

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONRADO DIOCADO @ “JUN,” ACCUSED-APPELLANT.

G.R. No. 170567. November 14, 2008

Ponente: BRION, J.

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BRION, J.:

We review[1] in this Decision the decision dated October 25, 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00280[2] that affirmed the decision dated August 18, 2004 of the Regional Trial Court (RTC), Branch 44, Masbate City in Criminal Case No. 8775.[3] The RTC decision found accused-appellant Conrado Diocado (Diocado) alias "Jun" guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, and sentenced him to suffer the penalty of Reclusion Perpetua; to pay the amount of P50,000.00 as civil indemnity, P50,000.00 for moral damages, P10,000.00 as exemplary damages; and to pay the costs.[4]

BACKGROUND

On April 30, 1998, Diocado was indicted for the crime of rape under the following Information[5]:

That on or about February 7, 1998, in the afternoon thereof at Sitio Matungao, Brgy. Tugbo, Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with lewd design did then and there willfully, unlawfully, and feloniously had carnal knowledge with AAA, an 11 year old girl, against her will.

Contrary to law.

Diocado, assisted by counsel de oficio, pleaded not guilty to the charge. In the trial on the merits that ensued, the prosecution presented the testimonies of: (1) Dr. Artemio Capellan (Dr. Capellan), the Municipal Health Officer of Masbate; (2) private complainant AAA;[6] and (3) BBB, the private complainant's older sister. The defense presented: (1) Diocado himself; (2) CCC (his wife and the mother of AAA); (3) Maria Manlapaz; and (4) Joey Cantojos.

The RTC summarized the prosecution's version of events based on the testimony of AAA, as follows:

... it appears that at about 5:00 o'clock in the afternoon of February 7, 1998, [AAA] was in their house in Matungao, Tugbo, Masbate together with Conrado, the live-in partner of her mother [CCC], who was then frying fish, felt urinating, so she went to the bathroom to take a pee. When she was about to go out from the bathroom, she was barred from doing so by Conrado who, armed with a knife, had followed her inside. Threatening her with the knife, Conrado proceeded to undress her by removing her shorts and panty after which she was told to bend forward. While on that bending position, Conrado touched and fingered her vagina, then inserted his penis therein. AAA felt pain in her vagina and could just only cry. She could not move away from Conrado because she was being held by the same at her waist. Neither could she shout because Conrado would sometimes cover her mouth with his hand or threaten her with the knife. She, however, noticed that, after a while a white fluid came out from the penis of Conrado. When Conrado was done with her, he went out

of the bathroom and proceeded upstairs. She, in turn, put on her clothes, went back to the kitchen and still crying, continued frying fish...

AAA further testified on cross-examination that she could not shout for help during the sexual assault because she was afraid of Diocado who was holding a knife.[7]

The physical and medical examination conducted by Dr. Capellan yielded the following findings: [8]

EXTERNAL FINDINGS:

1. Abrasion linear in shape posterior location right/left thigh.
2. Lacerated wound right hypochondrium area.

INTERNAL FINDINGS:

1. Old healed laceration 9:00 & 12:00 o'clock in position in the face of the clock.

x x x

CONCLUSION:

Physical virginity lost.

According to Dr. Capellan, the old healed lacerations were due to the rupture of AAA's hymen caused by the penetration of a penis.[9] Dr. Capellan further testified that the lacerations in the private complainant's hymen were already healed because AAA had an elastic type of hymen (i.e., the type that easily heals).[10] Although the injury to the private complainant's hymen might have been caused by carabao, horseback, or bicycle riding, Dr. Capellan considered the external findings conducted on AAA; they showed that the abrasion and lacerated wounds were caused by a sharp object like fingernails or a stone that gave the impression of sexual abuse.[11]

BBB testified that she confronted CCC with what had happened to AAA, but CCC insisted that it was not true.[12] She was later informed that AAA had been placed under the custody of the Department of Social Welfare and Development.[13]

Aside from testimonial evidence, the prosecution submitted documentary evidence consisting of the Medical Certificate executed by Dr. Capellan (Exhibit "A" with submarkings); the affidavit of AAA (Exhibit "B" with submarkings); and the complaint signed by AAA (Exhibit "C" with submarkings).

