

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABDELKARIM AHMAD ALKODHA, ACCUSED-APPELLANT.

G.R. No. 178067. August 11, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is an Appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01632 dated 19 March 2007 affirming in toto the Decision of the Regional Trial Court (RTC) of Pasig City, in Criminal Cases No. 127752-53-H, which found accused-appellant Abdelkarim Ahmad Alkodha guilty beyond reasonable doubt of two counts of rape.

Accused-appellant was charged with rape in two separate Informations, which read:

In Criminal Case No. 127752-H

On or about March 14, 2004, in Pasig City and within the jurisdiction of this Honorable Court, the accused, by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA],[2] against her will and consent, which is aggravated by the circumstances of abuse of superior strength, nighttime and dwelling, to the damage and prejudice of the said victim.[3]

In Criminal Case No. 127753-H

On or about March 15, 2004, in Pasig City and within the jurisdiction of this Honorable Court, the accused by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], against her will and consent, which is aggravated by the circumstances of abuse of superior strength, nighttime and dwelling, to the damage and prejudice of the said victim.[4]

The prosecution presented the testimonies of Dr. Joseph C. Palmero and complainant AAA.

Complainant AAA testified that she was hired on 13 March 2004 as a stay-in saleslady at the store of accused-appellant. The following day, on 14 March 2004, AAA did not report for work because accused-appellant requested her to take care of his son, Ahmad. At 5:00 p.m. of the same date, she and accused-appellant went to the Ever Gotesco Mall in Pasig City where the latter bought clothes for AAA. When they arrived home at 11:00 p.m., she and accused-appellant had dinner together.

Later that night, while AAA was watching television with accused-appellant's son, accused-appellant called AAA and talked to her about the policies in his store. AAA went back to the other room but was again called by accused-appellant. Accused-appellant then pulled AAA towards his room, covered her mouth, boxed her on the stomach, dragged her inside his room, and pulled her towards the bed. AAA resisted but accused-appellant succeeded in holding her hands and covering them with pillows. Accused-appellant then undressed her by removing her blouse, pajamas, bra and underwear. Accused-appellant thereafter proceeded to rape her by inserting his penis inside her vagina. AAA felt weak at this time, and was not able to resist. Accused-appellant warned her not to tell anybody; otherwise, he would kill her.

On 15 March 2004, at around 9:00 p.m., accused-appellant and AAA went home from the store and had dinner with Ahmad. AAA then went to the comfort room and changed her clothes. She then proceeded to the room of Ahmad. Accused-appellant, however, dragged her inside his room, boxed her right chest and undressed her. Accused-appellant raped her by inserting his penis inside her vagina. AAA went to the comfort room and later left the accused-appellant's room. She initially found it hard to sleep, but was later able to sleep when she took the medicine given by accused-appellant.

On 16 March 2004, while AAA and accused-appellant were at the store, AAA found a chance to escape when accused-appellant went up to the second floor of the store. AAA asked the guard to buy sanitary napkin for her, giving her a chance to escape. She rode a jeepney to a church, where she found a telephone. She called her aunt Divine, who fetched her, brought her to Divine's house, and proceeded to the police station to file a case.

Dr. Palmero testified that he conducted a medical examination of AAA on 16 March 2004 and found that there was a fresh laceration or new tear on the hymen of the victim^[5] and superficial abrasions on the right anterior chest.^[6] He concluded that his findings were compatible with recent sexual intercourse and loss of virginity.^[7]

The defense, on the other hand, presented the testimonies of accused-appellant, Rowena A. Fajardo, Ahmad Abdelkarim, and Senior Police Officer 2 (SPO2) Gerry Bautista.

Accused-appellant testified that he hired AAA on 13 March 2004. On the same date, AAA asked permission to leave early as she was having a headache. AAA went to accused-appellant's house at around 5:00 p.m. together with accused-appellant's son, Ahmad, and accused-appellant's live-in partner, Rowena Fajardo. Accused-appellant went home at around 9:00 p.m. AAA, Ahmad, and his yaya watched television in Ahmad's room while accused-appellant and Rowena stayed in their room.

On 14 March 2004, accused-appellant, Rowena and AAA went to the store at around 8:00 a.m. Upon arriving thereat, AAA asked for a cash advance of P1,500.00 for her to give to her parents. Accused-appellant refused to give AAA the cash advance considering that she was hired as a stay-in saleslady only the day before. At 10:15 a.m., accused-appellant went to the baptismal celebration of the child of SPO2 Jerry Bautista in St. Francis Church, Kapitolyo, Pasig City. After the baptism, they proceeded to Wok-In Restaurant along Shaw Boulevard, Pasig City, for the reception. At around 1:00 p.m., they proceeded to the house of SPO2 Bautista in Pasig City where accused-appellant stayed up to around 8:00 to 8:15 p.m. At around 8:30 p.m., accused-appellant closed his store and dropped off Rowena and AAA in his house. Accused-appellant then went back to the baptismal party. He left the house of Jerry at 12 midnight and proceeded to Metropolis, Alabang, at the house of his cousin where he "followed up the passport of (his) son" and "arranged his papers."^[8] He eventually left his cousin's house and arrived in his house at 3:30 a.m. and slept.

