# THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADOR BISMONTE Y BERINGUELA, ACCUSED-APPELLANT.

*G.R. No. 139563. November 22, 2001*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

This is an appeal from the decision[1]of the Regional Trial Court, Branch 24, Naga City, finding accused-appellant Amador Bismonte guilty of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the complainant, Sarah Joy Casiao, the amounts of P50,000.00 as indemnity, P25,000.00 as moral damages, and the costs of the suit.

The facts are as follows:

On March 19, 1996, complainant Sarah Joy Casiao then 12 years old, assisted by her mother Jael Casiao, filed with the Municipal Trial Court of Pasacao, Camarines Sur a complaint for rape against accused-appellant Amador Bismonte on the basis of which an information was filed in the Regional Trial Court on June 4, 1996 charging --

> That on or about the 15th day of March 1996, at about 2:00 o'clock in the morning at Brgy. Antipolo, Municipality of Pasacao, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge with. . . Sarah [Joy] Casiao a 12-year old, against her will and the offended party suffered damages.[2]

Accused-appellant pleaded not guilty to the charge and forthwith he was tried.

The prosecution presented evidence showing the following:

Sarah Joy Casiao, born on February 21, 1984, is the daughter of Jesus and Jael Casiao of Antipolo, Pasacao, Camarines Sur. At the time material to this case, the Casiao family lived in a nipa but located about a kilometer away from the barangay proper. The house, made of bamboo and other wooden materials, had no rooms and its occupants slept either on a bed placed on one side of the house or on the floor. Sarah Joy's parents earned their living by selling foodstuffs such as macaroni soup and pancit from a stall located near the cockpit in Centro Antipolo. They also raised and sold garlic and eggplant to supplement their income.[3]

On March 15, 1996, which is a tupada or cockfight day, the Casiao spouses opened their store as early as 1 o'clock in the afternoon. At 3 o'clock, Sarah Joy and her younger brother Izra, 10, and cousin John-john,[4]5, went to the store to help out. About three hours later, the children returned home and, after taking their dinner, went to sleep at around 10 o'clock in the evening. Sarah Joy left the door at the back of their house unlocked as her parents had not yet come home.[5]

Sometime later, Sarah Joy woke up because someone was focusing his flashlight on her face, She sat up and, from the illumination of the overnight lamp (patentihan) near her bed, recognized the intruder to be accused-appellant Amador Bismonte, a barriomate, whom she had known since birth. Accused-appellant warned her not to make

any outcry. He grabbed complainant's left hand, went behind her, and covered her mouth. Without removing his hand, accused-appellant dragged Sarah Joy out of the house. As she was being taken out, Sarah Joy tried to wake Izra and John-john up but the two remained fast asleep.[6]

In the backyard, accused-appellant pushed Sarah Joy to the ground, sat astride her, pulled down her shorts and underwear with one hand, and had sexual intercourse with her. Accused-appellant prevented Sarah Joy from shouting by covering her mouth with his hand. Before leaving, accused-appellant warned complainant not to report the incident to anyone or she would be killed.[7]

Sarah Joy went back inside their house crying and woke up Izra and John-john. At around 2:00 a.m., Jesus and Jael Casiao came home from the store and found their daughter inside the house, naked from the waist down, crying, and trembling. The sleeping area was in disarray and there were muddy footprints all over the house. Sarah Joy told them that she had been raped by accused-appellant. Jesus Casiao took his bolo and would have gone to accused-appellant's house had be not been prevailed upon by his wife to let the authorities take care of the matter.[8]

At 5:30 in the morning of that day, March 16, 1996, Jesus Casiao went to the then barangay chairman of Antipolo, Serino Ador, to report the assault on his daughter. Jesus also reported the incident to the Philippine National Police (PNP) in Pasacao.[9]At around 5:20 that afternoon, Jesus Casiao took Sarah Joy to the Bicol Medical Center in Naga City for a medical examination.[10]

Dr. Emily Papica, who had examined Sarah Joy, issued the following certification (Exh. A):

