PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VICENTE BASQUEZ Y MANZANO, APPELLANT.

G.R. No. 144035. September 27, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Judges are not mere boxing referees, whose only task is to watch the bout and decide the results. They are duty-bound to conduct an orderly trial and an expeditious presentation of the evidence. In the performance of their responsibility, they may ask questions that would elicit the facts of the issues involved, clarify ambiguous remarks by witnesses, and address the points that are overlooked by counsel.[1]

The Case

Before the Court is an appeal by Vicente Basquez, challenging the April 10, 2000 Judgment[2] of the Regional Trial Court of Davao City (Branch 17), in Criminal Case No. 42148-98. The dispositive portion of the said Decision, which found him guilty of rape, reads as follows:

> "WHEREFORE finding the evidence of the prosecution, more than sufficient, to prove the guilt of accused beyond reasonable doubt of the offense charged, pursuant to Art. 335 of the Revised Penal Code as amended by Rep. Act 7659 as amended, it being established from the evidence of the prosecution, the complainant is only 7 years old or exactly 6 years[,] 7 months and 24 days, the extreme penalty of Death notwithstanding, cannot be imposed for want of aggravating circumstance in the commission of the offense charged but accused, Vicente Basquez y Manzano is sentenced, to suffer the penalty of reclusion perpetua, together with all accessory penalty as provided for by law and to pay complainant by way of civil indemnity, the amount of P50,000.00 and another amount of P50,000.00, by way of moral damages, for the injury suffered by complainant in her young life, inhumanely committed with and unnecessar[ily] resulting from the odious crime of rape by accused to warrant per se an award of moral damages, without the requirement of proof of mental and physical suffering. (PP vs. Prades GR No. 127759, promulgated on July 30, 1998) with cost de oficio."[3]

The Information,[4] dated November 11, 1998, charged appellant as follows:

> "That on or about x x x November 4, 1998, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge [of] the complainant Jiggle Jilt R. dela Cerna, who is seven (7) years old, against her will."[5]

When arraigned on February 4, 1999, appellant pleaded[6] not guilty after the Information was read and interpreted to him in the Visayan dialect, which he fully understood.[7] On pretrial, he manifested through counsel that he would not plead guilty to a lesser offense or enter into any stipulations or admissions.[8] After the prosecution rested its case, he filed a demurrer to evidence with prior leave of court. This plea was subsequently denied.[9] Trial continued and the lower court, thereafter, promulgated its assailed Decision.

The Facts

Prosecution's Version

In its Brief,[10] the Office of the Solicitor General presents the prosecution's version of the facts as follows:

