

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSELITO BALTAZAR, ACCUSED-APPELLANT.

G.R. No. 130610. October 16, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In three separate informations, accused-appellant Joselito Baltazar was charged with three (3) counts of rape allegedly committed on December 26, 1995, December 29, 1995 and January 8, 1996, against Digi Ann F. Niño, which were docketed as Criminal Cases Nos. L-5486, L-5487 and L-5488, respectively.

The informations were similarly worded, except for the dates of the commission of the crimes, as follows:

That on or about ... in the afternoon, at New Street East, municipality of Lingayen, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the complainant Digi Ann F. Niño against her will and consent and to her damage and prejudice.

CONTRARY to Article 335, Revised Penal Code.[1]

The said cases were raffled to different branches of the Regional Trial Court but were consolidated to Branch 69 for trial.

On October 28, 1996, the accused-appellant, duly assisted by counsel, entered a plea of not guilty to the crimes charged.[2] Thereafter, trial ensued.

On July 15, 1997, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding the accused Joselito Baltazar guilty beyond reasonable doubt of the crime of Rape in all these three (3) cases. Pursuant to Article 335 of the Revised Penal Code, as amended by Sec. 11 of R.A. 7659, the accused is hereby sentenced to suffer the penalty of Death in each case, and to indemnify the private complainant Digi Ann Niño, the sum of P150,000.00 as moral damages, and to pay the costs.

May God have mercy on his soul.

SO ORDERED.[3]

Hence, the present recourse.

The prosecution's evidence is as follows:

On December 23, 1995, Digi Ann Niño went to the house of the accused-appellant at No. 39 New Street East to visit her mother Teresita Fernandez Niño who was then working as a house helper of the accused-appellant.[4] The accused-appellant is Digi Ann's uncle, the former being the husband of the younger sister of her mother.[5]

In the afternoon of December 26, 1995, Digi Ann was watching television on the second floor of the house of the

accused-appellant. At around four o'clock to five o'clock in the afternoon, she fell asleep inside the room of the accused-appellant but she was awakened when the latter lowered her short pants and panty. Accused-appellant poked a knife at her and taped her mouth with masking tape.[6] Accused-appellant then removed his pants and underwear and thereafter, inserted his penis into her vagina.[7] After satisfying his lust, accused-appellant told the victim in Tagalog "Pag nagsumbong ka papatayin kita." [8] Digi Ann then went to the bathroom to bathe herself.[9]

On December 29, 1995, Digi Ann was instructed by her mother to get something for her at the second floor of the house of the accused-appellant. Accused-appellant followed her as she was about to leave the room, held her and laid her on his bed. He poked a knife at her, sliced a piece of masking tape and placed it on her mouth.[10] He removed her short pants and panty and thereafter, removed his own pants and inserted his penis into her vagina.[11] After violating her, accused-appellant again threatened her by saying "Huwag mong kalilimutan ang sinabi ko sa iyo." [12]

On January 8, 1996, around four o'clock to five o'clock in the afternoon, the victim was watching television with the accused-appellant's two (2) children at the second floor of their house.[13] Accused-appellant instructed his children to go downstairs and told them that he had to say something to Digi Ann. But when Digi Ann asked accused-appellant what he was going to tell her, he did not say anything. Instead, when she was about to leave the room, accused-appellant held her and laid her on his bed. He lowered her short pants and panty up to the knees and then removed his own pants and inserted his penis into her vagina. Afterwards, he again threatened her with death if she will report the crimes he committed.[14]

After each rape, Digi Ann saw spots of blood on her underwear.[15]

For the defense, accused-appellant testified that he was a tricycle driver and that he operated his tricycle from Monday to Friday, at six o'clock in the morning up to twelve noon when he goes home for lunch and then, at one o'clock in the afternoon up to seven o'clock in the evening.[16] On Saturdays and Sundays, he spends time with his family. He is legally married to Marietta Fernandez Baltazar, the victim's aunt.[17] He denied having raped Digi Ann on December 26, 1995, December 29, 1995 and January 8, 1996.[18] He, likewise, denied having kept a knife in his person or in his bedroom. He also denied having masking tape in his possession.[19]

In his brief, accused-appellant claims that the court a quo erred when it found that:

- 1.) Digi Ann was raped on December 26, 1995, December 29, 1995 and January 8, 1996.
- 2.) The accused-appellant raped Digi Ann.
- 3.) A paternity test should have been undertaken by, and at the expense of, the accused-appellant.
- 4.) The evidence of the prosecution proved beyond reasonable doubt the guilt of the accused.[20]

The pivotal issue in this case is whether the trial court found the testimony of the victim credible. After a careful review of the records, we find no cause to hold otherwise.