**TO WHOM IT MAY CONCERN:**

> This is to certify that the [person] named hereunder was physically examined in this hospital to wit:
>
> NAME: CASIAO, SARAH JOY
>
> Age: 12 Sex:: F C/S child
>
> ADDRESS: Antipolo, Pasacao, Cams. Sur
>
> Date Examined: March 16, 1996
>
> Time Examined: 5:20 PM.
>
> Old [hymenal] scar at 12 o'clock, 1 o'clock, 3 o'clock [position] with foul smelling discharge per vagina allegedly for more than 1 month.
>
> I.E.: cervix admits 1 finger with ease, uterus is small adnaxae (-)
>
> With multiple weeping lesion on both lower extremities with bipedal edema.
>
> Gram Staining Result:
>
> - gram (+) bacili = many
>
> - puscells - few


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- epithelial cells = many

PAP SMEAR FOR IDENTIFICATION OF SPERM CELLS

Note: Stained smear shows absence of spermatozoa.[11]

On the witness stand, Dr. Papica opined that the lacerations in complainant's hymen could have been caused by sexual intercourse, but she could not say with certainty whether the intercourse took place within 24 hours of the examination considering that the lacerations were old. She added that the lacerations could have been caused earlier by the passage of blood clots during menstruation, the penetration of hard objects into the vaginal area, and by physical activities such as gymnastics, cycling, and horseback riding. As for the absence of spermatozoa, Dr. Papica stated that this could be due to the failure of the sexual partner to ejaculate. With regard to the foul-smelling discharge from private complainant's genitalia, she said that she asked private complainant about it and that the latter informed her that she has had such for a month.[12]

The prosecution presented Jael Casiao, the mother of private complainant, to testify on the civil aspect of the case. Mrs. Casiao stated that as a result of the filing and prosecution of this case, her family incurred expenses in the total amount of P57,190.00, representing food (P3,290.00),[13] transportation (P2,900.00),[14]and medical (P3,000.00)[15] expenses as well as unearned income (P48,000.00).[16] Mrs. Casiao, however, failed to present receipts or any documentary proofs to support her claim. On cross-examination, Mrs. Casiao admitted that the figures she had testified to were rough estimates only and that she was unsure about the amount for the medical expenses her family incurred although she was certain they paid P1,000.00 for medicines.[17]

The defense then presented its case. Testifying in his behalf, accused-appellant, 32, denied the allegations against him. He claimed that, at the time of the incident, he was working in a bakery owned by his brother-in-law Rodrigo Sibulo in Barangay Centro of Antipolo. He said that he, his brother-in-law, and his cousin, Romeo Beringuela, started making bread at 7 o'clock in the evening and finished work at around 6 o'clock in the morning of the following day, March 16, 1996. Thereafter, he went straight home and slept. He said that at no time during that period did he leave the bakery and that it was only after he was arrested on March 18, 1996 that he first heard of the rape of Sarah Joy.[18]

On cross-examination, accused-appellant admitted knowing Sarah Joy and her family's residence. He said that he was a barangay tanod in their barangay and, as such, he was issued a flashlight. However, he denied having used it in the evening of March 15, 1996 because he was allegedly in the bakery of Sibulo at the time.[19]

Rodrigo Sibulo and Romeo Beringuela corroborated accused-appellant's alibi. Both claimed they were with accused-appellant in Sibulo's bakery from 7:00 in the evening of March 15, 1996 to 6:00 in the morning of March 16, 1996.[20]

On cross-examination, Beringuela said that the Casiao residence was about 300 meters from Sibulo's bakery and that the distance could be traversed in three minutes by foot. He also stated that when there was a tupada or cockfight, the barangay tanods would patrol the streets at night.[21]

For his part, Sibulo testified that throughout the evening of March 15, 1996, his bakery was using electricity provided by the Camarines Sur I Electric Cooperative, Inc. (CASURECO).[22]

