

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROMEO BUBAN, APPELLANT.

G.R. No. 166895. January 24, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

It must be remembered that [rape] is an accusation easy to be made, and hard to be proved and harder to be defended by the party accused x x x.

— Lord Hale

The Case

For review before the Court is the January 11, 2005 Decision[1] of the Court of Appeals (CA), affirming the June 26, 2002 Judgment[2] of the Labo, Camarines Norte Regional Trial Court (RTC), Branch 64, finding appellant Romeo Buban guilty beyond reasonable doubt of raping his own daughter, and sentencing him to death.

The Facts

On September 11, 1997, appellant was charged with five (5) counts of rape committed on June 1, 3, and 5 and July 5 and 6, 1997[3] against his then 12-year old daughter, AAA.[4] The Informations read:

Criminal Case No. 97-0226

That on or about in the evening of June 1, 1997 at Sitio Danayan, Barangay San Roque, Municipality of Capalonga, [P]rovince of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of [AAA], by use of force, threats and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with said [AAA], a minor of twelve (12) years old, against her will.

CONTRARY TO LAW.

Criminal Case No. 97-0227

That on or about in the evening of June 3, 1997 at Sitio Danayan, Barangay San Roque, Municipality of Capalonga, [P]rovince of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of [AAA], by use of force, threats and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with said [AAA], a minor of twelve (12) years old, against her will.

CONTRARY TO LAW.

Criminal Case No. 97-0228

That on or about in the evening of June 5, 1997 at Sitio Danayan, Barangay San Roque, Municipality of Capalonga, [P]rovince of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court,

the above-named accused, being then the father of [AAA], by use of force, threats and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with said [AAA], a minor of twelve (12) years old, against her will.

CONTRARY TO LAW.

Criminal Case No. 97-0229

That on or about in the morning of July 6, 1997 at Sitio Danayan, Barangay San Roque, Municipality of Capalonga, [P]rovince of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of [AAA], by use of force, threats and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with said [AAA], a minor of twelve (12) years old, against her will.

CONTRARY TO LAW.

Criminal Case No. 97-0230

That on or about in the evening of July 5, 1997 at Sitio Danayan, Barangay San Roque, Municipality of Capalonga, [P]rovince of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of [AAA], by use of force, threats and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with said [AAA], a minor of twelve (12) years old, against her will.

CONTRARY TO LAW.

When arraigned on November 10, 1997, appellant pleaded not guilty to the five charges.[5] He likewise waived his right to pre-trial.[6] During trial, the prosecution presented the following witnesses: 1) Dr. Marcelito B. Abas, a medico-legal officer of the Camarines Norte Provincial Hospital, Daet, Camarines Norte; 2) Melinda Reyes, a social worker; 3) Jessica Oscillada, a social worker of the Department of Social Welfare and Development (DSWD) Children's Home for Girls in Sorsogon, Camarines Sur; and 4) AAA, the minor victim.

The facts culled from the evidence are as follows:

AAA was born on August 5, 1984 to appellant Romeo Buban and BBB.[7] She has a twin brother named CCC[8] and seven other siblings. Her older brothers and sister worked as house helpers, while her father worked as a laborer in a fishpond in their barangay. Her mother died of hemorrhagic shock on May 27, 1997.[9]

AAA narrated that the first rape occurred at nighttime of June 1, 1997 in the sala of their house in DDD,[10] but she could not recall the date and time of the rape. While her siblings were sleeping in the room, appellant removed her panty and inserted his finger in her vagina. Appellant thereafter inserted his penis. AAA felt pain and her vagina bled. Appellant threatened to roast her alive if she would make noise to awaken her siblings.[11]

AAA did not leave the house despite the incident because no one would take care of her siblings. Neither did she tell anyone of the rape because she was afraid the appellant would kill her. The following night of June 3, 1997, the appellant again raped her. Appellant strangled her and threatened her with a knife. The appellant removed her panty and inserted his penis in her vagina but she did not complain because she was being threatened.[12]

AAA was again raped by the appellant in the sala of their house at nighttime of June 5, 1997 while her siblings were asleep. The appellant removed her panty and inserted his penis into her vagina; then her vagina bled and she felt pain. AAA recalled that the appellant was on top of her while she was lying on the floor. The appellant was not wearing anything. AAA neither fought nor complained because she was threatened by the appellant.[13]

AAA stated that there was an interval of one day between the third and fourth rapes. It was the nighttime of July

5, 1997[14] when the appellant violated her on the fourth occasion inside their bedroom. The appellant told EEE,[15] AAA's brother, to go to their neighbor's house while AAA's other siblings were sleeping. The appellant removed AAA's underwear and inserted his fingers into her vagina. AAA was lying on the floor and her legs were spread apart. Appellant then mounted AAA and inserted his organ into the latter's vagina. AAA felt pain and her vagina bled.[16] AAA did not complain because she was afraid of her father.

