

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BAYANI DE LOS REYES Y PUSTIGO, @ “ANIE”; ACCUSED-APPELLANT.

G.R. No. 85771. November 19, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

At his arraignment on 17 June 1987[1] in Criminal Case No. ML-240 of Branch 4 of the Regional Trial Court of Bataan, Third Judicial Region, accused-appellant entered a plea of not guilty to an Information charging him and one Mando Doe with the crime of Robbery with Rape, committed as follows:

x x x

"That on or about October 15, 1986 at nighttime purposely sought to better accomplish their criminal design in Mariveles, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring, confederating together and mutually aiding one another, with intent to gain, did then and there with the use of firearm (sic) and bladed weapon willfully, unlawfully and feloniously grab, divest and carry away one (1) Seiko Five Man's Wrist Watch, valued at P500.00; one (1) gold ring with diamond stones, worth P500.00; and cash money in the sum of P500.00, belonging to Emily R. Punzalan, one (1) Seiko Five Men's (sic) Wrist Watch, gold plated and one (1) military ID amounting to P1,200.00, belonging to Graciano Hernandez, against the will and without the consent of the said owners, to their damage and prejudice in the total sum of P2,700.00 and the said robbery was accompanied by rape, that is by means of force, intimidation and abuse of superior strength while armed with a bladed weapon, the accused Bayani de los Reyes, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge of the offended party, Emily R. Punzalan, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW:

Balanga, Bataan, May 22, 1987."[2]

x x x

The other accused was not brought to the jurisdiction of the court and remains at large.

After trial on the merits, the trial court[3] promulgated on 13 October 1988 a decision[4] finding accused-appellant guilty of the crime of robbery with rape as defined and penalized under paragraph 2, Article 294 of the Revised Penal Code, as amended by P.D. No. 767, and sentencing him to suffer the penalty of reclusion perpetua, with the accessory penalties provided for by law; to indemnify the offended party, Emily R. Punzalan, in the amount of P25,000.00 and to pay her the amount of P500.00 for the cash money stolen from her which was not recovered; and to pay the proportionate share of the costs.

The dispositive portion of the decision reads:

x x x

"WHEREFORE, the Court finds the accused Bayani de los Reyes y Pustigo guilty beyond reasonable doubt as principal by direct participation of the crime of robbery with rape as defined and penalized under Article 294, par. 2 of the Revised Penal Code, as amended by Presidential Decree No. 767, and as charged in the information, with the attendance of the aggravating circumstance of nighttime, without any mitigating circumstance to off-set the same, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties provided for by law, and ordering him to indemnify the offended party Emily Punzalan in the amount of P25,000.00, and to pay the latter the amount of P500.00 for the cash money stolen from her and unrecovered, without subsidiary imprisonment in case of insolvency, and to pay the proportionate share of the costs.

SO ORDERED."

Immediately after the promulgation, accused-appellant (hereinafter referred to as Appellant), filed a Notice of Appeal wherein he manifested his intention to appeal from the decision to the Court of Appeals on questions of facts and law.[5]

Obviously, the appeal should be presented to this Court.[6] Quite correctly, however, the trial court forwarded to this Court the records of the case and, in Our Resolution of 11 January 1989,[7] We accepted the appeal.

The facts of the case are sufficiently summarized in the Brief for the People as follows:

"At around 8:00 o'clock in the evening of 15 October 1986, private complainant Emily Punzalan went out of her house in San Isidro, Mariveles, Bataan, to collect payment for the 'tocino' which she had sold on credit to a certain Cora Haluot. (tsn, 6 August 1987, pp. 8-9; tsn, 27 August 1987, pp. 6, 11). She encountered her friend of around 10 years, the other private complainant, Graciano Hernandez, in the canteen of her house, and since it was payday they invited each other to supper. (tsn, 27 August 1987, pp. 16-17). After eating supper in an eatery near the municipal building, they proceeded to the house of Cora Haluot at Bonifacio Street. (id., p. 6). Cora Haluot was not around, so private complainant Emily Punzalan invited the other private complainant Graciano Hernandez, to enjoy the breeze at the old pier along Bonifacio Street. (tsn, 6 August 1987, pp. 7-8; tsn, 27 August 1987, p. 19; tsn, 10 September 1987, p. 4). While there, private complainant Emily Punzalan happened to sit down on a rock with feces. (tsn, 6 August 1987, p. 8). So Emily removed her soiled pants to wash it off with sea water. (id., pp. 8-9). When she was about to wash her pants, accused-appellant Bayani de los Reyes and another accused, a certain Mando, approached them. (id., p. 9). Accused-appellant Bayani de los Reyes informed the couple that they (the two accused) were barangay tanods, and that strolling around the pier was prohibited. (id., p. 9). Private complainant Emily Punzalan retorted that how could it be so when the pier was a public place, while private complainant Graciano Hernandez apologized, saying that he was not aware of any such prohibition, and that they were not 'katalo'. (id., p. 10). Soon thereafter, the two accused walked some 5 meters away from the two private complainants, during which period of time Emily Punzalan hurriedly put on her soiled pants. She was about to button the same, when the accused returned and collared them (the private complainants). (id.; tsn, 1 October 1987, p. 6). Mando pointed a gun at private complainant Graciano Hernandez while accused-appellant Bayani de los Reyes pulled the hair, and pointed a dagger at the left side of the neck, of private complainant Emily Punzalan, at the same time pulling the latter to the cemented portion of the old pier some 12 meters away from the other two. (tsn, 6 August 1987, pp. 10-11; tsn, 10 September 1987, pp. 19-22; tsn, 1 October 1987, p. 7).