The defense next presented Rodolfo Brusola, who testified that complainant's mother, Jael Casiao, as barangay treasurer in 1997, failed to account for some P10,000.00 of barangay funds which she had to reimburse. Upon motion of the prosecution, however, the trial court disallowed the defense from further proceeding with its

questioning regarding this point pursuant to Rule 130, §51(a)(3),[23]considering that the proposed testimony did not concern the moral character of complainant but that of her mother, Jael Casiao. Nevertheless, Brusola was allowed to testify on the alleged good moral character of accused-appellant. Brusola admitted, however, that part of accused-appellant's duty as a barangay tanod was to patrol the barangay in the evening.[24]

To discredit accused-appellant's testimony that he was working at Sibulo's bakery from 7:00 in the evening of March 15, 1996 to 6:00 in the morning of March 16, 1996, the prosecution recalled Jesus and Jael Casiao to the witness stand. Jael Casiao testified that it was not true that accused-appellant was in Sibulo's bakery throughout the evening of March 15, 1996 because she in fact saw him at around 10:00 p.m. that night when he bought a bowl of macaroni soup and pancit from her food stall. She said that accused-appellant even lingered for a while in the store. Jael remembered him saying that he was hungry and that it was difficult having to live in a place far away. Jael also said that sometime that night, she went to Sibulo's bakery, which was located just five to six meters from her store, to buy some bread. The bakeshop, however, was already closed. She peeped through the slats on the side of the bakery and saw several people inside fast asleep. On cross-examination, she explained that she and her husband kept their store open long after the tupada had ended that day at the request of some customers, for whom she prepared meals.[25]

Jesus Casiao corroborated his wife's testimony. According to him, at around 10 o'clock in the evening of March 15, 1996, accused-appellant went to their store for macaroni soup and pancit and that he stayed there for a while. Between 11:00 to 11:45 p.m. he claimed he again saw accused-appellant while he (Jesus Casiao) was on his way to the store of one Salvador Peñales to buy kerosene for the Coleman lamp used in their store. According to Jesus Casiao, accused-appellant inquired about his (Jesus Casiao's) nephew, Edgar Salem, whose whereabouts he did not know. Accused-appellant then went towards the direction of the school grounds nearby. Jesus recalled that accused-appellant was wearing a sweater, a pair of jogging pants, and boots.[26]

The prosecution also presented Gloria Casili and Elmer Malate, Administrative Officer and Technical Services Department Manager of CASURECO, respectively, to rebut Rodrigo Sibulo's testimony that as of March 15, 1996, CASURECO was already supplying electricity to Antipolo, and that he had already subscribed to the cooperative at that time. Casili testified that although barangay Antipolo was within the coverage of CASURECO, it was only on April 10, 1996 that CASURECO was able to service that area. In addition, she submitted a certification issued by CASURECO's general manager, attesting that as of February 1, 1999 it had no registered subscriber in barangay Antipolo by the name of Rodrigo Sibulo. On the other hand, Malate submitted a certification, also issued by CASURECO's general manager, attesting to the fact that Sibulo did not have electrical connection from any of the barangays adjoining Antipolo.[27]

In an attempt to discredit the Casiao spouses' rebuttal testimony, the defense in turn presented Miguel Tayoto, fellow barangay tanod of accused-appellant in Antipolo. Tayoto stated that the cockpit arena, the Casiaos' food stall, and Sibulo's bakery were all within view from his house and that before retiring at 10 o'clock in the evening of March 15, 1996, he looked out of the window of his room towards the cockpit arena and saw that the area was deserted.[28]

On June 28, 1999, the trial court rendered a decision, the dispositive portion of which reads -

> WHEREFORE, the court finds that the prosecution has ably established the guilt of the accused, Amador Bismonte, beyond reasonable doubt and hereby sentences him to reclusion perpetua, to indemnify the victim Sarah Joy Casiao in the amount of P50,000.00, to pay her moral damages in the sum of P25,000.00 and to pay the costs.[29]

Hence, this appeal. Petitioner alleges that --

- THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE CATEGORICAL TESTIMONY OF THE MEDICO-LEGAL OFFICER NEGATING THE PROBABILITY OF SEXUAL ASSAULT UPON THE ALLEGED VICTIM.

