PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO SUYU @ RUDY, WILLY SUYU, FRANCIS CAINGLET AND ROMMEL MACARUBBO @ ROMMEL BARIUAN, APPELLANTS.

G.R. NO. 170191. August 16, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

On appeal is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 01238 affirming, with modification, the Decision of the Regional Trial Court (RTC) of Tuguegarao City in Criminal Case No. 7177 convicting petitioners Rodolfo Suyu, Willy Suyu, Francis Cainglet and Rommel Macarubbo of robbery with rape.

The Antecedents

An Information was filed with the RTC of Tuguegarao City charging appellants with robbery with rape. The accusatory portion of the Information reads:

> That on or about January 13, 1996, in the Municipality of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Rodolfo Suyu alias Rudy, Rommel Macarubbo y Licawan alias Rommel Bariuan, Francis Cainglet y Gargolla and Willy Suyu, armed with guns and sharp-pointed bladed instrument with intent to gain by the use of threat, violence and intimidation of persons, conspiring together and helping one another, did then and there, willfully, unlawfully and feloniously, take, steal and carry away against the will of the owner, the following items:
>
> **I - TAKEN FROM CLARISSA B. ANGELES**
>
> a) A pair of gold earrings valued at - P1,500.00
>
> b) A gold ring valued at - 1,000.00
>
> c) Cash money in the amount of - ____10.00
>
> **TOTAL - P2,510.00**
>
> **II - TAKEN FROM WILLIAM C. FERRER**
>
> a) A wallet containing cash money in the amount of - P 150.00
>
> all belonging to Clarissa B. Angeles and William C. Ferrer with a total value of P2,510.00 and P1 50.00, respectively, to the damage and prejudice of the aforesaid owner, Clarissa B. Angeles and William C. Ferrer in the aforesaid amount of TWO THOUSAND FIVE HUNDRED TEN (P2,510.00) PESOS and ONE HUNDRED FIFTY (P150.00) PESOS, Philippine Currency, respectively; that on the same occasion of the robbery, the above-named accused, likewise, armed with their aforesaid arms, with lewd design and by the use of force, violence, threat and intimidation, did then and there, willfully, unlawfully and feloniously conspiring together and helping one another, have sexual intercourse with the aforesaid party, Clarissa B. Angeles, against

her will.

Contrary to law.[2]

Appellants, assisted by counsel, pleaded not guilty to the crime charged when arraigned.

The Case for the Prosecution

At around 7:15 in the evening on January 13, 1996, Clarissa Angeles, a third-year student of St. Paul University, was with her boyfriend, William Ferrer. They were eating snacks inside a pick-up truck parked in a vacant lot near the Office of the Commission on Audit (COA) and the Department of Education, Culture and Sports (DECS) [now DepEd] in Tuguegarao, Cagayan, about fifteen meters from the highway. Momentarily, a tricycle passed by the truck on its way to the COA Building.[3] Clarissa was seated on the passenger's side, while William was behind the wheel. The two were alarmed when they saw shadows of persons near the truck. Clarissa suggested to William that they leave. The latter opened the window on his side halfway to check if there were persons outside. Suddenly, a man, who turned out to be Rommel Macarubbo, appeared in front of the truck, pointed a gun at them and said: "This is a holdup. If you will start the engine of the car, I will shoot you." Thereafter, another man, who turned out to be Willy Suyu, lifted the lock on William's side and entered the pick-up. Clarissa told William to give everything so that they would not be harmed. Willy Suyu then took Ferrer's wallet which contained around P150.00. A third man, who turned out to be Francis Cainglet, took Clarissa's jewelry valued at around P2,500.00 and cash amounting to PI0.00. Thereafter, Willy Suyu clubbed William and dragged him out of the truck. Fortunately, William was able to escape and immediately went to the police station to report the incident.

Meanwhile, Willy Suyu lifted the lock of the pick-up truck at Clarissa's side. Macarubbo then opened the door. The two and Cainglet dragged the girl to a hilly place, not far away. Macarubbo and Willy Suyu held her by the arms, while Cainglet poked a fan knife at her. She pleaded for mercy as she was brought to a house near a muddy place. At that point, a man, who turned out to be Rodolfo Suyu, the half-brother of Willy Suyu, came out of the house. Willy Suyu, Cainglet and Macarubbo pushed Clarissa towards Rodolfo Suyu. The latter pushed Clarissa and said: "You stay there because I will be the first one." Rodolfo Suyu then started embracing and kissing Clarissa and fondling her breast. When Rodolfo Suyu removed her pants, the ring she kept hidden inside her pants fell to the ground. She felt a knife, flashlight and pliers at the perpetrator's back. Pretending that she was submitting to him, she suddenly reached for the knife. They briefly struggled and Clarissa kicked his groin. Cursing, Rodolfo Suyu loosened his grip on her. And she tried to run, but she stumbled and she was grabbed by the hair. He then punched her stomach twice. She pleaded to the three others for help, but the three did nothing.

