

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRISTITUTO ALEGADO Y BULLO @”TOTOY,”
ACCUSED-APPELLANT.**

G.R. No. 80532. November 08, 1993

Ponente: NOCON, J.

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NOCON, J.:

Rape is a crime which is not normally committed in the presence of witnesses, hence, courts merely rely on the credibility of the complainant's testimony as weighed against the credibility of the accused.[1] Understandably, accused-appellant zeroes in on the alleged inconsistencies in the rape victim's testimony to extricate himself from criminal liability. Denying any such inconsistencies, the People point out to the stark-naked fact that the accused-appellant hid for fifteen (15) years right after the rape to elude arrest. Yielding to the Court's constitutionally derived power to review all criminal cases in which the penalty of reclusion perpetua is imposed,[2] accused-appellant leaves his fate to the court's disposition.

As synthesized by the Solicitor General, the facts of the case are as follows:

"On 15 November 1970, at about 7:00 A.M, complainant Alejandra Evangelista was sent by her parents Ignacio Evangelista and Mercedes Evangelista to get her father's gun at her sister's residence in Mangatarem, Pangasinan. She was then sixteen (16) years old and a grade five pupil of Quetegan Elementary School (TSN, January 14, 1986, p. 2).

Complainant walked from their residence in Barangay Calumbuyan, Mangatarem, Pangasinan to Quetegan, Pangasinan and from there she rode on a mini-bus going to Mangatarem town proper. By noon of the same day, complainant went home by taking a jeep to Barangay Quetegan and from there she had to walk, passing Barangays Bulalacao and Linmansangan, to reach Barangay Calumbuyan (Ibid., p. 3).

While walking along the road of Barangay Bulalaco, complainant noticed that she was being followed by two individuals. Complainant identified the first as the appellant but she did not recognize his companion. Soon the appellant and his companion parted ways and the former continued following the complainant.

Moments later, appellant was able to overtake the complainant. Suddenly, appellant held the complainant and thrust a knife at the right side of her neck (Ibid, p. 4). He pulled the complainant toward the bushes about ten (10) meters away from the house of the Diaz Family. Appellant continued to drag her to a forested area about fifteen (15) meters from the road (Ibid, p. 5) where he pushed the complainant to the ground and she fell on her back. Appellant immediately knelt and, with his right hand, he removed his pants. Complainant attempted to stand but she was pushed again by the appellant (TSN, January 27, 1986, p. 4). While the appellant was on his knees, he pulled down the complainant's trousers and her underwear.

Complainant pleaded not to touch her but she was ignored by the appellant. As the complainant continued to resist, appellant slapped her on both sides of her face and then held her shoulders as he started to insert his penis into her vagina. Despite the complainant's resistance, appellant succeeded in inserting his penis.

Appellant continued to satisfy his desire on the complainant while the latter tried to push and kick the appellant until she was able to free herself from the appellant's hold. Complainant immediately stood up and ran toward the road while shouting for help. An old man named Mama Ado dela Cruz responded but by the time he reached the place where the complainant was molested, appellant had already run away (TSN, January 14, 1986, p. 6).

Dela Cruz took the complainant to the house of Barangay Captain of Bulalacao where she waited for her parents. When her parents arrived, they reported the incident to the municipal health officer who accompanied them to San Carlos General Hospital, San Carlos City, Pangasinan (Ibid., p. 7).

The medico-legal examination on the complainant was made by Dr. Juanita Abrenio. Her examination was offered as Exhibit "A" which is reproduced as follows:

This is to certify that ALEJANDRA EVANGELISTA, 16 years old, single and resident of Calumb(o)yan, Mangatarem, Pangasinan, had been examined in this hospital on November 15, 1970, with the following findings:

Physical Examination:

1. Linear abrasions, left thigh;
2. Lacerated wound at the 3rd digit, right foot;

Internal Examination:

1. Hymen showed lacerations at 12:00 o'clock, 3:00 o'clock and ecchymosis at 1:00 o'clock.
2. Vaginal bleeding, slight (menstrual flow).
3. Vaginal introitus admits one (1) finger with difficulty.

