

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH FABITO, ACCUSED-APPELLANT.

G.R. No. 179933. April 16, 2009

Ponente: BRION, J.

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BRION, J.:

This is an appeal from the June 29, 2007 decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00006.[1] The CA affirmed the February 12, 2001 decision of the Regional Trial Court (RTC), Branch 43, Dagupan City,[2] finding the appellant Joseph Fabito (appellant) guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua.

THE CASE

The prosecution charged three individuals - the appellant, Froilan Paraan (Froilan) and Tony Bauzon (Tony) - before the RTC with the crime of rape under an Information that states:

That on or about December 8, 1999 at around 4:00 o'clock in the afternoon, at Barangay Ventinilla, Municipality of Sta. Barbara, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSEPH FABITO, in conspiracy with his co-accused FROILAN PARAAN and TONY BAUZON, with the use of force and intimidation, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with one [AAA],[3] minor, aged 14 years old, against her will and without her consent, to her damage and prejudice.

CONTRARY to Article 335 of the Revised Penal Code, as amended.[4]

All the accused pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: AAA; BBB; and Dr. Mary Gwendolyn Luna (Dr. Luna). The appellant, Froilan, Tony, Jovito Idos (Jovito) and Trinidad Bauzon (Trinidad) testified for the defense.

AAA testified that she was born in San Diego, California on October 7, 1985. She went to the Philippines in December 1997 at the age of 12 to pursue her schooling; she enrolled at the Daniel Maramba National High School.[5]

According to AAA, she went to the house of Tony on December 8, 1999 after classes to look for her boyfriend, Froilan. At Tony's house, she saw the appellant, Froilan and Tony under a mango tree drinking Tanduay. She approached them and Froilan offered him a glass of coke and some crackers. She drank the coke and after five (5) minutes felt dizzy and afterwards fell asleep.[6]

When she woke up, she was lying on a bed in a room at the second floor of Tony's house. She also noticed that her skirt had been lifted up and her panty had been removed. Tony was then two (2) steps away on her left side, Froilan was two (2) steps away on her right side, while the appellant was on top of her "doing up and down position." When asked to explain what she meant by "doing up and down position," she explained that the

appellant inserted his penis into her vagina which caused her pain. She asked the appellant why he was sexually abusing her but the appellant did not reply; instead, he held her hand tightly and continued abusing her. She turned her body from left to right causing the withdrawal of the appellant's penis from her private part. The appellant tried to insert his penis again but was unsuccessful because of her continued movements. Thereafter, Froilan pulled the appellant downstairs. AAA picked up her panty, wore it, and left.[7] During the rape, Froilan and Tony simply watched and did nothing.[8]

On cross examination, AAA stated that premarital sex was prevalent in the United States and admitted that she had her first sexual intercourse when she was around eight (8) or nine (9) years old.[9] She did not shout during the rape incident because she was afraid that the appellant might kill her. She also clarified that when she woke up, the appellant's penis was already inside her vagina. Her vagina did not bleed during the sexual intercourse.[10]

She further testified that before going to school on December 8, 1999, she drank two (2) shots liquor with her friends because of a family problem; and that neither her teacher nor her classmates noticed that she had consumed liquor because she took chicklets. She added that the last subject she attended before her class was dismissed was T.H.E.[11] She likewise admitted attending the birthday party of her boyfriend's brother the next day.[12]

On re-direct, she clarified that the sexual intercourse she had when she was eight (8) years old was without her consent; and that the person who sexually abused her was in jail in the United States.[13]

On re-cross, she recalled that when she was moving her body from left to right, the appellant's face was approximately two (2) inches away from her face. She also explained that the kiss mark on the left side of her neck indicated in the medico-legal certificate was not made during the rape incident, and that she did not know where it came from.[14]

BBB, the guardian of AAA, testified that her custody over AAA started in 1997 after AAA's arrival from the United States. She recalled that on December 8, 1999, AAA arrived home late and told her that she came from a Bible study.[15] The next day, she looked for AAA when she failed to return home on her usual schedule. She found her in Barangay Ventinilla, Sta. Barbara, Pangasinan, and she scolded her for not coming home on time. AAA then disclosed that she had been raped by the appellant, Froilan and Tony the previous day. Thereafter, they reported the incident to the police and then proceeded to the Region 1 Medical Center for medical examination.[16]