The fifth rape occurred in the daytime of July 6, 1997[17] also in the room of their house. The appellant ordered AAA's siblings to go fishing except AAA's three-year old sibling who was asleep in the house. AAA was forced to lie down, in spread eagle position, as the appellant went on top of her, removed her underwear and inserted his penis into her vagina. AAA said that she did not shout for help because she feared that the appellant might do the same to her sisters. Also, she could not push or beat the appellant because he was bigger.[18]

AAA thereafter told her brother, EEE about what happened. She and her siblings then reported the incident to the barangay kagawad of Danayan, Kagawad Mauro Dalan and later, to Kagawad Ramon Nacido. With the assistance of the two barangay officers, they were then brought to the police station in Poblacion for a sworn statement.[19]

Ms. Melinda Reyes, a social worker in Capalonga, met AAA on July 8, 1997 complaining about her father's abuse. After taking AAA to the Camarines Norte Provincial Hospital for a medical examination, Ms. Reyes assisted AAA in filing charges before the Municipal Trial Court of Capalonga/Sta. Elena, Camarines Norte. Also, she conducted a Social Case Study of AAA and the appellant.[20] On the other hand, Ms. Jessica Oscillada, a social worker at the DSWD Children's Home for Girls, Sorsogon, testified that AAA had been residing in the said facility since September 9, 1997.[21]

On July 9, 1997, Dr. Marcelito B. Abas, a medico-legal officer in Camarines Norte Provincial Hospital, Daet, Camarines Norte conducted a genital examination on AAA. She had fresh and superficial hymenal lacerations at five (5), eight (8), and eleven (11) o'clock positions, and deep lacerations at two (2) and six (6) o'clock positions in her vagina which could have been caused by the penetration of an erect penis. The patient's vagina admitted one finger with slight difficulty which indicated that AAA was no longer a virgin. There were no physical injuries in the surrounding parts of the patient's vagina. On cross-examination, Dr. Abas stated that while a hard object or finger may cause the fresh lacerations, a finger could not cause multiple and deep lacerations. He found no blood or seminal fluid in the patient's organ.[22]

Appellant, on the other hand, denied all the accusations of his daughter. He testified that his wife died on May 27, 1997 and was buried the following day. Prayers were held in their house every afternoon until July 6, 1997. He said that he usually fetched the person who led the prayers and that after the prayers, he prepared supper for his children and then left to work in the fishpond. He also said that he worked as a watchman until around 4:00 a.m. Lastly, he claimed that he did not know the reason for his daughter's accusations.[23]

Although AAA's sworn statement[24] mentioned five occasions of rape, the Complaint[25] mentioned only the incident on July 6, 1997, which became the subject of Criminal Case No. 97-0229. The charges of rape committed on June 1, 3, and 5, and July 5, 1997 were not supported with the required complaints in accordance with Section 5, Rule 110 of the 1985 Rules on Criminal Procedure.

On June 26, 2002, the Camarines Norte RTC rendered the assailed judgment, the fallo of which reads:

WHEREFORE, in view of the foregoing facts and circumstances, accused ROMEO BUBAN who is the father of [AAA], a 12-year old minor at the time of the incidents subject of the above-entitled cases is hereby found GUILTY beyond reasonable doubt of RAPE defined and penalized under Article 335 of the Revised Penal Code as amended by Section 11 of R.A. No. 7659. Accordingly, accused ROMEO BUBAN is hereby sentenced to suffer the maximum penalty of DEATH and to pay the victim [AAA] the sum of FIFTY

THOUSAND PESOS (P50,000.00) as moral damages and SEVENTY FIVE THOUSAND PESOS (P75,000.00) as civil indemnity and the additional amount of TWENTY THOUSAND PESOS (P20,000.00) as exemplary damages.

