

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO PAINITAN ALIAS ABIE,;
ACCUSED-APPELLANT.**

G.R. No. 137665. January 16, 2001

Ponente: VITUG, J.

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VITUG, J.:

Was the case proffered by the prosecution, absent contrary evidence presented by the defense, sufficient to warrant a conviction of the accused? The trial court concluded in the affirmative.

AAA, a thirty-seven year old housewife from xxx, and the mother to a brood of nine, the youngest of whom was only a month old by the time AAA took the witness stand, claimed to have been the victim of rape. The night of 12 December 1995 appeared to be a typical evening for AAA's family. AAA was left alone with her children, as husband BBB, an abaca stripper had to spend days in the mountains to gather and strip abaca. By seven o'clock that evening, AAA's household had already retired for the night. Save from the light of a lone lamp, the house was virtually dark and quiet. AAA was sleeping in one room and her three children - CCC, DDD and EEE - in another. Accounts on the whereabouts of the other children remained unclear. The two rooms in the family dwelling were separated by bamboo walls and an opening connected one room to the next. At approximately eleven o'clock, AAA was suddenly roused from slumber when she felt somebody hugging and kissing her lips. Aided by the light of a flickering lamp, she recognized her attacker to be Alberto "Abie" Painitan, then slightly drunk and wearing only an undershirt. Surprised, she tried to ward off his advances but he proved to be too strong for her. To restrain her, Alberto boxed both her shoulders and upper thighs. Pained by the blows, AAA slid into unconsciousness. Strangely, despite being unconscious, AAA could remember Alberto undressing her, removing her pair of shorts and panties, placing himself on top of her, inserting his penis into her vagina and making push and pull movements. When asked how long it took, private complainant stated that she could not tell because she was unconscious and that when she came to Alberto was no longer around. Instead, she said, she saw her two children CCC and DDD crying by her bedside.

The following days, AAA remained quiet, deciding to report the matter only upon her husband's arrival. It was five days after the alleged molestation when BBB came home. After AAA recounted to her husband what had happened to her, the couple decided to go to the barangay captain of xxx to lodge a complaint against Alberto. The physical examination of AAA at the hospital showed the presence of confluent hematoma which, according to examining physician Freddie Letigio, was probably caused by a hard object, like a closed fist. No physical examination was conducted on private complainant's private parts as several days had already elapsed since the alleged rape.

On 22 February 1996, the information against Alberto Painitan was filed. Thus -

"INFORMATION"

"The undersigned hereby accuses ALBERTO PAINITAN, alias 'Abie', who is said to be found atxxx, of the crime of Rape based upon a complaint signed by the offended party herself, and committed by above-named accused as follows:

"That on or about the 12th day of December, 1995, at around 11:00 o'clock in the evening, more or less, in xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lustful intent and lewd design, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously, had sexual intercourse with AAA, who is a married woman, against her will, to the damage and prejudice of the said victim and her family." [1]

The warrant for his arrest was returned unserved with a notation that Painitan had already transferred residence to Barangay Mainet, Nabontoran, Davao del Norte. It was a year later when Alberto surrendered to the authorities of xxx, and submitted himself to trial following his plea of "not guilty."

Taking the witness stand, AAA testified that she knew well Alberto "Abie" Painitan who had been a neighbor for nine years with only a rice field separating their houses. She did not know how Alberto was able to gain ingress to their dwelling that fateful night nor did it occur to her to ask him, confusion, fear and shock having gotten the better of her. On cross-examination, private complainant admitted that the door to their house was not bolted that night.