On cross examination, BBB admitted that she reported the incident to the police only on December 13, 1999.[17]

Dr. De Luna, Medical Officer IV of the Region I Medical Center in Dagupan City, narrated that at around 5:15 p.m. of December 10, 1999, AAA arrived at the hospital to undergo medical examination. At the interview prior to the examination, AAA disclosed to her that she (AAA) had been sexually abused. The examination thereafter followed with the following findings:

MEDICO-LEGAL CERTIFICATE

x x x

HEEN T - (+) Kiss mark left side of the neck

Genitalia: Old, healed deep hymen laceration at 1, 4, 5, 7, 8 o'clock superficial healed hymenal laceration at 10, 11 o'clock

Vagina admits 2 fingers with ease cervix close uteri small adnexia

[F]ree whitish vaginal discharge

x x x

RESULT: "NEGATIVE" for the presence of spermatozoa

x x x x[18]

She explained that "old, healed laceration" means that the lacerations were not fresh and that there was no bleeding. According to her, these lacerations could have been caused by previous sexual intercourse or by anything placed on the vagina.[19]

On cross examination, Dr. De Luna added that she did not find any other injuries sustained by AAA other than the lacerations on her vagina.

The defense presented a different version of events.

Froilan testified that AAA was his sweetheart and he did not know why she would charge him with rape.[20] He narrated that at around 11:00 a.m. of December 8, 1999, he and the appellant went near the river to cut bamboo. Afterwards, they went to Tony's place where, together with Tony, they stayed under a mango tree, conversing and drinking a bottle of Tanduay.[21] At around 1:00 p.m., Ardee Bauzon (Ardee) and AAA arrived. Ardee told him that AAA was looking for him. He noticed that AAA was drunk when she (AAA) sat beside him. Tony's father subsequently arrived and told them to stop drinking. Then they escorted AAA outside Tony's compound and went on their separate ways.[22]

He also testified that he was at home chopping wood at around 4:00 p.m. of the next day (December 9, 1999) when AAA arrived at his place. He brought her inside the house, where AAA told him that she just attended a birthday celebration in Tuliao. Soon after, he told AAA to go home because her grandmother might scold her; he then escorted her outside, asking Ardee to accompany her home.[23]

He narrated further that AAA again went to his house on December 10, 1999 carrying her clothes. She asked if she could stay with him. She also told him that something happened to her in Tuliao, and threatened to implicate him if he refused to accept her. BBB afterwards came to fetch AAA.[24]

Tony testified that the appellant and Froilan came to his house in the morning of December 8, 1999. They brought with them a bottle of Tanduay. He led them to a mango tree inside his compound where they had a "drinking spree." [25] Afterwards, Ardee and AAA arrived; Ardee informed Froilan that AAA, his girlfriend, had been looking for him. AAA sat beside Froilan and they talked. At around 4:00 p.m., they escorted AAA out of the compound going towards the barangay hall, and they then all parted ways.[26]

On cross examination, Tony stated that he already knew that AAA was the girlfriend of Froilan four (4) months before December 8, 1999. He recalled that when AAA arrived, she was already drunk.[27] He added that his two-storey house has two (2) rooms, both of which have neither doors nor beds.[28] He also claimed that he and the appellant did not talk to AAA while they were drinking. On re-direct, he stated that there were about three (3) other houses near his house.[29] He added that he did not ask AAA to take a rest in his house because his parents might scold him if he brought a woman inside the house.