Laboratory Examination:

1. Vaginal smear - negative for sperm cells.

The abovementioned injuries will heal with medical attendance and in the absence of complications from three (3) to five (5) days." [3]

Unfortunately, accused-appellant managed to evade arrest for fifteen (15) years. Thus, while Alejandra D. Evangelista, the rape victim, filed the complaint on November 17, 1970 -- two days after the rape [4] -- the Information charging accused-appellant with Rape was filed only on July 2, 1985, [5] after he was arrested a month before the filing of said Information. [6]

On April 2, 1987, the trial court rendered judgment finding accused-appellant guilty as charged, sentenced him to suffer the penalty of reclusion perpetua and to pay the offended party the amount of P30,000.00 as moral damages. [7]

Hence, this appeal where accused-appellant faults the trial court in convicting him despite:

"(1) the contradictory or inconsistent testimony of the complainant Alejandra Evangelista thereby creating doubt x x x (as to) the crime charge(d); and

"(2) failure of the prosecution to prove his guilt beyond reasonable doubt." [8]

Accused-appellant claims that a "deep perusal" of Alejandra's two sworn statements, the first taken during the first stage of the preliminary investigation conducted by the Municipal Judge of Mangatarem, Pangasinan, and the second taken at the office of the 153rd PC detachment at Mangatarem, Pangasinan, "shows glaring irreconcilable

inconsistencies and contradictions that bring doubts and suspicion of (sic) the crimes charge(d)."[9] He asks the Court to consider the following:

- "1. In her direct testimony, complainant Alejandra Evangelista testified that she was walking ahead of the accused and the latter was following her with a companion whom she failed to recognize. (TSN, Jan. 27, 1986, p. 4). Whereas in her sworn statement, she stated that she was following the accused and the latter stopped and waited for her.
2. Continuing her testimony, she declared that accused was able to catch up with her and overtake her. Then accused poked a balisong at her right neck and pulled her to a forested area. (TSN, Ibid, p. 5). In her sworn statement, she stated that when she got near the accused, the latter embraced her, held her and dragged her in the bushes of an isolated area.
3. She testified as well that accused removed first her pant(ies) and accused followed this by removing his pants and went on top of her (Ibid, p. 5). It appears on her affidavit that accused first removed his pants and trousers and then followed her panty and went on top of her.
4. She declared that accused had sexual intercourse with her for about ten (10) minutes (Ibid, p. 5) but in her sworn statement she said that it took him more than two (2) minutes to have sexual act with her.
5. That when accused had sexual intercourse with her, she struggled by kicking him but she was slapped on her right and left face. She was able to extricate herself after accused had successfully molested her. She ran away and shouted for help and she met Aldo dela Cruz who helped her retrieve her pant(ies) at the scene of the crime. She was brought by dela Cruz at the house of Brgy. Captain of Limansangan (Ibid, 6). Compared this to her sworn statement, she stated that after the accused had sexual contact with her for about two minutes, he took hold of her nipple and boxed her several times on her thigh and stomach. She tried to escape and shouted for help and when accused overtook her again, she was kicked, her hair was grabbed and pulled. She fell to the ground with her face downward and accused stepped on her several times. Then several person who heard her shout came to her rescue and helped her gather her things. Then Aldo dela Cruz was called by these persons to identify her."[10]

On the other hand, the Solicitor General claims that accused-appellant's contention is without merit because:

"Appellant never presented during the trial the two allegedly inconsistent statements of complainant. Hence, the complainant was deprived of the chance to explain the alleged discrepancies. Under section 13, Rule 132 of the Rules of Court of the Philippines, complainant's testimony can not be impeached by mere allegation of those previous statements. x x x

