

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GAUDENCIO ALBERIO, APPELLANT.

G.R. No. 152584. July 06, 2004

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from a decision[1] of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 37 in Criminal Case No. 13726, finding appellant Gaudencio Alberio guilty of Rape and sentencing him to suffer Reclusion Perpetua and to pay the complainant, Ana Liza Calunsag, the sum of P100,000.00 as moral damages, as well as the costs of the suit.

The information against appellant alleged:

That sometime in November, 1997 at about 6:30 o'clock in the afternoon, at Barangay Bulado, Guihulngan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court the above-named accused by means of force and intimidation, willfully, unlawfully and feloniously did lie and succeeded in having sexual intercourse with Ana Liza Calunsag, a 14 year old minor against the latter's will and which act resulted to the pregnancy of the victim.

Contrary to Article 335 of the Revised Penal Code as amended by Republic Act No. 8353, the Anti-Rape Law of 1997.[2]

When arraigned on March 22, 1999, appellant, assisted by counsel, pleaded "Not Guilty".[3]

The evidence for the prosecution is as follows:

Ana Liza Calunsag was, at the time material to this case, a 14-year old high school student. Sometime in November 1997, between 6:00 and 6:30 in the evening, she went to the house of a former classmate, Vivencia Alberio,[4] to retrieve a schoolbook which the latter had borrowed. She was met at the house by the appellant, Vivencia's father, who was well-known to the victim.

Appellant told the victim that Vivencia was waiting inside the kitchen. The victim went inside the house, entering through the main door at the second floor balcony before descending to the ground floor where the kitchen was located. Vivencia was nowhere to be found. The victim went back upstairs. She attempted to leave the house through the balcony but appellant blocked her egress.[5] He was clad only in short pants, and was half-naked from the waist up.[6] When the victim saw that he was carrying a knife, she attempted to run away.[7] Appellant hugged the victim, pointed the knife at her neck, and covered her mouth.[8] The victim struggled and attempted to shout, but to no avail. Appellant forced her to lie down, knelt on her legs to prevent her from struggling, pointed the knife at her mouth, stripped her of her shorts and panties, and lifted her blouse.[9] The victim tried to kick appellant's knees but she could not move because her legs were pinned down.[10] Appellant then inserted two fingers into the victim's vagina.[11] She felt pain. She could not break free from his clutches because of her fear.

After about three minutes, appellant removed his shorts, lay down on top of the victim, and inserted his penis into

her vagina. The victim knew he was no longer using his mere fingers to penetrate her because she saw both of his hands – one of his hands was supporting himself while the other was holding the knife which was pointed at the victim's mouth.[12] While he was on top of her, appellant made a pumping motion with his body. She felt pain.

After the sexual act, appellant dressed the victim up in her shorts and panties and allowed her to stand up.[13] The victim was in tears. Appellant warned the victim not to tell her parents about the incident, otherwise, he would kill both her and her parents. The victim then went home, still crying. She did not tell anyone what appellant did, not even her parents.[14]

Appellant continued to visit the sari-sari store owned by the victim's parents. Sometimes, the victim was the one tending the store, and he would give her threatening stares. Still afraid of appellant, the victim would be moved to tears.[15]

In the meantime, rumors circulated that the victim was pregnant. About four months after the incident, in March 1998, the victim's mother brought her to a manghihiilot who confirmed the pregnancy of the victim.[16] The victim's parents asked her who was the father of her unborn child, but because of fear of appellant, she did not immediately disclose her ravisher's identity.[17] After being forced by her parents, the victim finally revealed that the appellant was the father of the child she was carrying.[18]

On April 3, 1998, the victim was examined by a certain Dr. Rogelio Regalado, a general practitioner, who testified that the victim was approximately nineteen weeks and three days pregnant on the date of his initial examination.[19] He based this finding on the victim's last menstrual period.

On June 24, 1998, the victim gave birth to a son, whom she named Janjan Calunsag.[20]

The defense opted not to present any evidence.

On January 7, 2002, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused Gaudencio Alberio GUILTY beyond reasonable doubt of Rape penalized under Article 266-A, Revised Penal Code, as amended by R.A. No. 8353 (The Anti-Rape Law of 1997) and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA, together with all the accessory penalties provided for by law, to pay the sum of P100,000.00 to victim Ana Liza Calunsag as moral damages, and the cost.

The Jailer is hereby ordered to make the proper reduction of the period during which the accused was under preventive custody by reason of this case in accordance with law.

