

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY ERGUIZA, ACCUSED-APPELLANT.

G.R. No. 171348. November 26, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The Court is confronted with another case of rape. The victim, a 13-year-old girl. And although the Court may be moved by compassion and sympathy, the Court, as a court of law, is duty-bound to apply the law. Basic is the rule that for conviction of a crime, the evidence required is proof beyond reasonable doubt -- conviction with moral certainty.

For review before this Court is the November 18, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR H. C. No. 00763 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 57, finding Larry Erguiza (appellant) guilty of one count of rape and sentencing him to suffer the penalty of reclusion perpetua.

The Information, dated April 10, 2000, in Criminal Case No. SCC 3282 reads as follows:

That on or about 5:00 o'clock in the afternoon of January 5, 2000, at the back of the Bical Norte Elementary School, municipality of Bayambang, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife, by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously have sexual intercourse with AAA[3], a minor of 13 years old, against her will and consent and to her damage and prejudice.[4]

When arraigned, appellant pleaded "not guilty".[5] Thereafter trial ensued.

The prosecution presented four witnesses, namely: private complainant (AAA), her mother BBB and father CCC, and Dr. James Sison. The defense presented five witnesses, namely: Joy Agbuya, Juanito Macaraeg, Juanita Angeles, Albina Erguiza, and appellant.

On November 27, 2000, the RTC found appellant guilty of the crime of rape, the dispositive portion of which reads as follows:

In view whereof, the Court finds the accused LARRY C. ERGUIZA guilty of RAPE under Article 266-a paragraph 1(a) in relation to Article 266-b of R.A. 8353 and R.A. 7659 and sentences (sic) to suffer the penalty of reclusion perpetua and to pay the offended party, AAA P50,000 as civil indemnity, P50,000 as moral damages, P50,000 as exemplary damages, to give support to AAA's offspring and to pay the costs.

SO ORDERED.[6]

On appeal, the CA aptly summarized the respective versions of the parties, based on the evidence presented before the trial court, thus:

PROSECUTION'S VERSION:

On January 5, 2000, at around 4:00 o'clock in the afternoon, AAA, a thirteen-year old first year high school student, together with her friends, siblings Joy and Ricky Agbuya, went to the mango orchard located at the back of ZZZ Elementary School to gather fallen mangoes.[7] When they were bound for home at around 5:00 o'clock in the afternoon, AAA's short pants got hooked on the fence. AAA asked Joy and Ricky to wait for her but they ran away and left her.[8]

While AAA was trying to unhook her short pants, Larry suddenly grabbed and pulled her. Poking a knife at her neck, Larry threatened to hurt her if she would make a noise.[9]

Accused-appellant dragged AAA towards a place where a tamarind tree and other thorny plants grow. Then Larry removed his maong pants and forced AAA to lie down on the grassy ground. Thereafter, he removed her short pants and panty, mounted himself on top of her and inserted his penis into her private parts and made push and pull movements. He likewise raised AAA's "sando" and mashed her breast. AAA felt pain when accused-appellant entered her and she felt something sticky in her private part after Larry made the push and pull movements.[10]

Larry told AAA not to tell anybody about the incident otherwise he would kill her and all the members of her family and then he ran away.[11]

AAA lingered for a while at the place and kept crying. Having spent her tears, she wore her panty and short pants and proceeded to the adjacent store of her Aunt Beth who was asleep. After staying for some time at the store, AAA decided to come (sic) home. Upon reaching home, she directly went to bed. Fearing Larry's threat, AAA kept mum on the incident.[12]

On April 7, 2000, BBB brought her daughter AAA to her grandmother (BBB's mother), a hilot residing in XXX, Tarlac, to consult her on the unusual palpitation on the mid-portion of AAA's throat and the absence of her monthly period.[13] After examining AAA, her grandmother told BBB that her daughter was pregnant.

BBB asked AAA who was the father of her unborn child but AAA refused to talk. After much prodding, and in the presence of her Uncle, Rudy Domingo, AAA finally revealed that she was raped by accused-appellant.[14]

On April 8, 2000, AAA, accompanied by her mother and uncle, went to the police headquarters in YYY, Pangasinan to report the incident.[15] Then the police brought her to YYY District Hospital[16] where Dr. James Sison, Medical Officer III of said hospital conducted the examination on Michelle. Dr. Sison made the following findings:

"Q. x x x No extragenital injuries noted. Complete healed hymenal laceration 11:00 o'clock. x x x. In layman's term, Dr. Sison found no physical injury from the breast, the body except the genital area wherein he found a significant laceration complete (sic) healed over 11:00 o'clock." [17] Dr. Sison also testified that a single sexual intercourse could make a woman pregnant.