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xxx (said) provision mandates the proper procedure for impeaching a witness by evidence of alleged inconsistent statements. This procedure requires 'laying the predicate,' that is: (a) by confronting the witness with such statements, with the circumstances under which they were made; (b) by asking him whether he made such statements, and (c) by giving him the chance to explain the inconsistency. If the statements were made in writing, the documents must be shown to the witness before he may be asked to explain the discrepancy. Unless the witness is given the opportunity to explain the inconsistency, the impeachment is incomplete (Regalado, Remedial Law Compendium, Sixth Revised Edition, p. 537, Citing U.S. vs. Baluyot, 40 Phil. 385; People vs. Rosabal, 50 Phil. 780; People vs. Escosura, 46 O.G., 918, et al.). In the case at bar, the appellant never raised the alleged inconsistent statements during the trial. Consequently, such statements cannot now be used to impeach complainant."[11]

Be that as it may, issues not raised in the court below cannot be raised for the first time on appeal.[12] But even assuming that it was the prosecution itself which offered said sworn statements as part of the People's evidence

and accused-appellant is now pointing out the inconsistencies between Alejandra's sworn statements and her testimony in court -- and therefore obviating the need of impeaching her testimony by means of prior inconsistent statements[13] -- the alleged inconsistencies, if any, do not militate against her credibility as the Court has repeatedly held that since sworn statements are at most always incomplete and inaccurate and do not disclose the complete facts for want of inquiries or suggestions,[14] said sworn statements are generally considered to be inferior to the testimony given in open court.[15] Accordingly, accused-appellant's first assignment of error has no merit.

Accused-appellant harps on the alleged pregnancy of the complainant resulting from the alleged rape incident and her eventual abortion a month later. He states that such is not possible for she was menstruating at the time of the alleged rape.[16]

The Solicitor General explains that the vaginal bleeding of the complainant was caused by the sudden penetration of appellant's penis in her vagina. He says that the words "menstrual flow" in the medical report were in parentheses because the examining physician was not positive that the slight vaginal bleeding was also caused by the complainant's menstrual period.[17]

Vaginal bleeding is NOT an element in rape as what is important is that the rape victim testified that the appellant sexually abused her with force and intimidation and against her will.[18] When a rape victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed,[19] and if her testimony meets the test of credibility, the accused can be convicted on the basis thereof[20] because as related in *People vs. Uli*:

[N]o decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt - the dire consequence of a rape charge - unless she is, in fact, a rape victim (*People vs. Paringit*, 189 SCRA 478). (At page 12)

Neither is the alleged pregnancy an important element in the crime charged, its relevancy being only that if the offended party had given birth to a live baby then the accused-appellant would be ordered to support the fruit of his lecherous desires.[21]

Accused-appellant claims further that:

"There is no ample evidence on record to support the trial court's finding that complainant received death threats from the accused after the incident. This finding would run counter to prosecution's theory that after the incident, accused was never seen in their barangay and went into hiding and surfaced only two years after. Thus, how could accused make good his threat on complainant if he was nowhere to be found." [22]

On the other hand, the Solicitor General contends that:

"Complainant's statement that she received death threats from appellant is credible. Appellant lived only two hundred (200) meters away from the house of complainant. Hence, it was not impossible for appellant to display threatening gestures at complainant who was compelled to work in Manila for several years in order to get away from appellant. x x x." [23]

We have gone over the testimony of the offended party and we find no evidence that complainant received death threats from accused-appellant right after the rape incident.

What the Court finds is that the accused-appellant threatened the rape victim with a "balisong" at the time he was raping her in order to intimidate her into submitting to his carnal desire, as shown by the complainant's testimony in the court below, to wit:

“Q Now, as you were walking along from Quetegan bound to your house in Calumboyon, passing through Bullalacao, and Linmansangan, did you see accused Cristituto Alegado?

A Yes, sir.

Q Where did you see him?

A I saw him on the crossing of the road at Barangay Bullalacao and Linmansangan.

Q What was he doing when you saw him?

A Walking, Sir.

Q Was he alone?

A They were two, sir.

Q Did you recognize his companion?

A Not so much. I did not recognize him well, sir.

Q Do you know the name of his companion?

A No, sir.