Diocado relied on the defenses of denial and alibi adduced through testimonial evidence, and presented a different version of events. The RTC summarized Diocado's story, as follows:

... He declared that in the afternoon of February 7, 1998, he was at the Circle E Lodging House and Restaurant where he works as a carpenter with a 7:00 o'clock in the morning until 5:00 o'clock in the afternoon work schedule. On that particular day, being a Saturday and a payday, he was not able to go home at 5:00 o'clock because he waited for the manager for his salary. At around 6:00 p.m. the manager arrived and after receiving his salary, he went home. When he arrived home at past 6 in the evening, his wife CCC, who was then tending a sari-sari store, was there, together with their children DDD, EEE and FFF. x x x They took their supper at around 7:00 o'clock in the evening and after resting for a while, Conrado, together with his wife and the three children, went next door to the house of his parents to watch TV. At 9 o'clock they went home.

Conrado further testified that on the night in question, his step-daughter AAA (the private offended party) was not at their house as she was then at the house of Shirlyn Ramirez[14] to do some laundry work, and it was only on February 9, 1998 that she returned home because she was fetched by her older brother. x x x

CCC corroborated Diocado's testimony and narrated that she was at their house at around 5:00 p.m. of February 7, 1998, taking care of her children with Diocado. [15] AAA was also there but she (AAA) later went out without permission; she only came back at around 8:00 p.m.[16] CCC narrated that she heard no complaint from AAA that night or the day after;[17] AAA also never gave her any reason for leaving home that night.[18]

On cross-examination, CCC admitted that the reason AAA left home was because she (CCC) did not believe AAA's story that Diocado sexually abused her.[19] Subsequently recalled to the witness stand (six months later), she varied her testimony, this time declaring that at 5:00 p.m. of February 7, 1998, they had a lady visitor (whose name she did not know) in their house waiting for Diocado who was still at work;[20] and it was only her three children who watched the television that night while she and Diocado rested.[21] She again insisted that AAA's accusation against Diocado was not true and claimed that their bathroom was not enclosed by a curtain but had a door without a lock.[22] She maintained that she did not know of any motive why AAA would falsely accuse Diocado.[23]

The other defense witness, Maria Manlapaz, testified that at 5:00 p.m. of February 7, 1998, she went to the house of CCC (who was alone) to collect money from her but was told to wait for Diocado.[24] At 6:30 p.m., Diocado arrived and gave her P100.00 as payment.[25] On cross-examination, she admitted that she came to know CCC in 1998 at the Bureau of Jail and Management Penology (BJMP) when her husband and Diocado were both in jail.[26]

Joey Cantojos, a roomboy who also acted as a paymaster at Circle E Lodge and Restaurant, confirmed that Diocado was there at around 5:00 p.m. of February 7, 1998; and that Diocado went home at around 6:30 p.m. after receiving his salary.[27]

The RTC's decision of August 18, 2004 gave greater weight to the prosecution's evidence and rejected Diocado's defenses of denial and alibi. It believed the testimony of AAA which it described as "straightforward, and unshaken" despite her tender years and the rigorous cross-examination she underwent. In arriving at its conclusion, the RTC also considered that AAA's testimony was compatible with the physical evidence confirming the fact and the manner of her sexual abuse.

In contrast, the court discredited the accused-appellant's defenses of denial and alibi and took note of the contradictions in the testimonies of defense witnesses CCC and Maria Manlapaz. The trial court also found that the testimony of Joey Cantojos did not disprove Diocado's guilt as it was not physically impossible for him to be at the scene of the crime. Similarly, the RTC debunked -- for lack of supporting evidence -- Diocado's claim that AAA had improper motive to falsely accuse and testify against him.