CCC, Victoria's fifteen-year old daughter, testified that she had known Alberto "Abie" Painitan even prior to the alleged rape, and that she would often see Abie and her mother conversing with each other but added that she and her siblings were invariably present on such occasions. On the night of the incident, CCC was sleeping with her brother EEE and her sister DDD when she heard a commotion. Curious, she rushed to the other room and there she saw "Abie" on top of her mother, hitting her on different parts of her body and rendering her weak and speechless. While atop her mother, CCC saw Alberto make pumping motions, his bare buttocks in plain view to the terrified child. Unable to do anything, CCC and her sister DDD, who just then had followed her to their mother's room, were helplessly crying. Shortly afterwards, Alberto stood up, put on his pair of pants and went downstairs. With Abie gone, she and her sister DDD went to their still speechless mother, embraced her and cried. AAA did not discuss with her children what had happened. The first time CCC openly talked about the incident was when BBB, their father, finally came home. It was she, however, not her mother, who narrated the incident to her father. After listening to her story, CCC could sense her father's rage. He confronted her mother, and it was then when her mother told him the truth. Stunned, Daniel yelled before breaking into tears.

The defense presented two witnesses -- Simeon Tagnipez, uncle of the accused, and Proceso Samo.

Tagnipez testified that BBB and AAA had earlier confided to him their decision to withdraw the case for lack of money and ill-health. According to Tagnipez, financial hardships, coupled with BBB's swollen toes that made regular attendance in court hearings difficult, impelled the spouses to execute an affidavit of desistance. When shown the affidavit, however, witness Simeon Tagnipez admitted that he did not know how to read. The second witness, Proceso Samo, corroborated Tagnipez' testimony and testified that he, too, was present when the affidavit of desistance was executed. Reportedly, AAA and BBB were given P500.00 when they affixed their thumbmarks on the affidavit of desistance although no receipt was issued for the amount.

The defense rested its case, without the accused taking the witness stand.

The court a quo, after assessing the evidence found Alberto "Abie" Painitan guilty of the crime of rape and imposed upon him the penalty of reclusion perpetua; thus:

"WHEREFORE, premises considered, the court finds accused Alberto Painitan alias `Abie' GUILTY beyond reasonable doubt of the crime of RAPE and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the victim of the amount of P50,000.00 as damages." [2]

In the instant appeal, accused-appellant contends that the sexual congress between him and private complainant on the night of 12 December 1995, given the testimony of AAA and her daughter, could not have been anything else but an act of two consenting adults.

Verily, for the charge of rape to prosper, proof beyond reasonable doubt should show (1) that there has been carnal knowledge of the victim by the accused; and (2) that the accused achieves the act through force and intimidation upon the victim or because the latter is deprived of reason or is otherwise unconscious.

AAA testified that accused-appellant, to subdue and succeed in taking her, had boxed both her left and right shoulders and her upper thighs, causing her to lose consciousness.

"Q.

While you were sleeping on or about 11:00 p.m. of December 12, 1995, do you recall of any unusual incident that occurred?

"A.

Yes, sir.

"Q.

What was the unusual incident that occurred, if any?

"A.

That incident, when he climbed our house.

"Q.

You mentioned the word `he' to whom are you referring when you said `he climbed into your house?'

"A.

Alberto Painitan, alias `Abie' entered our house.

"Q.

After Alberto Painitan entered your house, do you recall through which opening of your house did he enter?

"A.

Because I was sleeping, I could not recall where he passed by when he entered our house

"Q.

Nevertheless, after he entered your house, what happened next if any?

"A.

He hugged and kissed me, sir.

"Q.

What were you doing at that time?

"A.

I tried to overcome his force, sir.

"Q.

Since it was nighttime, how did you recognize that it was Alberto Painitan who entered your house; hugged and kissed you?

"A.

At that time there was a lighted lamp.

"Q.

You said you were kissed by Alberto Painitan, where were you kissed?

"A.

On my cheeks, sir.

"Q.

Left or right?

"A.

Both cheeks, sir.

"Q.

After Alberto Painitan kissed your left and right cheeks, what happened next if any?

"A.

He boxed my both shoulders and my laps, sir.

"Q.

When Alberto Painitan boxed your left and right shoulders and your laps what did you feel?

"A.

I felt pain, sir.

"Q.