BBB testified that her daughter AAA stopped going to school after she was raped and that no amount of money could bring back the lost reputation of her daughter.

CCC (AAA's father), testified that on May 2, 2000, the family of accused-appellant went to their house and initially offered P50,000 and later P150,000; that in January 5, 2000, while they were repairing his house for the wedding reception[18], Larry left at around 4:00 o'clock p.m.

DEFENSE'S VERSION

On January 5, 2000, Larry Erguiza helped in the repair of CCC's[19] house from 8:00 o'clock in the morning up to 5:00 o'clock in the afternoon. When he reached home at around 5:00 pm, his mother Albina Erguiza instructed him to fetch a "hilot" as his wife Josie was already experiencing labor pains. He proceeded to fetch the "hilot" Juanita Angeles and stayed in their house until his wife delivered a baby at around 3:00 o'clock in the morning of January 6, 2000.[20]

Juanita Angeles corroborated Larry's testimony that he indeed fetched her at around 5:10 pm on January 5, 2000 to attend to his wife who was experiencing labor pains and who delivered a baby at about 3:00 a.m. of January 6, 2000; and that Larry never left his wife's side until the latter gave birth.

Albina, mother of the accused-appellant, testified that AAA is the daughter of her "balae" Spouses CCC and BBB; that her son Larry, her husband and two others left CCC and BBB's residence at about 5:00 o'clock in the afternoon on January 5, 2000; that she went to Spouses CCC and BBB to talk about the charge of rape against her son; that Spouses CCC and BBB were asking for P1,000,000.00 which was later reduced to P250,000.00 and that she made a counter-offer of P5,000.00.[21]

Joy Agbuya testified that she and AAA were at the mango orchard of Juanito Macaraeg on January 5, 2000; that she never left AAA when her short pants got hooked; that they went together to the store of Auntie Beth where they parted.[22]

Juanito Macaraeg, the mango orchard caretaker, testified that the house of Larry was a walking distance of about three minutes from the mango orchard; that if one runs fast, it would only take a minute to reach his house; and that he could not recall having seen Larry in the orchard.[23] (Emphasis supplied)

In its Decision dated November 18, 2005, the CA affirmed the decision of the RTC, but modified the amount of the award of exemplary damages and costs as follows:

WHEREFORE, in view of all the foregoing circumstances, the Decision of the Regional Trial Court of San Carlos (Pangasinan), Branch 57 dated November 27, 2000 in Criminal Case No. SCC-3282 is AFFIRMED with MODIFICATION. Accused-appellant Larry Erguiza is held GUILTY of Rape and is sentenced to suffer the penalty of reclusion perpetua. He is ordered to pay the victim AAA P50,000.00 as civil indemnity; P50,000.00 as moral damages, and P25,000.00 as exemplary damages and to give support to AAA's offspring.

SO ORDERED.[24]

Hence, herein appeal.

In his appeal Brief,[25] appellant raises the following errors:

- THE COURT A QUO GRAVLEY ERRED IN GIVING CREDENCE TO THE INCREDIBLE, THUS UNBELIEVABLE TESTIMONY OF PRIVATE COMPLAINANT AAA.
- THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED APPELLANT OF THE CRIME OF RAPE DESPITE THE FACT THAT THE PROSECTUION EVIDENCE FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.
- THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING ACCUSED-APPELLANT'S DEFENSE OF ALIBI CORROBORATED BY THE WITNESSES PRESENTED BY THE DEFENSE.[26]

The appeal is meritorious. The prosecution's evidence does not pass the test of moral certainty.

This Court has ruled that in the review of rape cases, the Court is guided by the following precepts: (a) an accusation of rape can be made with facility, but it is more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.[27]

In the case at bar, the CA upheld the conclusion of the RTC in finding the complainant credible, to wit:

The testimonies of victims who are young and of tender age, like AAA, deserve full credence and should not be dismissed as mere fabrication especially where they have absolutely no motive to testify against the

accused-appellant as in this case. Larry even admitted that AAA had no ill motive for charging him with rape. The Supreme Court in several cases, ruled that full credence is accorded the testimony of a rape victim who has shown no ill motive to testify against the accused. This being so, the trial court did not err in giving full credence to AAA's testimony.[28]

This Court does not agree with the CA.

