

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAYMUNDO MAGTIBAY Y BACHOCO, ACCUSED-APPELLANT.

G.R. No. 142985. August 06, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us on appeal is the Decision[1] of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch XLII, in Criminal Case No. P-5775, finding accused-appellant guilty of rape and imposing upon him the penalty of reclusion perpetua.

The Information against accused-appellant states:

That on or about the 15th day of September, 1997, at 8:00 o'clock in the evening, more or less, in Barangay Sagana, Municipality of Bongabong, province of Oriental Mindoro, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with lewd and unchaste design, did then and there willfully, unlawfully and feloniously have carnal knowledge of one RACHELLE RECTO y Rafal, by means of force and threats to kill, to the irreparable damage of the said Offended Party.

CONTRARY TO ART. 335 of the RPC AS AMENDED BY R.A. 7659.[2]

When arraigned on July 7, 1998, accused-appellant, with the assistance of counsel, entered a plea of not guilty to the crime charged. Thereafter, trial ensued.

The version of the prosecution is as follows: On September 15, 1997, at about 8:00 in the evening in Barangay Sagana, Bongabong, Oriental Mindoro, Rachele went to the store of Ka Emma Hernandez, about 40 meters from their house to buy cigarette and ice. When she got to the store, she saw accused-appellant standing there. She noticed that the latter kept staring at her.

On her way home, when she was some distance from the store, accused-appellant approached her and pulled her right hand. He covered her mouth and told her that he will kill her if she tried to shout for help. Accused-appellant made her lie on a grassy place and removed her shorts and panties. Accused-appellant then undressed, placed himself on top of Rachele and inserted his penis into her vagina.

Because of accused-appellant's threat on her life, Rachele kept silent about the incident. It was not until she became pregnant that she was constrained to tell her mother what happened. She eventually gave birth to a baby boy.[3]

Rachele's mother, Gaudiosa Recto, testified that she only came to know about the rape incident after Dr. Fetalberto required Rachele to have an x-ray examination at Bongabong Hospital. The results showed that Rachele was pregnant. She also testified that Rachele refused to tell her about it because accused-appellant threatened to kill her several times whenever he saw her.[4]

Dr. Ronaldo Fetalberto, the Municipal Health Officer of Bongabong South, Oriental Mindoro, testified that

Rachelle was brought to his clinic by her relatives after they noticed that her abdomen was bulging. Rachelle also complained of irregular bowel movement. The laboratory results showed that Rachelle was pregnant. Upon the request of Rachelle's relatives, he examined the private parts of the patient.[5] The Medico Legal Report[6] stated the following:

General Physical Examination:

Conscious, coherent, hearing-impaired, abdomen enlarged fundic height of 23 cm. FHT of 130 beats/min. located at RLQ.

Genital Examination:

Pubic hair minimal growth, vulva purplish, co-aperted labia majora, laceration in the labia minora at 8 o'clock position (+) whitish discharge.

There is a positive fetus during the radiological examination.

x x x x x x x x

Remarks:

1. Fetus (+) in radiologic exam
2. x x x.

In his defense, accused-appellant claimed that he was bedridden due to influenza from September 14, 1997 to September 19, 1997. He was then residing in the house of his parents-in-law at Sitio Suli, Sagana, Bongabong, Oriental Mindoro. On September 15, 1997, his wife, Merlyn Magtibay, asked her mother for medicine. On that same day, while he was recuperating from his sickness, Remuel Gallos, the son of their Brgy. Captain, came over and asked him to drive his tricycle. He refused because of his illness. He also testified that when the alleged rape incident happened he was still in the house of his parents-in-law because of his sickness.[7]

The wife of accused-appellant, Merlyn Magtibay, corroborated his testimony that he was ill at the time of the alleged rape. She also testified that on September 15, 1997, accused-appellant was bedridden and could hardly stand because he had flu since September 14, 1997. Her husband recovered only on September 19, 1997.