Upon reaching the cemented portion of the pier, accused-appellant Bayani de los Reyes ordered, with the dagger still pointed at the left side of the neck of private complainant Emily Punzalan, the latter to lie down and to remove her pants and panty, to which the latter, being so frightened, complied. (tsn, 6 August 1987, pp. 11-12; tsn, 10 September 1987, p. 24). After removing his pants, the accused-appellant, then, placed himself on top of private complainant Emily Punzalan, who was crying helplessly, and '[h]is organ went in and out of [private complainant Emily Punzalan's] organ' for about 15 minutes; after which, accused-appellant ordered said private complainant, to put on her panty and pants. (tsn, 6 August 1987, pp. 12-13; tsn. 10 September

1987; pp. 25, 27).

Accused-appellant, then, brought private complainant Emily Punzalan to the other two. (tsn, 6 August 1987, p. 13). Accused Mando asked private complainant Emily Punzalan if she has a residence certificate, to which the latter replied in the negative. (id.) Frisking Emily Punzalan from her breasts to her private parts, accused Mando removed, upon instruction of the accused-appellant, private complainant's P500.00 from her wallet. (id., pp. 13-14). Furthermore, accused Mando, likewise upon instruction of the accused-appellant Bayani de los Reyes, took Emily Punzalan's white gold ring with three diamond stones and Seiko black dial watch, and private complainant Graciano Hernandez' Seiko gold-plated watch and military ID. (id., pp. 14-15; tsn, 1 October 1987, p. 7).

Subsequently, accused-appellant Bayani de los Reyes told accused Mando to get a 'banca.' (tsn, 6 August 1987, p. 15). Private complainant Emily Punzalan pleaded with the two accused to take pity on them and said that they will just forget the incident. (id.) The accused-appellant was willing to allow private complainant Emily Punzalan to go home (in fact, he wanted her to go home naked) so long as the other private complainant, Graciano Hernandez, would stay behind. (id., pp. 15-16). Pleading with the two accused, the two private complainants were finally allowed to go home with their assurance that they will forget the incident. (id., tsn, 10 September 1987, p. 28). Private complainant Emily Punzalan got home at past 10:00 o'clock in the evening. (tsn, 6 August 1987, p. 16).

The following day, 16 October 1986, the two complainants reported the incident to the Mariveles Police Station, private complainant Emily Punzalan identifying her assailant as a fully bearded man, upon which information, the investigating officer, P/Cpl. Isidro Ruiz, immediately called his fellow policemen, boarded a vehicle, proceeded to the place of the incident, and upon information gathered from an informant, contacted the wife of accused-appellant Bayani de los Reyes, who voluntarily surrendered to him the two watches and the ring belonging to the two private complainants. (id., pp. 18, 27-28; tsn, 1 October 1987, p. 11; tsn, 11 November 1987, pp. 20-21).

Upon advice, Emily Punzalan proceeded to the Municipal Health Office in front of the Municipal Hall and was examined by Dr. Willie Calimbas at about 9:00 o'clock that morning. (tsn, 6 August 1987, pp. 20-21; Exhibit B, p. 236, Records).

When the complaint was filed with the Municipal Trial Court of Mariveles for preliminary investigation, the wife and mother of accused-appellant Bayani de los Reyes approached private complainant Emily Punzalan repeatedly for the settlement of the case. (tsn, 6 August 1987, pp. 23-27). They even went to the house of the private complainant; but, since the latter's parents were not informed of the incident which had happened to their daughter, said private complainant, to get rid of the two visitors, told them that she had forgiven the accused-appellant, and, upon the suggestion from the two, agreed to follow them to the Municipal Building to sign the necessary papers for the dismissal of the case against the accused-appellant. (id., pp. 24-25). Emily Punzalan did not follow the wife and mother of accused-appellant since it was never her intention to withdraw from the case. (id., p. 25). At another time, the mother and the wife of the accused-appellant visited private complainant Emily Punzalan at her workplace in the Pasig Textile factory (Mariveles, Bataan) (id., p. 26). On that occasion, they offered to double the P500.00 taken from, and gave a wristwatch to, said private complainant, which the latter refused, saying that it was not her birthday. (id.)”[8]

Dr. Calimbas recorded[9] the following findings at the time he conducted the medical examination of Emily Punzalan:

- "1. Abrasion along the vertebral line at the level of the lumbar area back.
2. Contusion entero medical aspect lower 3rd level of the thigh left.
3. Contusion and abrasion superficial around the vaginal area.

4. Hymen -- with caruncles.

5. Vaginal wall -- slightly hyperemic.

Smear done -- negative.

Vaginal discharge -- perivaginal orifice."

Upon the other hand, appellant presented a different version of what transpired on the night the crime charged was committed. His version, as summarized in his Brief, is as follows:

"In the evening of October 15, 1986, while accused-appellant, a fisherman and his wife were strolling along the old pier at Bonifacio street in Mariveles, they caught a couple, completely naked, making love inside a banca which they own. They recognized the couple, Emily Punzalan and Graciano Hernandez, as both of them live near their place (TSN, February 17, 1988, p. 5).

As it was the very same banca which he uses to earn a living, accused-appellant felt insulted and thus berated the couple. The couple apologized, but accused-appellant could not be restrained. To teach the couple a lesson, he took their clothes and brought it home with him.

Upon reaching home, accused-appellant placed the confiscated clothes under his bed and immediately left again to report the incident to a barangay councilman. Failing to find the barangay councilman, he proceeded to the house of a policeman residing in their barangay, who in turn told him that he (the policeman) would take care of everything. When accused-appellant returned to his home, he found out that his wife, taking pity on the couple, returned back the confiscated clothes (TSN, January 28, 1988, p. 26).