Q When you were walking alone and the accused ran, his companion whom you do not know were following you, what happened?

A When I was walking along the road and Cristituto Alegado and his companion, was also walking following me, the other companion left him and then his Cristituto Alegado catch up with me and upon overtaking me, he poked his balisong at me, then held me and pulled me, sir.”

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“Q Now, you said that Alegado, the accused, pointed something at your neck, what was that which he pointed to you?

A Balisong, sir.

Q Where, specifically, at your neck?

A Here, sir, below my right ear.

Q What did he say, if any, when he pointed that balisong at the right side of your neck?

A He told me not to talk, sir.

Q What did you do when you were told not to talk?

A I cried, sir.

Q And earlier, you stated that he placed his arms around and pulled you to where you were laid by Alegado?

A He pulled me up to the forested area, sir.”

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“Q Upon reaching that forested area, what happened?

A He pushed, me, sir.

Q When he pushed you, what happened to you?

A I fell on my back, sir.

Q What did the accused do when he pushed you and pulled you at your back, what did he do?

A He first pointed his balisong at my neck and then removed my pant(ies) then removed his pants and then went on top of me, sir.

Q When the accused went on top of you, what did you do?

A I struggled, sir.

Q Did you say anything when he went on top of you?

A None, sir.

Q Why?

A He first slapped me, sir. At first I told him not to touch me after which, he slapped me left and right of my face and then held my two shoulders and then inserted his penis inside my vagina, sir.

Q When the accused inserted his private part on your vagina, what did you do?

A I struggled, sir, by pushing him but I cannot do anything because he is stronger in holding my two shoulders.

Q How long did the penis of the accused stayed in your vagina?

A About 10 minutes, sir."

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"Q Now, how many hands did he use in removing his pants?

A He removed his pants with his hand and the other hand is holding a balisong and the hand that is holding that he used in holding the balisong is his left hand, sir.

Q Now, we go back to the time when you were being pulled by the accused, what hand did he use in holding the balisong, when he poked the balisong?

A Right hand, sir.

Q How do you know that it was the right hand of the accused?

A I saw it, sir."[24]

While Alejandra's mother testified that she saw accused-appellant for the first time in their barangay only after two years[25] which, of course, the latter vehemently denied,[26] what is important in considering flight as an indication of guilt is the period when the accused-appellant was arrested in relation to the filing of the complaint. Accused-appellant managed to elude arrest for fifteen (15) years as can be seen from the order of the municipal trial court, as follows:

"ORDER

In the order of the court dated November 17, 1970, accused was given P25,000.00 as Bail Bond for his temporary liberty. After this court has carefully examined the circumstances of the case, it finds out that the order of the court in 1970 needs an amendment for the following reasons:

That the accused Cristituto Alegado has evaded the law for about fifteen (15) years, and that the offense committed by him is very grave punishable by reclusion perpetua to death;

That accused is known to be publicly notorious, and has been threatening the complainant when she and her witness testified against him as per statement of the mother of the complainant;

WHEREFORE and in view of the foregoing, the order of the former judge dated November 17, 1970 imposing the Bail Bond of accused to be P25,000.00 is hereby amended and that NO BAIL is recommended.

SO ORDERED."[27]

As the Court recently held in *People vs. Castor*:[28]

"All the protestations of innocence by the accused-appellant are belied by his flight. x x x . It has long been settled that the flight of the accused is competent evidence against him as having a tendency to establish his guilt (*U.S. vs. Alegado*, 25 Phil. 510 [1913]); unexplained flight is a circumstance from which an inference of guilt may be drawn, for the wicked flee even when no man pursueth; but the righteous are as bold as a lion (*U.S. vs. Sarikala*, 37 Phil. 486 [1918]; see also, *People vs. Garcia*, G.R. No. 69581, 21 May 1992).[29]

Lastly, accused-appellant claims that:

"[T]he attitude and demeanor of Mercedes Evangelista, mother of complainant is improper, unnatural, and unfitting from a person being aggrieved of the alleged heinous act of the accused. This can be gleaned from her testimony, to wit:

'Q: After that when you saw him you never talked to him neither did he talk to you, is that correct?