Rodolfo Suyu passed Clarissa to Cainglet. Clarissa again pleaded, "Please do not hurt me, do not kill me and do not rape me. I am willing to join your group." She further begged, "Just give me the knife and I will be the one to kill myself." Cainglet kissed her but she pushed him away. He continued to kiss her and then pushed his tongue inside her mouth. She bit hard at his tongue, causing it to bleed down her shirt. She was cursed anew.

Then the three others came shouting, "They are coming." A beam of light illumined them. Cainglet and Rodolfo Suyu then brought her to the top of the hill near the Capitol. She attempted to shout but she feared for her life as a knife was thrust against her. She was forced to lie down on her back. Willy Suyu and Macarubbo served as lookouts, as Cainglet punched her on the thighs. Cainglet pinned her hands on the ground as Rodolfo Suyu removed her pants and undergarments. Rodolfo Suyu then spread her legs apart, removed his pants and undergarments, and went on top of her. Rodolfo Suyu then tried to insert his fully erected penis inside her vagina but the girl kicked him. He rolled down but was able to recover immediately. He resumed molesting her. Clarissa uttered, "It is better that you will just kill me and not rape me." Rodolfo Suyu insisted "Ipitem (sic) met lang e. Anyway, this is just for a few minutes." When he pushed his tongue inside her mouth, Clarissa bit it so hard that

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her teeth went through it. As the blood dripped on her shirt, he uttered, "I will let the blood drip on your shirt, mahirap na." Rodolfo Suyu inserted two fingers inside her. He then commented to Cainglet, who was still pinning her down, "Pare, this is still a virgin." Thereafter, with the aid of his two fingers, he inserted his penis inside her vagina.

Afterwards, Rodolfo Suyu told Cainglet, "You will be next." Cainglet then climbed on top of Clarissa while Rodolfo Suyu held her by the hands. She again pleaded for help from Willy Suyu and Macarubbo. But all her pleas fell on deaf ears. She kicked Cainglet, who then let go one of her hands. When one of her hands was briefly freed, she placed the crucifix pendant of her necklace on her mouth and uttered, "Lord, I offer you my soul." Rodolfo Suyu remarked, "We do not have God (sic), we do not believe in God." Cainglet continued to move on top of her. The two lookouts, Willy Suyu and Macarubbo, on the other hand, shouted, "They are coming." Rodolfo Suyu then helped her to sit down. Cainglet then spoke to her saying, "Put your pants. We will not give you your panty because we will have your panty be 'makulam' and tomorrow, we will display your panty on the gate of St. Paul with a dedication 'to Marie Sanchez'," the name she gave them. Cainglet was able to insert half an inch of his penis into her vagina.[4]

Cainglet suggested that she be released for ransom. The two lookouts again yelled, "They are coming." Then a beam of light illumined them and engines from vehicles became audible. Thereafter, two vehicles arrived from about 10 to 15 meters away from the pick-up truck. After pleading for mercy and promising not to report them to the police authorities, she was allowed by the culprits to leave.

Clarissa fled to a house illumined with a fluorescent light and climbed over its gate. She went around the house and knocked on the door. An old man answered the door. Blood-stained and covered in mud, she then pleaded to be let in. At first, the old man got a piece of wood to club her, but because one of his children recognized her, she was allowed inside. Thereafter, the barangay tanod was summoned. After 15 minutes, two police jeeps arrived and took her to the Cagayan Valley Regional Hospital (CVRH). The nurses there, however, merely examined her bruises.

At the Don Domingo Police Station, Clarissa saw William. The authorities asked her if she had been sexually abused, she declared that there was merely an attempt to rape her. At that time, she was ashamed to admit in front of her boyfriend that she had been abused.[5]

On January 17, 1996, Clarissa submitted herself to a physical and gynecological examination at the CVRH. The examining physician, Dr. Elsie A. Pintucan, found hematoma and contusions, which she diagnosed to have been sustained five days before. Furthermore, she made the following findings:

> x x x x
>
> Genitalia: external examination = abundant pubic hair, nulliparous outlet,
> no bleeding note.
> = hymen (+) complete, old healed laceration at 4 and 7 o'clock.
> speculum = vaginal wall no erosions/laceration.
> cervix = pinkish, (+) whitish discharge.
>
> Internal examination = admits 1 finger with ease,
> cervix = closed, small midline, firm, non-tender on wriggling,
> uterus = small,
> adnexae = negative for tenderness.[6]

On January 19, 1996, Clarissa signed and filed a criminal complaint for robbery and rape against Rodolfo Suyu, Willy Suyu, Francis Cainglet and Rommel Bariuan (also known as Rommel Macarubbo) with the Municipal Trial

Court (MTC) of Tuguegarao City. Appended to her complaint was her sworn statement executed on the same date. She later gave supplemental statements on January 25, 1996.[7]

Accused Macarubbo, who was born on August 24, 1978, then, still a minor, moved to be released on recognizance. Upon the recommendation of the Department of Social Welfare and Services, he was released on recognizance.[8]

Meanwhile, Macarubbo, accompanied by an old woman, arrived at Clarissa's boarding house. The woman offered that her son, Macarubbo, would testify for her case. Clarissa was amenable to the idea because the authorities had earlier advised her to agree to Macarubbo being a state witness. The old woman pleaded that Clarissa pity Macarubbo, who then worked as a part-time newspaper vendor to help his parents.[9] Moreover, Macarubbo did not rape her.