In the early morning of the following day, accused-appellant while preparing his fishing equipment, found under his bed wristwatches and a ring wrapped in a handkerchief. Accused-appellant entrusted the wristwatches and the ring to Cpl. Isidro Ruiz of the Mariveles police, who in turn promised to deliver the same to the owners. (TSN, February 17, 1988, p. 8)."[10]

In finding the appellant guilty of the crime charged, the trial court made the following well-written findings and conclusions:

x x x

"Judging from the attendant circumstances, the Court is inclined to give more credence to the prosecution's version of the incident which is consistent with the material and physical facts of the case.

To begin with, complainants Graciano and Emily have positively identified the accused as one of the two malefactors who staged the robbery-rape in question. This identification is even more reinforced by the confirmation of the accused placing himself at the scene of the crime during its commission. The sequence of events would reveal that said complainants have had ample opportunity of having a good look at the accused. Firstly, when they were initially accosted by said accused during which a short conversation transpired between them; secondly, when the accused upon departing, momentarily returned and again accosted them and it was at this juncture that the rape on Emily was committed; and, thirdly, when finally the accused divested them of their personal effects. More particularly, since Emily was the victim of the assault herself, she thus came face to face with her abuser. This is another clinching factor that enabled her to recollect, if not retain a clear memory of the face of said accused. 'It is the natural reaction of every victim of criminal violence to strive to know the identity of the assailant' (People vs. Orteza, 6 SCRA 109 (1962); People vs. Catipon, G.R. Nos. L-49264-66, Oct. 9, 1985). What further made recognition much easier is the illumination coming from the public hospital some 14 meters away which gave Emily a clearer view of the accused's facial features. Besides, the accused made no effort to cover his face or resort to any disguise when perpetrating the crime. As held by the Supreme Court: 'Where clear and positive identification is made by the People's witnesses

regarding the participation of the accused in the crime against him, his denial and explanation cannot overcome such evidence. (People vs. Chavez, et al., 81 OG No. 16. p. 1612).

There is nothing in the records that would show that complainant Emily had any bias or prejudice against the accused. Her court testimony was given in a direct, coherent and forthright manner and devoid of any suspicious circumstance. The Court finds no marked inconsistencies in her court declaration as contrasted to and which substantially dovetails with what she narrated in her sworn statement (Exh. "A") executed by her the day following the tragic incident before the police investigator spontaneously at a time when the facts relating thereto were still fresh in her mind and when extraneous influence was not yet exerted upon her and her only motive was to tell the truth in the interest of justice. To the mind of the Court, the fact that she lost no time in denouncing the wrong done to her to the police and revealing the details of the incident in question at the same time specifically describing the accused as a bearded man, and whose nickname is 'Anie' which easily led to the recovery by the police of part of the stolen articles and the prompt arrest of the accused, bespeak of spontaneity, candidity and reliability on her part.

The testimony of Graciano, the other complainant, equally positive, categorical and unequivocal, complements and affirms that of Emily's to the effect that the accused was Emily's rapist. His recognition of the culprits is positive and absolute. According to him, he was present at the scene of the crime as he was then with Emily so that he actually witnessed at close range the commission of the dastardly crime, being then held at bay with a gun pointed at him by the accused, Mando Doe, while the accused delos Reyes was ravishing Emily. His narration of the events of which he has a direct and immediate knowledge strikes the Court as positive, credible and probable and would suffice to mark said accused as the one who raped Emily and victimized them of their personal belongings.

It is true that Graciano was himself a victim with respect to the robbery aspect of the incident and an intimate friend of Emily and, therefore, may have in his heart a desire to avenge the wrongdoing committed on his person and that of Emily. But while revenge is a normal reaction in a person who was aggrieved by the felonious act of another, it does not follow that vindictiveness should be directed aimlessly so as to include even innocent persons. (Cf. People vs. Sarabia, et al., GR No. L-27422, Jan. 30, 1984, 83 OG No. 47, p. 6068). Neither does such closeness of relationship necessarily taint Graciano's testimony nor detract therefrom the probative credit that should otherwise be accorded to it; nor does the same prove prejudice or bias (Cf. People vs. Ciria, 106 SCRA 383); it may indicate at most the need for some caution in its assessment but it should not be deemed as impairing testimonial credit (People vs. Cruz, 133 SCRA 426; People vs. Bautista, 147 SCRA 500), specially where, as here, the testimony of Graciano finds ample corroboration as regards material details not only from the declarations of Emily and other prosecution witnesses but also from the testimony of the accused himself who, as earlier adverted to, admitted his presence at the crime scene although with a different version of the incident (Cf. People vs. Gutierrez, Jr., GR No. 3983, March 14, 1988).

At any rate, as between the positive and categorical declarations of the two principal prosecution witnesses, Emily and Graciano, and the mere denial constituting self-serving negative assertions of the accused and his sole witness, his wife Imelda, that no such unusual incident involving the accused occurred on that night in question, the choice is not hard to make, for the jurisprudence on the matter is that positive statement is stronger and attains greater evidentiary weight than negative evidence (People vs. Gonzales, 76 Phil. 473; People vs. Bocasas, 137 SCRA 531; People vs. Paseo, Jr., 137 SCRA 137).