The accused who is presently detained at the Provincial Jail at Daet, Camarines Norte is ordered immediately transferred to the New Bilibid Prisons, Muntinlupa City.

SO ORDERED.[26]

The Court observes that the trial court did not explicitly state in the aforequoted fallo that Criminal Case Nos. 97-0226, 97-0227, 97-0228, and 97-0230 were dismissed. Said dismissal is however implied from the body of the Judgment where the RTC concluded that there was no legal basis to convict the appellant for the alleged rape committed on June 1, 1997 (Criminal Case No. 97-0226), June 3, 1997 (Criminal Case No. 97-0227), June 5, 1997 (Criminal Case No. 97-0228), and July 5, 1997 (Criminal Case No. 97-0230), thus:

While alibi and denial are the weakest defenses, this court, however, would have no legal basis to convict the accused on the charges of rape allegedly committed on the private complainant by her father on the following dates: June 1, 1997, June 3, 1997, June 5, 1997 and July 5, 1997 since the same were not supported with the required complaints. Under Rule 110, Section 5 of the 1985 Rules on Criminal Procedure, the offense of rape shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian. In the case of *People vs. Oso*, 62 Phil. 271, the Supreme Court held that “where no valid complaint was ever filed and signed by the offended party, the court does not acquire jurisdiction to try the case even if no objection thereto was interposed in the trial court or no such error was arraigned or appeal [sic], questioning the jurisdiction of the lower court as such failure does not cure a fatal defect and mere silence or acquiescence of the accused cannot confer jurisdiction on the court.”[27]

The prosecutor filed a Motion for Reconsideration contending that 1) the Complaint was supported by AAA’s sworn statement which categorically stated that AAA was raped by the appellant five (5) times; 2) five (5) Informations were filed against the accused; 3) a resolution from the provincial prosecutor indicted the accused for five counts of rape; and 4) the law merely prescribes the filing of a valid complaint by the offended party but does not prescribe that a complaint will be filed for each date/count/ occurrence of the offense.[28] The Camarines Norte RTC ruled that the Motion for Reconsideration was one day late and denied it in its September 6, 2002 Order.[29] The prosecution did not question anymore the dismissal of the aforementioned four (4) criminal cases.

The imprecise judgment of the Camarines Norte RTC leaves much to be desired as it failed to specify the exact criminal case wherein the appellant was convicted and the four other cases wherein he was exonerated. Trial courts are reminded to be extremely cautious in crafting the decretal portion of the decision considering that the dispositive portion or the fallo is what actually constitutes the judgment of the court in a particular case. The body of the decision which contains the discussion and resolution of factual and legal issues may be relied upon to know the basis for the decision but nevertheless, it is still the fallo that is the actual determinant of the rights of the parties and sole basis for execution. Because the fallo is the only repository of the dispositions in the case, it has to be clear without equivocation and complete as to its contents.

Section 2, Rule 120 of the Revised Rules of Criminal Procedure prescribes the contents of a judgment of conviction, viz:

- the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission;
- the participation of the accused in the offense, whether as principal, accomplice, or accessory;

- the penalty imposed upon the accused; and
- the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

Magistrates must use utmost circumspection in decision writing more particularly with respect to the fallo of the decision as any vagueness necessarily leads to legal complications often resulting in delay and more importantly, possible prejudice to the life, liberty, and property of the accused or to the interests of the State and the private complainant. The accused could have filed a motion for the modification of the assailed judgment under Section 7, Rule 120 to clarify the fallo but missed the opportunity. The trial court could have specified the criminal case where the appellant was convicted in its September 6, 2002 Order denying the Motion for Reconsideration of the Assistant Provincial Prosecutor but likewise failed.

Notwithstanding the inability to take the appropriate measures to correct the June 26, 2002 Judgment, the accused through his counsel Public Defender Victoria D. Reyes, in her Opposition to the Motion for Reconsideration, admitted that the conviction of appellant referred to Criminal Case No. 97-0229.[30] Even appellant's appeal specifically refers to Criminal Case No. 97-0229; it leaves no doubt as to the subject of the instant appeal.

