

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AMADEO HANGDAAN AND ROMEL BALLOGAN, DEFENDANTS.
AMADEO HANGDAAN, DEFENDANT-APPELLANT.**

G.R. No. 90035. September 13, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. 653 of the Regional Trial Court of Lagawe, Ifugao, Branch 14[*], the accused-appellant Amadeo Hangdaan was convicted for the rape of Jocelyn Binoy, a 15-year old girl. His co-accused Romel Ballogan was not arraigned and tried as he remains at large. Hangdaan was sentenced to reclusion perpetua and to indemnify the victim in the amount of P30,000.00.[1] He has appealed the decision, contending that the trial court erred in finding and concluding that he is guilty beyond reasonable doubt of the crime charged.

During the trial of the case, the prosecution established the following facts:[2]

"That in the evening of November 12, 1986, one Jocelyn Binoy, a 15 years old student of the ISCAF, Nayon, Ifugao, went to attend a program at the Convention Hall Building of said Institution. After the program, said Jocelyn Binoy went to the girls' dormitory where she boards. However, before entering the dorm, she went to the toilet for necessity. As she sat to defecate, (sic) two boys, who were later identified as Romel Ballogan and Amadeo Hangdaan, entered the comfort room and both Romel Ballogan and Amadeo Hangdaan grabbed Jocelyn and pushed her to the wall with Romel poking a knife at her side. That Jocelyn shouted but her mouth was covered and was threatened with bodily harm if she does not keep quiet. That as Jocelyn was pushed with her back to the wall of the toilet, her panty was roughly removed and Romel Ballogan, whose zipper was already opened tried to insert his penis inside the organ of Jocelyn who was crying with pain. That Romel's penis was not able to penetrate Jocelyn's vagina as they were in standing position.

Evidence for the prosecution further show that when Romel could not penetrate despite several attempts, the light went off inside the toilet. So the two boys dragged Jocelyn to a hut across the river some 150 meters away from the toilet and there she was undressed and pushed down on the floor. That Romel went on top of Jocelyn and succeeded in raping her. That Jocelyn tried to resist but was weak and the knife was constant-ly poked at her side. That after Rommel Ballogan, the accused who is at large in this case, finished having sexual intercourse with Jocelyn, Amadeo Hangdaan also went on top of Jocelyn and tried to insert his penis but could not penetrate her as his penis was too big. So Amadeo mashed the nipples and breast of Jocelyn. After that, Amadeo stood up and again Romel went on top of Jocelyn for the second time and again succeeded in having sexual intercourse with Jocelyn. After Romel was through with his second intercourse with Jocelyn, Amadeo again went on top of Jocelyn and tried to penetrate her but could not put his penis inside so he contended himself by mashing the breast of Jocelyn. After Amadeo stood up, Romel again went on top Jocelyn and for the third time had inter-course with her. Then again after Rommel, Amadeo tried but simply could not put in his penis and just mashed the breast of Jocelyn.

Finally, it is the evidence of the prose-cution that after Romel Ballogan succeeded in raping Jocelyn three times and also three unsuccessful penetrations on the part of Amadeo Hangdaan, the two men allowed their

victim to go home with the warning that if she tells anyone they will do her harm. That Jocelyn Binoy went dizzily and with pains all over her body to the dormitory and knocked and the door was opened by Rosa Albino and Jocelyn while crying told her what happened to her and she was asked to go to sleep until the following morning. The following morning, Rosa and the principal confronted Jocelyn who related what happened to her and thereafter the matter was reported to the police authorities of Lamut, Ifugao. The police went after the accused but only Amadeo Hangdaan was arrested and identified by the victim while Romel Ballogan remained at large."