On April 2, 1996, Macarubbo, assisted by his counsel Atty. Gabriel O. Valle and his mother, Angelina, signed a sworn statement, in the form of questions and answers before Municipal Judge Elpidio Atal. He confessed to his participation and implicated Rodolfo and Willy Suyu, and Cainglet, in the robbery and the rape of Clarissa.[10]The Case for the Accused

Rodolfo Suyu denied the charge against him. He also interposed the defense of alibi. He declared that, on January 13, 1996, he was in their house at Alimannao, Tuguegarao City, taking care of his three young children, the youngest of whom was five months old.[11] His wife was in Manila with her sister-in-law who had just given birth. He never left their house in the evening.[12]

At 3:00 p.m. on January 16, 1996, he left his house and gathered cogon at the Bassig Resort, which was about a kilometer away. He was shot on the left thigh, but he did not know who shot him; neither did he bother to ascertain the identity of the perpetrator.[13] He managed to escape and arrived home at 7:00 p.m.[14] His wound was treated by his neighbor and eldest child.[15] While away, his 9-year-old eldest child took care of his five-month-old baby. He did not report the shooting incident to the police.

On January 18, 1996, policemen led by SPO4 Teodulfo Cudal arrested him and brought him to the hospital where his wound was treated. He was later brought to the Sto. Domingo Police Substation where he was detained. He was told to join a police line-up. SPO4 Cudal told Clarissa to point to him as one of the culprits.[16]

Cainglet declared that he was employed as a security guard inspector by the Night Hawk Security Investigation Agency with principal office in Quezon City. At about 7:15 p.m. on January 13, 1996, he was in the company of Nestor, an employee of the security agency, conducting a roving inspection at the Corinthian*Gardens. At 8:00 p.m. on January 21, 1996, he boarded a Victory Liner passenger bus and arrived in Tuguegarao City at 7:30 a.m. the next day, January 22, 1996. He intended to seek financial help from his mother since his wife needed money for her placement fee. A neighbor told him that his mother had left for Mindanao. He opened the door of the house with a duplicate key. After lunch, 12 armed men, led by SPO4 Cudal, barged inside and searched the house without any warrant. The armed men took his wedding ring and that of his wife, his wallet with cash of P2,150.10, and his Seiko watch. The personal properties taken from him were worth P10,000.00.[17]

He was tortured, hogtied with a nylon cord, and boarded in an owner-type jeep with only his underwear on. He was brought to the police headquarters for investigation for robbery with rape.[18] When the policemen failed to secure a confession from him, SPO4 Cudal took out a knife from his table. He was ordered to bring out his tongue and when he did, another policeman held out his tongue while SPO4 Cudal pointed the knife to his tongue. When he turned his face to the left, his tongue was injured.[19] He was brought to the CVRH where he saw Rodolfo Suyu. When SPO4 Cudal told Rodolfo Suyu that Cainglet was one of his companions, Rodolfo Suyu told SPO4

Cudal that he did not know him.[20]

At 7:30 a.m. the next day, he was ordered to join a line-up, including two persons he knew only while in detention, namely, Rodolfo Suyu and Rommel Macarubbo.[21] Clarissa arrived and was ordered by SPO4 Cudal to point to him as one of those who raped her. She failed to point at him at first, but when ordered anew by SPO4 Cudal, she finally pointed to him.[22] She also pointed to Rodolfo Suyu and Rommel Macarubbo. From the time Cainglet was arrested and while detained, he had no counsel.

Macarubbo testified that he was born on August 24, 1978.[23] He denied knowing any of his co-accused before his arrest on January 17, 1996. He declared that he was a native of Cagayan, Tuguegarao City, and went to San Pablo, Isabela on January 12, 1996 to visit his aunt Emma Pagulayan. He arrived in San Pablo at 7:00 a.m.[24] On January 17, 1996, he visited his friend Joel Iringan in San Pablo for a drinking spree. One of the guests created trouble and shot him on his right leg.[25] He was brought to Tumauini District Hospital but was transferred to the CVRH in Tuguegarao City. The next day, the policemen, led by Capt. Salvador,[26] maltreated him. He was forced to confess to the crime in Carig.[27] After his wounds were treated at the hospital, he was brought to the police station where he was detained. He never left San Pablo from January 12, 1996 until his arrest on January 17, 1996.[28]