- THE COURT A QUO GRAVELY ERRED IN DISALLOWING THE DEFENSE TO PRESENT PROOF OF ILL-MOTIVE ON THE PART OF THE COMPLAINANT (MOTHER OF THE ALLEGED VICTIM) IN INSTITUTING THE INSTANT MALICIOUS CHARGE AGAINST THE ACCUSED.[30]

First. Accused-appellant cites the findings of Dr. Papica that there were no signs of external injuries on the victim and, although there were lacerations in complainant's hymen, the same had healed. Accused-appellant argues that this negate complainant's claim that she had been raped a few hours prior to the medical examination.

This contention has no merit. The absence of external injuries and/or of fresh hymenal lacerations does not necessarily negate the commission of rape as neither constitutes an element of this crime as defined in Art. 335 (1) (now Art. 266-A par. 1(a)) of the Revised Penal Code. What is required to be proved is carnal knowledge by use of force or intimidation. The testimony of complainant establishes these two elements. She said:

[PROS. BALCUEVA, JR.]

....

Q:

Now, on March 15, 1996, at 8:00 o'clock in the evening of said date, would you tell the Honorable Court your whereabouts?

A:

Yes, sir.

Q:

Please do so.

A:

I was at home.

Q:

And, when you said you were at home, would you tell the honorable Court now in what barangay is your house situated?

A:

Barangay Antipolo.

Q:

What municipality and province?

A:

Pasacao, Camarines Sur.

Q:

That night, March 15, 1996, what time did you go to sleep?


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A:

10:00 o'clock, sir.

Q:

In the evening?

A:

Yes, sir, in the evening.

Q:

When you slept that night at 10:00 o'clock in the evening, did you sleep up to the early morning of the following day?

A:

No, sir.

Q:

Why not?

A:

Because Amador Bismonte entered our house.

Q:

And, will you estimate what time was that more or less on March 15, 1996?

A:

Around 12:00 o'clock, sir.

. . . .

Q:

Now, you just stated before the Honorable Court that he entered your house that evening or about that time, what happened next, if any?

A:

He focused his flashlight on my face.

Q:

And, the accused having done that to you, what action, if any, did you do?

A:

I rose up and sat down.

Q:

Now, when the accused focused his flashlight on your face that evening, where were you then in relation to the house where you were staying?

A:

On my bed, sir.

Q:

Inside the room?

A:

No, sir.

Q:

Where?

A:

I was on my bed but there was no room.

. . . .

Q:

You just stated a while ago that when the accused focused his flashlight on your face you sat down on bed and after doing that, what transpired next?

A:

He grabbed my left hand.

Q:

The accused?

A:

Yes, sir.

Q:

You stated that the one who focused the flashlight on your face that evening was one Amador Bismonte. How were you able to know that it was Amador Bismonte who focused his flashlight on your face that evening?

A:

Because there was an overnight lamp.

Q:

And, how far was that night lamp from you and the accused?

INTERPRETER:

The witness remonstrated the relative distance of about one (1) meter, as stipulated by counsels.

. . . .

Q:

And, as you stated, he grabbed your left hand and after the accused grabbed your left hand, what happened


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next?

A:

He covered my mouth, sir.

Q:

After covering your mouth, what did he do next?

A:

I was dragged outside, sir.

Q:

You were dragged outside, where?

A:

At our yard, sir.

. . . .

Q:

And, when he dragged you out of the house up to the yard, what happened next when both of you were already in the yard?

A:

It was there that he did his manhood. ("Duman niya guinibo si saiyang pagkalalaki.")

Q:

Exactly what do you mean when you said that he did what man should do on that circumstances? Exactly what do you mean by that?

A:

He inserted his penis in my vagina.

. . . .

Q:

You said that that accused inserted his penis in your vagina, how did that happen?

A:

He removed his jogging pants.