SO ORDERED.[21]

Hence, this appeal, on the lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN MISAPPRECIATING MATERIAL FACTS OF IMPORTANCE WHICH IF CONSIDERED AND GIVEN PROBATIVE VALUE, WOULD HAVE TILTED THE SCALES OF JUSTICE IN FAVOR OF AN ACQUITTAL.[22]

While not unmindful of the constitutional presumption of innocence, and firmly aware that the accused's failure to take the witness stand is not to be taken against him, we consider that the prosecution has amply discharged its burden of proving the guilt of the accused. Not one scintilla of evidence was presented by the appellant to rebut the evidence of the prosecution. It is a well-settled rule that the trial court's assessment of witnesses' credibility will not be disturbed on appeal, absent any showing of palpable error or grave abuse of discretion.[23] Appellate courts generally accord credence to the factual findings of the trial court, for the latter was in the best position to observe the witnesses' deportment and manner of testifying.[24]

In the case at bar, we find no reason to overturn the ruling of the trial court that the victim's testimony was credible. Also settled is the rule that an accused can be convicted on the strength of the lone testimony of a rape victim.[25] The clear and convincing testimony of the offended party, given ample credence by the trial court, suffices to merit a conviction in this case.

In this appeal, the defense contends that the offended party did not exhibit the natural behavior of a rape victim.[26] Specifically, the defense assails the victim's narration as to how she was raped, pointing out that she did not make any outcry and did not sustain a single cut or bruise.[27] The defense then argues that the failure to make any outcry, and the failure to show physical evidence of any struggle, diminishes Ana Liza's story that she was forced into the sexual act against her will.[28]

The contention has no merit.

We disagree with the contention that the victim's failure to shout for help is fatal to the charge of rape. Furthermore, we are not persuaded by appellant's contention that the victim offered no resistance. Rape is committed when the accused has carnal knowledge of a woman by use of force or intimidation.[29] Physical resistance is not an essential element of the felony, and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety.[30] It is enough that the malefactor intimidated the complainant into submission. Failure to shout or offer tenacious resistance did not make voluntary the complainant's submission to the criminal acts of the accused.[31] Furthermore, not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone.[32] The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility.[33]

In this case, Ana Liza failed to shout for help as she was threatened with death by the appellant. During the whole sexual assault, appellant poked the knife at her neck. When a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently.[34] Her failure to shout for help does not vitiate the credibility of her account. It must not be forgotten that the victim was only 14 years old at the time of the rape, inexperienced in the ways of the world.

It is completely irrelevant that the victim was unable to show cuts, lacerations or bruises that would be ample physical evidence of the presence of a struggle. The presence or absence of physical bruises are not necessary in order to prove the charge of rape. Besides, due to extreme fear, the victim did not report the rape until four months after the incident,[35] at which point any bruises or injuries sustained during the sexual assault would already have healed.

The defense also argues that the fact that the victim pointed to the appellant as the father of her child negates her assertion that she was completely paralyzed with fear.[36] The defense claims that the improbabilities and inconsistencies in the testimony of the victim cast serious doubts as to its veracity. Specifically, the defense asserts that it was highly improbable that a victim so afraid of her ravisher would actually come forward to testify.

In this case, it must not be forgotten that the victim displayed the highest level of reluctance in pointing the finger at appellant, which conduct reinforces her story of constant fear, intimidations and threats. Indeed, the victim said she believed the appellant's story that she and her parents would be murdered if she revealed that she was raped.[37] Only the pressure exerted by her father broke through the victim's fear. She named her ravisher only when forced to do so by the circumstance of her pregnancy.[38] Had she not been pregnant, appellant's hideous act may have remained a secret.

We thus see no inconsistency in the story presented by the victim. Contrary to the contentions of the defense, the alleged inconsistencies are minor; they do not affect the credibility of the victim. Indeed, they should be taken as indicia of truth rather than as badges of falsehood, for they erase any suspicion of a rehearsed testimony.[39] After her traumatic experience, we do not expect the victim to remember vividly the appellant's threats or each and every ugly detail of the sexual assault.[40] What is significant is that Ana Liza was clear and consistent in asserting that the appellant intimidated and raped her. On the basis of the victim's credible testimony, the conviction of appellant is inevitable.

As a final argument, the defense assails the testimony of Dr. Regalado, who examined the victim during her pregnancy and assisted in the birth of the child. The defense argues that, based on the testimony of Dr. Regalado, the victim was already five months pregnant on April 3, 1998, the date of her first physical examination by Dr. Regalado. The defense argues that if the victim was already five months pregnant on that date, then the accused, who allegedly raped the victim in November 1997, roughly four months before, could not have been the father of the child she was carrying. Moreover, the defense argues that Ana Liza gave birth to a full-term baby and not a premature infant, again negating her story as regards the child's paternity.