In the first assigned error, accused-appellant takes stock of the fact that Digi Ann's panty and short pants were pulled down only up to her knees when she was allegedly raped on December 26 and 29, 1995 and January 8, 1996. Accused-appellant contends that there was physical impossibility of carnal knowledge, much less of rape, because of the fact that the victim's short pants and panty were not completely removed from her. He submits that even a mere touch of the labia majora by the penis is physically impossible with the panty and the short pants of a reluctant or struggling victim pulled down only to her knees.

The submissions are without merit.

While it may be true that there might be some difficulty to penetrate a woman's sex organ if her short pants and panty were lowered only up to her knees, penetration, however, is not impossible if the pants and panty are loose and do not actually obstruct the penetration of the penis into her sex organ. In *People v. Hortelano*,^[21] the victim's underwear was lowered to her knees but the accused succeeded in raping her. The same is true in *People v. Aquino*,^[22] where the victim testified before the trial court that the accused was able to lower down her panty up to her knees and succeeded in having sexual intercourse with her.

Accused-appellant also claims that assuming he had carnal knowledge of the victim on January 8, 1996, the prosecution failed to present any evidence to show that force or intimidation attended the commission of the crime. Hence, he maintains that no rape was committed on said date.

The contention is devoid of merit.

It is true that Digi Ann did not testify that accused-appellant used force on her on January 8, 1996. However, it should be borne in mind that she was previously raped by the accused-appellant on December 26 and 29, 1995 and on both occasions, accused-appellant succeeded in intimidating the victim and in instilling fear in her fragile and young mind. Moreover, accused-appellant threatened her with death if she will report the rape to her family or to the authorities. With these threats still fresh in her mind, the victim could have been easily cowed to submission when the accused-appellant raped her for the third time on said date.

In *People v. Melivo*,^[23] cited in *People v. de Leon*,^[24] this Court held that:

xxx. A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.

x x x

xxx. [T]he rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time. In many instances, he succeeds and the crime is forever kept on a lid. In a few cases, the victim suddenly finds the will to summon unknown sources of courage to cry out for help and bring her depraved malefactor to justice.

Given this pattern, we have repeatedly ruled that the failure of the victim to immediately report the rape is not indicative of fabrication. `Young girls usually conceal for some time the fact of their having been raped.' x x x.

In all of these and other cases of incestuous rape, the perpetrator takes full advantage of his blood relationship, ascendancy, and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence. Unfortunately for some perpetrators of incestuous rape, their victims manage to break out from the cycle of fear and terror. In *People v. Molero*, we emphasized that "an intimidated person cowed into submitting to a series of repulsive acts may acquire some courage as she grows older and finally state that enough is enough, the depraved malefactor must be punished."^[25]

Verily, intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. It is addressed to the mind of the victim and is, therefore, subjective.^[26]

Accused-appellant also tries to discredit the declaration of the victim that she saw blood spots on her panty after each rape was committed. He claims (a) that as testified by Dr. Alexis Mary Chuson the last menstrual period of Digi Ann was in the last week of December 1995, and (b) that by reason of said menstrual period, her panty

would not have a mere spot of blood on December 26 or December 29, 1995 but would have been saturated or soaked with menstrual blood.[27]

We are not convinced by the argument.