The Court is not unmindful of the general rule that findings of the trial court regarding credibility of witnesses are accorded great respect and even finality on appeal.[29] However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the trial court.[30] In the past, this Court has not hesitated to reverse a judgment of conviction, where there were strong indications pointing to the possibility that the rape charge was false.[31]

Generally, when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. And so long as her testimony meets the test of credibility and unless the same is controverted by competent physical and testimonial evidence, the accused may be convicted on the basis thereof.[32]

After a judicious examination of the records of the case, the Court finds that there is testimonial evidence that contradicts the findings of the RTC and CA on the basis of which no conviction beyond reasonable doubt could arise. It is the un rebutted testimony of a credible defense witness. The testimony of Joy Agbuya (Joy) casts doubt as to the possibility of rape having taken place as narrated by complainant. In addition, the testimony of a disinterested defense witness, Juanita Angeles (Juanita) corroborated the alibi of appellant.

Before dwelling on the testimonies of Juanita and Joy, the Court shall first scrutinize the testimonial evidence presented by the prosecution and the defense.

Aside from the testimony of complainant, the prosecution presented the following witnesses: Dr. James Sison, BBB, and CCC. The pertinent portions of their testimonies may be summarized as follows:

Dr. James Sison testified that he conducted the medical examination of complainant. His diagnosis was that there was a significant laceration completely healed at the 11:00 o'clock position.[33] However, Dr. Sison testified that his findings were not conclusive, but were rather suggestive that complainant was raped. Furthermore, as to the question of paternity of the child of complainant, Dr. Sison suggested doing a DNA match.[34]

BBB testified the she brought AAA to her grandmother, a hilot residing in XXX, Tarlac, to consult her on the unusual palpitation on the mid-portion of complainant's throat and the absence of her monthly period.[35] After examining complainant, the hilot told BBB that her daughter was pregnant. AAA later revealed that she was raped by appellant.[36] BBB further testified that she accompanied AAA to the police headquarters in YYY, Pangasinan to report the incident.[37] Afterwards, the police brought complainant to YYY District Hospital[38] where Dr. James Sison, Medical Officer III of said hospital, conducted the examination on complainant. On cross-examination, BBB testified that the family of appellant offered her money to settle the case.[39]

CCC, the father of AAA, was the lone rebuttal witness of the prosecution. In order to rebut the allegation made by appellant's family that the present case was filed because appellant's family did a poor job in preparing for the wedding of CCC's daughter DDD and appellant's brother Carlito, CCC testified that on the contrary, the wedding went smoothly.[40] CCC further claimed that the family of appellant knelt before him crying and offered money to settle the case.[41] Moreover, CCC testified that appellant left his house at 4:00 p.m. on January 5, 2000.

On the other hand, the defense presented four witnesses, namely: Juanito Macaraeg (Macaraeg), Albina Erguiza (Albina), Juanita and Joy.

Macaraeg, the caretaker of the mango orchard, testified that he did not see appellant on any occasion in the orchard.[42] More specifically, Macaraeg emphasized that he did not see appellant on January 5, 2000.[43] However, on cross-examination, he testified that the house of appellant is only a three-minute walk from the mango orchard and probably a minute if one walks fast.[44]

Albina, the mother of appellant, testified that on January 5, 2000, she was with appellant at the house of CCC and BBB preparing for the wedding of CCC's daughter DDD and appellant's brother Carlito. She said that they left the house of CCC at around 5:00 p.m.[45] Albina narrated that when they arrived home, at around 5:02 or 5:03 p.m., she sent appellant to fetch a hilot, as the wife of appellant was having some labor pains.[46] She said that appellant and the hilot arrived at around 5:30 p.m.[47] According to Albina appellant never left their house.[48]

On the day of the wedding, Albina testified that she had an altercation with BBB regarding the bills and that they never resolved their quarrel.[49] She spoke to BBB and CCC because she learned that they were falsely accusing appellant of raping AAA.[50] After talking to BBB and CCC, she and her husband confronted appellant and asked if he had raped complainant, which appellant denied.[51] Albina claimed that CCC and BBB were demanding P1,000,000.00 and that they later reduced it to P250,000.00.[52] Albina said that she offered P5,000.00 to BBB and CCC only to preserve their relationship as in-laws and for peace.[53]

In sum, with the exception of the claim of AAA that she was raped by appellant, other evidence presented by the prosecution did not identify appellant as the perpetrator of the crime.

Moreover, the testimonies of the witnesses for both the prosecution and the defense conflict on certain points, more notably the claim by BBB and CCC that the family of appellant offered to settle the case. This, however, was denied by Albina, who claimed that it was BBB and CCC who demanded P1,000,000.00.

The offer of compromise allegedly made by Albina is critical to the case at bar in light of law and jurisprudence that an offer of compromise in a criminal case may be received in evidence as an implied admission of guilt.[54] In the case at bar, the offer of compromise was first testified to by BBB on cross-examination, to wit:

Q.