The Issue

The sole issue raised by the appellant before the CA, which was reiterated before this Court, is whether:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT IN CRIMINAL CASE NO. 97-0229 ALLEGEDLY COMMITTED ON JULY 6, 1997 DESPITE INSUFFICIENCY OF EVIDENCE.

Appellant contends that the prosecution failed to establish the fact of rape allegedly committed on July 6, 1997. He points out the inconsistency in the private complainant's testimony that the interval between the third and fourth rapes was only one day in contrast to the Informations which stated that the third rape happened on June 5, 1997 and the fourth rape transpired on July 5, 1997—an interval of more than one (1) month. Citing *People v. Taganna*,[31] appellant argues that while the precise date and time are not essential in rape, nevertheless, it must be stated as near the actual date as the information will permit. Otherwise, he will be denied his constitutional right to be informed of the charges against him.[32]

Appellant further argues that private complainant's testimony was unreliable. During the direct examination, he pointed out that AAA told the trial court that there was successful penetration of the penis. When cross-examined, however, AAA stated that only a finger penetrated her organ. Appellant further noted that based on the Information, the fourth rape happened at nighttime, but AAA later testified that it happened at daytime; and that AAA also testified that her siblings were asleep when all the five (5) rapes were committed, as opposed to their being sent away from the house. Moreover, since the house was not lighted during the alleged rapes, appellant argues that the private complainant could not have recognized her assailant. Lastly, appellant claims that private complainant bore grudges against him for the corporal punishment she received from the latter, and theorizes that AAA may have wanted to be free from his cruelty so she filed a case against him.[33]

The Court's Ruling

We DENY the petition.

We find no reversible error in the CA's and trial court's appreciation of the evidence against the appellant. Appellant's arguments deserve scant consideration.

As amended by Republic Act No. 7659, Article 335 of the Revised Penal Code,[34] which is applicable to the case at bar, provides:

Art. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve [12] years of age or is demented. The crime of rape shall be punished by *reclusión perpetua*.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusión perpetua* to death.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The elements of rape under the aforequoted provision are:

- 1) The offender is a man;[35]
- 2) The offender had carnal knowledge of a woman; and
- 3) The said act was committed with the use of force or intimidation, or the woman is deprived of reason or otherwise unconscious, or the woman is under 12 years of age or is demented.

Anent the first element, there is no doubt that the offender is a man—the accused-appellant Romeo Buban. On the second element, the prosecution was able to establish the fact that the appellant had sexual intercourse with AAA. AAA testified that on five (5) occasions, appellant inserted his penis into her vagina. The medico-legal officer supports this fact with his testimony and undisputed findings of multiple and deep lacerations in AAA's vagina; thus, he concluded that she was no longer a virgin. With regard to the third element, on the circumstances in which rape was committed, we have held that the element of force or intimidation is not essential in case of rape committed by a father against his own daughter, since the former's superior moral ascendancy or influence substitutes for violence and intimidation.[36]

The unique treatment of rape by a father against his daughter is explicated in *People v. Matrimonio*:

In a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter substitutes for violence or intimidation. That ascendancy or influence necessarily flows from the father's parental authority, which the Constitution and laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.[37]

Even if we concede that force or intimidation is essential to a conviction for rape; nevertheless, we have no reason to doubt AAA's testimony that appellant threatened to roast her alive and to kill her with a knife; moreover, he strangled and forced her to lie down on one occasion of rape. Fear and apprehension of bodily harm resulted from

the threats and willful acts and conduct of appellant coupled with the fact that her will to resist had been overpowered by the latter's moral authority. Hence, intimidation was adequately proved. Lastly, the attendant circumstances of AAA's relationship with the appellant and AAA's being a minor at the time of the rape were sufficiently alleged in the Informations and proven during trial through the presentation of AAA's birth certificate.

Appellant Buban contends that AAA's testimony is teeming and fraught with contradictions and hence, unreliable.

We DISAGREE.

