

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR V. LUTANEZ ALIAS "JUN PLEMENTERO";
DEFENDANT-APPELLANT.**

G.R. No. 78854. December 21, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal interposed by the accused Salvador V. Lutañez alias "Jun Plementero" from the judgment* rendered in Criminal Case No. 717 of the Regional Trial Court of Aurora, finding him guilty of the crime of Forcible Abduction with Rape and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the victim and her parents in the amount of P12,000.00, and to pay the costs.

The record of the case shows that at about 7:00 o'clock in the evening of 12 March 1980, while Estelita Porbido and her children named Rosemarie, Danilo, Zenaida, Inocencia, Ricardo, and Melogine, all surnamed Porbido, were in their house in sitio Balitwak, Barangay San Isidro, San Luis, Aurora,[1] she heard a man downstairs ordering in this manner: "all the women come out, the men will remain. If you will not go out we will kill you all." [2] When nobody made a move to go down, the muzzle of a gun was poked through the wall of the house made of coconut leaf shingles. Soon thereafter, a man whom they later identified as the herein appellant, Salvador V. Lutañez alias "Jun Plementero", pushed open the makeshift door of the house and put his head inside. Upon seeing Zenaida, the 15-year old daughter of Estelita, the appellant beckoned the girl to him.[3] When Zenaida was near him, the appellant grabbed her and stepped down. Then, he ordered Estelita to give the flashlight she was holding.[4]

With a gun tucked in his waist and another slung over his shoulder, the appellant held the right hand of Zenaida and brought her to the deserted hut of Ka Eric Isorena, about one-half kilometer away, where the appellant made her lie down and removed her panty. Zenaida struggled but she could not overcome the appellant. She also tried to shout, but the appellant covered her mouth. The appellant then pulled her legs apart and inserted his organ into her private parts. That was the first time she had sexual intercourse with a man. The appellant raped her twice that night.[5]

Meanwhile, after the appellant had left with Zenaida, Danilo Porbido ran to the house of Espiridion Isorena to seek help. Isorena then accompanied Danilo to the barangay captain, one Bienvenido Caballes who, in turn, reported the incident to the PC. On the return of Isorena and Danilo, they met Adriano Villaruz, a barangay tanod, whom they invited to accompany them.[6]

After satisfying his lust, the appellant brought Zenaida back to her mother. Upon reaching the house, the appellant demanded that the mother of the child come down. But Estelita pleaded with the appellant.[7] At that instant, Danilo Porbido and his companions arrived. Villaruz, the barangay tanod, directed his flashlight at the appellant who ran away. They chased him, but they were unable to overtake him. Soon, PC soldiers and the barangay captain arrived. They looked around the house and after about twenty minutes they left, bringing with them

Estelita Porbido and her children, who passed the night in the house of Isorena.[8]

The following day, 13 March 1980, Zenaida was examined by a physician at the Aurora Memorial Hospital. His findings were as follows:[9]

"General Survey - Fairly developed, fairly nourished.

"Lesions: - Head and Neck - no apparent physical injuries

- Body - no apparent physical injuries

- Extremities - no apparent physical injuries

- Breast - small, round

- Nipple - small, brownish

- Pubic hair - few, black

- labia majora

- labia minora - slightly coaptated

- Vaginal canal - tight, admit index finger easily test tube ½" diameter, admit without resistance

- Hymen - lacerated 5 o'clock and 7 o'clock face of the clock

Does not bleed on touch

Conclusion: Virginity lost"

Thereafter, or on 5 June 1980, Zenaida Porbido, assisted by her mother Estelita Porbido, filed a complaint against the appellant before the Court of First Instance of Aurora, docketed therein as Criminal Case No. 717, charging him with the crime of Forcible Abduction with Rape committed as follows:

"That on or about the 12th day of March, 1980, in the Sitio of Balitwak, Barangay San Isidro, Municipality of San Luis, Province of Aurora, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, threats and intimidation, to wit: by pointing a gun at her mother and threatening to kill her and her entire family if she should report to the authorities concerned, did then and there willfully, unlawfully, feloniously and forcibly pull and abduct the said complainant from her own house and brought her to distant hut where the said accused, with the use of force, threats and intimidation, had carnal knowledge of her against her will.