Is it not a fact that there was an offer by you to the mother of the accused that they pay you 1 million and you have reduced it to P250,000.00?

A.

No, sir, it was they who were the ones offering for settlement, but we never offer them any settlement, sir.[55]

On rebuttal, CCC corroborated the testimony of BBB that the family of appellant offered to settle the case, to wit:

Q.

And according to Larry Erguiza as well as his witnesses they told the Honorable Court that you and your wife are demanding from Larry Erguiza and his parents the amount of one million pesos so that you will not file this case against the accused, what can you say about that?

A.

There is no truth about that, sir.

Q.

And what is the truth about it?

A.

It was they who went to my house, they even knelt before me crying and they were offering money, sir.[56]

However, Albina, the mother of appellant, denied the foregoing allegations, to wit:

Q.

What happened when you went to the house of BBB and CCC talking with them about their problem of the alleged rape on AAA, their daughter?

A.

They were asking for a settlement price for one million pesos but we have no money, sir.

Q.

What did you do when they were asking one million pesos from you?

A.

We told them that we do not have that money until they reduced the price to P250,000.00 but we have no money because we are poor, sir.

Q.

Were you around when BBB testified to the witness stand?

A.

I was here, sir.

Q.

Did you hear what BBB said that you were the one offering money?

A.

Yes, sir, I was here and I heard that.

Q.

What can you say to that allegation of BBB?

A.

That is not true, sir. She was saying that we were the ones offering money for one million to them but she was telling a lie, it was they who were asking for one million pesos, sir.

Q.

What is your proof that it was they who are demanding the amount of one million and reduced that to two hundred fifty thousand (P250,000.00)?

A.

We already left because we cannot afford to give that much, sir.

Q.

Aside from the fact that you do not have money, was there any reason or what was your other reason in going there?

A.

Our reason in talking to them was that when Larry said that he did not commit the alleged rape and so we went there to talk to them so that we could preserve our relationship as in-laws even if it is for the sake of peace we could try our best to cope up even P5,000.00 just for the sake of peace because our intention in going to their house was to extract the truth, sir.[57]

On cross-examination, appellant gave the following statements:

Q.

Before the filing of this case with this Honorable Court, your parents and you were pleading to the parents of AAA not to continue anymore the case, is it not?

A.

Yes, sir, so that the case will not be filed and our relationship will not be destroyed, sir.

Q.

In fact you asked your parents to do so, is it not?

A.

No, sir. They were the ones who went to the house of AAA, sir.

Q.

But the family of AAA did not agree to the pleadings of your parents that the case be not filed anymore, is it not?

A.

They will agree if we will pay then 1 million, but we do not have 1 million, sir.

Q.

Did you offer them 1 million?

A.

No, sir. They were the ones who told that to us.[58] (Emphasis Supplied)

The alleged offer of the parents of appellant to settle the case cannot be used against appellant as evidence of his guilt. Appellant testified that he did not ask his parents to settle the case. Moreover, appellant was not present when the offer to settle was allegedly made.

An offer of compromise from an unauthorized person cannot amount to an admission of the party himself.[59] Although the Court has held in some cases that an attempt of the parents of the accused to settle the case is an implied admission of guilt,[60] we believe that the better rule is that for a compromise to amount to an implied admission of guilt, the accused should have been present or at least authorized the proposed compromise.[61] Moreover, it has been held that where the accused was not present at the time the offer for monetary consideration was made, such offer of compromise would not save the day for the prosecution.[62]

In addition, the Court, in weighing the evidence presented, may give less weight to the testimonies of Albina, on the one hand, and BBB and CCC, on the other, as they are related to the appellant and the victim, respectively[63] Their testimonies relating to the offer of settlement simply contradict each other. As a matter of fact, even the

lower courts did not consider the alleged offer of settlement in resolving the case.

Thus, the Court now considers the testimonies of Juanita and Joy.

Testimony of Juanita Angeles

Juanita, a hilot, testified that appellant fetched her at around 5:10 in the afternoon of January 5, 2000.[64] She asserted that they arrived at the house of appellant at 5:30 p.m. She said that appellant's wife gave birth at dawn at 3:00 a.m. of January 6, 2000.[65] Juanita said that appellant was with her the entire time and never left the house.[66]

Testimony of Joy Agbuya

For a better perspective on the testimony of Joy, it is necessary to repeat the testimony of AAA. AAA testified that on January 5, 2000, she was accompanied by 12-year-old Joy and the latter's brother Ricky Agbuya (Ricky) to the mango orchard at the back of the elementary school to pick fallen mangoes. Further, complainant claims that she was left behind by Joy and Ricky when her shorts got hooked to the fence and that while she was unhooking her pants from the fence, appellant grabbed her and raped her.[67]

This was however contradicted by Joy, to wit:

Q.