AAA's testimony remains credible despite the inconsistencies. In *People v. Antonio*, we held that:

The alleged inconsistencies are inconsequential considering that they refer to trivial matters which have nothing to do with the essential fact of the commission of rape, that is carnal knowledge through force or intimidation. Discrepancies and inconsistencies in the testimony of a witness referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair her credibility. If at all, they serve as proof that the witness is not coached or rehearsed.[38]

AAA categorically stated that she was raped by the appellant five (5) times. Through threats and force, appellant was able to have carnal knowledge of his own daughter. The fact of the commission of the rape remains. It is a basic principle in rape cases that the precise time of the commission of rape is not an essential element. In fact, "even a variance of a few months between the time set out in the indictment and that established by the evidence during trial has been held not to constitute an error so serious as to warrant reversal of a conviction solely on that score." [39]

In *People v. Taganna*, the variance between the date in the indictment and that established during trial was three years; hence, we held that the guilt of the accused was not proved beyond reasonable doubt. The rationale behind the ruling in said case is "to afford the defendant an opportunity to prepare an intelligent defense and avoid surprise and substantial prejudice to the defense." [40] In the case at bar, the period between the third and fourth rapes is one (1) month based on the Informations, and one (1) day based on AAA's testimony. The discrepancy is not so serious as to create a reasonable doubt that appellant indeed committed the crime and not enough as to throw him off guard and prevent him from defending himself in court.

Anent the issue of whether the rapes were committed during nighttime or daytime, the Informations stated that the first four rapes were committed in the evening while the fifth rape was committed in the morning. On cross-examination, AAA testified that the fourth rape was committed during daytime. To reiterate, the precise date and time of the commission of rape are not essential elements of it. The gravamen of the offense is sexual intercourse without consent.[41] Also, it is easy to understand how private complainant can confuse one rape for the other since there were five (5) occasions of rape done to her. The inconsistency, therefore, is negligible.

With regard to whether it was appellant's penis or finger which was inserted into the private complainant's organ, the alleged "discrepancy" in the testimony can be traced to the defense counsel's confusing question. Based on the records, defense counsel asked AAA, "Did it not come into your mind that what your father inserted in your vagina was his finger?" to which AAA replied, "Yes sir." [42] The counsels eventually argued because the witness was obviously confused by the question. She later admitted that she did not understand the question.[43] Certainly, the question was unfair to the private complainant. The question was confusing and complicated even for an average person. The presiding judge even made the observation that the witness was an unlettered probinsiyana.[44] She had enough difficulty in recalling her horrendous fate in the hands of her own father; the least the counsels could have done was to be more sensitive to her age and personal circumstances. In this regard,

it seems that private complainant's doubt on what was inserted stemmed from the confusing question of the defense counsel. In any case, the inconsistency in private complainant's testimony is minor. The essential fact of forcible sexual intercourse was established.

Moreover, AAA testified that on the first rape, appellant first inserted his finger, and later his penis, into her vagina. In the next four rapes, appellant inserted his penis into her vagina. On cross-examination, AAA said that in the first three rapes, appellant inserted his finger into her vagina, but when appellant later tried to insert his penis, he was not successful. On the fourth and fifth rapes, appellant was able to insert his penis into her vagina. The inconsistencies are to be expected from a minor who had no knowledge of sexual intercourse. Private complainant nevertheless became more specific upon further questioning and was able to clarify more details.

As regards the lack of illumination inside the house, AAA testified that despite the unlighted kerosene lamp, it was not totally dark. She was certain it was appellant who raped her because he is her father.[45] With regard to whether her siblings were asleep in the house in all the five (5) rapes, AAA testified that her siblings were asleep in the first four rapes. On the fifth rape, they were sent away to go fishing except the three-year old sibling who remained asleep in the house.[46] Therefore, we do not see any discrepancy in her testimony in this respect.

Private complainant's testimony is reliable considering her circumstances. AAA could not read and write; she did not even finish Grade 1. She was only 12 years old at the time of the abuse and was just 13 years old at the time of trial. She had difficulty understanding some of the questions propounded to her during the oral examination. The inconsistencies are trivial and forgivable, since a victim of rape cannot possibly give an exacting detail for each of the previous incidents since these may just be but mere fragments of a prolonged and continuing nightmare, a cavalry she might even be struggling to forget.[47] In the case at bar, inconsistencies are to be expected from a minor victim like the private complainant. Also, we held in *People v. Mahinay* that:

For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, such must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused. Even if the offended party may have erred in some aspects of her testimony, the same does not necessarily impair her testimony nor corrode her credibility. x x x What is vital is that the act of copulation be proven under any of the conditions enumerated in Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.[48]

Despite said discrepancies, AAA was able to describe how each rape was done to her. During trial, the trial court was convinced that her answers to the questions, especially from the defense counsel, were "straightforward as to be expected from an honest and credible witness." [49] The trial court was in the best position to assess the credibility of the witness and thus, its appreciation of the private complainant's testimony deserves full probative weight.