Confirmation of Emily's account of her defloration also came from Dr. Willie Calimbas, the Rural Health Physician who, after examining her physically and genitally barely 12 hours after the incident, found the presence of fresh injuries such as abrasions (or scratches or bluish spots) and contusions on her body. Notably, the contusions and abrasions at the skin surface surrounding the vagina were, as explained by the examining physician, caused by the force applied on the victim resulting in trauma and hyperemia (blood congestion) due to the forceful penetration of a hard object, like a penis, into the vaginal wall. This physical evidence which is of the highest order, stamps Emily's testimony of how she was forcibly ravished by the accused with the

impress of solid truth, and gives the lie to the latter's protestations of innocence. The fact that complainant is no longer a virgin as of the date of (sic) incident is of no material consequence. 'Virginity is not an essential element in rape and the character of the offended party in rape committed by force is immaterial.' (People vs. Ramos, GR No. L-49281, Aug. 27, 1987).

Equally complementing complainants' story is the testimony of P/Cpl. Isidro Ruiz, the police investigator. In a direct and coherent manner, he declared that upon learning from an informant that complainants' stolen articles were in the possession of the accused's wife, Imelda, he immediately contacted the latter who, therewith, voluntarily surrendered to him the subject items consisting of two wrist watches and a gold ring. He added that when he asked Imelda where she got said jewelries, she replied that her husband entrusted them to her for safekeeping. The recovery of the stolen items the day after the incident apparently cracked the case for the police for then it led to the early fall of the accused in their hands that same day and to his having to account for his misdeeds. Doubtless, these proven physical facts would suffice to connect, if not incriminate the accused to the robbery-rape in question. Assuredly, there can be no clearer proof of asportation by said accused of the personal effects of complainants than that of their recovery from the possession of his wife. Incidentally, the testimony of Corporal Ruiz anent the fact of recovery was neither rebutted nor belied by the accused which thereby renders it well-nigh conclusive against the latter. And the court has no reason to disbelieve the testimony of this police officer who, as such, has the duty and moral obligation, in the interest of fairplay and as an act of simple justice, to defend the truth as he is oath bound to do. 'There is nothing on record to suggest that he was moved by any motive other than simply the carrying out of his official mission or duties' (People vs. Patag, 144 SCRA 429 (1986). In fact, the accused was even candid enough to admit that he has (sic) no quarrel or misunderstanding with Corporal Ruiz prior to the incident in question (t.s.n., p. 27, Feb. 17, 1988) and does not know why he would so testify that way (t.s.n., p. 26). The principle of law that a person in possession or control of the stolen goods is presumed to be the author of the larceny well applies to the accused even if they were recovered from his wife specially since he miserably failed to discharge the burden of accounting for and justifying his possession thereof. It would be naive for the Court, indeed, if it fails to conclude from this proven fact the culpable participation of the accused in the crime in question.

The motivation which the accused seemingly ascribes to complainants -- which is revenge for having upbraided them after he had surprised them in the act of lustful coupling on board his banca, is too crude and shallow and obviously a desperate, albeit vain attempt at seeking exculpation. The Court's appreciation of human values rejects the purported motive as fanciful and illogical. In the first place, since it was allegedly complainants' despicable sexual conduct that has infuriated the accused there was, therefore, no sound reason for them to stir up any kind of vengeful retaliation, i.e., by falsely incriminating the accused of a very grave crime carrying capital punishment. And, secondly, complainants' natural instinct would have been to just remain silent or to hide such immoral assignation on their part which, if divulged, would certainly put them to great shame and scandal, if not make of themselves the object of gossip in their community. Yet, when they opted to face cruel realities by exposing with immediacy the sexual assault and robbery committed by the accused, it was because to them the crime, grave as it is, was too much to bear and keep to themselves and should not remain unpunished.

Moreover, it is hardly believable and so unnatural that Graciano and Emily would be so bereft of inhibition or any sense of modesty as to commit sexual congress on board a banca moored along the sea shore at the old pier. As a matter of decency, they could have at least mutually agreed to a more secret trysting place than in such venue -- an open space with anyone expected to just appear from nowhere and thus reveal their promiscuity.

In the same vein, the claim of the accused and his wife, Imelda, that Emily and Graciano were then completely naked when they surprised them in the act of sexual indulgence, equally defies the rational limits, if not realities of human behavior. For sure, not even those of wanton disposition would strip themselves of all their clothings, including such personal effects as wrist watches and ring when gratifying their libidinous urge more so in a

public place and with a time constraint. What they have to simply do if they were so lustfully disposed was just to lower their underwear and be done over with in such short moment as possible without necessarily undressing themselves completely.

Of note also is that the accused made no imputation of any sort that Emily is a woman of loose morals or ill-repute with the habit of satisfying her sexual urge even in a public place which, as in this case, is a few meters distant from a busy street and a public hospital and frequented by night strollers.

Evidence to be worthy of credit, must not only proceed from a reliable source, but it must in addition, be credible in itself. Stated otherwise, it must be natural, reasonable and probable as to make it easy to believe (People vs. Peña, Jr., GR No. L-72354, June 30, 1987).

Moreover, it has long been held that no young Filipina of decent repute would publicly admit that she has been criminally abused and ravished unless that is the truth. It is her natural instinct to protect her honor (People vs. Ramilo, GR No. L-52230, Dec. 15, 1986, 146 SCRA 256 and cases cited therein). Herein, it is rather inconceivable that a simple and unsophisticated provincial woman like Emily who was still possessed of the traditional and proverbial modesty of a Filipina, would be that callous as to deliberately fabricate a tale of an assault on her chastity and to suffer torment, if not ignominy of having to testify in a court of justice about a grievous wrong done to her by the accused if in truth she was not really raped and her only motive was revenge. The records of the case do not indicate that she had any motive other than an honest desire of obtaining justice and redress for the bestial act committed on her (Cf. People vs. Tejada, 109 SCRA 176; People vs. Cayado, et al., GR No. L-47398, March 14, 1988).