We have reviewed the testimony of Dr. Regalado, and fail to see that he made the purportedly categorical statements that the defense alleges. While conceding that the victim could have been as much as five months pregnant on April 3, 1998,[41] and could have delivered a full-term infant on June 24, 1998,[42] he was more of the opinion that the victim was merely nineteen weeks and three days pregnant when he initially examined her,[43] and positive in his opinion that the child he delivered on June 24, 1998 was a premature infant, its birth weight notwithstanding.[44] These assertions support the victim's story of rape sometime in November 1997. Besides, the victim's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped. Pregnancy is not an essential element of the crime of rape. Whether the child which Ana Liza bore was fathered by the accused, or by some unknown individual, is of no moment in the instant case. The veracity of her story is shown in her testimony. Her pregnancy and childbirth are merely corroborative. When there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of the crime, the logical conclusion is that the testimony is worthy of full faith and credence.[45]

We have reviewed the records, and we found no reason why Ana Liza should concoct a story as damaging to her reputation as this, if it were not true that she was raped. We have held that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true.[46] It is unbelievable that a young barrio lass would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was in fact raped.[47] No young and decent Filipina would publicly admit that she was ravished and her honor tainted unless such was true, for it would be instinctive for her to protect her honor and obtain justice for the wicked acts committed upon her.[48]

Thus, the trial court was correct in finding appellant guilty beyond reasonable doubt of Rape, penalized under Article 335, with Reclusion Perpetua.

We find, however, that the trial court erred in awarding P100,000.00 in moral damages to the victim Ana Liza Calunsag. In accordance with current jurisprudence, the amount of moral damages is hereby reduced to P50,000.00.[49] However, civil indemnity in the amount of P50,000.00 is also awarded to the victim, pursuant to prevailing case law.[50]

WHEREFORE, the decision of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 37, in Criminal Case No. 13726, finding appellant Gaudencio Alberio guilty beyond reasonable doubt of Rape and sentencing him to suffer the penalty of Reclusion Perpetua, is AFFIRMED with the MODIFICATIONS that appellant is ORDERED to pay the offended party, Ana Liza Calunsag, moral damages in the reduced amount of P50,000.00, and civil indemnity in the amount of P50,000.00.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Rollo, p. 14.

[2] Records, p. 3.

[3] Id., p. 50.

[4] Vivencia's name is also spelled in the Records as "Veencia".

[5] TSN, 5 July 1999, p. 11.

[6] Id., p. 13.

[7] Id., pp. 13-14.

[8] Id., pp. 14-15.

[9] Id., pp. 14-18.

[10] Id., p. 18.

[11] Id., p. 18.

[12] Id., p. 20.

[13] Id., p. 21.

[14] Id., pp. 20-21.

[15] Id., pp. 25.

[16] Id., p. 23.

[17] Id., pp. 23-24.

[18] Id., p. 25.

[19] TSN, 20 June 2000, pp. 6-7.

[20] TSN, 5 July 1999, pp. 27-28; Exhibit "A", Records, p. 132.

[21] Rollo, pp. 193-94.

[22] Rollo, p. 28.

[23] *People v. Oliver*, 362 Phil. 414 (1999); *People v. Barredo*, 357 Phil. 924 (1998); *People v. Escandor*, 333

Phil. 227 (1996); *People v. Deopante*, 331 Phil. 998 (1996).

[24] *People v. Atop*, 349 Phil. 821 (1998); *People v. Agbayani*, 348 Phil. 341 (1998).

[25] *People v. Rabosa*, 339 Phil. 198 (1997).

[26] *Rollo*, pp. 31-35.

[27] *Id.*, p. 34.

[28] *Id.*, pp. 34-35.

[29] REVISED PENAL CODE, as amended, art. 266-A, which provides in relevant part: “Rape, when and how committed. – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;” x x x.

[30] *People v. Rebose*, 367 Phil. 768 (1999).

[31] *People v. Corea*, 336 Phil. 72 (1997).

[32] *People v. Cabel*, G.R. No. 121508, 14 December 1995, 282 SCRA 410.

[33] *People v. Malunes*, 317 Phil. 378 (1995).

[34] *People v. Rebose*, *supra*.

[35] TSN, 5 July 1999, p. 24.

[36] *Rollo*, pp. 35-38.

[37] TSN, 5 July 1999, pp. 21, 22, 24.

[38] *Id.*, pp. 23-25.

[39] *People v. Salvatierra*, 342 Phil. 22 (1997); *People v. Zumil*, 341 Phil. 173 (1997); *People v. Bergonia*, 339 Phil. 284 (1997).

[40] *People v. Rabosa*, 339 Phil. 198 (1997); *People v. Butron*, 338 Phil. 856 (1997).

[41] TSN, 20 June 2000, pp. 13-14.

[42] *Id.*, pp. 14-15, 16-17.

[43] *Id.*, pp. 6-7, 9-10.

[44] *Id.*, pp. 10-11.

[45] *People v. Escala*, 354 Phil. 46 (1998).

[46] *People v. Clopino*, 352 Phil. 1040 (1998)

[47] *People v. Auxtero*, 351 Phil. 1001 (1998).

[48] *People v. Traverro*, 342 Phil. 263 (1997).

[49] People v. Pagsanjan, G.R. No. 139694, 27 December 2002.

[50] People v. Biong, G.R. Nos. 144445-47, 30 April 2003; People v. Invencion, G.R. No. 131636, 05 March 2003.

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