With regard to appellant's assumption that the private complainant bears grudges against him which may have moved her to file the rape charges, we find this theory preposterous. Appellant cannot seriously impute ill will, malice, and deviousness to a child. AAA was then only 12 years old, lacked education, and lived in the mountains. She and her younger siblings depended on appellant alone for their survival because of their mother's death and the absence of their older siblings. An innocent child could not have possibly fabricated such a tale and accused her own father of a crime as heinous as incestuous rape had she really not been abused. AAA must have truly experienced a series of unexpected, harrowing, debasing, and detestable experience in the hands of her own father, which left her no choice but to come out in the open and complain of rape despite the wide social humiliation and stigma she had to face and live with. It is clear that considering all the attendant personal circumstances of AAA and the situation she was subjected to, she was compelled to accuse her father of rape as a

natural human consequence of self-preservation, find succor from a seemingly hopeless predicament, and seek justice for herself and at the same time, protect her sisters from going through possible similar defilement and ruin.

Furthermore, AAA's testimony was corroborated by the medico-legal officer, Dr. Marcelito B. Abas, who examined her. The findings of fresh hymenal and deep lacerations cannot be denied. The expert's opinion that the lacerations could only be caused by an erect penis was not refuted. We have held that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there was carnal knowledge.[50]

As his defense, appellant mainly relied on alibi and simply denied the charges. Alibi is commonly treated as a defense although it is more of a challenge or attack on the State's evidence intended to prove the guilt of the accused. It merely aims to disprove one of the essential factors necessary for a strong case for the prosecution—the presence of the accused at the time and place of the commission of the alleged offense. It can indeed raise a reasonable doubt on the guilt of the accused.[51]

Since alibi can easily be fabricated or concocted, such allegation is always regarded with suspicion. For alibi to prosper, the accused must establish, by clear and convincing evidence, (a) his presence at another place at the time of the perpetration of the offense, and (b) the physical impossibility of his presence at the scene of the crime.[52] "Physical impossibility" means that the accused "was at such other place [for] such a length of time that it was impossible for him to have been at the [crime scene], either before or after the time he was at such other place." [53] The trial court subsequently found that the appellant failed to prove this physical impossibility because the appellant's house where AAA resided could easily be reached within 30 minutes using a motorized banca from the fishpond of Gaudencio Jeves where he worked. Moreover, the positive identification of the appellant as the rapist prevails over the defense of alibi.[54]

At the time of the commission of the offense, the penalty for rape given the circumstances in this case was death. The trial court then correctly imposed the penalty of death and civil indemnity in favor of the private complainant. With the passage of Republic Act No. 9346, the death penalty was abolished; hence, the penalty for the appellant should be reduced to the indivisible penalty of *reclusión perpetua* with no eligibility for parole.[55] Moreover, we further increase the award of moral damages from PhP50,000.00 to PhP 75,000.00, and the exemplary damages from PhP20,000.00 to PhP25,000.00 in line with prevailing jurisprudence.[56]

WHEREFORE, the January 11, 2005 Decision of the CA affirming the conviction of the appellant by the Camarines Norte RTC, Branch 64, is **AFFIRMED** with **MODIFICATION** that appellant Romeo Buban is sentenced to suffer the penalty of *reclusión perpetua* with no eligibility of parole for the crime of RAPE subject of Criminal Case No. 97-0229 and to pay the victim AAA (to be identified through the Informations in this case) the sum of PhP 75,000.00 as moral damages, PhP 75,000.00 as civil indemnity, and PhP 25,000.00 as exemplary damages plus costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Rollo, pp. 4-13. The Decision was penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Mario L. Guariña III and Santiago Javier Ranada.

[2] CA rollo, pp. 28-35. The Judgment was rendered by Assisting Judge Jose G. Dy.

[3] Id. at 10-19.

[4] The real name of the victim is withheld pursuant to R.A. No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and R.A. No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes).

