PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY BALMOJA ALIAS AYAT, ACCUSED-APPELLANT.

G.R. No. 140229. August 30, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

HENRY BALMOJA alias Ayat was found guilty of rape by the RTC-Br. 272, Marikina City, and sentenced to reclusion perpetua and to pay his victim P50,000.00 for moral damages.[1] He now appeals his conviction.

The Decision of the court a quo is anchored on the following factual findings: on 24 July 1997, at the behest of her teacher, a certain Mrs. Cillo, fourteen (14) year old Cynthia Lea Dapoc, private complainant, set out in search for the house of an absentee student so she could deliver a notice coming from her teacher. While trying to locate the place, accused Henry Balmoja pointed Lea towards the direction of Ma. Cristina Village. As she started to proceed on her way, the accused volunteered to accompany her but led her instead towards San Isidro Village. While there, Balmoja persuaded Lea to enter a vacant grassy area with a factory-like structure adjacent to it alleging that a certain lieutenant was tracking him down on account of a missing girl. Once in the grassy portion, Balmoja locked her in an embrace and made her sit on his lap. As she struggled, he removed her shirt, pants and panty, leaving her with only her sando on. Lea pleaded for Balmoja to stop but every time she did the latter strangled her into silence. Her fear was further exacerbated by the sight of a pair of long-nose pliers in the pocket of the accused. Balmoja then inserted his penis into her vagina. She cried in pain and begged him to stop. It was over in a few minutes. Seemingly satisfied, Balmoja told Lea to dress up and told her not to tell anybody, otherwise he would "bomb" her house. Thereafter, she was released.

Despite her ordeal, Lea managed to deliver the notice and to prepare herself for school. She did not reveal her tragic experience to the attendant at the beauty parlor from whom she asked for directions; neither did she tell her relatives at home, as she was ashamed, but decided to divulge it to her teacher instead. In school, Lea broke down before Mrs. Cillo who immediately summoned Lea's mother to the Guidance Counselor's Office where she was apprised of her daughter's misfortune.

Assisted by her mother, Mrs. Cillo, and another personnel from her school, Lea went to the police station where she filed a complaint against now accused Henry Balmoja whom she described as her rapist. Subsequently, Lea underwent medico-legal examination where it was discovered that she had two (2) abrasions on the posterior aspect of her right forearm which could have been caused by a hard, rough and sharp object, and fresh bleeding lacerations on the hymen at 3 o'clock, 6 o'clock, and 8 o'clock positions that could have been inflicted within twenty-four (24) hours.

The court a quo did not give credence to Henry Balmoja's claim that at the time of the incident he was sleeping in his house in Tumana, Concepcion, Marikina City; that earlier at 6:30 in the morning he was awakened by his brother-in-law Sonny Dalusong to deliver a swing in Cavite but that he opted to sleep it out instead as he had stayed up late the night before as he watched a mahjong game; and that he woke up only at 1:30 in the afternoon.

The lower court declared that the defense of alibi by the accused could not prosper over the positive testimony of private complainant Cynthia Lea Dapoc that he was the one who raped her.

Accused-appellant now contends that the trial court erred in convicting him of rape when his guilt had not been proved beyond reasonable doubt. He argues that Lea's claim that it was out of fear that she entered the vacant grassy area does not deserve credence since, first, Lea admitted that she did not believe his tale of a lieutenant looking for him in connection with a missing woman; second, she did not know the woman on the picture; and third, she had no reason to hide from the "lieutenant."

Accused-appellant disputes further the finding of force or intimidation by the lower court as there was no physical evidence that Lea was strangled and the only physical injuries noted on her body, apart from those in her genitalia, were the abrasions on the posterior aspect of her right forearm. He avers that it was hard to believe that the presence of a pair of long-nose pliers in his pocket would instill fear in the victim sufficient enough for her not to even put up a token resistance. He contends that Lea herself admitted that she did not shout nor resist when he undressed her.

Accused-appellant likewise contends that private complainant's testimony is not credible as it was inconsistent. He notes that during private complainant's direct testimony she stated that he laid her on the ground, undressed her, placed himself on top of her, and tried to insert his penis into her vagina. However, during cross-examination, she narrated that accused-appellant did not tell her to lie down but instead placed her on his lap, with her back against him, and while accused-appellant held her, he undressed both of them.