Diocado appealed his conviction to the CA, but the appellate court affirmed the RTC's decision. He now supports the present appeal with the argument that the RTC and CA committed reversible error when they anchored his conviction on AAA's incredible testimony.

THE ASSIGNMENT OF ERRORS

I.

THE LOWER COURT GRAVELY ERRED IN CONVICTING DIOCADO BASED SOLELY ON THE INCREDIBLE TESTIMONY OF PRIVATE COMPLAINANT.

II.

THE LOWER COURT GRAVELY ERRED IN FINDING DIOCADO GUILTY BEYOND REASONABLE DOUBT [OF] THE CRIME OF RAPE.

OUR RULING

We DENY the appeal and affirm Diocado's conviction.

First, we have held in a long line of cases that the findings of the trial court on the credibility of witnesses and of their testimonies are accorded great respect.[28] It is the trial judge who sees the behavior and demeanor of the witnesses in court, their possession or lack of intelligence, as well as their understanding of the obligation of an oath.[29] The trial court's evaluation or assessment acquires greater significance in rape cases because of the nature of the offense; oftentimes, the only evidence available is the victim's testimony.[30]

Our own independent examination of the records discloses no compelling reason to disturb the findings of the RTC, particularly its view that the testimony of AAA was straightforward and unshaken despite her tender years as she narrated the sexual abuse she suffered in the hands of Diocado. We thus gave great weight to her testimony on direct examination on October 14, 1999 when she testified:[31]

Q

Please do so?

A

After urinating, my stepfather entered the bathroom armed with a knife threatening me not to go out.

Q

What else did the accused do?

A

After threatening me with his knife, he undressed me.

x x x

Q

What part of your clothing was undressed by the accused?

A

My short and panty.

x x x

Q

After that, what happened next?

A

I was made to bend down (which means in the local dialect "towad").

Q

Can you make it clear, Witness, can you demonstrate in what way you were required to bend your body or towad?

A

I was made to bend down (witness demonstrating by bending her body with her head down with her buttocks up).

Q

While in that position, what did the accused do if there was any?

A

First, he fingered me.

Q

What do you mean by you were fingered?

A

He fingered my vulva.

Q

After your vulva was fingered by the accused, what happened next?

A

He inserted his penis into my vagina.

Q

Did the penis of the accused able to penetrate your vagina?

A

Yes, sir.

She remained steadfast in this narration and her identification of Diocado as the perpetrator despite the rigorous cross-examination she underwent.[32] Her credibility was strengthened when she cried at certain points of her testimony as she related the details of the rape.[33] It was further reinforced by its marked compatibility with the physical evidence reflected in Dr. Capellan's findings. These findings were consistent with her testimony that she was made to bend down while Diocado held her by the waist as she was raped.

Second, Diocado's attempt to discredit AAA by pointing out the discrepancies in her sworn affidavit and her court testimony on the actual date when the rape took place is more imagined than real. We found no real variance as both the sworn affidavit and testimony of AAA spoke of February 7, 1998 as the date of the rape. In any case, even assuming that discrepancies exist, these are not material if they relate to minor matters and do not negate the fact of rape, or if they do not relate to the material aspects of the crime. Discrepancies can also be disregarded when they are explained by other trustworthy evidence.

In these regards, we note that an exact allegation of the actual date and time of the rape is not an element of this crime; what must be proven is the carnal knowledge of the accused with the private complainant without her consent.[34] Thus, as a rule, the exact time of the commission of the rape is not a ground for acquittal once the prosecution has clearly established the sexual act between the rapist and the victim without the latter's consent.[35] All throughout the trial, AAA remained consistent and never wavered in her testimony relating to the events that transpired before, during, and after the commission of the rape, and her positive identification of Diocado as the perpetrator.