How many times did you go to the mango orchard of Juanito Macaraeg?

A.

Three (3) times, sir.

Q.

When you usually go to the mango orchard of Juanito Macaraeg, where did you met [sic] with AAA?

A.

In their house, I dropped by her house, sir.

Q.

Was there an occasion wherein you brought your brother Ricky when you went with AAA to the mango orchard of Juanito Macaraeg?

A.

No, sir.

Q.

Are we made to understand that Ricky, your brother did not go even once to the mango orchard of Maning Macaraeg?

A.

Yes, sir.

Q.

According to AAA in her sworn statement she stated that in [sic] January 5, 2000 you were with your brother

Ricky and AAA in going to the mango orchard, what can you say about that?

A.

What she is saying is not true. I was not with my brother, sir. I did not tug him along with me.

Q.

It is also said by AAA that you left her behind in the mango orchard when her pants was hooked, what can you say about that?

A.

No, sir I waited for her.

Q.

Are we made to understand Madam Witness, that there was no instance or never that happened that you left her in the mango orchard alone?

A.

No, sir, I waited for her and both of us went home together, sir.

Q.

Going back to the occasion wherein you were with AAA, who were with you in going back home?

A.

Just the two (2) of us, sir.

Q.

In your way home, where did you part or separate with each other?

A.

In front of the store of auntie Beth, sir.[68]

x x x x

Q.

Is AAA your bestfriend?

A.

Yes, sir.

Q.

Since you said that AAA is your bestfriend was there an occasion wherein she told you that she was raped?

A.

None, sir.[69] (Emphasis and underscoring supplied)

On cross-examination, Prosecutor Ely Reintar elicited the following statements from Joy:

Q.

In the year 2000, when was the last time that you talked to AAA?

A.

April, sir.

Q.

After April, you did not talk to AAA anymore?

A.

No more, sir.

Q.

Your friendship was severed?

A.

Yes, sir.

Q.

Will you please tell the Honorable Court why your friendship became severed?

A.

Because she quarreled with me, sir.

Q.

And because you quarreled, that is the reason why you are now testifying against her?

A.

Yes, sir.[70]

On re-direct examination, Joy clarified, thus:

Q.

Madam Witness, you said that you have a quarrel with the private complainant, AAA, will you please tell this Honorable Court what is the reason or cause of your quarrel with AAA?

A.

Because they wanted me to say another statement that I left AAA behind, sir.[71] (Emphasis supplied)

On re-cross examination, Joy gave the following answers to the questions of Prosecutor Reintar:

Q.

You said that the reason for your quarrel is that they wanted you to change your statement, that you left behind AAA, who are those they, that you are referring to?

INTERPRETER

No answer.

Witness

I, sir.

PROS. REINTAR

Q.

Who told you to change your statement that you left AAA behind?

A.

Because they are saying that I will change my statement that I left AAA but I did not sir.

Q.

Who are these who are telling that?

A.

They, sir.

Q.

Will you please mention them?

A.

BBB, only her, sir.[72]

The testimony of 12-year-old Joy makes it impossible for the appellant to have raped AAA the way complainant narrated it, to wit:

Q.

You try to understand clearly the question, Madam Witness, and may I repeat that, at the time of the rape when according to you, you were the one raped, where were Joy and Ricky Agbuya?

A.

They left ahead of me because my short pants was hooked at the fence so I was left behind, sir.

Q.

Were you able to remove the pants of yours at the fence?

A.

I was removing it sir, when he suddenly grabbed me.

Q.

And who is this person you are referring to as the one who grabbed you?

A.

Larry Erguiza, sir.[73]

Put simply, complainant could not have been raped because Joy waited for complainant when the latter's shorts got hooked to the fence and thereafter both went home together. The Court finds no cogent reason for Joy to lie and say that she had waited for complainant and that they both went home together. She had nothing to gain for lying under oath. Moreover, the records are bereft of any showing or claim that Joy was related to or was a close

friend of appellant or his family. On the contrary, Joy considers herself the "best-friend" and playmate of complainant.[74]

When Prosecutor Reintar questioned her as to her understanding of the oath she took, Joy answered, "That I will swear to God, sir. x x x The truth, sir." [75] Furthermore, Joy did not succumb to pressure even as she was being conscientiously examined by Prosecutor Reintar. Joy boldly testified that BBB, the mother of complainant, was forcing her to change her statement.