On 15 March 2004, accused-appellant woke up at 7:30 a.m. He went to the store at 8:00 a.m. with Rowena and AAA. He left the store with Rowena and AAA at 9:00 p.m. He went home and slept at 10:00 p.m. On 16 March 2004, he went to the store at 7:45 a.m. with Rowena and AAA. At one point, the telephone rang, and AAA answered the phone. Accused-appellant told AAA she had no right to answer the phone since she had been employed in the store for only two days. AAA got upset and left the store. Accused-appellant went to the police station at 11:00 a.m., where he reported the incident. The police officers asked him to come back after an hour. At 12:20 p.m., the police told him that they could not locate AAA with the telephone number and address that he gave them.

Rowena Fajardo, Ahmad and SPO2 Bautista testified on the whereabouts of accused-appellant during said dates.

On 29 July 2005, the RTC of Pasig City, Branch 262, rendered a Decision finding accused-appellant guilty of two

counts of rape, as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused ABDELKARIM AHMAD-ALKODHA:

- GUILTY beyond reasonable doubt of the crime of Rape in Criminal Case No. 127752-H and he is hereby sentenced to suffer the penalty of reclusion perpetua;
- GUILTY beyond reasonable doubt of the crime of Rape in Criminal Case No. 127753-H and he is hereby sentenced to suffer the penalty of reclusion perpetua; and
- Further, he is ordered to pay the victim, [AAA] Fifty Thousand Pesos (P50,000) as civil indemnity; Fifty Thousand Pesos (P50,000) as moral damages; and Twenty Five Thousand Pesos (P25,000) as exemplary damages, in each case.[9]

Accused-appellant appealed to the Court of Appeals. On 19 March 2007, the Court of Appeals issued its Decision affirming the Decision of the trial court, thus:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal is DISMISSED for lack of merit, and the judgment appealed from AFFIRMED in toto. Costs shall be taxed against the accused-appellant.[10]

Accused-appellant elevated his conviction to this Court, assigning the following errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S HIGHLY INCONSISTENT TESTIMONY.

II

THE COURT A QUO GRAVELY ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[11]

Accused-appellant claims there were inconsistencies in the testimony of AAA, to wit:

- AAA testified that she and the accused-appellant's son, Ahmad, were the only two persons in the house; however, in her sworn statement, she said that at around 5:00 p.m. of 14 March 2004, the accused-appellant called the housemaid to tell AAA to dress up and go to the cell phone store.
- When asked, "Who woke up first, you or the accused?" AAA answered that she woke up first. Later, when she was asked again, she said that it was accused-appellant who woke up first.
- On direct examination, AAA testified that she was raped by the accused on 15 March 2004 by inserting his penis into her vagina. However, on cross-examination, she said that she fainted at that time.

We have held that inconsistencies which refer to minor, trivial, or inconsequential circumstances only serve to strengthen the credibility of said witnesses, as they erase doubts that such testimonies have been coached or rehearsed.[12] The presence of the maid at one point during the afternoon of 14 March 2004, and who between AAA and accused-appellant woke up first on the morning of 15 March 2004 are clearly trivial matters which have no bearing at all on the commission of the crime of rape.

Furthermore, an error-free testimony cannot be expected of a rape victim, for she may not be able to remember and recount every ugly detail of the harrowing experience and the appalling outrage she went through, especially so since she might in fact be trying not to recall the same, as they are too traumatic and painful to remember.[13] Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall.

The rape victim was testifying in open court, in the presence of strangers, on an extremely intimate matter, which, more often than not, is talked about in hushed tones. Under such circumstances, it is not surprising that her narration was less than letter-perfect.[14]

Also, the first discrepancy refers to one between AAA's sworn statement and her testimony in court. This Court has held that affidavits are generally subordinate in importance to open court declarations. Affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to him.[15]

As regards the third alleged discrepancy, AAA's testimony on cross examination is as follows:

Q Would you remember, what time when Kim pulled you to his room?

A No, sir.

Q Did you have any sexual intercourse then?

A I do not know what happened next because I fainted, sir.

Q When was your last time of recollection, Madam witness?

A He was already through with me, sir.

Q How did you know he was through with you?