> "[O]n the afternoon of November 4, 1998, around 4:00 o'clock, Jiggle Jilt dela Cerna, six (6) years 7 months and 24 days old, was on her way home from Dumanlas Elementary School, Buhangin, Davao City where she was a Grade One (I) student.
>
> "While casually walking, Jiggle was waylaid by a man wearing x x x short pants and white T-shirt (whom she later identified as the appellant) who was drinking outside a store along her way.
>
> "The appellant blocked her way and pulled her by the belt of her dress. She was then dragged towards the direction of the houses at the back of the school and was brought inside an unoccupied dilapidated house. Upon reaching the said house, her hands, feet and body were tied with a tieback.
>
> "Jiggle, young as she [was], could do nothing but to struggle and cry.
>
> "At this point, her attacker undressed himself, untied Jiggle, had her lie down and put himself on top of her. The appellant's hands then started groping all over her young and fragile body and forced himself inside her. Jiggle, despite the excruciating pain, kicked appellant repeatedly in an effort to free herself from him. Appellant, however, continued forcing his penis inside x x x her vagina.
>
> "Around 5:00 p.m. or an hour after when the appellant had consummated his vile and lewd act of raping the innocent child, he (appellant) left her with her body still tied. With her school bag just beside her, Jiggle mustered enough courage and strength to take a pair of scissors from it and cut the remaining tiebacks tied at her body.
>
> "The following day, Jiggle, traumatized by the assault and rape committed by the appellant, refused to go to school for fear of seeing the appellant again. She later narrated her horrifying experience to her grandmother Segundina dela Cerna with whom she was living. She could do nothing but to cry her anger out upon learning of her granddaughter's fate. She then reported the incident to the Buhangin Police and submitted her granddaughter to a medical examination.
>
> "The Medical Examination conducted on Jiggle by Dr. Danilo Ledesma, Medico Legal of the City Health Office, disclosed that the hymen [was] intact and its orifice small as to preclude complete penetration by an average sized male organ in erection without causing hymen[al] injury. The same medical report stated that the patient was positive for spermatozoa in the opening of the vagina including the parts surrounding the urethra.
>
> "On November 9, 1998, SPO2 Miguel Foma, together with another member of the PNP and several members of the Buhangin Barangay Police headed by Jose Despe, conducted a follow up investigation of the alleged rape. The group, through the initiative of the barangay police, proceeded to the house of a certain Virgie dela Corta where the appellant was reported to be living.
>
> "The appellant was subsequently invited by the police at the Police station No. 5 of Buhangin, Davao.
>
> "Unknown to the appellant, while the investigation was going on, he was subsequently identified by Jiggle who was then present but was covered by a piece of plywood in order to hide her."[11] (citations omitted)

Defense's Version

The defense of appellant, on the other hand, consisted of alibi and denial. The trial court summed up his version of the facts,[12] as follows:

> "On November 4, 1998, he was at Guerrero St., particularly at the vulcanizing shop of one named Jeck Jeck Pinsoy at Guerrero Street, Davao City.

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"On November 4, 1998, he was helping in the store of his sister but Jeck-Jeck Pinsoy requested him, to help in the butchering and roasting of a pig, in preparation [for] her birthday.

"They started butchering the pig at 3:00 p.m., and finished the roasting of the pig at 6:00 p.m., along with his other companions in the butchering and roasting of the pig[. D]uring said period, he saw Jeck-Jeck Pinsoy, who used to go down to the place where they were working and verified their problem, in the butchering and roasting of the pig for her birthday.

"The party started at 7:00 p.m. up to dawn, the following day November 5, 1998.

"Meanwhile on November 9, 1998 at about 9:00 p.m., at Guerrero Street, Davao City, there were policemen who arrived looking for him, accompanied by his in-law, a certain Mike Vidanes, who told him, a case of rape was filed against him.

"His in-law told him, to [go] along with the policemen of Buhangin Police Station[. D]espite his hesitation, he finally agreed to [go] with them, in compliance with the advise of his in-law.

"Upon arrival at Buhangin Police Station, he was required to sit down without any counsel and he was confronted with a little girl who was asked, whether he was the one who raped her[. T]he girl answered, no.

"He [was] only about [t]hree (3) meters away from the girl, who was confronted with him.

"He identified pictures, showing the place he was brought [to] marked Exh. 5 and [with] submarkings for the accused[. L]ater after the grandmother of the girl asked the girl, whether accused [was] the one who raped her, complainant answered, [n]o.

"Thereafter he was handcuffed and put inside the detention cell but later his handcuff was removed.

"Since November 8, 1998, he was detained, up to the present."[13]

Trial Court's Ruling

The trial court ruled that the prosecution was able to prove the guilt of appellant beyond reasonable doubt. It gave superior weight to the positive identification given by the victim who had pointed to him as the person who had raped her. Furthermore, it deemed as biased the testimony of the witness whom appellant had relied upon to prove that the victim's identification of the latter was erroneous.[14]

Hence, this appeal.[15]

The Issues

Appellant submits that the court a quo committed the following errors:

"I

That the trial Judge showed manifest bias and partiality against the accused by virtually acting as PROSECUTOR, and using the authority of his position in making up for the shortcomings of the prosecutor;

"II

That the trial Court ERRED in holding that prosecution witness, Purok Leader and Barangay Policeman Jose Despe, was `patently bias[ed] and partial in favor of accused;'

"III

That the trial Court erred in not holding that the `rapist' as described by the victim, did not match the description of accused;

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"IV

That the trial Court erred in convicting the accused."[16]

The Court's Ruling

The appeal is devoid of merit.