A: No.

Q: You never reprimanded to (sic) the accused or show any anger when you first saw him after the incident?

A: No, sir.

Q: You never showed to him when you saw him any sign of anger?

A: None, sir.

Q: You smiled at him when you saw him?

A: Yes, sir but I kept silent."[30] (Emphasis in the original)

The Solicitor General, on the other hand, explains that "Mercedes Evangelista's (the mother of complainant) reaction was intentional so as not to invite a violent reaction from the appellant or cause him to flee and elude arrest once more." [31]

In fact, in answer to the trial court's clarificatory question, the complainant's mother stated that she reacted in the way she did to psychologize the accused so he won't be angry at her:

"COURT:

I want to clarify.

x x x

Q Earlier, you said that two years after the incident, the accused appeared, you just kept silent, why?

A So that he could psychologize me that I am not angry at him, sir. (sic)"[32] (Emphasis supplied)

As correctly suggested by the Solicitor General, Alejandra's mother wanted to create the impression that she had already accepted the fact of Alejandra's rape and was no longer seeking justice -- in order to give accused-appellant a false sense of security, and enable the police authorities to arrest him and stand trial for the rape.

WHEREFORE, finding no merit in the appeal, the Decision of the court below, finding accused-appellant Cristituto Alegado y Bullo guilty beyond reasonable doubt of the crime of rape is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] People vs. Tereso, 194 SCRA 154.

[2] Section 5, subsection 2 (d), Article VIII, Constitution.

[3] Rollo, pp. 137-140.

[4] Ibid., p. 19.

[5] Ibid., p. 6.

[6] Original Records, p. 11.

[7] Decision, People vs. Alegado, Criminal Case No. L-3258, April 2, 1987, penned by the Hon. Cornelio W. Wasan, Sr., presiding judge, Lingayen RTC, Branch 39; Rollo, pp. 22-31.

[8] Rollo, p. 92.

[9] Id.

[10] Op cit., pp. 93-94.

[11] Ibid., pp. 142-144.

[12] In People vs. Buendia, 210 SCRA 531, the appellants therein attached affidavits to their brief by which they wanted to show that the vacant lot near the scene of the buy-bust operation, where they were arrested for selling marijuana, did not exist. The Court dismissed the same noting that:

“x x x (they were) belatedly submitted, and therefore raising a nagging question as to their credibility, no explanation is even given why the affidavits were not submitted before the trial court.” (At page 539)

[13] Section 13, Rule 132, Rules of Court.

[14] People vs. Dominguez, G.R. No. 100199, January 18, 1993.

[15] People vs. Dabon, G.R. No. 102004, December 16, 1992.

[16] Rollo, p. 94.

[17] Ibid., p. 147.

[18] People vs. Mabunga, G.R. No. 96441, November 13, 1992.

[19] People vs. Sueta, G.R. No. 94549, August 9, 1993 citing People vs. Aboneda, 169 SCRA 530 and other cases.

[20] *People vs. Uli*, G.R. No. 103403, August 24, 1993 citing *People vs. Calixtro*, 193 SCRA 303 and *People vs. Isip, Jr.*, 188 SCRA 648.

[21] Paragraph No. 1 (3), Article 345, RPC.

[22] *Rollo*, p. 95.

[23] *Ibid.*, p. 148.

[24] TSN, January 14, 1986, pp. 4-6; TSN, January 27, 1986, p. 4.

[25] *Ibid.*, May 13, 1986, p. 6.

[26] *Ibid.*, October 30, 1986, pp. 3, 4, 8, 9 and 10; January 15, 1987, p. 2; February 5, 1987, pp. 2 and 5.

[27] Original Record, p. 14.

[28] G.R. No. 93664, December 11, 1992.

[29] At p. 11.

[30] *Rollo*, p. 95.

[31] *Ibid.*, p. 148.

[32] TSN, May 13, 1986, p. 8.

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