Remuel Gallos testified that accused-appellant was the driver of his tricycle since 1996. On September 15, 1997, he went to the house of accused-appellant to ask him to drive his tricycle because he had to work at his farm. He found accused-appellant lying in his bed and suffering from influenza.[8]

On August 5, 1999, the trial court rendered judgment as follows:

ACCORDINGLY, accused RAYMUNDO MAGTIBAY y BACHOCO, is hereby sentence (sic) to suffer the penalty of RECLUSION PERPETUA, together with the accessory penalty provided by law and to pay the cost.

Accused is likewise ordered to indemnify the victim Rachelle Recto the amount of P50,000.00 without subsidiary imprisonment.

Finally, accused shall be entitled to the full term of his preventive imprisonment if he has any to his credit, provided that he shall agree to abide with the disciplinary rules imposed upon convicted prisoners, otherwise he shall be entitled to only four fifths of the preventive imprisonment.

SO ORDERED.[9]

Accused-appellant appealed to this Court and contends that:

I

THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPLAUSIBLE AND REHEARSED TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[10]

In crimes against chastity, the primordial issue hinges on the credibility of the testimony of the complaining witness. When credibility is in issue, we have ruled time and again that absent any showing that the trial court's assessments and conclusions overlooked certain significant facts and circumstances which would have affected the outcome of the case, the reviewing court is generally bound by the trial court's findings. We generally defer to the findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial.[11]

After a thorough review of the evidence on record, the transcript of stenographic notes of the testimonies of the witnesses, especially that of Rachelle, and the pleadings of both parties in this appeal, we find no cogent reason to reverse the trial court's judgment of conviction. The prosecution has established by proof beyond reasonable doubt the guilt of the accused-appellant in this case.

Contrary to the claim of accused-appellant, his guilt was proven beyond reasonable doubt, as shown by the following:

Q: On September 15, 1997, around 8:00 o'clock in the evening, where were you?

A: I was at the store of Ka Emma.

Q: What is the surname of this Ka Emma?

A: Hernandez, sir.

Q: Why were you there in the store of Emma Hernandez?

A: I bought cigarette and ice, sir.

Q: While you were buying cigarette and ice in the store of Ka Emma, were there other persons thereat?

A: None, sir.

Q: How about the accused you pointed a while ago, where was he at that time?

A: He was at the store of Ka Emma, sir.

x x x x x x x x

FISCAL (Continuing):

Q: And what was he doing in the store?

A: He was standing, sir.

x x x x x x x x

Q: After buying ice and cigarette, where did you go?

A: I returned home, sir.

Q: How far is the house of Ka Emma to your house?

A: 40 meters, more or less, sir.

Q: While you were on your way home coming from the store of Ka Emma, do you remember of an unusual incident that transpired?

A: Yes, sir.

Q: And what was that? Please tell the court?

A: He was always looking at me, sir.

Q: Who was that person always looking at you?

Witness:

A: Raymundo Magtibay, sir.

FISCAL (Continuing):

Q: After looking at you, what happened next?

A: When I was a little bit far from the store, he approached me, sir.

Q: After the accused approached you, what did he do next?

A: He pulled my right hand, sir.

Q: After pulling your right hand, what did he do if any?

A: He covered my mouth, sir.

Q: With what instrument did he cover your mouth?

A: He told me that he will kill me if I shout.

Q: After telling you that he will kill you if you shout, what did he do next if any?

A: He told me that he will kill me.

x x x x x x x x

Q: You stated that the accused held your right arm and covered your mouth and thereafter threatened you not to shout or else you will be killed. After doing these things, what else did he do to you if any?

Witness:

A: He placed himself on top of me and inserted his penis.

x x x x x x x x

Q: Was he successful in inserting his penis?

A: Yes, sir.

Q: What did you feel after he successfully and forcibly inserted his penis?

A: I felt pain, sir.