Jovito, a teacher at the Daniel Maramba National High School, testified that he was AAA's class adviser,[30] and that AAA had dropped out of school as of October 29, 1999. He also brought with him AAA's attendance sheet and confirmed that she (AAA) has no attendance record for the month of December 1999.[31] He also confirmed that the last scheduled subject on December 8, 1999 was Filipino II, and that AAA was currently enrolled and was repeating second year high school because she had dropped out the previous year.[32]

On cross examination, he reiterated that AAA attended classes only from June 1999 until October 29, 1999, but clarified that it was only in the month of June when AAA had a perfect attendance.[33]

The appellant, for his part, testified that at around 11:00 a.m. of December 8, 1999, he and Froilan were at Barangay Ventinilla, Santa Barbara and were cutting bamboo near the river. As they were finishing this task, his best friend Edwin Benito came and gave them a bottle of Tanduay. He and Froilan then proceeded to Tony's house where they saw him under a mango tree; they invited him to have a drink with them.[34]

The appellant further narrated that Ardee and AAA arrived at around 1:00 p.m., and Ardee informed Froilan that AAA was looking for him. Froilan approached AAA and they talked. They finished drinking at around 4:00 p.m. when Tony's father warned them that AAA's parents might already be looking for her. Thereafter, they escorted AAA out of the compound; all of them then went home. He was surprised to learn the next day that AAA had accused him of rape.[35]

On cross examination, the appellant denied raping AAA and insisted that he met her for the first time only on December 8, 1999.[36] He also recalled that on December 8, 1999 when AAA arrived, he assumed that she was drunk because she had reddish eyes and he overheard her saying that she came from a "drinking spree" in Barangay Tuliao.[37]

Trinidad, Tony's mother, recalled that on December 8, 1999, she saw AAA drinking Tanduay together with her son, the appellant, and Froilan under the mango tree located at the back of their house.[38] According to her, she never saw AAA inside their house.[39]

On cross examination, she maintained that on December 8, 1999 from 1-4 p.m., she was inside their house together with her husband, their children and grandchildren.[40] She further narrated that during the drinking spree, she was inside one of the rooms fixing clothes and insisted that she never saw anyone enter the other room. She emphasized that both rooms have no beds or doors.[41]

The RTC's decision of February 12, 2001 convicted the appellant of the crime of rape, but acquitted his two (2) co-accused. The dispositive portion of the trial court's decision reads:

WHEREFORE, the Court finds accused Joseph Fabito guilty beyond reasonable doubt for the felony of RAPE defined and punishable under Article 266-A of the Revised Penal Code and in conformity with law, he is hereby sentenced to suffer prison term of RECLUSION PERPETUA and to pay the offended party the following amounts to wit:

- Civil Indemnity in the amount of P50,000.00;
- Moral Damages in the amount of P50,000.00;
- And cost.

Further, the Court orders his immediate commitment to the National Penitentiary without unnecessary delay.

With respect to accused Froilan Paraan and Tony Bauzon for failure to prove their GUILT beyond reasonable doubt they are ordered ACQUITTED.

The BJMP Dagupan City is ordered to release said accused (Paraan and Bauzon) from detention in so far as the above case is concerned.

SO ORDERED.[42] [Emphasis in the original]

The appellant directly appealed his conviction to this Court in view of the penalty of reclusion perpetua that the RTC imposed. We referred the case to the CA for intermediate review[43] pursuant to our ruling in *People v.*

Mateo.[44]

The CA affirmed the RTC decision but increased the amounts of civil indemnity and moral damages to P75,000.00, respectively.[45] According to the CA, the fact that the victim was brought up the American way and was not the "typical innocent barrio lass" does not discount the possibility of rape because even a woman of loose morals could still be the victim of rape. Moreover, the essence of rape is the carnal knowledge of a woman without her consent.[46]

The CA also held that AAA sufficiently explained the inconsistencies in her sworn statement of December 13, 1999 and her testimony in court. Even granting that inconsistencies existed, an errorless recollection of a harrowing experience cannot be expected of a young victim especially when she was recounting the details of an occurrence as humiliating and as painful as rape. In addition, AAA was consistent and never faltered in her testimony when asked during the direct and cross examinations how she had been raped. She also described in every detail how the appellant raped her.[47]

The CA added that the defense merely offered the appellant's outright denial and alibi. The appellate court then cited the well-settled rule that a categorical and positive identification of the accused, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial. According to the CA, the appellant did not present satisfactory evidence that it was physically impossible for him to be the scene of the crime at the time of its commission; he never denied the fact that he was at Tony's house in the afternoon of December 8, 1999 drinking with his co-accused when AAA arrived.