First Issue: Bias and Partiality of the Trial Judge

Appellant contends that the trial judge showed manifest bias and partiality against him by acting as a virtual prosecutor. We differ.

The participation of judges in the conduct of trials cannot be condemned outrightly. They cannot be expected to remain always passive and stoic during the proceedings. After all, they are not prohibited from asking questions when proper and necessary. In fact, this Court has repeatedly ruled that judges "must be accorded a reasonable leeway in asking questions to witnesses as may be essential to elicit relevant facts and to bring out the truth."[17]

Stated differently, "questions designed to clarify points and to elicit additional relevant evidence are not improper. Also, the judge, being the arbiter, may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time."[18]

Very illuminating on this point is the ruling of this Court in 1914 in United States v. Hudieres, which we quote:

> "The first assignment of error has its basis in the claim of counsel that the trial judge went to unjustifiable lengths in examining some of the witnesses called for the defense. It is very clear, however, from a review of the whole proceedings that the only object of the trial judge in propounding these questions was to endeavor as far as possible to get at the truth as to the facts which the witnesses were testifying [to]. The right of a trial judge to question the witnesses with a view to satisfying his mind upon any material point which presents itself during the trial of a case over which he presides is too well established to need discussion. The trial judges in this jurisdiction are judges of both the law and the facts, and they would be negligent in the performance of their duties if they permitted a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material fact upon which the judgment in the case should turn. So in a case where a trial judge sees that the degree of credit which he is to give the testimony of a given witness may have an important bearing upon the outcome, there can be no question that in the exercise of a sound discretion he may put such questions to the witness as will enable him to formulate a sound opinion as to the ability or the willingness of the witness to tell the truth. The questions asked by the trial judge in the case at bar were in our opinion entirely proper, their only purpose being to clarify certain obscure phases of the case; and while we are inclined to agree with counsel that some of the observations of the trial judge in the course of his examination might well have been omitted, there is no reason whatever to believe that the substantial rights of the defendants were in [any wise] prejudiced thereby."[19]

Appellant alleges that the trial judge "took up the cudgels for the prosecution virtually assuming the role of a prosecutor."[20]

On the contrary, a trial judge may examine some of the witnesses for the defense for the purpose of ferreting out the truth and getting to the bottom of the facts. That he does so would not justify the charge that he assisted the prosecution with the evident desire to secure a conviction, or that he intimidated the witnesses.[21]

Verily, trial magistrates are judges of both the law and the facts. They would be negligent in the performance of their duties if they permit a miscarriage of justice through their failure to propound questions that have some material bearing upon the outcome. In the exercise of sound discretion, they may ask such questions as will enable them to formulate sound opinions on the ability or the willingness of witnesses to tell the truth. They may even

examine or cross-examine these witnesses.[22] They may seek to draw out relevant and material testimonies, even if such evidence may tend to support or rebut the position taken by one or the other party.[23] Even if the clarificatory questions they propound happen to reveal certain truths that tend to destroy the theory of one of the parties, bias is not necessarily implied.[24]

In the present case, there was an effort by the trial judge to arrive at the truth and to do justice to both parties. It would be a distorted concept of due process if, in pursuance of that valid objective, he is to be accused of unfairness. His inquisitiveness did not unduly harm appellant's substantial rights. Rather, the questions he propounded to the witnesses showed his intention to elicit the truth. This conduct is expected of judges who, conscious of their responsibilities as magistrates, propound questions to witnesses who give incomplete and obscure answers.

Second Issue: Partiality of Prosecution Witness

Appellant argues that the trial court erred in declaring as biased Prosecution Witness Jose Despe's testimony which favored the defense.