Q: You stated that he placed himself on top of you, what was your position when he placed himself on top of you?

A: I was lying faced upward.

Q: In what place were you lying upward?

A: At the grassy place sir (damuhan).

Q: Before he was able to successfully insert his penis, what did he do to you or your garments or pantie (sic)?

A: He removed my short and my pantie.

x x x x x x x x

FISCAL (Continuing):

Q: How about Raymundo Magtibay, what did he do before placing himself on top of you?

A: He removed his pants and brief, sir.

Q: Because of the threat of the accused that he will kill you if you will reveal this to anybody, will you tell the court if you acceded to the threat of the accused?

A: No, sir.

Q: What do you mean, “no sir”? Did you report or reveal this to your mother or father?

A: No, sir.

Q: Why did you not reveal this to your parents?

A: He was threatening me to be killed, sir.[12]

The foregoing testimony clearly shows that Rachelle was unable to ward off accused-appellant’s sexual advances because of fear for her life. While she cowered in terror, accused-appellant succeeded in consummating his bestial acts on her.

Rachelle’s failure to offer adequate resistance or to make an outcry for help[13] did not negate the commission of rape upon her person. Rachelle’s fear of physical harm cannot be tested by any hard-and-fast rule. It must instead be viewed in the light of her perception and judgment at the time of the crime.[14] The lack or even absence of resistance is not necessary because the law does not impose upon a rape victim the burden of proving resistance.[15] What is necessary is that the force or intimidation is of such a degree as to impel the defenseless and hapless victim to bow into submission, as in this case.[16]

The presence and distance of other houses near the locus of the crime is also of no consequence in the commission of rape. Rape is not necessarily committed only in an isolated place, for rapists have no respect for locale or time when they carry out their evil deed. In a long line of cases, it has been shown that rape can be committed in even the unlikeliest of places.[17] It can be committed in places where people congregate, in parks, along the roadside, within school premises, inside an occupied house, and even in a room where other members of the family are also sleeping. There is no rule or norm that a woman can only be raped in seclusion. [18]

Accused-appellant claims that the testimony of Rachelle was rehearsed, and cites the following excerpts from the testimony during cross-examination:

ATTY. JOYA:

Q: Is it not a fact that you have made the affidavit you have just identified only on May 5, 1997, am I correct?

A: Yes, ma’m.

Q: And that you, together with your parents went to the police station of Bongabong, purposely to give your affidavit thereat. Correct?

A: Yes, ma’m.

Q: Who was the police officer who took your statement?

A: I do not know him ma’m.

Q: But you are very sure that the one who took your affidavit is a police officer?

A: Yes, ma’m.

Q: Is it not a fact that when you arrived at the police station of Bongabong on May 5, 1998, this affidavit of yours has already been prepared?

A: Not yet, ma’m.

Q: Because the police officer was just preparing or typewriting (sic) the same when you arrived at the place;

Am I correct?

A: Yes, ma'm.

Q: And while typewriting (sic) the same, the police officer was occasionally asking questions from your mother. Am I correct?

A: Yes, ma'm.

Q: That the police officer occasionally ask questions to your mother, and not to you?

A: Yes, ma'm.

Q: And after that, your affidavit was prepared and asked you to sign your name on top of your typewritten name. Correct?

A: Yes, ma'm.

Q: You will agree with me that you have met this Raymundo Magtibay while you were at the police station?

A: Yes, ma'm.

Q: That he was presented to you among with other male persons of his age. Am I correct?

A: Yes, ma'm.

Q: And that you were asked by the police officers to point Raymundo Magtibay but when you cannot point to Raymundo Magtibay, the police officers instructed you to point Raymundo Magtibay?

A: I pointed him.

Q: But you have pointed to Raymundo Magtibay after the police officer have instructed you to point Raymundo Magtibay because initially, you cannot point to him?

A: Yes, ma'm.