The testimony of Joy clearly lays down the following facts which are damaging to the case of the prosecution: first, that Joy did not leave behind AAA when the latter's shorts got hooked to the fence; and secondly, that Joy and AAA left the orchard, went home together and separated at their Aunt Beth's house, indicating that no untoward incident, much less rape, was committed by appellant at the time and place that complainant had testified on.

Necessarily, either Joy or AAA lied under oath. It was thus critical for the prosecution to show that Joy gave false statements.

Unfortunately for AAA, the prosecution miserably failed to rebut Joy's testimony. Neither complainant nor Ricky, BBB or any other witness was called to the witness stand to refute Joy's testimony. True, it is up to the prosecution to determine who to present as witnesses.[76] However, considering that the testimony of Joy critically damaged the case of the prosecution, it behooved the prosecution to present evidence to rebut the defense evidence. Witnesses such as Ricky, AAA and BBB should have been presented by the prosecution to demolish Joy's testimony. The testimony of Ricky is particularly significant, especially since AAA claimed that he was with her and his sister Joy at the mango orchard on the day of the alleged rape incident. The failure on the part of the prosecution to present Ricky or AAA bolsters the defense evidence, that no rape happened on the date and time claimed by AAA.

The prosecution presented CCC, the father of complainant, as its lone rebuttal witness.[77] However, the testimony of CCC covered facts and issues not related to the testimony of Joy. The testimony of CCC merely rebutted the allegation made by appellant's family that the present case was filed because appellant's family did a poor job of preparing for the wedding of CCC's daughter DDD and appellant's brother Carlito. To this, CCC testified that on the contrary, the wedding went smoothly.[78] Furthermore, CCC claimed that the family of appellant knelt before him crying and offered money to settle the case.[79] In addition, CCC testified that appellant left his house at 4:00 p.m. on January 5, 2000. Thus, the testimony of CCC did not in any way rebut the testimony of Joy.

Further, Joy testified that during the three times she went with AAA to the mango orchard, the time was 1:00 p.m.[80] However, AAA testified that she went to the mango orchard with Joy at 4:00 p.m.[81] The variance in the testimonies of Joy and AAA as to the time they went to the mango orchard on the day of the alleged rape incident may be disregarded as they are de minimis in nature and do not relate to the commission of the crime. There is a common point uniting the testimonies of both Joy and AAA; that is, that both referred to the day when AAA's shorts got hooked to the fence.

Moreover, assuming *arguendo* that the variance between the testimonies of AAA and Joy as to the time they were together at the mango orchard is an indicia that AAA may have been raped by appellant on a different day, not on January 5, 2000, to still impute to appellant the crime of rape is not plausible.

The Court is not unmindful of the rule that the exact date of the commission of the crime of rape is extraneous to and is not an element of the offense, such that any inconsistency or discrepancy as to the same is irrelevant and is

not to be taken as a ground for acquittal.[82] Such, however, finds no application to the case at bar. AAA and Joy may differ in their testimonies as to the time they were at the mango orchard, but there could be no mistake as to the actual day when AAA was supposed to have been raped; it was the day when AAA's shorts got hooked to the fence at the mango orchard.

The RTC and CA unwittingly brushed aside the testimonies of Juanita and Joy and gave full credence to the testimony of AAA. As a matter of fact, their probative weight were not considered or evaluated in the text of the lower courts' decision.

As mentioned earlier, the prosecution could have rebutted the testimony of Joy, but for some reason or oversight, it chose not to do so.

Consequently, in view of the unrebutted testimony of Joy, appellant's defense of alibi and denial assumes considerable weight. It is at this point that the issue as to the time that the rape was committed plays a significant factor in determining the guilt or innocence of appellant. This Court must therefore address this issue for a thorough evaluation of the case.

The Court takes note that Macaraeg, the caretaker of the orchard, testified that appellant's house was only a minute away from the orchard if one would run.

As earlier mentioned, CCC testified that appellant left CCC's house at 4:00 p.m. on January 5, 2000, contrary to the testimony of Albina that she and appellant left at 5:00 p.m. AAA declared that the alleged rape took place after 5:00 p.m.

Q.

So at 4:00 o'clock you were at the house and you left and proceeded at the back of the school to pick mangoes?

A.

Yes, sir.

Q.

That was already around 5:00 o'clock?

A.

Yes, sir. I asked my companion Joy.

Q.

What did you ask of her?

A.

She was wearing a wristwatch and I asked Joy what time is it and when I looked at her wristwatch, it was already 5:00 o'clock, sir.[83] (Emphasis Supplied)

Moreover, on cross-examination, AAA gave the following statements, to wit:

Q.