We are not persuaded. We find no cogent reason to disturb the trial court's assessment of the testimony of Despe. Its declaration that he was biased and partial to appellant was neither arbitrary nor baseless. The age-old rule is that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court, which had firsthand impressions of their demeanor and conduct.[25] The trial court observed:

> "The transcript of stenographic notes of the proceedings from pages 35 up to 42 on clarificatory questions of the court on Jose Despe, revealed said witness was evasive in trying to hide his apparent predilection in favor of accused by going around the bush, in answer to the questions of the court, glaringly declarative of his apparent intention, to exonerate the accused of the offense charged.
>
> "In fact although presented as witness for the prosecution, the extent and tenor of his testimony can be considered[. H] he is indeed a witness for accused disguise[d] as prosecution witness, to divert his true and correct inclination, in favor of accused.
>
> "It was only upon critical questions of the court, to unmask his true color and attachment, that his testimony was given proper and correct affiliation, in favor of accused."[26]

Time and time again, this Court has iterated the principle that where the culpability or the innocence of the accused hinges on the credibility of the witnesses and the veracity of their testimonies, the findings of trial courts are given the highest degree of respect. After all, trial judges have an excellent chance to personally observe the declarants on the witness stand, an opportunity that is not equally available to appellate courts.[27]

Moreover, it was the testimony of appellant that provided the link between him and Despe, as the following shows:

> "Court: You said that Despe is your close friend?
>
> "Basquez: Yes.
>
> "Court: In fact he is the leader of the barangay police in Dumanlas?
>
> "Basquez: Yes.

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"Court: And you were one of his errand boy[s]?

"Basquez: Yes."[28]

This admission in court belies appellant's claim that "Despe and accused do not know each other."[29]

Third Issue: Error in the Description of the Accused

Appellant assails the victim's description of her rapist as one who sported a big stomach and a balding head. He claims he is not "dark-skinned, does not have a big belly and neither does he have a balding head."[30]

It should be clarified, at the outset, that it was Witness Jose Despe who, quoting the victim, said that the "one who raped her was dark-skinned, [a] skin-head, with hallow scalp on top with big belly and with cutex on his fingernails."[31]

That the appearance of appellant differs from the description given by the victim does not necessarily affect her credibility as a witness. It must be remembered that she positively identified him, not only during the investigation conducted by the police on November 9, 1998, but also during the trial. We quote from her testimony:

"Q: You said, you were going home after attending to your class at Dumanlas Elementary School. While on your way home, what happened, if any?

"A: I was waylaid by him.

"Q: Who is that him [you are] referring to?

A: "Yes, sir.

"Q: If that person you are referring to is in court, can you identify him?

"A: Yes, sir.

"Q: That person [whom] you pointed [to] as the one who waylaid you, what [was] he wearing at that time?

"A: He was wearing short pants.

"Q: [What] about his attire on the other portion of his body, can you recall?

"A: T-shirt.

"Q: Can you recall the color of the t-shirt?

"A: Yes, sir.

"Q: What was the color?

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"A: White."[32]

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"Q: You know who is that man, whom you said molested you?

"A: Yes, your Honor.

"Q: Why do you know him?

"A: Because I used to see him.

"Q: If that man is in court, can you point [to] him?

"A: That man. (witness pointed to accused, Vicente Basquez).

"Q: Do you know the house of that man?

"A: I do not know.

"Q: But you said you know him? Where did you see him before he molested you?

"A: In the store."[33]

Moreover, the trial court noted the fact that appellant had a bulging stomach when he testified in court.[34] There was no equivocation on this point. The other alleged discrepancies are minor. To a young child, "brown complexion" may be the same as dark skin, and having a "balding head" may refer to a long forehead. More important, minor discrepancies, if any, will not detract from the fact that complainant categorically identified appellant as her assailant and vividly narrated the sexual assault committed against her.