Finally, the CA invoked the consistent holding that when a victim testifies that she has been raped and her testimony is credible, such testimony may be the sole basis of conviction.[48]

In his brief,[49] the appellant contends that the RTC erred in finding him guilty of the crime of rape despite the insufficiency of the prosecution's evidence; and in giving full faith and credence to the testimony of AAA. He maintains that AAA was well trained and excelled in the art of coquetry, and claims that the court a quo blindly convicted him by believing her every statement.

The appellant further argues that AAA's conduct before and after the alleged rape renders her testimony unbelievable. First, she admitted that she had her first sexual intercourse at an early age of 8 or 9 years old. Second, she admitted having consumed liquor before proceeding to the house of Tony, causing her to be flirtatious. Finally, she gave conflicting statements in her sworn statement and in her court testimony. [50]

THE COURT'S RULING

We find that the prosecution failed to prove the appellant's guilt beyond reasonable doubt and therefore ACQUIT him of the crime charged.

AAA's Credibility

The review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of evidence.[51] In the case of rape, a review begins with the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the accused, although innocent, to disprove his guilt. These realities compel us to approach with great caution and to scrutinize the statements of a victim on whose sole testimony conviction or acquittal depends.[52]

An examination of the appealed decision shows that the appellant's conviction was based largely on the uncorroborated testimony of the victim, AAA. This is not at all unusual in rape cases, as the participants are usually the only parties at the rape scene and only they can testify on what happened. But as we stated above, the testimony of a sole witness to the alleged rape must be closely examined when it is the pivotal point on which conviction or acquittal will turn. We should be ready to accept it if the victim's sincerity is above reproach, and at the same time reject it if indicators point to her doubtful credibility. In the present case, we opt for the latter option as various circumstances show that we cannot wholly believe the victim's testimony.[53]

First, the medical findings of Dr. De Luna, the examining physician, does not fully support AAA's claim that she was raped. Effectively, Dr. De Luna testified that the victim was no longer a virgin and has had past sexual experience. She could not, however, conclude whether the healed vaginal lacerations were the result of forced or consensual sexual congress.

ATTY. ELMER M. SUROT:

Q: Madam Witness, in your expert opinion, based on this particular findings, the lacerations sustained, will you be in a position to tell us whether this particular laceration is consistent with voluntary copulation or there was violence?

PROSECUTOR MARLON MENESES:

Objection, your Honor, that area has already been touched.

COURT:

Witness may answer.

DR. DE LUNA:

A: Because the laceration is old, I also placed there that the vagina is very lax and admits two (2) fingers so I could not tell exactly whether there was voluntary consent or there is forcible penetration, sir.

COURT:

Especially so when the victim have had previous sexual intercourse?

A: Yes, your Honor.[54] [Emphasis supplied]

Thus, the healed lacerations are undisputed but they can only prove that AAA has had prior sexual experience. Lacking is the specific proof that sexual intercourse occurred on or about the time she was alleged to have been raped by the appellant.

Second, AAA's declaration that her boyfriend, Froilan, watched her being raped by the appellant strikes us as highly unlikely and contrary to human nature and experience. This impression is further reinforced by her statement that on December 9, 1999, or a day after the alleged rape, she went to Froilan's house to attend the birthday party of his (Froilan's) brother. To directly quote from the records:

ATTY. ELMER M. SUROT:

Q: Madam Witness, considering that as you have said or claimed you were allegedly raped by Joseph Fabito, why is it that you still attended your boyfriend's brother [sic] on December 9, 1999?

PROSECUTOR MARLON MENESES:

Vague, your Honor.

COURT:

Reform.