A I was already bleeding, sir.[16]

We do not see an inconsistency here. At most, this only proves that the part of AAA's testimony on direct examination in which AAA said accused-appellant inserted his penis into her vagina did not come from personal knowledge, but from an inference from her bleeding when she woke up. This, however, is not sufficient reason for us to overturn the appealed Decision. We have ruled that carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape has been committed and that the accused is the perpetrator thereof.[17] The actuations of accused-appellant before AAA fainted, the bleeding of AAA's private part afterwards, and the corroboration by physical evidence on the part of Dr. Palmero, when taken together, convincingly prove the carnal knowledge of AAA by accused-appellant.

Accused-appellant then argues that AAA was actuated by improper motives in haling him before the court. Claims accused-appellant:

In this case, there was a strong manifestation of improper motive on the part of the private complainant to testify falsely against the accused or to falsely implicate him in the commission of the crime charged.

First, the private complainant was asking for a One Thousand Five Hundred (Php1,500.00) Pesos advance from the accused and the latter did not give her the said amount since she was still new in the job. Second, she was scolded by the accused when she answered the telephone which was the cause of her disappearance from the latter's store.

While it may be debated that the above reasons are too flimsy to accuse a person of a serious crime as rape, still, the private complainant was motivated by hatred and in order to get even with the accused, she filed the instant cases.[18]

Accused-appellant then proceeds to argue that the application of the presumption that a young Filipina will not charge a person with rape if it is not true goes against the constitutional presumption of innocence.[19] Accused-appellant cites *People v. Godoy*,[20] wherein we held:

The trial court, in holding for conviction, relied on the *presumptio hominis* that a young Filipina will not charge a person with rape if it is not true. In the process, however, it totally disregarded the more paramount constitutional presumption that an accused is deemed innocent until proven otherwise.

It frequently happens that in a particular case two or more presumptions are involved. Sometimes the presumptions conflict, one tending to demonstrate the guilt of the accused and the other his innocence. In such case, it is necessary to examine the basis for each presumption and determine what logical or social basis exists for each presumption, and then determine which should be regarded as the more important and entitled to prevail over the other. It must, however, be remembered that the existence of a presumption indicating guilt does not in itself destroy the presumption against innocence unless the inculpatory presumption, together with all of the evidence, or the lack of any evidence or explanation, is sufficient to overcome the presumption of innocence by proving the defendant's guilt beyond a reasonable doubt until the defendant's guilt is shown in this manner, the presumption of innocence continues.

Accused-appellant was correct in anticipating that we would see the flimsiness of the alleged ill motives he imputed to AAA. He, thus, claims that his actuations of not giving AAA a cash advance and scolding her for answering the phone were enough to create such a deep-seated hatred as to charge him with a very grave crime of rape. Almost needless to state, accused-appellant's arguments remain flimsy.

As regards the jurisprudence concerning the alleged presumption of guilt arising from the accusation by a young Filipina, suffice it to state here that accused-appellant's conviction was not the mere result of this jurisprudence, but of the clear and convincing evidence presented by the plaintiff-appellee, consisting of the testimony of AAA and the corroborative medical evidence. In rape cases, the accused may be convicted solely on the testimony of the victim, provided such testimony is credible, natural, convincing and consistent with human nature and the normal course of things;^[21] and when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.^[22]

As regards accused-appellant's defense of alibi, we quote with approval the findings of the trial court:

Accused Ahmad Alkodha, however, disputes [AAA]'s version claiming that it is not credible due to some improbabilities in her testimony. Firstly, he contends that he cannot possibly commit the crime attributed against him due to physical impossibility. That on March 14, 2004, at or about 8:30 in the evening until 12:00 midnight he was in the house of SPO2 Bautista, whom he had just got acquainted with. They were not even close or intimate with each other. SPO2 Bautista testified that at or about 8:30 of the said date, accused Ahmad-Alkodha left his house to close his store and went back at 9:00 in the evening. However, accused Ahmad-Alkodha told this Court that he left the house of SPO2 Bautista at 8:00 in the evening to close his store. Thereafter, he dropped his wife and [AAA] in their house at Casa Enrica, Mercedes Avenue, San Miguel, Pasig City and returned to the baptismal party at 8:30 in the evening. While it may be true that accused Ahmad-Alkodha stayed in the house of SPO2 Bautista the same cannot be given probative value, being self-serving, for the defense failed to present the other witnesses who were also there as guests of SPO2 Bautista and who could have seen the accused to clarify the inconsistent testimonies of the accused and SPO2 Bautista to this effect.

Secondly, the accused contends that on March 15, 2004, at or about 12:00 midnight he left the house of SPO2 Bautista and went to Alabang, Muntinlupa City to his cousins Abraham and Ali to follow up his son's passport. Yet, he opted not to present his cousins to prove that he really went to the said place.