So it is almost 5:00 p.m. When you went to the mango orchard with Joy Agbuya and Ricky Agbuya?

A.

What I only know was that, it was already about 5:00 o'clock then, sir.

Q.

How many minutes did you consume in getting mangoes?

A.

When we went there, we were not able to get some mango and when I asked sir what was the time then and when I looked at the wristwatch, it was already 5:00 o'clock, sir.[84] (Emphasis Supplied)

The testimony of Joy makes it impossible for AAA to have been raped at 4:00 p.m. or 5:00 p.m. or any time thereafter since it was not rebutted that Joy never left complainant at the mango orchard even when AAA's shorts got hooked to the fence, and both went home together without any other untoward incident.

This Court is not unmindful of the doctrine that for alibi to succeed as a defense, appellant 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.[85]

In the case at bar, although the orchard is just a minute away from the house of appellant, in view of the testimony of the hilot Juanita that appellant was with her from 5:10 p.m. and never left his house from that time until his wife gave birth at 3:00 a.m.; and the testimony of Joy that she never left AAA in the orchard and that they both went home together, the defense of alibi assumes significance or strength when it is amply corroborated by a credible witness.[86] Thus, the Court finds that appellant's alibi is substantiated by clear and convincing evidence.

What needs to be stressed is that a conviction in a criminal case must be supported by proof beyond reasonable doubt -- moral certainty that the accused is guilty.[87] The conflicting testimonies of Joy and complainant, and the testimony of Juanita that corroborated appellant's alibi preclude the Court from convicting appellant of rape with moral certainty.

Faced with two conflicting versions, the Court is guided by the equipoise rule.[88] Thus, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[89] The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.[90]

It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion.[91] What is required of it is to justify the conviction of the accused with moral certainty.[92] Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.[93]

WHEREFORE, the Decision dated November 18, 2005 of the Court of Appeals in CA-G.R. CR H. C. No. 00763 is REVERSED and SET ASIDE. Larry Erguiza is ACQUITTED and ordered immediately RELEASED from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is ORDERED to implement this Decision forthwith and to INFORM this Court, within five (5) days from receipt hereof, of the date appellant was actually released from confinement.

Costs de officio.

SO ORDERED.

Puno,[*] C.J., Ynares-Santiago, (Chairperson), Chico-Nazario, and Reyes, JJ., concur.

* In lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated October 13, 2008.

[1] Penned by Associate Justice Regalado E. Maambong with the concurrence of Associate Justice Rodrigo V. Cosico and Associate Justice Lucenito N. Tagle; rollo pp. 3-19.

[2] CA rollo, pp. 23-28.

[3] The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as, Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as, Rule on Violence Against Women and Their Children effective November 15, 2004. Hence, in *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, citing the case of *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and their immediate family members other than the accused, shall appear as "AAA", "BBB", "CCC", and so on. Addresses shall appear as "xxx" as in "No. xxx Street, xxx District, City of x x x."

[4] CA rollo, p. 6.

[5] Records, p. 30.

[6] CA rollo, p. 69.

[7] TSN, July 12, 2000, pp. 3-5.

[8] TSN, July 12, 2000, pp. 6-7; TSN, July, 13, 2000, p.14.

[9] TSN, July 12, 2000, pp. 8-9; TSN, July 13, 2000, pp. 14-15.

[10] TSN, July 12, 2000, pp. 9-11; TSN July 19, 2000, pp. 4-5.

[11] TSN, July 12, 2000, pp. 11-12.

[12] TSN, July 12, 2000, p. 13.

[13] TSN, July 26, 2000, p. 5

[14] TSN, July 12, 2000, p. 15

[15] TSN, July 12, 2000, pp. 16-17.

[16] TSN, July 12, 2000, p.18.

[17] TSN, July 25, 2000, p.6.

[18] CCC's daughter DDD (from his first marriage) got married to Larry Erguiza's brother Carlito on January 20, 2000, fifteen days after the rape incident.

[19] TSN, September 12, 2000, pp. 4-5.