In terms of corroboration, we find it significant that immediately after the rape, AAA reported the matter to CCC who herself confirmed what AAA did.[36] It is also important that AAA's actions after the rape were consistent with the actions of a young female who had been grossly wronged. AAA herself testified that she left home without permission three days after the incident and the reason she left was CCC's refusal to believe that Diocado raped her.[37] We additionally note that aside from running away, (a) AAA refused to go back home despite the whipping she suffered from her older brother; (b) aside from her mother, she also reported the rape to her grandmother and to a friend; and (c) she voluntarily submitted herself to medical examination and went through the process of filing a rape case and testifying against Diocado. To our mind, these are manifestations that cannot simply be negated by claims that discrepancies exist regarding the date the rape took place.

Third, as the trial court did, we cannot give any credit to Diocado's argument that AAA did not even shout for help when she was allegedly raped. We believe that AAA satisfactorily explained why this happened: she was afraid of Diocado who was holding a knife and who also covered her mouth with his hands:

Q

You did not shout?

A

I could not shout because he was covering my mouth with his hands.

COURT

Q

While the accused was inserting his penis into your vagina, your mouth was not covered by the hands of the accused?

A

No, sir.

ALFORTE

Q

Why did you not shout?

A

Because he was threatening me with his knife.[38]

x x x

x x x

BADILLOS

Q

The houses in the neighborhood are very close to each other, in fact, the house of the mother of your stepfather is just adjacent to your house, is it not?

A

Yes, sir.

Q

And, have you shouted or ... had you shouted (sic) people in the neighborhood could have heard you?

A

Yes, sir.

Q

But you did not shout?

A

Because I was afraid to (sic) him.

COURT

Q

Why did you not shout?

A

I was afraid of my stepfather.[39]

This explanation, to our mind, is completely plausible. AAA was physically restrained during the rape. She was also emotionally prevented from calling for help because her stepfather was holding a knife. If a person of age and ordinary prudence can be subdued into submission and silence by these kinds of restraints, can a young innocent girl act any differently?

Even if AAA had not been so restrained, we emphasize that her failure to shout for help cannot per se be read as an indicator that no rape took place. Our judicial experience in handling rape cases teaches us that no hard and fast rule can be made on how rape victims react, especially when the victim is young and is related to the accused. The approach we have consistently adopted in these types of cases is to regard normal behavior to be a relative term; people faced with the same kind of stimulus may react differently. This is all the more true in crimes like rape which does not only entail violence against the person of the victim; it is a crime that cannot but emotionally affect the victim and give rise to untold feelings, especially in a culture like ours where a stigma attaches to rape victims.

For all these reasons, we cannot give any credit to Diocado's defense in so far as it seeks to impugn AAA's testimony for her failure to shout during the act of rape.

Fourth, we cannot avoid considering that this is a case where AAA is pitted against the testimonies of her stepfather and her own mother. What is involved, however, is not a straight line weighing of statements against statements, with two statements being always better than one. In a court of law, we look at the totality of the evidence adduced and we weigh these using the scales of reason, experience and credibility based on insights into the human character, all made within the parameters of the law. All these now tell us that, under the circumstances of this case, the mother's word cannot prevail against the word of her wronged daughter. The testimonial evidence of rape, supported by convincing physical evidence, cannot be defeated by a mother's contrary testimony. That CCC was in fact at home in the afternoon of February 7, 1998 does not negate the commission of the rape. Time and again, we have declared that lust is no respecter of time and place. It is a master that does not recognize decency or morality but cares only for the fulfillment of its selfish desires. CCC's changing testimonies also tell us that at some point she might have chosen the practical option of siding with the husband who provides for her and her family. Thus, we cannot give credit to what CCC, as mother, said with respect to her daughter's charge of sexual abuse in the hands of her stepfather.