Even though the victim was having her menstruation on the date that she was raped, it does not mean that the flow of blood was constant all the time. It is widely known that during a period of menstrual flow, there are times when the flow is heavy so as to saturate a girl's underwear with blood and there are also times when the flow is minimal that only mere spots of blood can be seen on the underwear. What is certain is that the presence of blood in her panty is consistent with the medical findings of hymenal lacerations and the victim's menstrual period. Thus, we quote with approval the findings of the trial court on this matter:

The defense seems to overlook the biological fact that during the menstrual period of a woman there are times when the menstrual flow is heavy and there are also times when the flow is minimal or only a little blood comes out. This could have been the reason why there was only a spot or stain of blood in the panty of the complainant when she was raped by the accused on December 26 and 29, 1995. There is no evidence of the size of the blood spot or stain, but apparently, her menstrual flow was not heavy on those dates. But the inescapable fact remains that there was blood in her panty which is consistent with the medical findings of hymenal lacerations and complainant's menstrual period. (Exh. "A").[28]

As to the rape which was allegedly committed on January 8, 1996, accused-appellant contends that there could not have been any spot of blood because the victim was no longer menstruating at that time.

We disagree.

In the first place, the victim did not testify that she was menstruating on January 8, 1996. It was only the accused-appellant who asserted that if there were blood spots on the underwear of the victim, the same may have been due to menstruation. We agree with the trial court that the blood spots on the underwear of the victim may have been due to menstruation or to vaginal lacerations as a result of the rape.[29] It is not the presence or absence of blood on the victim's underwear that determines the fact of rape anyway.

Accused-appellant also denies having a knife or masking tape inside his bedroom.[30] He also claims that Digi Ann was merely fantasizing when she said that she saw something "white and sticky" coming out of the erected penis of the accused-appellant.[31] He further argues that if she was sexually abused on December 26 and 29, 1995, when she was menstruating, that "white and sticky" substance would have been mixed with the menstrual blood and would have been blood red or pinkish in color instead of a separate spot of blood on one side of her panty and a separate spot of the "white and sticky" substance on the other side of her panty.[32]

To our mind, these allegations are merely peripheral and trivial in nature.[33] They cannot prevail over the positive identification made by the victim and her categorical declaration that she was raped on three occasions by herein accused-appellant. Besides, during cross-examination, accused-appellant admitted that there was a knife in the kitchen of his house.[34] Thus, even if he did not keep a knife in his bedroom, there was nothing to prevent him from taking a knife from the kitchen and using it to threaten the victim. The presence, absence or mixture of menstrual blood and semen, as the case maybe, does not have any bearing on the resolution of this case.

Accused-appellant also claims as unnatural the act of the victim in returning to the bedroom where the alleged rape was committed (a) three days after the commission of the first rape and (b) on January 8, 1996. He submits that with her harrowing experience on December 26, 1995 and December 29, 1995, Digi Ann should have refrained from going to his bedroom on January 8, 1996.[35] Accused-appellant also maintains that if he raped Digi Ann, there was no sensible and credible reason for her to remain in his house for another eleven days.[36] Moreover, accused-appellant finds it unnatural for a rape victim to return to the house of her molester a little more

than three months after the alleged rape was committed.[37]

Digi Ann's behavior cannot be considered as unnatural and contrary to human behavior. We must remember that herein victim is a girl of tender age. Surely, she cannot be expected to act indignantly as an adult would or do what is expected of mature people. On the occasion of the second rape, records reveal that Digi Ann was instructed by her mother to get something from the room of the accused-appellant. She did not go there of her own accord. With the threat of death still lingering in her mind, it was not unnatural for the victim to mask her fear from her mother. As to the third rape, the victim was with her two cousins while inside the accused-appellant's bedroom. She had no inkling that the accused-appellant would again rape her. The trial court's finding on this matter is relevant:

The defense has stressed this fact as being unnatural and inconsistent with ordinary human experience. But the Court thinks otherwise. The following circumstances may explain why complainant returned to the house of the accused on May 1, 1996.

- Her mother was still working in the house of the accused on said date;
- Being the youngest in the family, it is not unnatural for the complainant to yearn for the company of her mother. In fact, she testified that she went there to visit her mother. (tsn, page 20, December 11, 1996)
- Her claim that the accused may have been problematic that is (sic) why he was able to do what he had done to her. In fact, he was also good to her before the incidents.

x x x

By the same token, it may have been also due to her honest belief that her uncle would not do it again that brought her in the accused's house to see her mother.[38]

In the second assigned error, accused-appellant categorically denies having raped Digi Ann on December 26 and 29, 1995 and on January 8, 1996. He claims that he operated his tricycle everyday from Monday to Friday from six o'clock in the morning to twelve noon and then, from one o'clock in the afternoon up to seven o'clock in the evening.