Thirdly, accused claims that on March 15, 2004 he could not have raped [AAA] because he was then sleeping with Fajardo in their room. While Ahmad, his "yaya" and [AAA] were in the other room. It is not really impossible to commit rape under such a situation. In our judicial experience, we observed that lust is not respecter of time and place (*People vs. Pepito*, G.R. Nos. 147650-52, 2003). The Court has consistently held

that for rape to be committed, it is not necessary for the place to be ideal, for rapists bear no respect for locale and time when they carry out their evil deed. The presence of people nearby does not deter rapists from committing their odious act (People vs. Aspuria, G.R. Nos. 139240-43, 11-12-02). Again, the accused did not present the "yaya" who allegedly was with [AAA] in the room of Ahmad, who had testified that no unusual happened on March 14 and 15, 2004.

x x x x

This Court rejects the accused's defense of alibi. For the defense of alibi to prosper, the accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed physically but also that it was impossible for him to have been at the scene of the crime at the time it was committed. Aside from his testimony, the accused never presented any other evidence to prove that he was not at the scene of the crime at the time the rape took place. He did not present any other witness, whom he claimed was with him during the time he attended the baptismal party until the time he allegedly went to Alabang, Muntinlupa City. Obviously, it was not physically impossible for him to perpetrate the crime for the alleged baptismal party happened at Caniogan, Pasig City and the rape took place at San Miguel, Pasig City, a few minutes drive to his house, the scene of the crime, in Pasig City. Weak as it is, alibi becomes all the more ineffectual when the accused fails to demonstrate that it was physically impossible for him to be at the crime scene at the time it was committed.[23]

Finally, accused-appellant argues that if he was indeed guilty, he would not have sought the help of police officers in locating AAA as evidenced by the blotter that was presented.[24] We are not swayed by this argument. The police blotter presented by accused-appellant clearly shows that his seeking the help of police officers was in reaction to the complaint filed by AAA against him:

PAGE NO.

:

0417

ENTRY NO.

:

1845

DATE

:

16 March 2004

TIME

:

6:30 pm

Reportee one Abdel Karim Ahmad Alkodha, 46 yrs. Old, married, businessman and a resident of Unit 11 Casa Enrica, Mercedes Ave., Brgy. Caniogan, Pasig City came/appeared to this office and reported that one [AAA], of legal age, a resident of XXX allegedly asked advance payment to the reportee to give to her family in the province. Said subject was allegedly employed for two days only as Sales Lady. According to the reportee, said subject allegedly fabricated a complaint against complainant without basis and he requested that this particular incident be recorded on the police blotter for future reference as shown his signature below.

Signed

Abdelkarim Ahmad Alkodha[25]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01632 dated 19 March 2007 affirming in toto the Decision of the Regional Trial Court of Pasig in Criminal Cases No. 127752-53-H, which found accused-appellant Abdelkarim Ahmad Alkodha guilty beyond reasonable doubt of two counts of rape is hereby AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio, Austria-Martinez, and Reyes, JJ., concur.

* Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 29 July 2008.

[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; rollo, pp. 2-13.

[2] *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

[3] Records, p. 1.

[4] *Id.* at p. 25.

[5] TSN, 9 August 2004, p. 8.

[6] *Id.* at 9.

[7] *Id.* at 10.

[8] TSN, 25 April 2005, p. 8.

[9] CA rollo, pp. 31-32.

[10] Rollo, p. 12.

[11] *Id.* at 50.

[12] *People v. Pamor*, G.R. No. 108599, 7 October 1994, 237 SCRA 462, 475.

[13] *People v. Canoy*, 459 Phil. 933, 943 (2003); *People v. Callos*, 419 Phil. 422, 430 (2001); *People v. Aguero, Jr.*, 417 Phil. 836, 849 (2001).

[14] *People v. Perez*, 337 Phil. 244, 250 (1997).

[15] *People v. Sanchez*, 372 Phil. 129, 145 (1999); *People v. Lusa*, 351 Phil. 537, 544 (1998).

[16] TSN, 20 September 2004, pp. 33-34.

[17] *People v. Sumarago*, 466 Phil. 956, 966 (2004).

[18] Appellant's Brief, Rollo, p. 63.

[19] *Id.* at 64.

[20] G.R. No. 115908-09, 6 December 1995, 250 SCRA 676, 726-727.

[21] *People v. Gastador*, 365 Phil. 209, 225 (1999); *People v. Medina*, 360 Phil. 281, 290 (1998).

[22] *People v. Tabion*, 375 Phil. 542, 551-552 (1999).

[23] CA rollo, pp. 29-31.

[24] Appellant's Brief, rollo, p. 63.

[25] Records, p. 224.

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