An error-free testimony cannot be expected from children of tender years, most especially when they are recounting details of harrowing experiences, those that even adults would rather bury in oblivion.[35] To be sure, complainant's testimony may not be described as flawless, but its substance, veracity and weight were hardly affected by the triviality of her alleged inconsistencies. On the contrary, the supposed inconsistencies may have even reinforced her credibility, as they had probably arisen from the naivete of a seven-year old child, confused and traumatized by the bestial act done upon her person.

Appellant likewise submits that the victim failed to immediately identify him during the police investigation, and had merely been pointed out to her.[36]

We are not convinced. As already discussed, appellant was positively identified by the victim. The reason for the latter's initial failure to identify the former as her assailant was sufficiently explained by the trial court, as follows:

"Although the confrontation was marred [by the] alleged, testimony of Jose Despe, a Purok Leader at Buhangin, Dumanlas, Davao City a Head of the Barangay Police by disputing the identification of accused by

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> complainant, in the presence of her grandmother, who when asked whether the accused was the one who abused her, she answered for about 3 to 4 times, he was not the one; the situation and circumstances of said identification was done when complainant was still confused, afraid and uncertain of the support of Jose Despe who apparently, as found by the court, was wittingly partial [to the] accused, during the alleged confrontation.
>
> "Moreover, during the confrontation in the Police Station of Buhangin, Davao City, the [complainant's] view of x x x [the] accused was obstructed by a plywood made by Jose Despe, to cover and separate complainant [from the] accused, intended to hide the complainant."[37]

Fourth Issue: Absence of Penetration

Although there had been no complete penetration of the victim's vagina by appellant's penis, contact between then was not ruled out by the doctor who testified in this case. In fact, he found the victim's vagina positive for spermatozoa.[38] In his testimony, the doctor declared:

> "Q:
>
> In your examination you refer[red] to a statement that the penetration may not be full but you are positive it [maybe] partial?
>
> "A:
>
> Yes, it could be only between two lips of the genitalia of the victim and he ejaculated just outside.
>
> x x x x x x x x x
>
> "Q:
>
> But certainly, there is a kissing of female organ and male organ?
>
> "A:
>
> Yes."[39]

Existing rulings on rape do not require complete or full penetration of the victim's private organ. Neither is the rupture of the hymen necessary. The mere introduction of the penis into the labia majora of the victim's genitalia engenders the crime of rape.[40] Hence, it is the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia that consummates rape.[41] Penile invasion necessarily entails contact with the labia. Even the briefest of contacts, without laceration of the hymen, is deemed to be rape.[42]

Finally, appellant tries to escape liability by advancing the defense of alibi. He testified that he was at a neighbor's house, helping in the butchering and roasting of a pig.[43] The trial court easily dismissed his contention in this wise:

> "There is no evidence to show, accused was required to stay in the premises, all the time from 3:00 to 6:00 p.m., on said date because the birthday celebrant herself, ha[d] no way of assuring accused stayed in the premises, all the time more than merely seeing to it accused was around helping in the work, without certainty of the presence of accused, during the entire period of the work.
>
> "Moreover, it is not denied from 11:00 up to 2:00 p.m., accused was not in the house of Pinsoy, helping in the preparation of her birthday."[44]

In any event, alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. For alibi to prosper, it is not enough to prove that the defendant was somewhere else when the crime was committed; he must

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likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[45] Furthermore, alibi cannot prevail over the positive and unequivocal identification of appellant by complainant. Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the appellant's defense of denial and alibi. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[46]

WHEREFORE, the appeal is DENIED. We AFFIRM the assailed Decision finding VICENTE M. BASQUEZ guilty beyond reasonable doubt of the crime of rape and sentencing him to reclusion perpetua and to pay the victim P50,000 as indemnity ex delicto and another P50,000 as moral damages. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, and Sandoval-Gutierrez, JJ., concur.

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[1] Cf. People. v. Herida, GR No. 127158, March 5, 2001.

[2] Penned by Judge Renato A. Fuentes.