Q:

After removing his jogging pants, what did he do next?

A:

He lay on top of me, sir.

Q:


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You said that he lay on top of you. Why? What was your position then when he laid on top of you? Where were you then?

A:

At the bottom, sir.

Q:

Where were you lying?

A:

On the soil, sir.

Q:

Would you explain to this Honorable Court how were you able to lie down on that surface of the soil?

A:

He pushed me, sir.

. . . .

Q:

From the time you were dragged outside the house to the time you were pushed to the ground and the time that the accused inserted his penis in your vagina, would you tell the Honorable Court what [did] you d[o] during that sequence of time that all these things happened?

A:

I was trembling as I was very much afraid of him. I could not do anything.

Q:

Why did you not shout?

WITNESS:

A:

I could not shout because he was covering my mouth.

. . . .

Q:

Would you also explain to this Honorable Court why you were trembling and you said you were very much afraid of him?

A:

Because at that time when I woke up and saw him I was already afraid of him and then I was trembling.

Q:

Now, after he finished that, what did he do next? After that sexual intercourse with you then, what did the accused do?

A:

Before he left he told me that I should not tell anybody because if I do so he will kill me.

Q:

And, after saying that statement, what did the accused do next?

A:

He left, sir.

Q:

And, when he left, what did you do also?

A:

I went inside, sir.

Q:

Inside the house?

A:

Yes, sir.

Q:

And, after entering the house, what did you do next?

A:

I kept on crying.[31]

Contrary to accused-appellant's claim, Dr. Papica did not say that there was no possibility that complainant was sexually abused. What Dr. Papica said was that in view of the fact that the hymenal lacerations she detected were healed, she could not definitely say that there had been sexual exposure on the part of the patient within 24 hours of the examination considering that complainant's hymen was of the elastic type. Dr. Papica said:

PROS. BALCUEVA, JR:

Q:

Doctor, you stated that on March 16, 1996 at 5:20 P.M., this complainant Sarah Joy Casiao was in your office, or clinic or hospital, and you examined her on said date. Do you recall why you examined her on said date:

A:

Yes, sir.

. . . .

Q:

Now, however, under your lesions and findings, and you stated that there w[ere] an old scar[s] at 12:00 o'clock, 1 o'clock, 3 o'clock [positions] with foul smelling discharge per vagina allegedly for more than 1 month. That was your findings?

A:

Yes, sir.

Q:

I would like to know from you, if you have any findings that sex [was] made on said complainant within the last 24 hours [of the examination]?

A:

With the physical findings on the patient, we cannot definitely say that there had been a sexual exposure of the patient within 24 hours considering the findings were old scars.

. . . .

Q:

So, it is clear from your answer that you cannot definitely give the answer on that question I asked you?

A:

Yes, sir.

. . . .

COURT

Q:

In your examination, what kind of hymen [did private complainant had]? Rigid or elastic?

A:

Our findings, a thin one which was elastic, which has . . .old scar[s] or laceration[s] on the 12:00, 1:00 and 3:00 o'clock positions.[32]

As this Court held in People v. Ngo:[33]

First, [the] hymen may be "distensible" or "congenitally imperforate" in which case the insertion of the male organ, even a big one, would not produce any laceration (SOLIS), Legal Medicine, 1964 d., pp. 341-342). So the fact that the hymen is intact does not prove the absence of sexual intercourse (Id., pp. 344; People vs. Abonada, G.R. No. 50041, January 27, 1989, 169 SCRA 530)

Secondly, the hymen is lacerated only once and, as a rule, this happens during the first sexual act, however, this is not always the case (Solis, supra, pp. 341, 343-344). The laceration of the hymen can be caused by any of the following:

- Passage of clotted blood during menstruation.

- Ulceration due to diseases, like diphteria.

- Jumping or running.

- Falling on hard or sharp objects.

- Medical instrumentation.

- Local application or irritation.


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- Self-scratching due to irritation.

- Masturbation.

- Insertion of foreign bodies.