Willy Suyu testified that on the day of the alleged robbery and rape, he was in their house at Dodan, Penablanca, Cagayan, about 45 minutes by tricycle from Centro, Tuguegarao, Cagayan.[29] At 6:00 a.m., he and his wife went on foot to a place called Hot Spring to gather firewood. They arrived at the place at around 11:00 a.m., had their lunch at the house of his wife's niece, Lanie Tuliao, gathered firewood, then proceeded back home to Dodan. By 6:00 p.m., they were already at their house. They had their dinner at 8:00 p.m. Before going to bed, their neighbor, James Taccad, invited him for a bottle of beer. He went back home at around 8:20 p.m., and went to bed with his wife at 9:00 p.m. He worked as a tricycle driver, but he did not go out the following day, as the piston ring of the tricycle he was driving was broken.[30]

James Taccad, Willy's neighbor, and Eduardo Dalin, Willy's brother-in-law, were presented to corroborate Willy's testimony.[31]

Willy Suyu further testified that on February 12, 1996, he was arrested and detained.[32] At the police station in Tuguegarao City where he was brought, he was maltreated by policemen. After 3 or 4 days in detention, Clarissa, whom he met for the first time, went to the station and asked for the person named Willy Suyu. The other detainees pointed to him and Clarissa said, "So you are the person named Willy Suyu." She asked him to show his tongue. He did so and Clarissa said, within the hearing distance of the other detainees, that he was not the one.[33]

Willy, moreover, admitted that Rodolfo Suyu was his half-brother. He, however, denied having known Macarubbo and Cainglet prior to his detention as he met them only in jail. He also saw Clarissa, for the first time, at the police station when she asked for him.[34] Rodolfo Suyu used to stay at their father's house in Capitol Hills (near the place where the robbery and rape happened), but stayed at Barangay Gosi, Tuguegarao, most of the time where he helped in the farming.[35]

Accused Rodolfo Suyu and Macarubbo presented SPO4 Cudal as their witness. The police officer testified that, as gleaned from the police blotter, at 9:30 p.m. on January 13, 1996, Clarissa failed to identify the culprits and to declare that she was raped. However, she insisted that in the event that she saw the culprits again, she can identify them.[36] Cainglet was a mere caretaker of the house where he was arrested.[37] It was the owner of the house who informed the police officers that he was hiding in the house.[38] He noticed a bite mark on the tongue of Cainglet when he viewed it.[39]

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On cross-examination, SPO4 Cudal declared that Macarubbo, assisted by his counsel, executed an extrajudicial statement on April 2, 1996, in the presence of his mother.[40]

SPO1 Alexander Tamang, the investigator assigned at the Domingo Police Substation on the evening of January 13, 1996, was presented by Willy's counsel and testified, among others, that the blotter, as written, did not state the name of the malefactors, their features or characteristics, or the unlawful taking of personal property; and that the blotter did not state a sexual abuse but only that Clarissa bit the tongue of one of the suspects and kicked the sex organ of the other accused.[41] He, however, added that he did not write the word rape because what he understood from Clarissa's statement was the biting of the tongue and the kicking of the sex organ.[42]

The prosecution presented SPO4 Cudal as rebuttal witness and testified that accused Macarubbo gave an extrajudicial confession on April 2, 1998 while detained at the jail, and that he signed his extrajudicial confession before Judge Atal.[43] The prosecution wanted to present Atty. Gabriel Valle as rebuttal witness because the judge was already dead; but, after an off-the-record conference between the court, the counsel of the accused and the prosecution, the plan of the prosecution did not materialize.[44] The court admitted the extrajudicial confession of Macarubbo[45] only as part of the testimony of SPO4 Cudal because, according to the court, the prosecution failed to present Judge Atal.[46]

On February 10, 2003, the RTC rendered judgment finding all the accused guilty beyond reasonable doubt of robbery with rape. The RTC gave credence and probative weight to Clarissa's testimony and rejected the defenses of denial and alibi of the accused. The court ruled that the latter's testimonies were full of inconsistencies and were not in accord with human experience. The RTC further ruled that the four accused conspired in the robbery with rape. The dispositive portion of the said decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> (1) Finding RODOLFO SUYU, WILLY SUYU, FRANCIS CAINGLET and ROMMEL MACARRUBO, GUILTY beyond reasonable doubt of the crime of Robbery with Rape and hereby sentence each of them to suffer the penalty of reclusion perpetua;
>
> (2) Ordering the accused to pay, jointly and severally, the amount of PI,510.00 representing the value of the jewelry (earring) and cash belonging to Clarissa Angeles; and
>
> (3) Ordering the accused to indemnify, jointly and severally, Clarissa Angeles the amount of P50,000.00 as civil indemnity.
>
> SO ORDERED.[47]

The accused appealed the decision to the Court. After the parties submitted their respective briefs, the Court ordered the transfer of the case to the CA pursuant to its ruling in People v. Mateo. [48]

The CA rendered judgment affirming, with modification, the decision of the trial court. The fallo of the decision of the CA reads:

> WHEREFORE, in consideration of the foregoing, the decision dated 10 February 2003 of the court a quo is perforce AFFIRMED but with the modification that insofar as the accused-appellant ROMMEL MACARUBBO is concerned, he is hereby sentenced to suffer an indeterminate penalty of from Eight (8) years and One (1) day of prision mayor, in its medium period, as minimum, to Fifteen (15) years of reclusion temporal, in its medium period, as maximum.
>
> SO ORDERED.[49]