That the accused committed the above offenses with the following aggravating circumstances:

1. It was committed at night time purposely sought, and which facilitated the commission of the aforesaid crimes;
2. The abduction was committed by the accused in the dwelling of the offended party who had not given any provocation;
3. The offenses were committed with evident premeditation;
4. The crime of rape was committed in an inhabited (sic) place."[10]

When arraigned, the accused, assisted by counsel, pleaded not guilty to the commission of the offense.[11] At the stand, he denied that he abducted and then raped the complainant Zenaida Porbido on the night of 12 March 1980. He claimed that he was in Bongabon, Nueva Ecija on the said day.[12] His claim was corroborated by Mario

Danipog and Jun Collado who both testified that the accused and other residents of Sinipit, Bongabon, Nueva Ecija, attended the birthday party of Narciso Corpus held at the Banquerohan River, Palayan City, where they stayed up to 3:00 o'clock in the afternoon, after which they went to the house of the accused where they had a drinking spree until midnight of the said day.[13]

But the trial court did not give credence to the appellant's alibi since he was positively identified by prosecution witnesses who had no motive to testify falsely against him and rendered judgment in the case, sentencing the accused, under the charge, to suffer the penalty aforesaid.[14]

Whereupon, the accused instituted the present appeal. In support thereof, he claims that the trial court erred: (1) in giving credence to the testimonies of prosecution witnesses in readily identifying the accused whom they all allegedly saw for a fleeting moment on the night of 12 March 1980; (2) in concluding that complaining witness Zenaida Porbido was abducted and raped by accused-appellant on the night of 12 March 1980; (3) in convicting the accused-appellant solely on the question of whether his defense of alibi is available and worthy, and not on the strength of the corroborated and firmly established alibi of the accused-appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

We find no merit in the appeal. The issues raised by the appellant involve the credibility of witnesses and we have repeatedly upheld the well-established rule that conclusions and findings of fact of the trial court are entitled to great weight on appeal because the trial court is in a better position to observe the demeanor and credibility of the witnesses while testifying. While there may be some exceptions to this rule,[15] we find that the present case is not within such exceptions.

The testimony of the complainant on how she was forcibly taken from her home and brought to a deserted hut, about half a kilometer away, and then raped twice, is credible and we find nothing unusual or improbable in it. Her testimony appears to be straightforward and consistent and she had no motive to testify falsely against the appellant. This Court has consistently held that the testimony of a rape victim as to who abused her is credible where she had no motive to testify falsely against the accused.[16] We need not also belabor the rule that no Filipino girl would publicly admit that she had been ravished unless this is the truth for her natural instinct is to protect her honor and future.[17]

We can not give credence to the appellant's claim that he was somewhere else at the time of the commission of the crime because the appellant was positively identified as the culprit by prosecution witnesses who had no ulterior motive to impute to him the commission of the crime.[18] In this case, the appellant was identified by Zenaida Porbido, Estelita Porbido, and Danilo Porbido by his pock-marked face and recognition was easy because the house was sufficiently illuminated.

In this connection, the appellant contends that the testimonies of said witnesses should not be given credence because such testimonies identifying him by his pock-marked face, appear to be too identical and of the same pattern as to clearly betray their being rehearsed and concocted; and that the said witnesses could not have identified him because they saw the culprit for the first time on a fleeting moment and at night time.

It is not true, however, that the appellant was seen only for a fleeting moment so that it could not be possible for the said witnesses to identify him as the culprit. It should be noted that Zenaida Porbido, the victim, had spent some time with him, having been abducted and then raped by the appellant. The fact that the prosecution witnesses were one in identifying the appellant by his pock-marked face, would not also justify a conclusion that their testimonies were rehearsed or concocted. As we have pointed out, the prosecution witnesses had no evil motive to impute the commission of the crime to the appellant; and besides, the crime was reported to the police authorities immediately after the appellant had left with his victim, giving no time for these witnesses to concoct a

story against the accused.

