of the crime charged. Similarly, his having attained the position of "Ministerial Servant" in his faith is no guarantee against any sexual perversion and plunderous proclivity on his part. Indeed, religiosity is not always an emblem of good conduct, and it is not the unreligious alone who succumbs to the impulse to rob and rape. An accused is not entitled to an acquittal simply because of his previous good moral character and exemplary conduct. The affirmance or reversal of his conviction must be resolved on the basic issue of whether the prosecution had discharged its duty of proving his guilt beyond any peradventure of doubt. Since the evidence of the crime in the instant case is more than sufficient to convict, the evidence of good moral character of accused-appellant is unavailing.

Accused-appellant likewise bewails and assigns as reversible error the failure of the trial court to give credence to the testimonies of the defense witnesses. He argues that these are Jehovah's Witnesses, and as such, they are God-fearing people who would never lie as to his whereabouts at the time in question. This argument is as puerile as the first. We quote once more, and with approval, the pertinent portion of the trial court's ruling on this point -

x x x x it is so easy for witnesses to get confused as to dates and time. The precision with which the witnesses for the defense, who are his co-members in the Jehovah's Witnesses, quoted the respective hours when the participants in the Bible sharing session supposedly arrived is, at best, self-serving and deserves scant consideration because of the facility with which it may be concocted and fabricated (underscoring supplied).

The matter of assigning values to the declarations of witnesses is best and most competently performed by the trial court who had the unmatched opportunity to observe the demeanor of witnesses while testifying, and to assess their credibility using various indicia available but not reflected in the records.[25] Hence, the court a quo's appraisal on the matter is entitled to the highest respect, and will not be disturbed on appeal unless there is a clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case.[26] There is no compelling reason in the present case to depart from this rule.

In sum, we find that all the elements of robbery with rape are present in this case. There was asportation of the jewelry and cash of the victim by means of force and violence on her person, showing the initial animus lucrandi of accused-appellant,[27] and then his lecherous intent when he raped his victim. Accordingly, we hold that the court below did not commit any reversible error in ruling that the requisite quantum of evidence for a finding of guilt has been sufficiently met by the prosecution as to call for our affirmance of the judgment of the court a quo.[28]

However, in addition to the actual and moral damages awarded by the trial court in the amounts of P8,500.00 and P50,000.00, respectively, another amount of P50,000.00 should have also been awarded to the victim Dominga Pikit-pikit for civil indemnity, as it is mandatory upon a conviction of rape. Such indemnity is distinct from moral damages and based on different jural foundations.[29]

WHEREFORE, the assailed Decision of the Regional Trial Court of Davao City, convicting accused-appellant RAFAEL DIOPITA y GUZMAN of ROBBERY WITH RAPE, sentencing him to reclusion perpetua, and ordering him to pay DOMINGA PIKIT-PIKIT the sums of P8,500.00 for actual damages and P50,000.00 for moral damages, is AFFIRMED with the MODIFICATION that, in addition, civil indemnity of another

P50,000.00 is further awarded to her. Costs against accused-appellant.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Decision penned by Presiding Judge Virginia Hofileña-Europa, RTC-Br. 11, Davao City.

[2] TSN, 26 July 1995, p. 11.

[3] Id., pp. 15, 21-23.

[4] Id., p. 26.

[5] Id., pp. 12, 15, 38.

[6] Id., pp. 12-13.

[7] Id., pp. 39, 44.

[8] Id., pp. 13-26.

[9] Exh. "C."

[10] Id., 31 August 1995, pp. 5-7.

[11] Id., pp. 5-6, 8-9, 13, 16, 23.

[12] Id., 26 July 1995, pp. 17-18; 31 August 1995, pp. 9-10, 31.

[13] Id., 26 July 1995, p. 35.

[14] Id., 13 January 1997, pp. 4-6.

[15] See Note 3, pp. 17-18.

[16] In *People v. Lopez*, G.R. No. 119380, 19 August 1999, 312 SCRA 684, we held that illumination from the moon and even from the stars is fair and sufficient to identify perpetrators of crimes.

[17] *People v. Castañeda*, G.R. No. 114972, 24 January 1996, 252 SCRA 247.

[18] *People v. Teehankee, Jr.*, G.R. Nos. 111206-08, 6 October 1995, 249 SCRA 54, 94-96.

[19] TSN, 4 March 1997, pp. 2-3.

[20] Id., p. 2.

[21] *People v. Domingo*, G.R. No. 104955, 17 August 1999, 312 SCRA 487.

[22] *People v. Patalin, Jr.*, G.R. No. 125539, 27 July 1999, 311 SCRA 186.

[23] *People v. Plasencia*, G.R. No. 90198, 7 November 1995, 249 SCRA 674.

[24] *People v. Mejia*, G.R. Nos. 118940-41, and G.R. No. 119407, 7 July 1997, 275 SCRA 127.

[25] *People v. Accion*, G.R. Nos. 122550-51, 11 August 1999, 312 SCRA 250.

[26] *People v. Ibay*, G.R. No. 132690, 10 August 1999, 312 SCRA 153.

[27] It does not matter that the stolen properties were never recovered. It has never been the rule in this jurisdiction that such a fact can diminish the guilt of the robber whose complicity in the crime has been established by proof beyond reasonable doubt.

[28] Art. 294, par. (1), The Revised Penal Code, provides: "Any person guilty of robbery with the use of violence against or intimidation of persons shall suffer: 1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson x x x x"

[29] People v. Ignacio, G.R. No. 114849, 24 August 1998, 294 SCRA 542.

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