Hence, the present petition, where the appellants raise the following arguments:

I

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT CLARISSA ANGELES.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

III

THE TRIAL COURT ERRED IN NOT DECLARING AS INADMISSIBLE THE ALLEGED EXTRAJUDICIAL CONFESSION OF ACCUSED-APPELLANT ROMMEL MACARUBBO.[50]

Appellants assert that Clarissa was not able to identify any of them at the city jail and succeeded in identifying them only after she was coached by SPO4 Cudal. They contend that Clarissa was declared by Dr. Pintucan to be ambulatory and coherent with no signs of cardio-respiratory distress, proof that she was not forcibly and sexually assaulted. It was also discovered that there was no evidence of forcible assault despite the insertion of one finger on her cervix. Appellants argue that the trial court erred in admitting in evidence the extrajudicial confession of appellant Macarubbo.

Appellants, moreover, aver that the testimony of Clarissa is postmarked with inconsistencies. She executed no less than five sworn statements before the MTC. These statements were substantially inconsistent. In her January 13, 1996 statement made immediately after the alleged commission of the crime, she declared to the police investigator that appellants attempted to rape her, but she actually succeeded in thwarting all attempts.[51] In her second sworn statement dated January 18, 1996, she maintained the said story. The police blotter did not even carry an allegation of rape. However, in her January 19, 1996 statement:, Clarissa declared that she had been raped.[52] Appellants, thus, argue that the alleged victim has the propensity to lie and withhold valuable information in her affidavits.[53]

We are not persuaded. To begin with, the rule is that, in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied facts or circumstances of weight and substance, which would have affected the result of the case, the findings of the trial court on the credibility of witnesses are entitled to the highest respect and will not be disturbed on appeal.[54] The stringency with which appellate tribunals have observed this rule is predicated on the undisputed vantage of the trial court in the evaluation and appreciation of testimonial evidence.[55]

The trial court found Clarissa's testimony to be consistent,[56] believable,[57] and credible,[58] hence, is worthy of full faith and credit.[59] The CA reviewed Clarissa's testimony and found the same to be clear, sincere and could have only come from the mouth of a victim. During the grueling cross-examination conducted by three separate counsels of appellants, she remained steadfast in her testimony that she was raped. The credibility of complainant's testimony is a primordial consideration in rape cases for the accused may be convicted solely on the testimony of the victim, provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[60] When the testimony of a rape victim is simple and straightforward, unshaken by rigorous cross-examination and unflawed by any serious inconsistency or contradiction, the same must be given full faith and credit.[61]

While it is true that the victim initially did not reveal to the authorities the fact that she was raped after the robbery, this does not cast doubt on her testimony for it is not uncommon for a rape victim right after her ordeal to remain mum about what really transpired. Jurisprudence has established that delay in revealing the commission of

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rape is not an indication of a fabricated charge, and the same is rendered doubtful only if the delay was unreasonable and unexplained.[62] Besides, Clarissa sufficiently explained her initial reluctance on cross-examination, thus:

Atty. Morales:

Q:

And what did you tell these policemen at the Don Domingo police station?

A:

Naturally (sic) I told them what transpired to me, Sir.

Q:

Will you please tell now before this court what exactly were those things that you reported to the police station?

A:

At that time, Sir, I was then trembling because of fear so that I told them that there was only an attempted rape to me (sic) because I was then ashamed to the policemen and infront (sic) of my boyfriend.

Q:

As a matter of fact when you arrived at the CVRH you also informed the nurses that what was committed was only an attempted rape, is that correct?

A:

I did not talk to the nurse but it was only the policemen who told the nurse.

Q:

You heard these policemen informed the nurses that what was committed is an attempted rape, is that correct?

A:

Yes, Sir.

Q:

Your boyfriend was present when you went to the Don Domingo police station?

A:

Yes, Sir.

Q:

And your boyfriend also accompanied you when you went to the CVRH?

A:

No, Sir.

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Q:

When you heard these policemen mentioned to the nurses that what was committed was attempted rape (sic) you did not try to call the attention of the policemen (sic) and correct them that what actually happened (sic) you were allegedly raped?

A:

Because I was ashamed, Sir.[63]

xxx

Atty. Salud:

Q:

You stated that at first you did not divulge that you were sexually molested, did you?

A:

At first, Sir, what I have stated is that they held my breast, the different parts of my body and they also fingered me, Sir. But I did not state that their penis were inserted to my vagina.

Q:

So all that you have divulged at first was that your breast was held and so with the different parts of your body?

A:

Yes, Sir.

Q:

To whom did you divulge that?

A:

To Sir Cabildo, Sir.

Q:

That was the first time you divulged it to any person?

A:

At first, Sir, I divulges (sic) that to the PNP Substation at Don Domingo, Tuguegarao, Cagayan, then to my parents, to my classmates and lastly to Sir Cabildo, Sir.

Q:

Whom (sic) for the first time did you disclose that you were raped?

A:

To Sir Cabildo, Sir.