ATTY. SUROT:

Madam Witness, I am showing you back this sworn statement particularly Question No. 12 "Q - How about this Ardy Bauzon, what is his participation?" "A - That is a separate incident and that was transpired [sic] on the following day December 9, 1999 at around 6:00 o'clock in the evening wherein I attended the birthday party of Froilan's brother also in Barangay Ventinilla, Sta. Barbara, Pangasinan together with my friends (ladies) but later on they already left me behind and I'm talking to my boyfriend Froilan and that he also give [sic] me orange juice which he ordered me to consume all of it. After consuming, my boyfriend Froilan ordered Ardy Bauzon to accompany me in going to my grandmother's house also in Brgy. Ventinilla, Sta. Barbara, but while on half-way I was down on my knees into the ground and I already felt dizzy, and as Ardy helped me stand, he brought me at the house of his Lola also in Brgy. Ventinilla, Sta. Barbara, Pangasinan." Do you confirm that?

x x x

AAA:

A: Yes, sir.

Q: So, it is clear that despite the alleged rape which happened to you on December 8, 1999, you still went back to your boyfriend Froilan's house?

A: Yes, sir.

x x x[55] [Emphasis ours]

The idea of the rape victim going to a birthday party the house of her boyfriend - who had watched her (AAA) being ravaged - a day after she was raped baffles us no end; the party was at house of one who participated in and who was initially accused of the rap and ordinarily was an occasion an aggrieved rape victim would not attend. Her attendance in our view, was a conduct, done immediately after the rape, that is directly inconsistent with the natural reaction of an outraged woman who had been robbed of her honor.[56] Time and again, this Court has emphasized that a woman's conduct immediately after an alleged sexual assault is critically important in gauging the truth of her accusations. The conduct must coincide with logic and experience, taking into account the experience she just went through. While it may be true that AAA cannot be expected to act in any particular manner and that people may react differently to a given situation, still, this Court finds it hard to believe that she would act as if nothing untoward happened so soon after an allegedly harrowing incident.[57]

Third, AAA's statements that that (a) she attended school on December 8, 1999; (b) she went to the house of Tony to look for her boyfriend after her class was dismissed at 4:00 p.m.; and (c) she was wearing her school uniform when she was raped, were contradicted by the evidence on record.

AAA's very own class adviser, Jovito, testified that she (AAA) had dropped out of school as of October 29, 1999.

ATTY. ELMER M. SUROT:

Q: Now, Mr. Witness do you know one by the name of AAA?

JOVITO Q. IDOS

A: Yes, sir. I am the adviser of AAA.

Q: Now, have you received the subpoena issued by the Court for you to bring the attendance record of AAA?

A: I received the subpoena last October 11, 2000, sir.

Q: Did you bring that document with you?

A: Yes, sir. [Witness bringing out school register and pointing the same to the name of student AAA]

Q: With respect to this document, in what school year is this covered?

A: For the school year 1999-2000, sir.

Q: Now, Mr. Witness, using this school register, could you please inform the Honorable Court regarding the attendance of AAA on the month of December 1999?

A: She has no attendance already in the month of December, sir.

COURT:

Q: What do you mean by no attendance in the month of December?

A: She was already dropped, sir.

ATTY. ELMER M. SUROT:

Q: You said that AAA is already drop [sic] in that particular document, will you please show on what date was she considered already as drop [sic]?

JOVITO Q. IDOS

A: She was dropped as early as October 29, 1999, sir.

COURT:

Q: What was the last attendance of AAA?

A: October 29, 1999, sir.

x x x[58] [Emphasis and italics supplied]

Jovito's testimony is corroborated by AAA's attendance records from September to December 1999 (Exhibits "6"[59] and "7"[60]), which disclosed that the last time she attended school was on October 29, 1999; as well as a certification (Exh "8")[61] dated September 22, 2000 signed by the school principal stating that AAA was dropped from the list of students for the school year 1999-2000 on October 29, 1999. The authenticity and validity of these documents remained un rebutted throughout the trial and were never controverted nor assailed by the prosecution.

Significantly, no logical reason exists for witness Jovito to testify falsely; in fact, the prosecution did not discredit nor attribute any ill motive against him.