Moreover, accused-appellant observes that the conduct of private complainant immediately after the incident was not the natural reaction of a woman who had just been sexually abused since she still looked for the address of the absentee student on the notice and even asked directions from a parlor attendant. He also finds it unbelievable that private complainant did not immediately inform any member of her family considering that she went home and could immediately phone her mother.

Accused-appellant thus maintains his innocence and avers that the trial court should not have been hasty in ruling out his defense of alibi. Contrary to the trial court's finding, he contends that his home was not a fifteen (15) minute walk from the locus criminis but a fifteen (15) or twenty (20) minute ride away which makes it physically impossible for him to have been at the scene of the crime at the time it was committed had he been awake.

We find the arguments unmeritorious. Prior to its amendment,[2] Art. 335 of The Revised Penal Code (RPC) provides that rape is committed when the malefactor has carnal knowledge of a woman under any of the following circumstances: (a) by using force or intimidation; (b) when the woman is deprived of reason or is otherwise rendered unconscious; or (c) when the woman is under twelve (12) years of age, even when neither of the preceding circumstances is present. What is vital is that the act of copulation be proven under any of the conditions enumerated.

Here, Lea was unwavering in her narration that accused-appellant was the one who sexually abused her by employing deceit, intimidation and force upon her. Accused-appellant lured her into a trap by promising her that he would accompany her to the address indicated on the notice and later tried to deceive her into believing that a lieutenant was about to apprehend him. Lea admitted being skeptical of Balmoja's tale but she likewise declared that every time she tried to leave, Balmoja would prevent her by holding on to her hands and letting her sit down.[3]

On cross-examination, she acknowledged that they were near the exit, where on one side was a grassy area full of branches while on the other side was a narrow pathway which rendered escape possible, but she was held back by

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accused-appellant who locked her arms in an embrace and pushed her down on the ground.[4] Indeed, as accused-appellant asserted, private complainant Lea did not shout, but not for want of trying. She pleaded for him to spare her but he strangled her.[5] Lea was further held immobile by the sight of the pliers of accused-appellant which she feared would be used against her if she continued struggling.[6] Contrary therefore to accused-appellant's assertion, it was more than token resistance that was exhibited by Lea but foresight and prudence in the midst of adversity.

We likewise find that private complainant was able to adequately establish the act of rape as she was consistent in her narration. The statements she uttered should be viewed in the context in which they were expressed and not compartmentalized. Thus, when Lea stated that accused-appellant laid her on the ground, undressed her, placed himself on top of her, and tried to insert his penis into her vagina, it was in answer to the question of how the felon raped her.[7] However, private complainant's statement that she was not lying down but was instead on top of accused-appellant with her back against him while he undressed her and himself was made in answer to the query on why she was not able to put up any resistance against the advances of accused-appellant and escape his clutches.[8] In this declaration private complainant was therefore not referring to the execution of the rape itself as she clarified that it happened only after accused-appellant had undressed her. Thus -

> ATTY. VALEZA: After he undressed you, what happened next?
> A: He laid on top of me and he was trying to...?
>
> Q: What do you mean by "ano?"
> A: He tried to insert his penis into my vagina?[9]

All other considerations and alleged factual discrepancies fade in the light of this averment. For a discrepancy to serve as basis for acquittal, such must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction.[10] Thus, any inconsistency with regard to private complainant Lea's position relative to accused-appellant Balmoja is inconsequential as the material fact that the latter inserted his penis into her vagina has been established.

Although the extent of penile penetration was not expounded upon, private complainant's cry of pain and entreaty that accused-appellant cease from his actions[11][11]Id., p. 24.11 show that a certain degree of penetration was achieved sufficient to conclude that consummated rape was committed. This was confirmed by the medico-legal report which declared that private complainant's hymen had fresh bleeding lacerations at 3 o'clock, 6 o'clock, and 8 o'clock positions that could have been inflicted within twenty-four (24) hours as of the time of the examination.[12]

Accused-appellant begs the question when he requires additional evidence of physical injury. In rape cases, it is the victim's lacerated hymen that is more conclusive than any physical injury. People v. Alimon[13] is in point. There the accused capitalized on the absence of physical injuries on the body of the victim as well as on the alleged uncertainty of penile penetration since it was claimed that he placed himself on top of the victim although did not succeed in fully inserting his penis into her organ. The Court however found the victim's healed lacerations to be consistent with her claim that she was raped, and adjudged the accused guilty of the crime. It held that the absence of any external sign or physical injury on the body of the victim did not negate the commission of the crime of rape. So we hold in this case.