After your shoulders and your laps were boxed, what happened next, if any; what did Alberto Painitan do next?

"A.

He undressed me, sir.

"Q.

What was undressed from you?

"A.

He removed my shirt and panty, sir.

"Q.

After Alberto Painitan removed your short and panty, what happened next, if any?

"A.

He had sexual intercourse.

"Q.

When you said sexual intercourse, what did he particularly do to you?

"A.

He placed himself on top of me.

"Q.

What did he do with his organ?

"A.

He inserted his penis to my vagina.

"Q.

After he inserted his penis to your vagina, what did he do next, if any?

"A.

He kept on pumping while his penis was inside my vagina.

"Q.

For how long did Alberto Painitan pump while inserting his penis to your vagina?

"A.

Since I was unconscious, sir, I could not remember for how long did he keep on pumping, sir.

"Q.

After he inserted his penis into your vagina and started pumping, what did you feel?

"A.

I felt pain in my vagina.

"Q.

What did you observe on his person, was he drunk?

"A.

He was slightly drunk.

"Q.

Why do you say that Alberto Painitan was slightly drunk?

"A.

I could say that he was slightly drunk because if he was not so drunk, he could not locate my house.

"Q.

While this sexual intercourse was occurring, where were these two (2) children, then?

"A.

My children were at the other room.

"Q.

You said you were boxed on your laps; what portion of your laps were boxed by Alberto Painitan?

"A.

I was boxed on my both front portion of my laps, sir.

"Q.

When you were boxed on your upper legs, what did you feel?

A.

"I felt pain, sir.

"Q.

You said you were unable to estimate the time Alberto Painitan kept on pumping you; after he had sexual intercourse with you, what did he do next, if any?

"A.

Because I was unconscious, I could no longer remember what did he do next. After I regained consciousness, he was no longer around.

"Q.

When you regained consciousness where were your two (2) children then?

"A.

They were already at my side.

"Q.

What were they doing?

"A.

They were crying, sir." [3]

According, however, to Dr. Freddie Letigio, the examining physician, the hematoma found on Victoria did not correspond to the location of the injuries testified to by her. Dr. Letigio found hematoma on her left elbow joint, left upper arms and on the right shoulder.

"Q.

And what were your findings, if any?

"A.

Based on my record, there was a confluent hematoma at the left elbow joint, confluent hematoma at the left deltoid area and multiple confluent hematoma at the right shoulder." [4]

Common experience would dictate that the force of a closed fist merely hitting the extremities of the body normally will not be enough to cause unconsciousness. Pointedly, private complainant has had herself examined on 18 December 1995, or six days after the incident, at which time, an average hematoma or mark on the body caused by mere inflection of a closed fist could become indistinct. Clear marks on the body after the lapse of nearly a week from the date the injury is inflicted can raise great likelihood that the physical marks may have been of a more recent occasion.

A few other factors could militate against AAA's allegation of having been rendered unconscious at the time of rape. Although claiming to be in a state of stupor, private complainant, nevertheless, was able to narrate in detail the acts of accused-appellant in removing her shorts and pair of panties, in inserting his penis into her vagina and in making pumping motions. When her attention was brought to this glaring incongruity, she deftly answered that she knew what the accused-appellant did to her even in her unconscious state only because her children had told her about it. If it were so, then her own narration would also be reduced to mere hearsay. During both direct examination and cross-examination, AAAherself stated that her children were not with her when the rape had

taken place –

"Q.

While this sexual intercourse was occurring where were these two children, then?

"A.

My children were at the other room." [5]

"Q.

At that time your children were not yet with you when the sexual intercourse was done by the accused on you?

"A.

They were not yet with me, sir." [6]

Perhaps realizing her inconsistency, AAA later reformed her testimony to say that her children were already present when the episode was unfolding -

"A. My children came to my room when the accused was still there.

"Q. Where was the accused at that time?

"A. My children came to my room when the accused was still having sexual intercourse with me.