Fourth, AAA's credibility is further eroded by inconsistencies between her sworn statement, on the one hand, and her court testimony, on the other hand.[62]

In her sworn statement, she stated that she felt dizzy on arrival at Tony's house because she "already drank shots of liquor;" thereafter she accepted Tony's offer to sleep upstairs, thus:

x x x

5. Q - : Will you relate to me in brief how this incident happened?

A - : This is the story, sir. I've just dismissed [sic] from the school last December 8, 1999 at around 4:00 o'clock in the afternoon when I decided to visit my boyfriend Froilan Paraan in Brgy. Ventinilla, Sta. Barbara, Pangasinan wherein upon arrival thereat, at the house of one Tony alyas Enciong Bauzon, my boyfriend together with another named Joseph Fabito were then having a drinking spree. While there I told them that I felt dizzy because I already drank shots of liquor and that this Enciong Bauzon offered me to just take a rest upstairs of the house.

6. Q - : Did you accepted [sic] his offer?

A - : Yes, sir.

x x x[63] [Emphasis supplied]

However, in her testimony dated September 18, 2000, she stated that she only became dizzy and fell asleep after she consumed the coke offered by Froilan. When she regained consciousness, she was already lying on a bed in a room and the appellant was already on top of her. When asked to explain the inconsistencies between her testimony in court and her affidavit, she simply stated that she forgot to state in her affidavit that she was offered a glass of coke by her boyfriend. She also added that she no longer could remember who led or carried her upstairs.

In her sworn statement, she also declared that she did not bother to shout or ask for help because she was scared that the three (3) accused might kill her; she reiterated this matter in her court testimony of September 18, 2000. However, upon further cross examination, she stated that she asked Froilan to help her, thus:

ATTY. ELMER M. SUROT

Q: You were already awake when you turned your body?

[AAA]

A: Yes, sir.

Q: Did you shout at him?

A: I told him do not do this to me, I do not like this but he kept on doing it, sir.

Q: Now, did you not seek the help of your boyfriend taking into consideration that he was present at that time?

A: He does not want to help me, sir.

Q: But did you try to seek his help?

A: Yes, sir.

Q: In what way?

A: Help me, help me but he did not help me, sir.[64]

She likewise stated in her sworn statement that the appellant and Tony accompanied her to the public market after the rape incident; thereafter, the three (3) of them parted ways. However, in her testimony of September 18, 2000, she testified that Froilan and the appellant went downstairs after the rape leaving her and Tony in the room; thereafter, she got her panty from the floor, wore it, and then left. To directly quote her testimony:

COURT:

Q: How many times did Joseph Fabito insert his penis?

[AAA]:

A: Only once, sir.

PROSECUTOR MARLON MENESES:

Q: And so what happened next?

A: Froilan Paraan pulled Joseph Fabito downstairs.

x x x

Q: So you claimed that Froilan Paraan and Joseph Fabito went down afterwards, how about Tony Bauzon?

A: He was upstairs, he was with me upstairs, he did not do anything to me, sir.

Q: What did Tony Bauzon do to you when you were left alone with him?

A: Nothing, sir.

Q: And so what happened next after Joseph Fabito and Froilan Paraan went down?

A: I got my panty from the floor, I wore it then I left, sir.[65]

In her subsequent testimony dated September 25, 2000, AAA again contradicted herself and declared that no one was in the room when she left. She testified:

ATTY. ELMER M. SUROT:

Q: Now, Madam Witness, after the alleged rape, who accompanied you in going downstairs?

[AAA]:

A: Nobody, sir.

Q: At the time you left the room where you were allegedly raped, all of the accused were still there and you left them inside the room?

A: No, sir.

Q: At the time you left the room, who were still there?

A: Nobody, sir.[66]

While rape victims are not required or expected to remember all the details of their harrowing experience, the inconsistencies drawn from AAA's sworn statement and her declarations during trial cannot be considered as minor inconsistencies that do not affect her credibility.[67] These discrepancies are not isolated nor are they on minor details of her tale of rape. Her contradictory statements are on important details and cannot but seriously impair the probative value and cast serious doubt on the integrity of her testimony.[68]

Finally, there were facts elicited during trial that give us reasons not to unquestionably accept AAA's testimony. One of these is her testimony that she woke up lying on a bed inside a room at the second floor of Tony's house after consuming the coke that Froilan offered. We have to reject this testimony because the unrebutted testimony on record is that both rooms in the second floor of Tony's house had neither beds nor doors. Trinidad, Tony's mother, testified to this physical fact, confirming Tony's own testimony that there was no bed in the room where the alleged rape took place. AAA's story, on the other hand, remained unsubstantiated.