As sequel, if Emily was merely fabricating her story of robbery with rape, she would easily be snarled and caught in the web of her own prevarications during the laborious grind of a public trial. Certainly, she should feel deterred by the grave consequences of such willful falsehood which could easily be unmasked as such by the medical findings that would be made after a thorough examination of her body. It was the truth of her story that gave her the courage and boldness fearlessly to face interrogation by the police authorities and medical examination, both effective means to verify the truth of her serious accusation (Cf. People vs. Clarin, GR No. L-47200, Oct. 30, 1981, 78 OG No. 52, p. 7276). And the Court is convinced that Emily's testimony was given with sincerity and candor. It leaves no room for the slightest doubt that it is not a mere concoction so that it has no hesitation to accept the same as the more credible version as against that of the mere denial of the accused. It is true that the location where complainant was sexually assaulted, i.e., atop a concrete portion at (sic) old pier, is a place where people usually pass by and stroll and located about a few meters distant from the road and a public hospital. But this does not render the commission of the crime improbable, the Court being charged with notice of the fact that rape has been committed even in vicinities or places where people usually gather or pass by, such as in parks and by a roadside (People vs. Vidal, 127 SCRA 168 (1984); People vs. Mesias, 127 SCRA 192 (1984) and People vs. Lopez, 141 SCRA 386 (1986))."[11]

It appreciated against the appellant the aggravating circumstance of nighttime on the ground that the appellant deliberately waited for nighttime before perpetrating the crime to avoid discovery, if not minimize the risk of capture.

Appellant, assisted by the then Citizens Legal Assistance Office (now Public Attorney's Office), interposes a lone assignment of error in his Brief,[12] to wit:

"THE TRIAL COURT ERRED IN NOT HOLDING THAT THE EVIDENCE OF THE PROSECUTION HAS FAILED TO MEET THE TEST OF MORAL CERTAINTY OF ACCUSED-APPELLANT'S GUILT AND TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR."

in support of which he contends that: (1) it is highly improbable that the offense would be committed under the circumstances the offended party, Emily Punzalan, testified to; (2) the testimony of Emily is replete with and

beset by serious inconsistencies which render the same unworthy of belief; (3) the injuries suffered by Emily were not proven by the prosecution to be the result of rape; (4) certain material facts were not appreciated by the trial court; and (5) there was no intent of gain on his part.

As to the first, appellant claims that the crime was allegedly committed along Bonifacio Street, which is a busy street even at nighttime. There are at least fifty (50) houses along said street, the nearest being only about thirty (30) meters away from the place where the crime was allegedly committed. Furthermore, the site of the alleged crime is only about fourteen (14) meters away from a public hospital. Emily also testified that there were three (3) persons and a couple who were about thirty (30) meters from the crime scene. If it is indeed true that she shouted and cried at the time she was allegedly being abused by the Appellant, then it would have certainly attracted the attention of the people nearby.

As to the second contention, Appellant points out several alleged contradictions and inconsistencies in Emily's testimony. Thus, while she testified during the direct examination that it was the Appellant himself who removed her pair of pants and panty, she completely changed her answer on cross-examination when she claimed that it was she who removed the pair of pants and panty upon order of the appellant. Moreover, she averred that she had never met the appellant before the incident and that it was only Cpl. Isidro Y. Ruiz who identified the perpetrator from the description she gave; yet, Cpl. Isidro Y. Ruiz testified that appellant was identified by the private complainant herself, even giving his first name. Lastly, she attested to the fact that aside from her hair being pulled by the appellant, no other physical violence was committed before and during the rape. However, her companion, Graciano Hernandez, claimed that he saw the appellant "box" Emily's thighs before she was raped. Appellant avers that these inconsistencies in the account of the incident cannot but create doubt as to their truthfulness and sincerity.

Appellant likewise challenges the decision of the court a quo on the basis of the negative finding of spermatozoa within the victim's sexual organ. Although admitting that the absence of spermatozoa does not negate rape, its absence when the private complainant was examined the day after the alleged incident strengthened his claim that he caught the couple making love, and belied Emily's allegation that the Appellant raped her. The Appellant's unexpected arrival prevented the couple, specifically the man, from reaching the climax of their sexual act, thereby accounting for the absence of spermatozoa.

As to the robbery aspect of the case, appellant submits that there was no intent to gain as it is an undisputed fact that the alleged stolen items were returned to the proper authority the next day.

In the Brief for the People, the Solicitor General nixes all the contentions of Appellant and prays that the decision appealed from be affirmed in toto.

We now address the points raised in the Appellant's Brief.

The first point raised by appellant is drawn from conclusions which are not supported by facts. There is no evidence on record as to the length of Bonifacio Street, along which lies the pier, the place of the incident, and as to the distance between or among, or the density of, the houses lining said street. The house nearest the scene of the crime, which was not even shown by the records to be inhabited, was thirty (30) meters away. Furthermore, the incident occurred between 8:30 o'clock and 10:00 o'clock in the evening with the perpetrators using a gun and a dagger to ensure the silence and cooperation of the victims. As to the presence of people other than the appellant and his co-accused, it was clearly established from the testimony of Emily that they had already left. Thus, on her cross-examination, Emily Punzalan declared:

"A. ATTY. CAINOY:

Q When you were already removing your pants, the three teen-agers as well as the two persons whom, according to you, you happened to pass by then, were they still around?