"Q. Until the end?

"A.

Yes, sir." [7]

The flip-flopping on a material portion of her testimony taints AAA's credibility and gives the version of her daughter, CCC, added prominence as being the only eyewitness account of the sexual assault. Unfortunately, CCC's claim that she witnessed the coupling between Painitan and her mother would itself appear to be highly questionable. CCC's claim in open court that she actually saw accused-appellant hit her mother and thereafter raped her diverges from her earlier sworn declaration before Investigating Judge FFF where she categorically stated that, upon reaching her mother's room, she saw accused-appellant already dressed, lying beside her seemingly unconscious mother.

"Q.

At around eleven o'clock in the evening on December 12, 1995, was there any untoward incident that took place?

"A.

Yes, sir.

"Q.

Please tell us what was that incident all about?

"A.

I was awakened by a commotion in the room of my mother. My sister DDD also awoke at that time and we went inside the room where my mother was sleeping. I saw Alberto Painitan alias 'Abie' lying beside my mother. We cried upon seeing him and Alberto Painitan stood up and told us to give way because he will go out.

"Q.

At that time you saw accused lying beside your mother, was the accused naked as well as your mother?

"A.

I saw my mother's short already torn placed at the foot of my mother while Abie who was wearing a short pant at that time was lying beside my mother. Upon seeing us, Abie stood up and told us to give way because he was going out passing through the kitchen door.

"Q.

How come you were able to identify accused Alberto Painitan alias "Abie" who was lying beside your mother?

"A.

I could clearly identify him because the kerosene lamp in my mother's bedroom was lighted.

"Q.

Do you know personally the accused Alberto Painitan?

"A.

He frequently comes to our house because he is a 'compadre' of my parents.

"Q.

Having seen the accused lying beside your mother, what did you do then?

"A.

We just cried because we were afraid.

"Q.

Did you actually enter into the room of your mother when you saw the accused lying beside your mother?

"A.

Yes, sir." [8]

Not to be taken lightly was the failure of the prosecution to show that private complainant had actually resisted accused-appellant's amorous advances except for the following snippet of her testimony –

"Q.

What were you doing at that time?

"A. I tried to overcome his force, sir." [9]

Other than this negligible and obscure portion of her account, AAA failed to describe to any extent the form and the manner of the resistance she exerted to protect her honor. No attempt was made by the prosecution to recite how private complainant exactly tried to overcome accused-appellant's brutish intentions. Instead, per her testimony, AAA, upon being showered with kisses by Alberto Painitan made no attempt to shout or struggle, her silence and immobility suspiciously qualifying as somehow being a wordless acquiescence and surrender to Painitan's advances -

"Q.

On December 12, 1995 was the door of your house locked?

"A.

Our door was not locked at that time.

"Q.

You knew that somebody entered your house because of the sound that you heard?

"A.

I came to know that somebody entered our house when he was already inside the house.

"ATTY. GABUCAN:

"Q.

In fact you asked him why he was in your house at that time?

"A.

I did not ask him because I was confused.

"Q.

You just stared at him by the eyes?

"A.

Yes, sir.

"Q.

Of course, at that time he uttered words when he was staring at you?

"A.

No, sir, instead he directly approached me.

"Q.

At that time your two children were sleeping in the other room of your house?

"A.

Yes, sir.

"Q.

While he got near you, you were not able to shout for help?

"A.

I was not able to shout for help.

"Q.

Until what you said, he was able to embrace and hug you?

"A.

Yes, sir.

"Q.

And he even kissed your cheeks and your lips?

"A.

Yes, sir." [10]

This Court is not unaware of its own rulings that when a woman states that she has been raped, she says in effect all that would be necessary to show that rape did take place. This principle, however, only stands as long as the testimony is free from serious or major incongruence and unbridled by suspicion or doubt.