The defense, on the other hand, denied participation by the accused Hangdaan in the crime charged and gave Hangdaan's own exculpatory version of the incident, as follows:[3]

"That on November 12, 1986, accused was at their house at Bolog, Kiangnan, Ifugao. That after 4:00 o'clock in the afternoon Amadeo Hangdaan, co-accused in this case, proceeded to Nayon and dropped at the Robles store where he met Romel Ballogan, the other accused in this case and one Eugenio Mangag who were drinking gin at the Calimlim's store. That the two offered Amadeo a drink and he took a shot. Then after an hour, the three transferred to another store where they took some more drinks. While drinking, Romel and Eugenio had a scuffle with the security guard and thereafter, the three run (sic) away. Later, Amadeo proceeded to the program at Nayon, Lamut where again he met Romel Ballogan. After an hour, Amadeo thought of going home. Moments later, Amadeo met Ricardo Namingit and borrowed his flashlight. Then Amadeo after borrowing the flashlight from Ricardo went back to the program and there he met again Romel who insisted on borrowing the flashlight from Amadeo to look for a Batangas knife that he dropped and so Amadeo gave the flashlight. Moments later, Amadeo Hangdaan met Ricardo and he asked for his flashlight but Amadeo told Ricardo that he will look for Romel Ballogan and get back the flashlight. Amadeo then went to the school where the program was held but Romel was not there; then he went to the dorm but failed to find Romel there. So Amadeo went to the small hut beyond the river and there he saw Romel lying on top of a girl who was crying softly. The girl asked Amadeo help but Amadeo did nothing. Then Amadeo got the flashlight as (sic) he borrowed and told Romel that he is returning it to Ricardo. Thereafter, Amadeo left for home. The following morning, he was apprehended by Lt. Brawner, the Station Commander of the INP of Lamut, Ifugao."

The trial court however, gave credence to the prosecution's evidence and convicted the accused Amadeo Hangdaan for the crime of rape.[4] Whereupon, the accused interposed the present appeal, with denial as his only defense.

After a careful review of the records and the evidence, we find no cogent reason to disturb the judgment of the trial court which found the appellant's denial devoid of truth and the appellant guilty beyond reasonable doubt.

As aptly observed by the People, the accused-appellant's defense leaves much to be desired. He admits that he was at the scene of the crime and there saw his co-accused, Romel Ballogan, lying on top of a girl who was crying softly. He also admits that the girl asked his help but he did nothing except to get back a flashlight from Romel and then left for home after telling Romel that he was returning the flashlight to Ricardo. Although appellant admitted his presence at the scene of the incident with a hint that it was his co-accused Romel Ballogan who raped the victim, he, however, vehemently denies having participated in the commission thereof.

He attempts to bolster such denial by pointing out that unlike his co-accused Romel Ballogan, who fled and remains at large, he did not hide, thereby showing that he is innocent of the crime charged.[5]

Appellant's pretended innocence is clearly non-sequitur to his decision not to flee. Apart from the fact that there is no case law holding that non-flight is conclusive proof of innocence, the argument does not hold weight in the light of the positive identification of the appellant by the victim as one of two (2) men who abused her.[6] The material factor here is that there is positive identification of the accused as the author or, more accurately, co-author of the crime.[7]

The accused-appellant further advances the argument that since it is probable that the sperm found in the victim's vagina came from one or more persons, it is also probable that only one person raped the victim and that the offender or culprit was only Romel Ballogan. The appellant appears to be stretching his argument too far. We agree with the People when it says that the fact that the sperm found in the vagina of the victim may have come from one person is not conclusive that it was only Romel Ballogan who raped the victim. Neither does such medical finding rule out the participation of the appellant in the commission of the crime.[8]

It must be pointed out that in the crime of rape, the important consideration is penetration and not emission. The absence of spermatozoa in the victim's vagina or thereabouts does not necessarily negate the commission of rape.[9] In fact, with or without the medical findings, a conviction would still be proper in the case at bar given the positive identification of the accused-appellant by the victim, while medical examination is not an indispensable element in rape cases.[10]

One other aspect of this case has to be dealt with. It appears from the evidence that accused-appellant was unable to introduce his private part into the victim's vagina. Was there consummated rape? There was.

The un rebutted evidence for the prosecution positively implicates accused Hangdaan as having made several efforts to penetrate the victim's vagina. The victim testified:[11]

"x x x x x x x x

"Q And after the accused had forcible inter-course with you, what happened next?

A The other one took over.

Q Whom are you referring to?

A That man in blue. (Witness pointing to Amadeo Hangdaan)

Q And what did this Amadeo Hangdaan do to you?