Lastly, the defenses of denial and alibi of Diocado cannot prevail as against the positive, straightforward and consistent testimony of AAA that both the RTC and the CA found credible. The established dictum is that denial is an intrinsically weak defense that must be supported by strong evidence of non-culpability to merit credibility.[40] In the same manner, for the defense of alibi to prosper, not only must the accused-appellant prove that he was in another place at the time of the commission of the crime; he must also show that it was impossible for him to be at the crime scene at the appointed time.[41] In the present case, the evidence on record shows that it was not physically impossible for Diocado to have committed the rape as the distance of his house to his place of work is only one kilometer. This distance can be negotiated in 10 minutes when riding a bicycle and in less than 5 minutes when riding a tricycle.[42] Rather than disturb the appreciation by the RTC and the CA of the testimonies of the defense witnesses, we quote with approval the following CA findings:

In contrast, appellant's defense of alibi is far from convincing. His testimony and those of his witnesses collided with each other. Tessie Diocado declared that, at the time of the incident, she was at their house with her children including the private complainant; that private complainant went out but returned around 8:00

p.m.; and that the private complainant left the house on February 9, 1998. But Maria Manlapaz, their supposed visitor, affirmed that Tessie was all alone in the house, when she visited their house. On the other hand, the appellant testified that, when he arrived at the house, the private complainant was not there and she came home only on February 9, 1998; and he never mentioned having met Manlapaz that evening. Notably, Tessie Diocado stated that they had a lady visitor on the date and time of the incident but she does not know the name of said visitor. However, Maria Manlapaz, who was the visitor that Tessie was referring to, said that Tessie bought some goods from her that was why she went to Tessie's house to collect payment. Furthermore, appellant's co-employee, Joey Cantojos, testified that, on the day of the incident, he was the one who gave the salary of the appellant. Yet, appellant claimed that it was the manager who released their wages. Such discordant and irreconcilable testimonies indicated a tendency to prevaricate and to twist the facts.

These weaknesses have not been remedied by testimonial records showing (a) CCC's silence when asked by the RTC who she would believe between her daughter and her husband;^[43] (b) Maria Manlapaz' testimony that she only met CCC in 1998 at the BJMP when Diocado was already committed to jail and where her (Manlapaz') husband was also a detention prisoner;^[44] and (c) Joey Cantojos' admission that he was requested by Diocado to help him in the case, and his uncorroborated explanation for his delay in clearing Diocado's name.^[45] These weaknesses, when considered against AAA's positive and steadfast testimony, give us comfort that our conclusion to convict Diocado cannot be wrong.

The Proper Penalty

Article 335 of the Revised Penal Code, as amended,^[46] defines and penalizes the crime of rape as follows:

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 and intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

x x x

The crime of rape shall be punished by reclusion perpetua.

Under Republic Act No. 7659, the penalty of death shall be imposed if the crime is committed 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 common-law spouse of the parent of the victim. Section 8, Rule 110 of the Revised Rules of Criminal Procedure provides that the minority of the complainant and her filiation with the accused or the fact that the accused was the common-law spouse of her parent must be alleged in the Information. Although the Revised Rules of Criminal Procedure came after the commission of the rape in this case, its provisions may be applied retroactively considering that it is favorable to the accused. Accordingly, while the Information stated that AAA was 11 years old at the time of the commission of the rape, it failed to indicate (although it was later on established during the trial) that Diocado is the common-law spouse of AAA's mother. Thus, both the RTC and CA are correct that Diocado is only guilty of simple rape punishable by reclusion perpetua.

The RTC and CA correctly awarded the private complainant the amount of P50,000 as civil indemnity and another P50,000 as moral damages, in accordance with the prevailing jurisprudence.^[47] Civil indemnity is in the nature of actual and compensatory damages that must be awarded upon a finding of guilt in rape cases.^[48] Moral damages, on the other hand, are automatically awarded to rape victims without the necessity of proof; the law

assumes that the victim suffered moral injuries entitling her to this award.[49]

We increase the award of exemplary damages to P25,000.00 in accordance with existing jurisprudence.[50] The award of exemplary damages is warranted after the prosecution established that Diocado is the common-law spouse of CCC and has lived under the same roof with AAA since the latter was only 7 to 9 years old;[51] AAA also regarded him as the stepfather who sent her to school.[52] Likewise undisputed is the circumstance that the rape took place in the bathroom of AAA's own house where she should have felt safe and protected.