We also find it unlikely that when AAA returned home after the rape incident, BBB did not observe anything

unusual about her that could have immediately aroused her suspicion that something untoward had happened to her.[69] Surprisingly, AAA even told BBB that she came from a Bible study.

Taking AAA's testimony in its totality, we find ourselves unable to accord it the same credibility extended to it by the lower courts. For evidence to be believed, it must not only come from the mouth of a credible witness, but must be credible in itself; it must be one that reason and the common experience and observation of mankind can approve as probable under the circumstances. These are the same standards to determine its value in weighing it in the scale of judicial acceptance.[70]

Denial as a defense

Generally, denial as a defense is weak and is looked upon with disfavor. Weakness of the defense, however, cannot be the basis for conviction. The primary burden still lies with the prosecution whose evidence must stand or fall on its own weight and who must establish by proof beyond reasonable doubt the guilt of the accused before there can be conviction. Under this rule, the defense of denial finds its special place and assumes primacy when the case for the prosecution is at the margin of sufficiency in establishing proof beyond reasonable doubt; a validly established denial then becomes sufficient to defeat the prosecution's case and tilt the outcome in favor of the defense.

In our view, the present case is characterized by a double plus in favor of the defense.

A first plus factor is the weakness in the prosecution's case. The prosecution almost solely relied on the testimony of AAA. As discussed above, her testimony is replete with inconsistencies and we cannot accept it, by itself, as sufficient proof beyond reasonable doubt that would support a conviction. It could have been helped by the corroborative testimony of Ardee who appeared to have been present in the "drinking spree" that preceded the alleged rape, but who, inexplicably, was never called by either party. There are, of course, other prosecution witnesses but they did not contribute in any significant way in establishing the level of proof that the law requires. In fact, we read the medical evidence as an indicator of how ambivalent the prosecution's case is. Thus, the prosecution's evidence, by itself, is sufficient to lead to a verdict of acquittal on grounds of reasonable doubt.

A second plus for the defense is the evidence of denial that it adduced. The evidence was straight forward and needed no elaborate analysis to understand. Three boys were enjoying life on their own, conversing and drinking under the shade of a mango tree, when two girls came and joined them. One girl has had several drinks before she came and indicated signs of being tipsy. This much was undisputed. At the time they were drinking, the family of the owner of the house were at the premises, and the father even asked the group to break up after some time. Thus, the group did and that would have ended that happy afternoon except for the accusation of rape that subsequently followed. Under these facts, it is not hard to resolve, given the shaky contrary tale of the prosecution, that a simple denial is all that is needed for a verdict of acquittal on grounds of reasonable doubt. We thus confirm once more what we said in *People v. Muleta*: [71]

In our jurisdiction accusation is not synonymous with guilt. The freedom of the accused is forfeit[ed] only if the requisite quantum of proof necessary for conviction be in existence. This, of course, requires the most careful scrutiny of the evidence for the State, both oral and documentary, independent of whatever defense is offered by the accused. Every circumstance favoring the accused's innocence must be duly taken into account. The proof against the accused must survive the test of reason. Strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the accused could be laid the responsibility for the offense charged. If the prosecution fails to discharge the burden, then it is not only the accused's right to be freed; it is, even more, the court's constitutional duty to acquit him.[72]

WHEREFORE, under these premises, we ACQUIT the appellant Joseph Fabito on grounds of reasonable doubt.

We consequently REVERSE and SET ASIDE the June 29, 2007 decision of the Court of Appeals in CA-G.R. CR-HC No. 00006 that affirmed with modification the judgment of conviction of the Regional Trial Court, Branch 43, Dagupan City.