- Previous operation.

(Solis, Legal Medicine, supra, p. 344)

Hence, [a] complainant's hymen could have been previously lacerated due to any of the foregoing causes. If so, the absence of any fresh laceration due to the alleged rape is not surprising and does not indicate that she was not raped.

Indeed, this Court have sustained convictions for rape despite the fact that the victim did not exhibit external injuries[34] or that healed, and not fresh, hymenal lacerations were detected after an examination conducted on the same day,[35] the following day,[36] or three days[37] after the commission of the rape.

At any rate, as earlier stated, Sarah Joy clearly explained how, by intimidation and physical strength, accused-appellant, a 32 year-old barangay tanod, succeeded in having sexual intercourse with her. For purposes of establishing the element of force or intimidation in rape, it is not necessary that it be of such character as could not be resisted.[38] As has been held in a case,[39] the victim need not kick, bite, hit, slap, or scratch the offender with her fingernails to show that she has been raped; it is sufficient that the woman yielded because of an authentic apprehension of bodily harm.[40]

Accused-appellant contends that it was improbable for Sarah Joy to have immediately recognized him in view of the glare of flashlight on her face which must have "momentarily blinded" her. This contention is likewise without merit. Sarah Joy explained that she was able to recognize accused-appellant because of the light from a lamp, located a meter away from her bed.[41] She had no difficulty identifying accused-appellant because she had known him all her life.

Neither is there any merit to accused-appellant's contention that Sarah Joy's testimony that she had suffered moral damages as a result of the rape in the amount of P100,000.00, "runs counter to the deportment of a grieving and anxious victim."[42] Sarah Joy's testimony is even unnecessary because the law presumes that she has suffered as a result of the rape and is thus entitled to moral damages without need of proof.[43] As held in People v. Prades:[44]

> [T]he fact that [the] complainant [in a rape case] has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages are too obvious to still require the recital thereof at the trial by the victim, since the Court itself even assumes and acknowledges such agony on her part as a gauge of her credibility. What exists by necessary implication as being ineludibly present in the case need not go through the superfluity of still being proved through a testimonial charade.

In addition, we cannot believe that a 12-year old barrio girl would fabricate a rape charge, implicate a tanod of her barangay, submit herself to examination, and subject her family to the rigors of a rape trial just to earn a few thousand pesos. Sarah Joy's conduct immediately after the sexual assault belies accused-appellant's claim that the rape charge against him was trumped up. She was found by her parents in the early morning of March 16, 1996, half-naked, crying, and trembling. This is not the conduct of a person who is alleged to have filed a rape case for financial gain. As this Court has observed, the conduct of a woman immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of her claim.[45]

Second. Accused-appellant assails the credibility of complainant's parents, Jesus and Jael Casiao. He contends

that Jael Casiao's conduct in "fussing" over the expenses her family incurred in relation to the prosecution of this case betrays her true motive to obtain money with which to settle her liability to the barangay for funds which she could not account. Accused-appellant likewise claims that it was improbable for the Casiaos to have kept their food stall open until the early morning of March 16, 1996 considering that the tupada ended at 6 o'clock in the afternoon of the previous day, March 15, 1996. Lastly, he says that it is unbelievable for anyone to play "toss coin" at that late hour, as the Casiao couple had testified, since the electricity for the barangay had been cut off earlier.[46]

These contentions are likewise without merit. Jael Casiao testified on the expenses incurred by her family in prosecuting this case as a prosecution witness. The trial court, therefore, correctly ruled that the defense cannot introduce evidence showing that she owed the barangay money she allegedly misappropriated, as the issue concerns Jael's reputation and not that her daughter, Sarah Joy Casiao. Needless to say, there is no basis for the claim of the defense that complainant's parents, especially her mother, instigated the filing of this case for ulterior motives.