A The three teen-agers who were near our place left before I removed my pants, sir, but the two persons by the banca were still there.[13]

B. ATTY. CAINOY:

Q What was their only statement when, according to you, they introduced themselves to you and to Graciano Hernandez as barangay tanods?

A That it was prohibited for anybody to go to that place, sir.

Q What else?

A And I told them why it was prohibited when it was a public place.

Q At that precise moment, Miss Witness, have you already put on your pants?

A Yes, sir, only I was not able to button it.

Q What else happened after that?

A After they told us that it was prohibited, sir, Gary told them, 'Sorry, we do not know that it was prohibited' and that 'we are not katalo'.

Q At that precise moment, did you also noticed (sic) the whereabouts of those two persons whom, according to you, you happened to pass by earlier?

A We did not notice the two persons anymore, sir, because Bayani returned."[14]

(Underscoring supplied)

This would explain why no one heard the shouts of Emily. And even assuming arguendo that the couple remained where they were, it must be pointed out that the robbery was committed near the seashore at a distance of approximately thirty (30) meters from the couple, and the rape was committed at a place twelve (12) meters away from where the robbery was committed. It was quite far to have alerted the said couple to the ongoing rape.

We have previously ruled that it is not necessary that the place where the rape is committed be isolated. In not a few instances, We held that rape can be committed even in places where people congregate: in parks, along the roadside, within school premises, and even inside a house where there are other occupants.[15]

The claim of contradictions and inconsistencies in the testimony of Emily is not persuasive. They are on minor matters. We have held that minor inconsistencies do in fact strengthen rather than weaken the witness' credibility.[16] Minor inconsistencies in the testimonies of witnesses are but natural, and even enhance their credibility as witnesses as these discrepancies indicate that the responses given were honest and unrehearsed.[17] They even tend to show sincerity and absence of connivance.[18] Besides, as the People explained in its Brief, the change in her version about who took off her pants and underwear can be explained by her state of mind at the time of the rape. She was understandably in shock and too afraid to have clearly remembered such a detail.

The alleged contradiction with regard to the identification by Emily of the appellant is more apparent than real. As correctly put by the People in its Brief, no contradiction exists:

x x x

"Such contention is totally without merit. There is no contradiction nor (sic) inconsistency between the

testimony of private complainant that she had not met the accused-appellant prior to the incident and that she knew the latter's first name. The private complainants knew the first names of the two accused since the latter had addressed each other during the robbery incident. As testified by Cpl. Ruiz, neither of the private complainants knew the full name of the accused-appellant Bayani de los Reyes; in fact, they identified the two accused by their nicknames only, i.e., Annie and Mando."[19]

The asserted divergence between the claims of Emily that no other physical violence was inflicted on her aside from the pulling of her hair and that of her companion, Graciano Hernandez, who testified that the appellant "boxed" the victim's thighs is an outright misunderstanding of the testimony of Graciano. All that he said was:

"FISCAL VIANZON:

Q And what happened else, if any after that?

A That if we tell anybody about it we will be killed, sir.

Q What else happened after that?

A I was told by my companion that she was done harm and she was boxed on her both thighs and she was raped, sir."[20]

(Underscoring supplied)

It is crystal clear that Graciano did not categorically state that the appellant "boxed" the victim's thighs.

As to the claim that the negative finding of spermatozoa supports the appellant's version of the incident, We have said time and again that the absence of spermatozoa cells in the genital organ does not negate rape, the slightest penetration even without emission being sufficient to constitute the offense.[21] In the case at bar, the absence of the sperm cells was explained by the examining rural health physician, Dr. Willie G. Calimbas, in his testimony:

"A. COURT:

Q Now, considering that doctor, your finding would conclude that the victim has such sex or intercourse immediately before you examined her?

A By the findings that I had, your Honor, all I can say is that there could be or there could not been (sic) any sexual penetration or sexual contact.

Q Why do you say so?

A Because the Smear done was negative, vaginal wall; the hyperimic of the vaginal wall is strong as when you find something like sperm inside the vagina and this, if the patient is a virgin it could appear as lacerations, this could be stronger than caruncles, however, I said it could be because there are contusions around the vaginal area and vaginal discharge which could also be coming from the outside, your Honor.

Q Now, if the victim would have washed off her vagina after the contact, would you say that actually your findings would be negative on the sperm cells?

A It is a possibility, your Honor.[22]

B. FISCAL VIANZON:

Q You likewise mentioned a finding vaginal discharge (sic) peri vaginal orifice, will you please tell us what you mean by this?

A This could be discharge from outside or it could be discharge coming from the inside of the vagina so, I just state this to find out if this is significant because this discharge which may come from the outside could be the

semen of the male person, sir."

The last point raised by the appellant, which has reference to the charge of robbery, is the absence of intent to gain in the taking of the clothes and jewelry as allegedly shown by his professed desire just to teach the victims (Emily and Graciano) a lesson and the subsequent return of the goods the day following the incident. This claim is preposterous and easily burdens one's credulity. For one, the trial court correctly discredited the version of the appellant as incredible. For another, even if appellant's version as to the reason why he wanted to teach them a lesson were to be believed, it must be stressed here that when he entrusted the clothes and the jewelries to his wife, he never told her the reason therefor, much less of his plan to turn them over to the proper authorities. Counsel for appellant brought out on the cross-examination of Cpl. Isidro Ruiz the following testimony which convincingly proves intent of gain:

"ATTY. CAINOY:

Q Now, when you were able to locate the wife of Bayani de los Reyes, did you ask her the reason why the items, meaning to say the jewelries; seiko watches and one diamond ring were in her possession?

A Yes, sir.

Q And what was the answer she gave you?