Q:

When?

A:

January 19 in the afternoon, Sir.

Q:

Are you very certain that you first divulges (sic) it (sic) that you were raped to Cabildo on January 19, 1996 in the afternoon?

A:

Yes, Sir.

Q:

You are certain in the sense that there can be no probability that you have committed mistake (sic) in remembering that you divulged for the first time to Mr. Cabildo that you were rape (sic) in the afternoon of January 19, 1996?

A:

No, Sir.

Q:

Is it not a fact that you executed a second sworn statement before a police officer named SP02 Marcelo R. Cabildo on January 18, 1996?

A:

Yes, Sir.

Q:

And still you are sure that on January 18, 1996 on the occasion of the taking of your sworn statement by SP02 Marcelo R. Cabildo inside the investigation room of the Tuguegarao Police Station, you did not disclose to him that you were raped?

A:

I was investigated on the 18th day of January and I have not yet divulge (sic) to SP02 Cabildo that I was fingered and I was raped because I was then ashamed at that time. Because this policeman Cabildo is from Baggao, he might have (sic) divulged what had happened to me in our town of Baggao, Sir.[64]

Understandably, Clarissa was reluctant to reveal, while at the police station, the fact that she was raped, considering that her boyfriend was present when she. made her first statement before the police investigator. Further, one of the investigating officers was her townmate. Indeed, the fear of social humiliation prevented Clarissa from revealing, at the time, the details of her defilement. She was in a state of trauma, impelled by her natural instinct to put out of her mind such a painful and disturbing experience. Oftentimes, victims would rather bear the ignominy and the pain in private than reveal their shame to the world.[65] In her desire for justice, she,

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nonetheless, later revealed the true events that happened on that fateful night of January 13, 1996, thus:

Pros. Sagucio:

Q:

Now, you said that when you were first investigated by the police or at the CVRH that you are (sic) not raped which is half true (sic) and now when you were again investigated you said you were raped, what made you changed (sic) your mind?

A:

I finally thought of filing a case of rape because of the fact that I am helping other people whom (sic) might be the next victim and (sic) aside from the fact that I did not owe anything to them, I did not owe any obligation to anybody else and finally I want justice that (sic) will prevail of (sic) what they have done to me.[66]

Certainly, no young and decent Filipina would publicly admit that she was ravished and her honor tainted unless such were true, for it would be instinctive for her to protect her honor and obtain justice for the wicked acts committed upon her.[67]

Appellants, likewise, contend that Clarissa was coached by SPO4 Cudal during the police line-up, while Rommel had to be pointed by the other detainees. She even asked them to show their tongues so that she could ascertain whether they were the ones who molested her.[68]

The arguments of appellants do not persuade. The victim recounted that there were lights emanating from the nearby DECS (now DepEd) and COA buildings, and several residences.[69] The place was bright enough for her to see the faces of her assailants, only that she did not know their names.[70] Familiarity with the physical features of a person is an acceptable way for proper identification.[71] Indeed, We agree with the following ruling of the trial court, thus:

> Defense' contention that they were not sufficiently identified cannot be taken seriously. Accused did not resort to any disguise. There could be no doubt as to their identities. Besides, it appears that the accused stayed with Clarissa for a couple of hours so that there was ample time and opportunity for her to see and observe their features.[72]

Appellants, in their brief, further fault the trial court in not declaring as inadmissible the alleged extrajudicial confession of Macarubbo, as it was not affirmed in open court and the latter even denied having executed the statement.[73]

The contention of appellants has no merit. The trial court never admitted Macarubbo's sworn statement for the purpose offered by the prosecution,[74] but only as part of the testimony of SPO4 Cudal. Appellants were not convicted based on the said sworn statement, but rather on the credible testimony of the victim,[75] and her positive identification of the culprits.[76]

The claim of appellants that their arrest was irregular, which consequently rendered their detention illegal, cannot be considered in this appeal as the matter was not raised at the opportune time. Records reveal that warrants for the appellants' arrest were indeed issued on January 19, 1996 and February 1, 1996.[77] Appellants, likewise, entered their pleas[78] without moving for the quashal of the information. As we held in People v. Bongalon,[79] in such case, the defect of the arrest and detention are cured thereby:

> Moreover, the rule is that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure

> in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection. The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention.[80]

Appellants also assert that the medical report issued by Dr. Pintucan does not conclusively suggest that Clarissa was raped, for during the examination, her deportment was not of that of a rape victim and the examination of her cervix did not even suggest forcible assault.[81]

The said argument is, however, without merit. Hymenal lacerations which are usually inflicted when there is complete penetration are not essential in establishing the crime of rape as it is enough that a slight penetration or entry of the penis into the lips of the vagina takes place.[82] Partial penile penetration is as serious as full penetration; the rape is deemed consummated in either case.[83] Dr. Pintucan further found contusion and hematoma on the victim, which bolsters Clarissa's recount that she was dragged, forced to lie down, and raped.