As for the fact that the Casiao kept their food stall open until the early hours of March 16, 2001, Jael Casiao satisfactorily explained that it was because some individuals from a neighboring barangay had asked her to prepare dinner for them, and not because there were people playing "toss coin." What she said was that some individuals usually stayed behind even after the tupada had closed, playing "toss coin."[47]

In contrast to the testimonies of Sarah Joy and her parents which are consistent, accused-appellant's defense of alibi suffers from serious contradictions. Thus, (1) accused-appellant's testimony that Romeo Beringuela, Rodrigo Sibulo, and himself baked 25 kilos of flour in the evening of March 15, 1996 only in one "setting"[48] contradicts Sibulo's statement that they baked the flour in two settings by first mixing half of the 25 kilos of flour and cutting the dough into pieces and that it was only after this was done that the other half was similarly prepared;[49] (2) Sibulo's statement that after operating the bakery for six months, Beringuela, accused-appellant's alleged assistant, learned how to bake bread (such that when accused-appellant was on duty as barangay tanod, Beringuela took care of baking the bread while he (Sibulo) assisted him)[50] is contradicted by Beringuela who declared that after the arrest of accused-appellant, the bakery had to close because "nobody can mix the dough"[51]; and (3) accused-appellant's testimony that he started working in Sibulo's bakery in February 1996[52]does not coincide with Sibulo's statement that he hired accused-appellant as early as March 1995.[53]

The defense's version of events is further rendered unlikely by the testimony not only of Jesus Casiao but also that of the defense witnesses Tayoto and Beringuela that the electricity provided by the barangay generator is shut off before 12:00 in the evening. Taken in conjunction with the testimonies of the personnel of the CASURECO that it was only on April 16, 1996 that CASURECO supplied electricity to Barangay Antipolo, it is clear that it would have been next to impossible for accused-appellant and his alleged companions to have baked the 25 kilos of flour throughout the evening of March 15, 1996 up to the early morning of March 16, 1996 without electricity.

Even granting that accused-appellant was working in Sibulo's bakery on the night in question, it was not impossible for him to have gone to private complainant's house, which is only about a kilometer away, commit the crime, and then go back to Sibulo's bakery. The defense of alibi can prosper only if it can be shown that it was physically impossible for accused-appellant to have been at the scene of the crime at the time of its commission.[54]

Third. With respect to damages, we hold that the trial court correctly did not award actual damages in view of the failure of the prosecution to present independent corroborative evidence to support its claim.[55] On the other hand, the trial court correctly awarded civil indemnity and moral damages to complainant. The award of moral

damages should, however, be increased to P50,000.00 in line with current jurisprudence.[56]

WHEREFORE, the decision of the Regional Trial Court, Branch 24, Naga City, dated June 28, 1999, is AFFIRMED with the modification that accused-appellant Amador Bismonte is ordered to pay complainant moral damages in the amount of P50,000.00.

**SO ORDERED.**

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

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[1] Per Judge Corazon A. Tordilla.

[2] Rollo, p. 9.

[3] TSN (Sarah Joy Casiao), pp. 5-6, 8, 24-25, June 19, 1997; TSN (Jael Casiao), pp. 12-14, Sept. 16, 1997; pp. 7-8, Dec. 17, 1998; TSN (Jesus Casiao), p. 41, June 4, 1997.

[4] Also referred to as Jan-jan in the transcript of stenographic notes.

[5] TSN (Sarah Joy Casiao), pp. 6-7, 24-25, 27-29, 31, June 19, 1997; TSN (Jael Casiao), pp. 7-8, 16, Dec. 17, 1998; p. 4, Sept. 16, 1997.

[6] TSN (Sarah Joy Casiao), pp. 7-11, June 19, 1997.

[7] Id., pp. 12-18, 31-38, 51, June 19, 1997.

[8] Id., pp. 19-20, 40-42; TSN (Jesus Casiao), pp. 33-35, 45-48, June 4, 1997.

[9] TSN (Jesus Casiao), pp. 39-40, June 4, 1997.

[10] Id., pp. 36, 38; TSN (Serino Ador), pp. 16-25, June 4, 1997.

[11] Records, p. 5 (emphasis added).