Well-entrenched is the rule that the defense of denial cannot prevail over the positive identification of the accused.[39] It is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[40] So is the defense of alibi which is equally weak and cannot prevail over the positive identification made by the victim of the accused.[41] Time and again, this Court has held that alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove.[42]

Consequently, denial and alibi, if not substantiated by clear and convincing evidence, are negative and self-serving evidence and bear no weight in law.[43] In the present case, although accused-appellant was operating his tricycle during the hours mentioned, the possibility of going home during those hours could not be discounted. In order for his defense of alibi to prosper, accused-appellant must be able to show that it was physically impossible for him to be at the scene of the crime at the time it was committed. This, he failed to do. Even his own lawyer admitted that it was possible for him to go home anytime he wanted. Thus, we quote the testimony of accused-appellant during the cross-examination:

x x x

Q

Now Mr. Witness, you said that you are operating your tricycle from six to twelve in the morning and one to seven in the afternoon, is it not?

A

Yes, sir.

Q

And it is in Lingayen, Pangasinan where you operated your tricycle?

A

Yes, Sir. In Poblacion.

Q

And if you want to return to your house you could return any time of the day, is it not?

ATTY. TANOPO:

Objection, your Honor. That's very unfunctionable.

PROS. BUSTAMANTE:

That's why I'm asking, your Honor, by operating his tricycle if want (sic) to return, he could return.

ATTY. TANOPO:

Yes, but that is speculative and argumentative, your Honor, the possibility is there, your Honor, yes, but for cross-examination along that line, the question would be improper, your Honor.

COURT:

Witness may answer.

A

I used to go home during twelve o'clock in the afternoon when I eat my lunch time (sic).

PROS. BUSTAMANTE:

You did not answer my question categorically. My question Mr. Witness is, if you want to go home anytime while you were operating your tricycle, you can go home.

ATTY. TANOPO:

Possibility of course.[44]

In the third assigned error, accused-appellant avers that he is not duty bound to undergo a paternity test, nor should he shoulder the expense for it. He contends that it is the prosecution who is duty bound to shoulder the expenses for said paternity test since it was the prosecution who offered the Certificate of Birth of Digi Ann's child declaring the father as unknown as part of their evidence. He further contends that since the prosecution refused or failed to shoulder the expenses for the paternity test, it is presumed that the result of the test, had the same been conducted, would be adverse to the prosecution.[45]

It is extant from the records that it was the accused-appellant who filed a motion to undergo a paternity test and this motion was granted by the trial court. Why then would he abandon his request and blame the prosecution for not shouldering the expenses for said test? In the hearing dated May 27, 1997, his own counsel informed the court that when he asked the accused-appellant about the paternity test, the latter just said that he was not in the position to do it. He did not say that the prosecution should shoulder the expenses for said paternity test.[46] Hence, we

agree with the Solicitor General's contention that the accused-appellant must have abandoned the idea of submitting himself to the paternity test for fear that said test may reveal the falsity of his claim that he had no carnal knowledge of Digi Ann.[47]

As to the last assigned error, we find that the trial court committed no error in finding the accused-appellant guilty beyond reasonable doubt of the crime charged.

Accused-appellant could not show any ill motive on the part of Digi Ann to falsely accuse him of raping her. In fact, Digi Ann even said that prior to the rape, her uncle was good to her.[48] Obviously, Digi Ann would not subject herself to public humiliation and to the travails of trial if she was not really raped. A rape victim will not come out in the open and reveal her humiliating experience if her end is not to obtain justice.[49] A young woman of good repute would not expose herself to public shame and embarrassment by declaring that she was raped unless her desire is to have her offender apprehended and punished.[50]

We do not agree with the trial court, however, that accused-appellant should be sentenced to death for the rapes committed. Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, provides:

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- where the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. (Underscoring supplied)

x x x

The Court in a number of cases[51] held that the relationship of the accused-appellant and the victim, and the minority of the offended party must be specifically pleaded in the information in order to be properly appreciated as a qualifying circumstance for the purpose of imposing the death penalty under R.A. 7659. Here, the circumstances that would qualify the offense are (a) that the accused-appellant is the uncle of the victim, and (b) that the latter is under 18 years of age at the time of the rape. However, since the three informations failed to allege these circumstances, accused-appellant cannot be convicted of qualified rape because he was not properly informed of the charges against him. Consequently, accused-appellant can only be convicted of three (3) counts of simple rape and accordingly punished with reclusion perpetua.