The common defense of alibi used by the appellants cannot, moreover, prevail over Clarissa's clear and convincing narration of the events that transpired and her positive identification of her assailants. It is a time-honored rule that alibi is a weak defense when unsubstantiated by credible and plausible testimonies.[84] To merit approbation, clear and convincing evidence must be adduced that the accused was in a place other than the situs of the crime at the time the crime was committed, such that it was physically impossible for him to have committed the crime.

Willy Suyu, a tricycle driver, relied solely on his testimony to prove his alibi that he and his wife were in Hot Spring, had lunch with the spouses Tuliao, and arrived home at 6:00 p.m. He and his wife had dinner at 8:00 p.m., he drank beer in the house of his neighbor James Taccad, and finally went to bed at 9:00 p.m. However, appellant failed to present his wife, and the spouses Tuliao to corroborate his testimony, and he gave no justification for his failure to present any of them as witnesses. The records show that the distance from Willy Suyu's house to Capitol Hills can be negotiated in 15 minutes by tricycle; hence, it was not impossible for him to have been at the scene of the crime.

Macarubbo testified that he left Tuguegarao City on January 13, 1996; and arrived in the house of his aunt, Emma Pagulayan and worked in her farm; he was shot at the thigh on January 17, 1996. However, appellant Macarubbo failed to present his aunt and his friend, Joel Iringan, to corroborate his alibi. Moreover, it is incredible that Macarubbo did not even know who shot him despite his claim that the perpetrator was known to his friend, Iringan. Rodolfo Suyu's claim that he was in his house in Alimannao, Tuguegarao City on the night in question is equally weak, for he failed to prove that it was physically impossible for him to be near the DECS (now DepEd) and COA buildings in the city.

For his part, appellant Cainglet failed to present any record from the Night Hawk Security Agency to prove that on January 13, 1996, at 7:15 p.m., he was conducting a roving inspection at the Corinthian Gardens in Quezon City, as he claimed; neither did he present the driver of his employer who was purportedly with him at the time.

After going over the voluminous records, We find no error in the aforesaid observations of the trial court as affirmed by the CA. Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense.[85] Again, these weak defenses cannot stand against the positive identification and categorical testimony of a rape victim.[86] Clarissa, in this case, as aforesaid, passed the test of credibility in her account of her ordeal; positively identified her assailants; and had no ill-motive to falsely implicate them to the commission of a crime, other than her desire to seek justice for a wrong. Where an

alleged rape victim says she was sexually abused, she says almost all that is necessary to show that rape had been inflicted on her person, provided her testimony meets the test of credibility.[87]

Conspiracy to commit the crime was also correctly appreciated by the trial court. Indeed, "at the time of the commission of the crime, accused acted in concert, each doing his part to fulfill their common design to rob the victim and although only two of them, through force and intimidation, raped Clarissa, the failure of Macarubbo and Willy Suyu to prevent its commission although they were capable would make their act to be the act of all."[88] We have previously ruled that once conspiracy is established between several accused in the commission of the crime of robbery, they would all be equally culpable for the rape committed by any of them on the occasion of the robbery, unless any of them proves that he endeavored to prevent the other from committing rape.[89]

The conviction thus of appellants for robbery with rape defined and penalized under Article 294, paragraph 1 of the Revised Penal Code is correct. The law provides:

> Art. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> - The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or animus lucrandi; (4) the robbery is accompanied by rape.[90]

The intent to rob must precede the rape. In robbery with rape, the intention of the felony is to rob and the felony is accompanied by rape. The rape must be contemporaneous with the commission of the robbery. We note that aside from raping the victim, appellant Rodolfo Suyu inserted his finger in her sexual organ. Appellant Suyu, thus, committed sexual assault as defined and penalized in Article 266-A, paragraph 2 of Republic Act No. 8353.[91] Also, aside from Rodolfo Suyu, Cainglet raped the victim. Nevertheless, there is only one single and indivisible felony of robbery with rape and any crimes committed on the occasion or by reason of the robbery are merged and integrated into a single and indivisible felony of robbery with rape.[92]

As to the damages, the RTC only awarded actual damages of P| 1,510.00 and civil indemnity of P50,000.00 to Clarissa. In line with settled jurisprudence, however, this Court rectifies the same and orders all ppellants to, jointly and severally, pay Clarissa Angeles P50,000.00 as moral damages and P50,000.00 as civil indemnity for the rape by Rodolfo Suyu; P50,000.00 as moral damages and P50,000.00 as civil indemnity for the rape by Francis Cainglet; and P30,000.00 as moral damages and P30,000.00 as civil indemnity for the sexual assault by Rodolfo Suyu.[93]

WHEREFORE, premises considered, the appeal is hereby DENIED for lack of merit. The Decision of the Court of Appeals is AFFIRMED WITH THE MODIFICATION that all the appellants are also ordered to, jointly and severally, pay Clarissa Angeles P50,000.00 as moral damages and P50,000.00 as civil indemnity for the rape by Rodolfo Suyu; P50,000.00 s moral damages and P50,000.00 as civil indemnity for the rape by Francis kinglet; and P30,000.00 as moral damages and P30,000.00 as civil indemnity for the sexual assault by Rodolfo Suyu. No costs.