COURT:

Q: What do you mean by "yes"?

A: "Totoo po".

ATTY. JOYA:

Q: Before you testified here in Court you have had a chance to talk with your lawyer. Correct?

A: Yes, ma'm.

Q: And at his office, he interviewed you as what you are going to testify today?

A: Yes, ma'm.

Q: Before you went to the Office of the Provincial Fiscal, along the way and in your house, you and your mother were discussing as to what you are going to testify today?

A: Yes, ma'm.

Q: And your mother told you that you should testify in the manner you did, today. Correct?

A: Yes, ma'm.

Q: She told you to testify on the manner you did when you were directly examined by the prosecutor?

A: Yes, ma'm.

Q: That because you love your parents very much, you will follow your parents. Am I correct?

A: Yes, ma'm.[19]

Accused-appellant's claim lacks merit. Rachele's testimony on cross-examination did not deviate from, much less impeach, the core of her testimony as to the gravamen of the crime of rape -- sexual congress with a woman

by force and without consent.[20] The foregoing cross-examination by accused-appellant's counsel merely injected innuendoes of a fabricated charge but failed to clearly demonstrate compelling reason why we should render Rachelle's testimony less worthy of belief. Notwithstanding the ambiguous questions asked by accused-appellant's counsel to Rachelle, we find her testimony convincing and straightforward. The cross-examination of a young girl, not accustomed to public trial, could produce apparent contradictions on minor details that would nevertheless keep intact the credibility of the victim as to the fact of rape. At any rate, accused-appellant's contentions are nothing but indicia of his desperate attempt to evade liability for the crime he committed.

As regards the drafting of Rachelle's sworn affidavit,[21] the defense dismally failed to distinctly establish whether all the answers supposedly given by Rachelle were indeed supplied by her mother. It likewise faltered in eliciting convincing proof that the questions asked by the police officer to the mother of Rachelle were questions related to the answers Rachelle gave in her affidavit. The inquiry fell short of exhibiting the verity of its claim that Rachelle's answers in her sworn statement were supplied by her mother. Be that as it may, Rachelle's ex-parte affidavit will generally be considered incomplete and inaccurate and will not thus prevail over her statements on the stand.[22]

We likewise find nothing objectionable in Rachelle's positive identification of her defiler at the Police Station of Bongabong, Oriental Mindoro. The identification made at the police station did not foreclose the admissibility of the independent in-court identification.[23] Police investigators are presumed to have performed their duties regularly and in good faith and in the absence of adequate proof to overthrow this presumption, the identification of an accused remains free from any taint of irregularity.[24]

The record shows that even before the rape incident took place Rachelle personally knew accused-appellant because the latter was her barrio mate whom she often sees.[25] She even attended accused-appellant's wedding day together with her mother on March 19, 1998, roughly six months after the rape incident occurred.[26] Once a person gains familiarity of another, identification becomes quite an easy task even from a considerable distance.[27]

Furthermore, the in-court positive identification of accused-appellant gains more significance when Rachelle categorically narrated that she was forced to lie down on a grassy place facing her attacker, whom she categorically and unflinchingly identified as the accused-appellant. There is no evidence that Rachelle's vision of her rapist was obstructed or that she was rendered unconscious at the time of rape.

The fact that Rachelle conferred with the government prosecutor before she testified in court is immaterial. The duty of the government prosecutor does not preclude him from meeting and conferring with the complaining witness as to matters concerning a case. Accused-appellant failed to demonstrate any fact or circumstance which would prove that Rachelle's testimony were coached or supplied by his counsel. Moreover, accused-appellant failed to cite any law or jurisprudence that prohibits a government prosecutor from conferring with his witnesses with respect to the prosecution of a criminal case.