[5] Records, Crim. Case No. 97-0226, p. 10; Crim. Case No. 97-0227, p. 4; Crim. Case No. 97-0228, p. 4; Crim. Case No. 97-0229, p. 4; and Crim. Case No. 97-0230, pp. 17 & 18.

[6] Id. at 26.

[7] Id. at 53. Exhibit "E," Certificate of Live Birth. The real name of the victim's mother is withheld pursuant to R.A. No. 7610 and R.A. No. 9262.

[8] The real name of the victim's twin brother is withheld pursuant to the aforementioned Republic Acts.

[9] Id. at 54-55. Exhibit "B." The Social Case Study on AAA was prepared by SWO I Melinda C. Reyes.

[10] The victim's address is withheld pursuant to the aforementioned Republic Acts.

[11] Id. at 173-176. TSN, March 17, 1998.

[12] Id. at 177-182.

[13] Id. at 182-187.

[14] Information, Crim. Case No. 97-0230, records, p. 1. Note that based on the Informations, the third rape occurred on June 5, 1997 (Crim. Case No. 97-0228, records, p. 1), or one (1) month before the fourth rape.

[15] The name of the victim's younger brother is withheld pursuant to the aforementioned Republic Acts.

[16] Id. at 187-193.

[17] Information, Crim. Case No. 97-0229, records, p. 1.

[18] Id. at 193-200.

[19] Id. at 200-204.

[20] Id. at 130-153. TSN, February 3, 1998.

[21] Supra note 11, at 156-168.

[22] Supra note 20, at 115-129. The medical report was submitted as Exhibit "A," records, MCTC Records, Crim. Case No. 2482 p. 5.

[23] Records, pp. 252-258. TSN, June 16, 1999.

[24] Id. at 6-7.

[25] Id. at 4.

[26] Supra note 2, at 35.

[27] Id. at 34-35.

[28] Records, p. 321.

[29] Id. at 327.

[30] Id. at 329.

[31] G.R. Nos. 137608-09, July 6, 2001, 360 SCRA 609.

[32] CA rollo, p. 56.

[33] Id. at 57-59.

[34] Repealed by R.A. No. 8353, otherwise known as the “Anti-Rape Law of 1997” which took effect on October 22, 1997. Rape, formerly a crime against chastity, was reclassified by R.A. No. 8353 as a crime against persons. Consequently, Article 335 became Article 266-A of the Revised Penal Code, to wit:

ART. 266-A. Rape, When and How Committed.— Rape is committed –

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

- Through force, threat or intimidation;

- When the offended party is deprived of reason or is otherwise unconscious;

- By means of fraudulent machination or grave abuse of authority;

- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

- By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[35] However, under R.A. No. 8353, rape can be committed by a woman.

[36] People v. Bartolome, G.R. No. 129054, September 29, 1998, 296 SCRA 615, 624.

[37] G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 631.

[38] G.R. No. 122473, June 8, 2000, 333 SCRA 201, 208.

[39] People v. Bernaldez, G.R. No. 109780, August 17, 1998, 294 SCRA 317, 327, citing Rocaberte v. People, G.R. No. 72994, January 23, 1991, 193 SCRA 152, 156.

[40] Supra note 30, at 614-615.

[41] People v. Baring, Jr., G.R. No. 137933, January 28, 2002, 374 SCRA 696, 708.

[42] Records, p. 230. TSN, September 15, 1998.

[43] Id. at 239.

[44] Id. at 240.

[45] Supra note 41, at 236.

[46] Supra note 18.

[47] People v. Nava, Jr., G.R. Nos. 130509-12, June 19, 2000, 333 SCRA 749, 760.

[48] G.R. No. 139609, November 24, 2003, 416 SCRA 402, 415.

[49] Supra note 2, at 34.

[50] Supra note 47, at 412.

[51] III V. Francisco, CRIMINAL EVIDENCE 1574.

[52] People v. Obrique, G.R. No. 146859, January 20, 2004, 420 SCRA 304, 321.

[53] United States v. Oxiles, 29 Phil. 587, 593 (1915).

[54] Records, p. 315.

[55] Pertinent provisions of R.A. No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) are as follows:

SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SEC. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[56] People v. Cabalquinto, G.R. No. 167693, September 19, 2006; People v. Salome, G.R. No. 169077, August 31, 2006; and People v. Quiachon, G.R. No. 170236, August 31, 2006.

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