These circumstances show that the aggravating circumstances of abuse of confidence and commission of the crime in the dwelling of the offended party were present pursuant to the terms of Article 14, paragraphs 3 and 4 of the Revised Penal Code, as amended.[53] While these circumstances cannot be used to increase the penalty because they were not alleged in the Information, they nevertheless suffice as bases to award exemplary damages.[54]

WHEREFORE, premises considered, we hereby DENY the accused-appellant's Petition for Review. The appealed Decision dated October 25, 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 00280 finding accused-appellant Conrado Diocado @ Jun guilty beyond reasonable doubt of the crime of simple rape is hereby AFFIRMED but the award of exemplary damages is MODIFIED and increased to P25,000.00.

The other portions of the appealed Decision are hereby AFFIRMED.

SO ORDERED.

Quisumbing, Acting C.J., Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Petition for Review on Certiorari filed under Rule 45 of the 1997 Revised Rules of Court.

[2] Penned by Associate Justice Renato C. Dacudao with Associate Justice Lucas P. Bersamin and Associate Justice Celia C. Librea-Leagogo, concurring; rollo, pp. 109-127.

[3] Penned by Hon. Pazlinda A. Villamor-Joaquin; records, pp. 101-119.

[4] Id., pp. 118-119.

[5] Id., p. 1.

[6] The real name of the victim as well as those of her immediate family members are withheld per Republic Act (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).

[7] TSN, October 14, 1999, p. 38.

[8] Records, p. 54.

[9] TSN, September 14, 1999, p. 6.

[10] Id., p. 7

[11] Id., pp. 5 and 7-9.

[12] TSN, March 9, 2000, pp. 5-6.

- [13] Id., p. 6.
- [14] Also referred to as "Shirleyn"; "Shirley"; or Sherlyn Alcovindas
- [15] TSN, April 6, 2001, pp. 4-6.
- [16] Id., pp. 5-6.
- [17] Id., p. 7.
- [18] Id., p. 8
- [19] Id., p. 17.
- [20] TSN, October 11, 2001, p. 4.
- [21] Id., p. 6.
- [22] Id., p. 7.
- [23] Id., p.12.
- [24] TSN, May 31, 2002, pp. 3-4.
- [25] Id., p. 4.
- [26] Id., p.8.
- [27] TSN, December 5, 2002, pp. 3-4.
- [28] People v. Buenaflor, G.R. No. 148134, July 8, 2003, 405 SCRA 396, 402.
- [29] Id.
- [30] Id.
- [31] TSN, October 14, 1999, pp. 9-10.
- [32] Id., pp. 26-39.
- [33] Id., p. 10.
- [34] People v. Escaño, G.R. Nos. 140218-23, February 13, 2002, 376 SCRA 670, 686.
- [35] Id., p. 687.
- [36] TSN, April 6, 2001, p. 17.
- [37] TSN, October 14, 1999, pp. 14-15.
- [38] Id., October 14, 1999, p. 10.
- [39] Id., p. 38.
- [40] People v. Soriano, G.R. No. 135027, July 3, 2002, 383 SCRA 676.
- [41] Id.
- [42] TSN, March 11, 2004, p. 11.
- [43] TSN, October 11, 2001, p. 26.

[44] TSN, May 31, 2002, p. 8.

[45] TSN, December 5, 2002, pp. 10-11.

[46] As amended by R.A. No. 7659, "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[47] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 352 (2005).

[48] *Id.*

[49] *Id.*

[50] *People v. Blancaflor*, *supra* note 28, p. 366.

[51] TSN, March 11, 2004, p. 7.

[52] *Id.*, and TSN, October 14, 1999, p. 5.

[53] *People v. Blancaflor*, *supra* note 50, p. 366.

[54] *Ibid.*

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