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SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente, concurring; rollo, pp. 259-291.

[2] Records, pp. 181-182.

[3] TSN, May 7, 1997, p. 19.

[4] TSN, March 12, 1997, p. 36.

[5] TSN, May 7, 1997, p. 23.

[6] Exhibit "A," records, p. 2.

[7] Id. at 34.

[8] Id. at 201.

[9] TSN, May 7, 1997, p. 15.

[10] Exhibit "D," records, pp. 514-516.

[11] TSN, October 26, 2000, p. 23.

[12] Id. at 8.

[13] Id. at 15.

[14] Id. at 21.

[15] Id. at 22.

[16] Id. at 16.

[17] TSN, May 4,2000, p. 15.

[18] Id. at 17.

[19] Id. at 19.

[20] Id. at 21.

[21] Id. at 24.

[22] Id. at 25.

[23] Records, p. 61.

[24] TSN, November 19, 1998, p. 4.

[25] Id. at 5.

[26] Id. at 6-7.

[27] Id. at 7-8.

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[28] Id. at 10.

[29] TSN, April 1, 1998, p. 5-7.

[30] Id. at 8-15.

[31] TSN, July 1, 1998, pp. 3-32 and TSN, July 16, 1998, pp. 3-10.

[32] TSN, July 1, 1998, pp. 16-17.

[33] Id. at 21-22.

[34] Id. at 24-25.

[35] Id. at 31.

[36] TSN, January 26, 2000, p. 19.

[37] Id. at 26.

[38] TSN, January 27, 2000, p. 4.

[39] TSN, January 26, 2000, p. 29.

[40] Supra note 9.

[41] TSN, July 17, 1997, pp. 38-39.

[42] Id. at 69.

[43] TSN, December 4, 2000, pp. 1-13.

[44] TSN, December 11, 2000, p. 12.

[45] Supra note 9.

[46] Records, p. 518.

[47] Id. at 584.

[48] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[49] Rollo, p. 290.

[50] Id. at 135.

[51] Id. at 150.

[52] Id. at 151.

[53] Id.

[54] People v. Sta. Ana, G.R. Nos. 115657-59, June 26, 1998,291 SCRA 188, 202

[55] People v. Quinanola, G.R. No. 126148, May 5, 1999, 306 SCRA 710, 725.

[56] Records, p. 549.

[57] Id. at 556.

[58] Id. at 582.

[59] Id. at 556-557.

[60] Peoplev. Pascua, G.R. No. 151858, November 27, 2003, 416 SCRA 548, 552.

[61] People v. Sernadilla, 403 Phil. 125, 140 (2001).

[62] People v. Baway, 402 Phil. 872, 892 (2001).

[63] TSN, May 7, 1997, pp. 23-24

[64] TSN, May 9, 1997, pp. 40-42.

[65] People v. Capareda, G.R. No. 128363, May 27, 2004, 429 SCRA 301, 314.

[66] TSN, May 20, 1997, p. 25.

[67] People v. Alberio, G.R. No. 152584, July 6, 2004, 433 SCRA 469, 478.

[68] Rollo, p. 151-152.

[69] TSN, May 7, 1997, p. 20.

[70] Id. at 42.

[71] People v. Barrientos, 349 Phil. 141, 158 (1998).

[72] Records, p. 583.

[73] Rollo, pp. 154-155.

[74] TSN, December 11, 2000, p. 11.

[75] Records, p. 582.

[76] Id. at 583.

[77] Id. at 36-37.

[78] Id. at 214.

[79] 425 Phil. 96 (2002).

[80] Id. at 119-120.

[81] Rollo, p. 153.

[82] People v. Bali-Balita, 394 Phil. 790, 809 (2000).

[83] People v. Salinas, G.R. No. 107204, May 6, 1994, 232 SCRA 274, 279.

[84] People v. Escober, G.R. Nos. 122980-81, November 6, 1997, 281 SCRA 498, 505.

[85] People v. Alvarez, G.R. Nos. 140388-91, November 11, 2003, 415 SCRA 523, 530.

[86] People v. Orande. G.R. Nos. 141724-27, November 12, 2003, 415 SCRA 699, 708.

[87]People v. Sampior, 383 Phil. 775, 783 (2000).

[88] Records, pp. 558-559.

[89] People v. Mendoza, G.R. No. 123186, July 9, 1998, 292 SCRA 168, 183

[90]People v. Mamalayan, 420 Phil. 880, 891 (2001).

[91] People v. Nequia, 459 Phil. 283, 300 (2003).

[92] People v. Escote, Jr., 448 Phil. 749, 784 (2003); see also People v. Sultan, 387 Phil. 229 (2000); People Regala, 386 Phil. 148 (2000).

[93]People v. Carpio, G.R. No. 150083, May 27, 2004, 429 SCRA 676, 683-684; People v. Olaybar, 459 Phil. 114, 129 (2003); People v. Balacanao, 446 Phil. 525, 548-549 (2003).

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