Private complainant's subsequent demeanor is not contrary to the natural reaction of a woman who had just been defiled. It is evident that she was in shock and in denial of the horror to which she had been subjected and opted to do something methodical and mechanical - deliver the notice, take a bath, prepare for school. Victims have been

known to react differently to trauma and tragedy but this does not affect their credibility. Certain however with private complainant was the person to whom she was to reveal her sad fate - teacher Mrs. Cillo. As explained by Lea, she was ashamed to tell anyone else and knew it was only Mrs. Cillo who would understand her. Thus she waited to get to school to see her. This too is not a point against private complainant as naturally people disclose vital information only to those whom they trust and who would sympathize with them.

The burden of proof to establish the crime lies with the prosecution and this it was able to dispense satisfactorily. The defense of alibi and denial of accused-appellant is weak compared to the mountain of evidence presented by the prosecution as to the guilt and culpability of accused-appellant. It cannot prevail over the positive identification of accused-appellant by private complainant.[14] Other than defense witness Vilma Santos' claim that she saw Balmoja sleeping on a wooden bed, no other witness was presented by the defense - not the niece of Balmoja whom Vilma Santos spoke to outside of the house of Balmoja,[15] nor Darling and Dennis who passed by and beckoned to Vilma Santos.[16] Other than his assertion that he was asleep at the time of the incident, accused-appellant did not present any evidence showing that his presence at the locus criminis was impossible. Pitted against the volume of evidence presented by the prosecution the defense of alibi and denial of accused-appellant therefore falls as it has nothing to anchor on.

WHEREFORE, the 18 February 1999 Decision of the Regional Trial Court (RTC), Br. 272, Marikina City, declaring accused-appellant Henry Balmoja alias Ayat guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay complainant P50,000.00 as moral damages, is AFFIRMED. In addition, consistent with prevailing jurisprudence, accused-appellant is also ordered to pay the complaining witness P50,000.00 as civil indemnity and P25,000.00 as exemplary damages.
SO ORDERED.

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

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[1] Decision penned by Judge Reuben P. De la Cruz, RTC-Br. 272, Marikina City.

[2] Article 335 of the Revised Penal Code (RPC) was amended by R.A. 8353, otherwise known as "The Anti-Rape Law of 1997." Under the new law, the definition of the crime of rape was expanded, reclassified as a crime against persons, and incorporated into Title Eight under Chapter Three of the RPC as Articles 266-A, 266-B, 266-C and 266-D.

[3] TSN, 27 July 1998, p. 41.

[4] Id., pp. 42-44.

[5] Id., p. 21.

[6] Id., pp. 21-22.

[7] ATTY. VALEZA: You said you were raped, how did that person rape you?

WITNESS: He undressed me, he laid on top of me, he kissed me on my lips and on my breast. (TSN, 27 July 1998, pp. 12-13.)

[8] ATTY. LARRACAS: So in other words, you want to tell us that you did not put any resistance to defend yourself against the man?

A: Because he always held my two (2) hands so I could not move.Q: You can kick him if you want?A: Yes,

> but I was sitting on the ground.Q: When the man asked you to lie down, what was he doing at that time?A: He did not tell me to lie down. He laid me on top of him while he was holding my hands he was undressing himself and he undressed me.Q: While you were lying on top of him?A: I was lying on top of him with my back against himQ: So you mean to tell us that you were lying on top of him so if you want at that time to run away or stand up, you can easily do so because you were lying only on top of him and not under him?A: Because he was holding my hands so I cannot move. (TSN, 27 July 1998, pp. 44-45).

[9] Id., pp. 22-23.

[10] People v. Antonio, G.R. No. 128149, 24 July 2000, citing People v. Bato, G.R. No. 134939, 16 February 2000 and People v. Sancha, G.R. Nos. 131818-19, 3 February 2000.

[11] People v. Antonio, G.R. No. 128149, 24 July 2000, citing People v. Bato, G.R. No. 134939, 16 February 2000 and People v. Sancha, G.R. Nos. 131818-19, 3 February 2000.

[12] TSN, 24 March 1998, p. 17.

[13] G.R. No. 87758, 28 June 1996, 257 SCRA 658.

[14] People v. Batidor alias "Tora," G.R. No. 126027, 18 February 1999.

[15] TSN, 24 November 1998, p. 10.

[16] Id., pp. 15-16.

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