Accused-appellant's allegation that Rachelle's mother instructed her on what she would say on the witness stand does not diminish the reliability of her statements. A mother whose daughter, more so if still a minor, have been subjected to the beastly act of rape, cannot be expected to learn the details of her daughter's harrowing experience. Besides, the record is barren of any evidence to support accused-appellant's contention. It is unnatural for a mother to sacrifice her own daughter, a child of tender years, and subject her to the rigors and humiliation of a public trial for rape if she was not driven by an honest desire to have her daughter's transgressor punished accordingly.[28]

Aside from this self-serving claim of the accused-appellant that Rachelle's testimony was rehearsed, no other reason is shown why the testimony given by Rachelle on the witness stand is not credible.

The trial court correctly gave full faith and credence to Rachelle's testimony. There was no showing that Rachelle had an improper motive to testify against accused-appellant. The non-attendance of any ill motive on the part of Rachelle gains more weight in the light of Merlyn Magtibay's description of Rachelle as a nice person.[29] Accused-appellant also had no reason why Rachelle would falsely accuse her of such serious crime as rape if she were not motivated to bring her perpetrator to justice.[30] Needless to say, it is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman, more so if she is a minor, says she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.[31]

A girl of such age as the victim would not concoct a tale of defloration, allow the examination of her private parts, make public the offense, undergo the trouble and humiliation of a public trial, and endure the ordeal of narrating all its gory details, if she had not in fact been raped.[32] If the accused-appellant had really nothing to do with the crime, it would be against the natural order of events and of human nature, and against the presumption of good faith, that a prosecution witness would falsely accuse him of such a serious crime as rape.

In the light of the positive identification of accused-appellant, his defense of denial and alibi cannot sustain his acquittal for rape. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testified on affirmative matters.[33] For alibi to prosper, accused-appellant must prove not only that he was somewhere else when the crime was committed but he must likewise demonstrate that it was physically impossible for him to be at the scene of the crime at the time of its commission.

As correctly found by the trial court:

It is very easy for anybody to pretend to be sick and that headaches cannot be seen or felt except by one who claims to have it. The defense of sickness cannot be taken with much doubt and hesitation.

Accused likewise claims that after taking some medicine, he was able to fully recover. A tablet of paracetamol and neozep doubly taken could easily subside the fever. It openly shows that the sickness accused suffered is not so serious enough for him to be bedridden and incapacitated to leave his house and do his usual course. Accused house is around 100 meters from the scene of the incident, and the required physical impossibility of being present at the situs of the crime therefore becomes unavailing to him. (Citations omitted)[34]

It appears that there was no allegation of the age and minority of the victim in the Information, hence, the trial court was correct in imposing the penalty of reclusion perpetua. The requisite for complete allegations on the particulars of the indictment is based on the right of the accused to be fully informed of the nature of the charges against him so that he may adequately prepare for his defense, pursuant to the due process clause of the Constitution.[35]

However, the award of damages by the trial court must be modified. The trial court ordered the payment of indemnity in the amount of P50,000.00, but failed to take into consideration the prevailing jurisprudence regarding the award of moral damages in the amount of P50,000.00 to a rape victim. Moral damages are awarded in rape cases involving young girls between 13 and 19 years of age, taking into account the immeasurable havoc wrought on their youthful feminine psyche. It may be awarded without need of showing that the victim suffered mental anguish, fright, serious anxiety and the like.[36]

Finally, the record shows that when Rachelle's mother, Gaudiosa Recto, discovered about her ordeal, Rachelle

was already eight months pregnant.[37] She eventually gave birth to a baby boy.[38] These facts confirm the commission of rape sometime in September 1997. There was no showing that Rachelle has previously been sexually abused or she had sexual relations with other men during that time. Thus, with respect to the acknowledgment and support of the child born out of rape our recent ruling in *People v. Justiniano Glabo*[39] states:

Concerning the acknowledgment and support of the offspring of rape, Article 345 of the Revised Penal Code provides for three kinds of civil liability that may be imposed on the offender: a) indemnification, b) acknowledgment of the offspring, unless the law should prevent him from so doing, and c) in every case to support the offspring. With the passage of the Family Code, the classification of acknowledged natural children and natural children by legal fiction was eliminated and they now fall under the specie of illegitimate children. Since parental authority is vested by Article 176 of the Family Code upon the mother and considering that an offender sentenced to reclusion perpetua automatically loses parental authority over his children, no “further positive act is required of the parent as the law itself provides for the child’s status.” Hence, accused-appellant should only be ordered to indemnify and support the victim’s child. However, the amount and terms of support shall be determined by the trial court after due notice and hearing in accordance with Article 201 of the Family Code.

WHEREFORE, in view of the foregoing, the Decision dated August 5, 1999 of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch XLII, in Criminal Case No. P-5775, finding accused-appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** with the **MODIFICATION** that accused-appellant RAYMUNDO MAGTIBAY y BACHOCO is ordered to pay complainant Rachelle Recto, the amount of P50,000.00 as civil indemnity, and P50,000.00 as moral damages. Accused-appellant is further ordered to provide support to the victim’s child born out of the rape, subject to the amount and terms to be determined by the trial court in a proper proceeding.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Austria-Martinez, JJ., concur.

[1] Penned by Judge Manuel C. Luna, Jr.; Records, pp. 59-62A.

[2] Records, p. 4.

[3] TSN, November 10, 1998, pp. 3-9.

[4] TSN, September 22, 1998, pp. 10-12.

[5] *Ibid.*, pp. 8-9.

[6] *Id.*, p. 4; Exhibit “A”, Records, p. 8.

[7] TSN, March 3, 1999, pp. 3-6.

[8] TSN, February 22, 1999, pp. 2-4.

[9] Rollo, p. 20.

[10] Rollo, p. 55.

[11] *People v. Navida*, 346 SCRA 821 (2000).

[12] TSN, November 10, 1998, pp. 3-7.

[13] *People v. Barcelona*, 325 SCRA 168 (2000).

[14] *People v. Lustre*, 330 SCRA 189 (2000).

[15] *People v. Ramos*, 345 SCRA 685 (2000).

[16] *People v. Lozano*, G.R. No. 126149, 7 December 2001.

[17] *People v. Cortes*, 323 SCRA 131 (2000).

- [18] People v. Tagud, G.R. No. 140733, 30 January 2002.
- [19] Rollo, pp. 58-60.
- [20] People v. Dela Cruz, 338 SCRA 582 (2000).
- [21] Exhibit “C”; Records, pp. 5-6.
- [22] People v. Castillo, 335 SCRA 100 (2000).
- [23] People v. Pacistol, 284 SCRA 520 (1998).
- [24] People v. Gallego, 338 SCRA 21 (2000).
- [25] Exhibit “C”, Records, p. 5.
- [26] TSN, January 26, 1999, p. 6.
- [27] People v. Alagon, 325 SCRA 297 (2000).
- [28] People v. Gopio, 346 SCRA 408 (2000).
- [29] TSN, January 26, 1999, p. 6.
- [30] TSN, 23 March 1999, p. 7.
- [31] People v. Puerta, G.R. No. 131609, 27 August 2001; People v. Cledoro, Jr., G.R. No. 111860, 29 June 2001; People v. De Villa, 351 SCRA 25, (2001); and People v. Juntilla, 314 SCRA 568 (1999).
- [32] People v. Agustin, G.R. Nos. 135524-25, 24 September 2001.
- [33] People v. Alay-ay, G.R. Nos. 137199-230, 23 August 2001.
- [34] Rollo, p. 19.
- [35] People v. Oscar Dante, G.R. No. 127652, 5 December 2001.
- [36] People v. Tagaylo, 345 SCRA 284 (2000).
- [37] TSN, September 22, 1998, p. 16.
- [38] TSN, November 10, 1998, p. 8.
- [39] G.R. No. 129248, 7 December 2001.

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