Unless confined for any other lawful cause, Joseph Fabito is hereby immediately ordered RELEASED from detention. The Director of the Bureau of Corrections is DIRECTED to IMPLEMENT this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justice Bienvenido L. Reyes and Associate Justice Aurora Santiago-Lagman; rollo, pp. 4-15.

[2] Penned by Judge Silverio Q. Castillo; CA rollo, pp. 19-33.

[3] This appeal is pursuant to our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein this Court has 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.

[4] CA rollo, p. 7.

[5] TSN, September 18, 2000, pp. 4-7.

[6] *Id.*, pp. 10-14.

[7] *Id.*, pp. 14-19.

[8] *Id.*, p. 18.

[9] *Id.*, pp. 21-22.

[10] *Id.*, pp. 40-42.

[11] TSN, September 25, 2000, pp. 6-9.

[12] *Id.*, pp. 21-22.

[13] *Id.*, pp. 24-25.

[14] *Id.* Pp. 28-30.

[15] TSN, September 25, 2000, p. 34.

[16] *Id.*, pp. 34-36.

[17] *Id.*, p. 44.

[18] Records, p. 5.

[19] TSN, September 29, 2000, p. 10.

[20] TSN, October 4, 2000, p. 3.

- [21] Id., pp. 4-6.
- [22] Id., pp. 6-8.
- [23] Id., pp. 8-9.
- [24] Id., pp. 9-11.
- [25] TSN, October 16, 2000, pp. 3-4.
- [26] Id., pp. 4-6.
- [27] Id., p. 13.
- [28] Id., pp. 14-15.
- [29] Id., p. 19.
- [30] TSN, October 19, 2000, p. 4.
- [31] Id., pp. 5-7.
- [32] Id., pp. 7-10.
- [33] Id., p. 11.
- [34] TSN, October 26, 2000, pp. 3-5.
- [35] Id., pp. 6-8.
- [36] Id., pp. 9-11.
- [37] Id., pp. 14-15.
- [38] TSN, November 6, 2000, pp. 4-5.
- [39] Id., p. 5.
- [40] Id., pp. 7-8.
- [41] Id., p. 9.
- [42] CA rollo, pp. 32-33.
- [43] Resolution dated August 30, 2004.
- [44] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [45] Rollo, pp. 4-15.
- [46] Id., pp. 9-10.
- [47] Id., pp. 10-12.
- [48] Id., pp. 12-13.
- [49] CA rollo, pp. 50-63.
- [50] Id.
- [51] See *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005, 463 SCRA 652.

- [52] See *People v. Fernandez*, G.R. Nos. 139341-45, July 25, 2002, 385 SCRA 224,232.
- [53] See *People v. Domogoy*, G.R. No. 116738, March 22, 1999, 305 SCRA 75.
- [54] TSN, September 29, 2000, pp. 15-16.
- [55] TSN, September 25, 2000, pp. 21-22.
- [56] *People v. Subido*, G.R. No. 115004, February 5, 1996, 253 SCRA 196.
- [57] See *People v. Laurente*, G.R. No. 129594, March 7, 2001, 353 SCRA 765, 776.
- [58] TSN, October 19, 2000, pp. 3-5.
- [59] Records, p. 121.
- [60] *Id.*, p. 122.
- [61] *Id.*, p. 123.
- [62] *People v. Laurente*, G.R. No. 129594, March 7, 2001, 353 SCRA 765.
- [63] Records, p. 2.
- [64] TSN, September 25, 2000, p. 12.
- [65] TSN, September 18, 2000, pp. 17-19.
- [66] TSN, September 25, 2000, p. 19.
- [67] See *People v. Perez*, G.R. No. 172875, August 15, 2007.
- [68] *People v. Torion*, G.R. No. 120469, May 18, 1999, 307 SCRA 169.
- [69] See *People v. Salazar*, G.R. No. 122479, December 4, 2000, 346 SCRA 735.
- [70] See *People v. San Juan*, G.R. No. 130969, February 29, 2000, 326 SCRA 786.
- [71] G.R. No. 130189, June 25, 1999, 309 SCRA 148, citing *People v. Mejia*, 275 SCRA 127 (1997).
- [72] *Id.*

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