As to the indemnity awarded by the trial court to the victim, we find the same sadly lacking considering that three (3) rapes were committed against the victim, hence, the indemnity should be increased to P75,000.00 for each rape, or a total of P225,000.00. In *People v. Victor*,[52] we ruled that:

Indictment for rape continue unabated and the legislative response has been in the form of higher penalties. The Court believes that, on like considerations, the jurisprudential path on the civil aspect should follow the same direction. Hence, starting with the case at bar, if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law, the indemnity for the victim shall be in the increased amount of not less than P75,000.00.

WHEREFORE, the decision of the trial court is hereby **AFFIRMED** with the **MODIFICATION** that accused-appellant Joselito Baltazar is sentenced to suffer the penalty of **RECLUSION PERPETUA** for each count of rape and is ordered to pay **TWO HUNDRED TWENTY-FIVE THOUSAND (P225,000.00) PESOS**, as civil indemnity.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Records of Criminal Case No. L-5486, p. 1; Records of Criminal Case No. L-5487, p. 1; and Records of Criminal Case No. L-5488, p. 1.

[2] Records of Criminal Case No. L-5486, pp. 56, 61.

[3] *Id.*, at 182.

[4] TSN, 11 December 1996, p. 3.

[5] *Id.*, at 17.

[6] *Id.*, at 4.

[7] *Id.*

[8] *Id.*

[9] TSN, 11 December 1996, p. 6.

[10] *Ibid.*

[11] *Id.*, at 7.

[12] *Id.*

[13] *Id.*

[14] TSN, 11 December 1996, p. 8.

[15] *Id.*, at 26.

[16] TSN, 14 May 1997, p. 5.

[17] *Id.*, at 5-6.

[18] *Id.*, at 7.

[19] *Id.*

[20] Rollo, pp. 51-52.

[21] 148 SCRA 469 (1987).

[22] 197 SCRA 578 (1991).

[23] 253 SCRA 347 (1996).

[24] G.R. No. 130985, December 3, 1999.

[25] *People v. Melivo*, *supra*, pp. 356-358.

[26] *People v. Edualino*, 271 SCRA 189 (1997); *People v. Oarga*, 259 90 (1996).

[27] Rollo, p. 58.

[28] Id., at 29.

[29] Id., at 31.

[30] TSN, 14 May 1997, pp. 7-8.

[31] Rollo, p. 61.

[32] Id., at 62.

[33] Id., at 118.

[34] TSN, 14 May 1997, p. 15.

[35] Rollo, p. 70.

[36] Id., at 71.

[37] Id.

[38] Rollo, pp. 31-32.

[39] People v. Ricky Banela, 301 SCRA 84 (1999); People v. Dela Torre, 272 SCRA 615 (1997); 272 SCRA 615 (1997); People v. Catolcol, Sr., 265 SCRA 109 (1996).

[40] People v. Burce, 269 SCRA 293 (1997).

[41] People v. Mayor Antonio L. Sanchez, et al., 302 SCRA 21 (1999).

[42] People v. Grefaldia, 263 SCRA 591 (1997); People v. Mañosca, 269 SCRA 513 (1997).

[43] People v. Apongan, 270 SCRA 713 (1997).

[44] TSN, 14 May 1997, pp. 14-15.

[45] Rollo, pp. 78-80.

[46] TSN, 27 May 1997, pp. 2-3

[47] Rollo, p. 125.

[48] TSN, 11 December 1996, p. 42.

[49] People v. Castromero, 280 SCRA 421 (1997).

[50] People v. Pontilar, Jr., 275 SCRA 338 (1997); People v. Antipona, 274 SCRA 328 (1997); People v. Caballes, 274 SCRA 83 (1997).

[51] People v. Tabion, G.R. No. 132715, October 20, 1999; People v. Panique, G.R. No. 125763, October 13, 1999; People v. Acala, 307 SCRA 330 (1999); People v. Ramos, 296 SCRA 559 (1998); People v. Garcia, 281 SCRA 463 (1997).

[52] 292 SCRA 186 (1998).

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