A It was entrusted to her by her husband, sir.

Q And did you also ask the wife of Bayani de los Reyes if she knew the reason why these jewelries were entrusted to her by her husband?

A Yes, sir.

Q And what was the answer given to you by the wife of Bayani de los Reyes?

A She said for safe-keeping, sir.

Q Did she not tell you that the jewelries were entrusted to her by her husband because they will have to turn over these jewelries to proper authorities say, the INP police station of Mariveles, Bataan?

A No, sir."[23]

(Underscoring supplied)

Finally, in his testimony, appellant claimed that he only gathered and brought home Emily's and Graciano's clothes.[24] Yet, he cannot offer any credible explanation as to how it came about that the jewelries of the victims found their way under his bed.[25]

We are then of the opinion that the evidence for the prosecution in this case has established beyond all reasonable doubt that appellant committed the crimes of rape and, with his co-accused, the crime of robbery.

In rape cases, the following guidelines and principles are well-entrenched:

1. An accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused, though innocent, to disprove it;
2. In view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution;
3. The evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[26]

We believe that the lower court judiciously applied these guidelines in holding appellant liable for the rape. To begin with, both complainants were able to positively identify the accused as one of the two (2) malefactors. More particularly, since Emily was the victim of the assault herself, she naturally came face to face with the accused. We have held that it is the natural reaction of every victim of criminal violence to strive to know the identify of the assailant.[27] And, when a woman says that she has been raped, she says, in effect, all that is necessary to show that rape has been committed and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[28] The lower court also concluded that the testimonies of the witnesses for the prosecution were "positive, categorical, and unequivocal" and given in a direct, coherent, and forthright manner.[29] We are bound by such a finding.[30] Well-settled is the rule that appellate courts will generally not disturb the findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless the court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. Further confirmation of Emily's account came from Dr. Willie Calimbas, the examining physician who, after examining her physically barely twelve (12) hours after the incident, found the presence of fresh injuries on her body which were explained to have been caused by the force applied on the victim resulting in trauma and hyperemia (blood congestion) due to the forceful penetration of a hard object, like a penis, into the vaginal wall.[31]

Finally, the records disclose that appellant's mother and wife offered, on several occasions, to settle the matter amicably. The following testimony of Emily:

"FISCAL VIANZON:

Q Where did the mother and the wife of Bayani de los Reyes approached (sic) you in connection with the case?

A They visited me in my home, sir.

Q Where?

A At San Isidro, sir.

Q Do you remember when?

A I cannot remember cause it took long before he was jailed and after his incarceration it was then that the mother and wife approached me, sir.

COURT:

Q What was the purpose of mother and the wife of Bayani in visiting you in your house, if you know?

A They were asking for settlement, sir.

FISCAL VIANZON:

Q Was that the only occasion when the mother and wife of Bayani de los Reyes went to you for the settlement of the case?

A Several times, sir.

Q How many times?

A I can no longer tell you how many times because they visited me several times, they even went to the factory where I work, sir.

Q What happened when they went to the factory?

A They told me that they would even double my P500.00 and return to me P1,000.00 and they even offering (sic) me watch as a gift but I decline (sic) to accept the same because I told them it was not my birthday." [32]

was not rebutted by appellant.

As correctly observed by the trial court, the offer of compromise by appellant's mother and wife betrays the guilty conscience of appellant, which can be taken as an implied admission of guilt.[33]

As likewise established by the evidence, rape was committed on the occasion of the robbery. From the testimony of Graciano Hernandez, it is conclusive that the two accused divested him of his wallet before physically abusing Emily. Thus:

"FISCAL VIANZON:

Q And what was the answer of the accused?

A He told us why we were there while it was prohibited and we did not ask their permission to be there, sir.

Q And so, what did they do?

A The two of them talked and left for a while for about ten (10) meters away and then return (sic), sir.

Q And upon the return, what happened else, if any?

A When they returned Bayani de los Reyes got my wallet, sir.

Q And how much was contained in your wallet?

A My wallet contained P30.00, sir.

Q And after getting your wallet, what happened else, if any?

A He returned it to me, sir." [34]

We disagree, however, with the trial court's appreciation against appellant of the aggravating circumstance of nighttime. This circumstance should not be taken into account unless there is proof that an accused had purposely sought the cover of darkness in committing the crime, or that it facilitated its commission[35] or that he took advantage thereof for the purpose of impunity.[36] Nighttime is aggravating if the offender sought for it in order to realize the crime with more ease[37] or when the accused waited for the night before committing the crime.[38] Nighttime is not especially sought for when the notion to commit the offense was conceived only shortly before its commission.[39] It is not aggravating if it does not concur with the intent or desire of the offender to capitalize on the intrinsic impunity afforded by the darkness of the night.[40]

In the instant case, there was only a chance or accidental encounter at nighttime between the victims and the malefactors. It was not proved that the latter had prior knowledge that the former would be at the scene of the incident at any time in the evening of 15 October 1986 or that the appellant or his co-accused were there, or used to be there at nighttime, to commit robbery, rape or any crime upon any person. Nocturnity would not be an aggravating circumstance if it was not purposely sought for and a crime was committed at night upon mere casual encounter.[41]

The penalty for the crime of robbery with rape under the second paragraph of Article 294 of the Revised Penal Code is reclusion temporal in its medium period to reclusion perpetua. It consists of three (3) periods, namely: (a) the minimum period, which is reclusion temporal in its medium period; (b) the medium period, which is reclusion temporal in its maximum period; and (c) the maximum period, which is reclusion perpetua. Since the crime was

committed without any aggravating or mitigating circumstance, the penalty should be imposed in its medium period,[42] i.e., reclusion temporal in its maximum period. The appellant is, therefore, entitled to the benefit of the Indeterminate Sentence Law.[43] Accordingly, he can be sentenced to a penalty whose minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code as indicated above, and whose maximum shall be reclusion temporal in its maximum period.