Extraneous circumstances could also augur against the existence of force and intimidation. The front door of the house during the night of the supposed rape when AAA, alone with her young brood and without the man of the house to protect them, was left unlocked. Then, too, it was her daughter CCC who first related the incident to her father, and it was only when confronted that AAA finally told her husband about it.

The presumption of innocence of an accused is a substantial part of the law founded upon a great principle of justice that cannot be balanced out merely by conjecture or by probability. [11] The heavy burden of overcoming this presumption rests on the prosecution, and unless it succeeds in proving by satisfactory evidence the guilt of the accused, the constitutional mandate of innocence prevails. [12] In crimes of rape particularly, conviction or acquittal depends almost entirely on the credibility of the victim's testimony because ordinarily only the participants can testify to its occurrence. [13] Rape is an emotional word, and the natural human reactions against it are strong and categorical. Judges, as interpreters of the law and as dispensers of justice, are enjoined, however, to look at rape charges without those proclivities and to still deal with it with extreme caution and circumspection, free from the natural tendency to be protective of every woman decrying her having been sexually abused. [14] Thus, the Court has exhorted courts to keep in mind settled principles in the decision-making process, i.e., (1) that an accusation for rape can be made with facility; (2) that it is difficult to prove but more difficult for the person accused, although innocent, to disprove; (3) that, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with great caution; and (4) that the evidence for the prosecution must stand or fall in its own merits, and it cannot be allowed to draw strength from the weakness of the evidence for the defense. [15]

Be all that, nevertheless, confronted with the conflicting and vague evidence proffered by the prosecution, and the total silence on the part of accused-appellant, what might have actually transpired on the night of 12 December 1995 can never be fully known, except perhaps to the two involved in the incident. Regrettably, there are, in the mind of the court, lingering doubts that have remained unanswered. Could it be that the matter has been no more than the unleashing of shared passions, and that the door of the house has purposely been left unsecured? Could it have been because of an obvious embarrassment upon being caught by her daughters in the afterglow of a

passionate lovemaking which has prevented her from immediately reporting the incident to her husband or to the authorities? Could it be that the disappearance of accused-appellant immediately after the incident has merely been to escape the ire of a wronged husband? Could it be that the injuries sustained by private complainant have been caused not by accused-appellant but by an angry spouse? On another end, it may well be that Alberto "Abie" Painitan did commit the crime of raping the defenseless AAA. If indeed he is guilty, let the Ultimate Judge make that righteous judgment. Courts of men, hardly infallible, can only rely upon the evidence before them. Verily, it may be necessary to reiterate the basic rule that requires a party to prove his affirmative allegations even as it underscores the delicate and pivotal role of the prosecution, particularly during the direct and cross-examination, on the imperativeness of probing questions in order to elicit fine points from witnesses that pertain to no less than the vital elements of the crime. This focal duty of the prosecution is not abdicated even in the face of the failure of the accused to utter a word in his defense.

WHEREFORE, the decision of the Regional Trial Court of xxx is REVERSED. Accused-appellant Alberto "Abie" Painitan is ACQUITTED of the crime of rape on the ground of the People's failure to prove his guilt beyond reasonable doubt. He is to be released forthwith unless there are other lawful reasons for his continued detention. Costs de oficio.

SO ORDERED.

Melo, (Chairman), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Records, p. 19.

[2] Rollo, p. 27.

[3] AAA, supra, at pp. 5-9

[4] TSN, 18 March 1997, p. 8.

[5] TSN, 19 February 1997, p. 9.

[6] Ibid., p. 19.

[7] Ibid., p. 20.

[8] Statement of CCC before Investigating Judge FFF, 24 January 1996, Records, pp. 11-12.

[9] TSN, 19 February 1997, p. 6.

[10] TSN, 19 February 1997, pp. 15-16.

[11] Ibid.

[12] People vs. Pidia, 249 SCRA 687.

[13] People vs. Ching, 240 SCRA 267.

[14] People vs. Godoy, 250 SCRA 676.

[15] People vs. Tacipit, 242 SCRA 241.

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