A He also came over me and tried to insert his penis to my vagina but each time he tried to do that, it could not go inside so he started mashing my breasts.

COURT: (to the witness)

Q Madam witness, do not cry. I will ask you this question. Although his penis was not able to penetrate your vagina, you are sure that his penis touched your vagina?

A Yes, but it did not penetrate.

x x x x x x x x

Q After this first accused had carnal knowledge of you for the second time, what else transpired?

A After that the other one took over again and went on top of me and at the same time mashed my breasts.

Q Did he have sexual intercourse with you for the second time?

A He tried but again his penis could not go inside it was too big.

Q And after this accused Amadeo Hangdaan played with your breasts, what else transpired?

A After that they permitted me to go home.

Q When this Amadeo Hangdaan was mashing your breasts for the first time, did you feel his penis inside your vagina?

A It was on my vagina it could not go inside because it was too big and so he could not do it but mashed my breasts.

COURT:

Q But did it touch your vagina?

A Yes, sir.

x x x x x x x x"

Such testimony of the victim, which was given credence by the trial court, suffices to support the conclusion that the accused Hangdaan committed the crime of rape. The fact that the accused repeatedly tried, but in vain, to introduce his big penis into the victim's vagina leaves no doubt whatever as to the consummation of the crime. For it is settled rule that for rape to be consummated, it is not essential that there be perfect, complete and full

penetration of the vagina. Mere entry of the labia or lips of the female organ without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction for consummated rape.[12]

"It is enough that there be proof of entrance of the male organ within the labia of the pudendum, or lips of the female organ. The slightest penetration is sufficient to consummate the rape."[13]

Finally, as this Court has repeatedly ruled, when the victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed, and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[14]

In sum, what the appellant's defense really boils down to is that he has greater credibility than the victim. In this regard, this Court has ruled:

". . . on the question of the credence to which of the conflicting versions of the prosecution and defense are entitled, the answer given by the trial court is generally viewed as correct and entitled to the highest respect."[15]

"It is the policy of this Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses in the stand and to determine by their demeanor whether they are telling or distorting the truth... In rape cases especially, much credence is accorded the testimony of the complaining witness, on the theory that she will not choose to accuse her attacker at all and subject herself to the stigma and indignities her accusation will entail unless she is telling the truth."[16]

WHEREFORE, the judgment appealed from is AFFIRMED in all respects. Costs against the accused-appellant.

SO ORDERED.

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

[*] Presided over by Judge Nicasio A. Baguilat

[1] Rollo, p. 123

[2] Judgement of RTC, Rollo, pp. 119-120

[3] Judgement of RTC, Rollo, p. 121

[4] Judgement of RTC, Rollo, p. 121

[5] Appellant's Brief, Rollo, pp. 143-144

[6] TSN, p. 14

[7] People vs. Chavez, G.R. NO. L-38603, 30 September 1982, 117 SCRA 221

[8] Appellee's Brief, Rollo, p. 146

[9] People v. Abonada, G.R. No. 50041, 27 January 1989, 169 SCRA 530, 543

[10] People v. Orteza, G.R. No. L-16033, 29 September 1962, 6 SCRA 109; People v. Selfaison, G.R. No. L-14732, 28 January 1961, 1 SCRA 235

[11] TSN, pp. 16-18

[12] People v. Oscar, 48 Phil. 527, 529

[13] People v. Paton-og, No. 70574, November 27, 1987, 155 SCRA 675, 683 citing People v. Oscar, 48 Phil. 527; People v. Pastores, L-29800, 1971, 40 SCRA 498; People v. Conchada, L-39367-69, 1979, 88 SCRA 683; People v. Selfaison, L-14732, January 28, 1961, 1 SCRA 235.

[14] People v. Averro, G.R. No. 76483, 30 August 1988, 165 SCRA 130; citing People vs. Royeras, 56 SCRA 666; People vs. Reglos, 118 SCRA 344

[15] People v. Eguac, G.R. No. L-36082, 29 December 1977, 80 SCRA 665; citing People vs. Villamala, G.R. No. L-41312, 29 July 1977

[16] People v. Lope Andaya, G.R. No. 86364, 6 May 1991

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