Accordingly, We hereby modify the sentence imposed by the trial court by imposing upon the appellant the penalty of Ten (10) years and One (1) day of prision mayor as MINIMUM, to Eighteen (18) years and Eight (8) months of reclusion temporal as MAXIMUM.

WHEREFORE, judgment is hereby rendered AFFIRMING, in all respects, the decision appealed from except as to the penalty which is hereby modified as above indicated. As modified, appellant BAYANI DE LOS REYES y PUSTIGO is hereby sentenced to suffer the penalty of Ten (10) years and One (1) day of prision mayor as MINIMUM, to Eighteen (18) years and Eight (8) months of reclusion temporal as MAXIMUM. He shall be fully credited with the period of his preventive imprisonment, if any.

Costs against appellant.

IT IS SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Romero, JJ., concur.

[1] Original records, 16.

[2] Original records, 1-2; Rollo, 6-7.

[3] Per Judge Pedro Villafuerte, Jr.

[4] Op. cit., 382-395; op. cit., 29-42.

[5] Original records, 396.

[6] Paragraph 2 (d), Section 5, Article VIII, 1987 Constitution, and Section 17 of the Judiciary Act of 1948, as amended.

[7] Rollo, 43.

[8] Brief for Appellee, 3-9; Rollo, 97, et seq.

[9] Exh. "H"; Original records, 236.

[10] Rollo, 67-68.

[11] Rollo, 34-39.

[12] Id., 61-76.

[13] TSN, hearing of 10 September 1987, 8.

[14] TSN, hearing of 10 September 1987, 16.

[15] People vs. Viray, 164 SCRA 135, citing People vs. Opena, 102 SCRA 755; People vs. Aragona, 138 SCRA 569; People vs. Lopez, 141 SCRA 385.

[16] Medios vs. Court of Appeals, 169 SCRA 838; People vs. Barros, 122 SCRA 34; People vs. Delavin, 148

SCRA 257.

[17] *People vs. Mangalino*, 182 SCRA 329; *People vs. Cantuba*, 183 SCRA 289; *People vs. Palino*, 183 SCRA 680; *People vs. Flores* 185 SCRA 366.

[18] *People vs. Del Socorro*, 182 SCRA 359.

[19] TSN, hearing of 11 November 1987, 22-23.

[20] TSN, hearing of 1 October 1987, 8.

[21] *People vs. Budol*, 143 SCRA 241 citing *People vs. Jose*, 37 SCRA 450 and *People vs. Carandang*, 52 SCRA 259; *People vs. Ocampo*, 143 SCRA 428; *People vs. Eclarinal*, 182 SCRA 106; *People vs. Tabago*, 167 SCRA 65; *People vs. Abonada*, 169 SCRA 530; *People vs. De Guia*, 185 SCRA 336.

[22] TSN, hearing of 11 November 1987, 16.

[23] TSN, hearing of 11 November 1987, 23-24.

[24] TSN - Hipolito, 17 February 1988, 6-7.

[25] *Id.*, 8.

[26] *People vs. Quintal*, 125 SCRA 734; *People vs. Aldana*, 175 SCRA 635; *People vs. Capilitan*, 182 SCRA 313; *People vs. Albuero*, 184 SCRA 655; *People vs. De Guia*, *supra.*; *People vs. Leoparte*, 187 SCRA 190; *People vs. Giron*, 192 SCRA 141.

[27] *People vs. Orteza*, 6 SCRA 109; *People vs. Catipon*, 139 SCRA 192.

[28] *People vs. Averro*, 165 SCRA 130; *People vs. Cariño, Jr.*, 167 SCRA 285; *People vs. Poculan*, 167 SCRA 176; *People vs. Abonada*, *supra.*, *People vs. Rosell*, 181 SCRA 679; *People vs. Barcelona*, 191 SCRA 100.

[29] Decision, 7; Rollo, 35.

[30] *People vs. Cruz, Sr.*, 151 SCRA 609; *People vs. Veloso*, 148 SCRA 60; *People vs. Patog*, 144 SCRA 429; *People vs. Adones*, 144 SCRA 364.

[31] *Op. cit.*, 8; *op. cit.*, 36.

[32] TSN, hearing of 6 August 1987, 23-26.

[33] Section 27, Rule 130, Revised Rules of Court. See also *People vs. Magdaraog*, 160 SCRA 153.

[34] TSN, hearing of 1 October 1987, 6.

[35] *People vs. Palino*, *supra.*; *People vs. Cristobal*, 91 SCRA 71, citing *People vs. Pardo*, 79 Phil. 568; *People vs. Cabale*, 185 SCRA 140.

[36] *U.S. vs. Billedo*, 32 Phil. 574; *People vs. Matbagon*, 60 Phil. 887.

[37] *People vs. Aquino*, 68 Phil. 615.

[38] *People vs. Barredo*, 87 Phil. 800.

[39] *People vs. Pardo*, 79 Phil. 578-579.

[40] *People vs. Boyles*, 11 SCRA 89, cited in *People vs. Gatcho*, 103 SCRA 207.

[41] AQUINO, R.C., The Revised Penal Code, vol. I, 1987 ed., 333.

[42] Paragraph 1, Article 64, Revised Penal Code.

[43] AQUINO, R.C., op. cit., 724-725.

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