- [20] TSN, August 28, 2000, pp. 3-7.
- [21] TSN, August 3, 2000, pp. 4-5; TSN, August 22, 2000, pp. 3-15.
- [22] TSN, August 1, 2000, p. 9.
- [23] TSN, August 2, 2000, pp. 8 and 11.
- [24] Rollo, p. 18.
- [25] CA rollo, pp. 43-62.
- [26] CA rollo, p. 45.
- [27] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 108.
- [28] Rollo, pp. 15.
- [29] *People v. Palma*, G.R. Nos. 130206-08, June 17, 1999, 308 SCRA 466.
- [30] *People v. Domogoy*, G.R. No. 116738, March 22, 1999, 305 SCRA 75.
- [31] *People v. Medel*, G.R. No. 123803, February 26, 1998, 286 SCRA 567.
- [32] *People v. Banela*, G.R. No. 124973, January 18, 1999, 301 SCRA 84, 87.
- [33] TSN, July 25, 2000, p. 6.
- [34] TSN, July 25, 2000, p. 11.
- [35] TSN, July 26, 2000, p. 5.
- [36] TSN, July 26, 2000, p. 7.
- [37] TSN, July 12, 2000, pp. 16-17.
- [38] TSN, July 12, 2000, p. 18.
- [39] TSN, July, 27, 2000, p. 9.
- [40] TSN, September 12, 2000, p. 10.
- [41] TSN, September 12, 2000, p. 10.
- [42] TSN, August 2, 2000. p. 8.
- [43] TSN, August 2, 2000, pp. 6-7.
- [44] TSN, August 2, 2000, p. 11.
- [45] TSN, August 2, 2000, p. 8.
- [46] TSN, August 2, 2000, p. 8.
- [47] TSN, August 2, 2000, p. 9.
- [48] TSN, August 2, 2000, p. 9.
- [49] TSN, August 22, 2000, pp. 11-12.
- [50] TSN, August 22, 2000, p. 12.

- [51] TSN, August 22, 2000, p. 13.
- [52] TSN, August 22, 2000, p. 13.
- [53] TSN, August 22, 2000, p. 14.
- [54] Rules of Court, Rule 130, Section 24.
- [55] TSN, July 27, 2000, p. 9.
- [56] TSN, September 12, 2000, p. 10.
- [57] TSN, August 22, 2000, pp. 13-15.
- [58] TSN, September 7, 2000, pp. 13-14.
- [59] Wigmore, RULES ON EVIDENCE, Section 1061, p. 30.
- [60] People v. Manzano, No. L- 38449, November 25, 1982, 118 SCRA 705; People v. Manuel, G.R. No. 57061, May 9, 1988, 161 SCRA 235, 244-245.
- [61] People v. Bangcado, G.R. No. 132330, November 28, 2000, 346 SCRA 189.
- [62] People v. Godoy, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676.
- [63] See People v. Martinez, G.R. No. 124892, January 30, 2001, 350 SCRA 537, People v. Abendan, G.R. Nos. 132026-27, June 28, 2001, 360 SCRA 106.
- [64] TSN, August 3, 2000, p. 4.
- [65] TSN, August 3, 2000, p. 5.
- [66] TSN, August 3, 2000, p. 7.
- [67] TSN, July 12, 2000, pp. 5-12.
- [68] TSN, August 1, 2000, pp. 8-9.
- [69] TSN, August 1, 2000, p.10.
- [70] TSN, August 1, 2000, p. 19.
- [71] TSN, August 2, 2000, p. 2.
- [72] TSN, August 2, 2000, p. 3.
- [73] TSN, July 12, 2000, pp. 8-9.
- [74] TSN, August 1, 2000, p.10.
- [75] TSN, August 1, 2000, p. 13.
- [76] People v. Ruedas, G.R.No. 83372, February 27, 1991, 194 SCRA 553.
- [77] TSN, September 12, 2000, pp. 2-16.
- [78] TSN, September 12, 2000, p. 10.
- [79] TSN, September 12, 2000, p. 10.

- [80] TSN, August 1, 2000, pp. 16-17.
- [81] TSN, July 12, 2000. p. 5.
- [82] People v. Lantano, G.R. No 176734, January 28, 2008, 542 SCRA 640.
- [83] TSN, July 12, 2000, pp. 5-6.
- [84] TSN, July 13, 2000, p. 13.
- [85] People v. Obrique, G.R. No 146859, January 20, 2004, 420 SCRA 304.
- [86] People v. Amestuzo, G.R. No. 104383, July 12, 2001, 361 SCRA 184.
- [87] People v. Bautista, G.R. No. 123557, February 4, 2002, 376 SCRA 18.
- [88] Tin v. People, G.R. No. 126480, August 10, 2001, 362 SCRA 594.
- [89] People v. Agustin, 316 Phil. 828, 832 (1995).
- [90] People v. Lagmay, G.R. No. 125310, April 21, 1999, 306 SCRA 157.
- [91] People v. Fernandez, G.R. Nos. 139341-45, July 25, 2002, 385 SCRA 224, 232.
- [92] RULES OF COURT, Rule 133, Section 2.
- [93] People v. Aballe, G.R. No. 133997, May 17, 2001, 357 SCRA 802.

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