[3] Assailed Decision, p. 14; rollo, p.79.

[4] Signed by State Prosecutor I Fundador B. Villafuerte Jr.

[5] Information dated November 11, 1998; records, p. 1.

[6] Assisted by his counsel de parte, Atty. Melchor Quitain.

[7] See the lower court's Order dated February 4, 1999; records, p. 25.

[8] See the lower court's Order dated March 3, 1999; records, p. 29.

[9] See the lower court's Order dated July 14, 1999; records, p. 64.

[10] Signed by Asst. Sol. Gen. Carlos N. Ortega, Asst. Sol. Gen. Roman G. Del Rosario and Asso. Sol. Raymond C. De Lemos.

[11] Appellee's Brief, pp. 2-5; rollo, pp. 99-102.

[12] Appellant's Brief did not contain any statement of facts.

[13] Assailed Decision, pp. 6-7; rollo, pp. 71-72.

[14] Ibid., p. 9; rollo, p. 74.

[15] This case was deemed submitted for resolution on June 11, 2001, when the Court received Appellee's Brief.

The filing of a reply brief was deemed waived, as none had been submitted within the reglementary period.

[16] Appellant's Brief, p. 3; rollo, p.47.

[17] Barbers v. Laguio, AM No. RTJ-00-1568, February 15, 2001, per De Leon Jr., J.

[18] Cosep v. People, 290 SCRA 378, May 21, 1998, per Romero, J.

[19] 27 Phil 45, 47-48, March 7, 1914, per Carson, J.

[20] Appellant's Brief, p. 5; rollo, p.49.

[21] People v. Zheng Bai Hui, GR No. 127580, August 22, 2000, citing United States v. Lim Tiu, 31 Phil. 504, September 27, 1915.

[22] People v. Manalo, 148 SCRA 98, February 27, 1987.

[23] Ibid.

[24] People v. Ibasan Sr., 129 SCRA 695, June 22, 1984.

[25] People v. Sarabia, 266 SCRA 471, 485, GR No. 124076, January 25, 1997.

[26] Decision, pp. 9-10; rollo, pp.74-75.

[27] People v. Deleverio, 289 SCRA 547, April 24, 1998.

[28] TSN, January 18, 2000, p. 10.

[29] Appellant's Brief, p. 16; rollo, p. 60.

[30] Appellant's Brief, p. 17; rollo, p. 61.

[31] TSN, March 24, 1999, p. 32.

[32] TSN, April 14, 1999, pp.4-5.

[33] Ibid., p. 15.

[34] TSN, January 18, 2000, p. 2.

[35] People v. Tumala Jr., 284 SCRA 436, January 20, 1998.

[36] Appellant's Brief, p. 15; rollo, p. 59.

[37] Assailed Decision, p. 9; rollo, p. 74.

[38] Medical Report signed by Danilo P. Ledesma, MD; records, p. 7.

[39] TSN, March 25, 1999, pp. 5-6.

[40] People v. Cura, 310 Phil. 237, 248, January 18, 1995.

[41] People v. Balibalita, GR No. 134266, September 15, 2000; People v. Campuhan, GR No. 129433, March 30, 2000; People v. Clopino, 290 SCRA 432, 442-443, May 21, 1998.

[42] People v. Dimapilis, 300 SCRA 279, 305, December 17, 1998.

[43] Assailed Decision, p. 8; rollo, p. 73.

[44] Ibid., pp. 8-9; rollo, pp. 73-74.

[45] People v. Hofileña, GR No. 134772, June 22, 2000; People v. Legaspi et al., GR No. 117802, April 27, 2000; People v. Llanes et al., GR No. 116986, February 4, 2000; People v. Rendoque et al., GR No. 106282, January 20, 2000; People v. Estrada, 22 SCRA 111, January 17, 1968.

[46] People v. Jose, GR No. 130666, January 31, 2000, citing People v. Villablanca, 316 SCRA 13, October 1, 1999.

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