[12] TSN (Dr. Emily Papica), pp. 7-12, June 4, 1997.

[13] Exh. F.

[14] Exh. E.

[15] Exh. F.

[16] Exh. G.

[17] TSN (Jael Casiao), pp. 5-14, 23-27, Sept. 16, 1997.

[18] TSN (Amador Bismonte), pp. 3-14, 19-21, 24, 31-32, Nov. 6, 1998.

[19] Id., pp. 22-23, 29-30.

[20] TSN (Romeo Beringuela), pp. 6-10, 13, July 16, 1998; TSN (Rodrigo Sibulo), pp. 33-42, Sept. 30, 1998.

[21] Id., pp. 18, 21, Sept. 30, 1998.

[22] TSN (Rodrigo Sibulo), pp. 48-50, Sept. 30, 1998.

[23] Sec. 51. Character evidence not generally admissible; exceptions;--


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(a) In Criminal Cases:

. . . .

(3) The good or bad moral character of the offended party may be proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.

[24] TSN (Rodolfo Brusola), pp. 4-14, 30-31, Sept. 3, 1998.

[25] TSN (Jael Casiao), pp. 7-10, 13-14, 16-19, Dec. 17, 1998.

[26] TSN (Jesus Casiao), pp. 27-30, 33-35, Dec. 17, 1998.

[27] TSN (Gloria Casili), pp. 1-5, Jan. 5 1999; TSN, pp. 4-5, Feb. 2, 1999; TSN (Elmer Malate), pp. 1-5, March 10, 1999.

[28] TSN (Miguel Tayoto), pp. 4-6, March 24, 1999.

[29] Decision, p. 9; Rollo, p. 31.

[30] Appellant's Brief, p. 1; Rollo, p. 52.

[31] TSN (Sarah Joy Casiao), pp. 6-19, June 19, 1997 (emphasis added).

[32] TSN (Dr. Emily Papica), pp. 7-9, 12, June 4, 1997 (emphasis added).

**[33] 202 SCRA 549, 556 (1991).**

[34] People v. Patriarca, 319 SCRA 87 (1999); People v. Mohado, 227 SCRA 94 (1993).

[35] People v. Dela Paz, Jr., 299 SCRA 86 (1998).

[36] People v. Madridano, 227 SCRA 282 (1993); People v. Ngo, 202 SCRA 549 (1991).

[37] People v. Llamo, 323 SCRA 791 (2000); People v. Erardo, 277 SCRA 643 91997).

[38] People v. Paranzo, 317 SCRA 367 (1999).

[39] People v. Ngo, 202 SCRA 549 (1991).

[40] People v. Barcelona, 191 SCRA 100 (1990).

[41] TSN (Sarah Joy Casiao), p. 10, June 19, 1997.

[42] Appellant's Brief, pp. 15-18; Rollo, pp. 66-69.

[43] People v. Bolatete, 303 SCRA 709 (1999).

**[44] 293 SCRA 411, 431 (1998).**

[45] People v. Talo, G.R. No. 125542, Oct. 25, 2000.

[46] Appellant's Brief, pp. 18-22; Rollo, pp. 69-73.

[47] TSN (Jael Casiao), pp. 22-23, Dec. 17, 1998.

[48] TSN (Amador Bismonte), p. 19, Nov. 6, 1998.

[49] TSN (Rodrigo Sibulo), pp. 35-36, Sept. 3, 1998.

[50] Id., p. 41, Sept. 3, 1998; p. 12, Oct. 2, 1998.

[51] TSN (Romeo Beringuela), pp. 19-20, July 16, 1998.

[52] TSN (Amador Bismonte), pp. 15, 32, Nov. 6, 1998.

[53] TSN (Rodrigo Sibulo), p. 9, Oct. 2, 1998.

[54] People v. Thamsey, G. R. No. 144179, July 19, 2001.

[55] CIVIL CODE, Art. 2199.

[56] E.g., People v. Carbonell, G.R. Nos. 140789-92, Sept. 28, 2001.


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