Moreover, the identification of the appellant was not based solely on his physical defect, but by his voice as well, when the appellant told the women in the house to come out; and when he told the victim's mother, Estelita Porbido to come down, after he returned to the house with Zenaida.

The appellant further claims that the testimony of the prosecution witnesses is incredible because they contradicted each other as to the gun used by the appellant, in that Estelita Porbido declared that the gun poked into the wall of their house was about 98 centimeters long, while Danilo Porbido stated that the gun of the appellant was about 29 centimeters in length, and even as Zenaida Porbido testified that the appellant had two (2) firearms – one tucked into his waistband and another slung over his shoulder. This alleged contradiction, if it be so, refers however to an insignificant detail which would not destroy the credibility of the said witnesses.

The Court has ruled that "it is an accepted rule that the credibility of a rape victim is not destroyed by some inconsistencies in her testimony more especially if she is testifying on minor matters. In fact, such inconsistencies are to be expected if a witness is unrehearsed and testifies spontaneously. In the case of *People vs. Gozum* (135 SCRA 295), We held that minor inconsistencies in the testimony of a complainant, a 16-year old girl not accustomed to a public trial, do not affect her credibility." [19]

The appellant contends that the complainant could not have been raped on the night of 12 March 1980, as claimed by her, because of the testimony of the physician who examined her the following day that the lacerations on the complainant's vagina were no longer fresh and bleeding and in view of the absence of other physical injuries on the complainant.

The fact, however, that the lacerations on the complainant's vagina were no longer bleeding when she was examined the day after the commission of the crime charged does not preclude a finding that she was raped in the manner testified to by her. In fact, the same medical examiner testified that "it is possible that she lost her virginity on the day before she was examined." [20] The absence of other physical injuries on the complainant's body does not also negate the complainant's testimony that she was raped. For rape to be committed, it is not necessary that there be marks of physical violence on the victim's body. [21]

The trial court, therefore, did not commit any error in finding the appellant guilty of the crime for which he was charged. The indemnity to be paid to the complainant, however, should be increased to P30,000.00, in line with recent decisions of the Court.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the modification that the indemnity to be paid to the complainant is increased to P30,000.00. With costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Ernesto P. Valencia.

[1] tsn of January 28, 1982, pp. 2-5, 10; tsn of February 12, 1982, pp. 8-9

[2] tsn of January 28, 1982, pp. 10-11

[3] Id., pp. 3-4, 7-8

[4] Id., pp. 11-12

- [5] Id., pp. 4-5, 8, 11, 18
- [6] tsn of February 12, 1982, pp. 3, 9-10, 12-13
- [7] tsn of January 28, 1982, pp. 12-15
- [8] tsn of January 28, 1982, pp. 5-6, tsn of February 12, 1982, pp. 3-4, 13-14
- [9] Exhibit A
- [10] Original Record, pp. 1-2
- [11] Id., p. 14
- [12] tsn of July 21, 1982, pp. 2-3
- [13] tsn of June 16, 1982, pp. 2-17
- [14] Original Record, pp. 123-128
- [15] Teodoro vs. Court of Appeals, G.R. No. L-31471, November 12, 1987, 155 SCRA 547
- [16] People vs. Nunag, G.R. No. 54445, May 12, 1989, 173 SCRA 274
- [17] People vs. Abonada, G.R. No. 50041, January 27, 1989, 169 SCRA 530
- [18] tsn of July 21, 1982, p. 4
- [19] People vs. Jamandron, G.R. Nos. 80226-27, October 13, 1989, 178 SCRA 474, 479
- [20] tsn of March 31, 1982, p. 3
- [21] People vs. Viray, G.R. No. L-41085, August 8, 1988, 164 SCRA 135, 141, and cases cited

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