

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANKIE ARENAS, VICTOR HAYAG, NOEL SERRANO, REY FOJAS, ALMARIO BIGALBAL ALIAS MAR AND NOLIE PAREJA, ACCUSED, ALMARIO BIGALBAL ...

G.R. No. 92068. June 05, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Appellant Almario Bigalbal, together with Frankie Arenas, Victor Hayag, Noel Serrano, Rey Fojas and Noli Pareja, was charged before the Regional Trial Court of Cavite, Branch 23 with the crime of rape allegedly committed as follows:

"That on or about the 27th day of January 1989, in the Municipality of Tanza, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and assisting each other, while then armed with an icepick, by means of force and intimidation, did, then and there, wilfully, unlawfully and feloniously take turns in having sexual intercourse with said Agustina Aranas y Alcala against her will and consent, to her damage and prejudice." (Rollo, p. 4)

Arenas, Hayag, Serrano, Fojas and Pareja remained at large and did not face trial. Accused-appellant Bigalbal was the only one arrested and brought to trial. He pleaded not guilty to the charge of rape.

The prosecution's evidence, as summarized by the Solicitor General in his Brief, is set forth below:

"On January 27, 1989 on or about 8:30 in the evening, while Agustina Arañas was in the house of her aunt, in Brgy. Punta, Tanza, Cavite, helping in the preparation of the food for the wedding party to be held the day following, accused Frankie Arenas, Victor Hayag and Noel Serrano approached her. Vic Hayag poked an icepick at her telling her, he (Hayag) would kill her if she shouts (pp. 3-4, TSN, Sept. 5, 1989). Vic Hayag together with Noel Serrano dragged her outside of the house and brought her to 'bajada' (local term meaning up-hill portion) in Brgy. Punta, Cavite. At the 'bajada' she saw Noel Serrano, Rey Fojas and appellant Almario Bigalbal. (Should also include Noli Pareja as per Exh. A, Records) Upon reaching the place, Vic Hayag removed her bra and her shorts, then raped her. She struggled. She did not shout because the accused poked an icepick at her right waist, then Frankie Arenas took his turn in raping her and while Frankie was on top of her, Vic Hayag was holding the icepick, and warning her not to tell anybody or they would kill her. Noel Serrano then took his turn in raping her, also threatened her, Vic Hayag holding the icepick while appellant Almario Bigalbal held her hands and Rey Fojas holding her feet (pp. 9, 10 and 11, TSN, *ibid*). After satisfying their lust accused left (p. 12 TSN., September 5, 1989). When asked what she felt after she was raped by the three (3) accused, she answered that she felt pain in her private part (p. 13, TSN, *id*).

After she was raped, Agustina Arañas went to her aunt's house, arriving there at 12:00 midnight. She was met by her cousin, but she did not tell her that she was raped because Vic Hayag threatened her not to reveal what had happened or she would be killed (pp. 20-31, TSN, Sept. 11, 1989). Her mother noticed kiss marks on her

neck and breast, but she did not tell her what caused the marks out of fear (pp. 26-27, TSN., *ibid*). On January 28, 1989, on the prodding of her mother, Teodora Aranas, Agustina told the former that she was raped by Vic Hayag, Frankie Arenas, Noel Serrano and Rey Fojas, (p. 29-30, TSN., Sept. 12, 1989). That same day after she told what happened, her mother and brother accompanied her to the Camp and there narrated to Costelo, a PC soldier, the details of her harrowing experience (pp. 27-28, TSN, Sept. 11, 1989).

Dr. Alberto M. Reyes, supervising medico-legal officer, NBI, who examined Agustina, made the following findings:

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GENITAL EXAMINATION:

No extragenital physical injury noted.

Pubic hairs, fully grown, moderate, labia mejora, coaptated. Fourchette, tense, Vestibule, pinkish, Hymen, originally annular, tall, thick, with a healed complete laceration at 3:00 o'clock position corresponding to the face of a watch, edges of which are sharp and coaptable. Hymenal orifice, admits a tube, 2.5 cm. in diameter. Vaginal walls, tight. Ruggosities, prominent.

CONCLUSION:

1. No evidence (sic) sign of extragenital physical injury noted on the body of the subject at the time of examination.
2. Recently healed hymenal laceration, present.

APPROVED:

(SGD. RICARDO G. IBARROL, JR., M.M.

Acting Chief

Examined by:

(SGD. ALBERTO M. REYES, M.D.

Medico-Legal Officer

NOTED:

(SGD.) ATTY. MANUEL C. ROURA

Deputy Director, Technical Services'

(PP. 7, 8 & 9, Decision)

Teodora Aranas, mother of the complainant testified that on January 27, 1989, Agustina left the house and when she failed to return home the next day, she went to Salinas and met her there. She noticed kiss marks on her neck and breast. When she asked Agustina about these marks, the latter refused to tell her. Teodora's insistent prodding however, broke her daughter's silence. Agustina confided to her about the rape. Mrs. Aranas accompanied complainant to the Camp at the 215 PC Coy, Tejero, Rosario, Cavite. Complainant narrated the details of the rape (pp. 10-11, TSN, September 12, 1989). A complaint was filed originally before the Municipal Trial Court of Tanza, Cavite by Agustina Aranas. Her case was referred to the National Center for Mental Health for psychiatric examination. Result of the examination (Exh. "C"; pp. 12-14, TSN, September 12, 1989) follows:

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MENTAL STATUS EXAMINATION :

Patient was seen thrice at the Out-Patient Service of the NCMH dated February 27, 1989, March 3, 1989 and March 10, 1989. On her latest follow-up, she was accompanied by her sister and brother-in-law. Seen as a female in her late adolescence, dark complexioned, fairly groomed in streetclothes. Behaved and cooperative. Coherent and relevant. Answers queries appropriately in a clear and audible manner, but needs to be prodded. Movement was noted to be childish at times, would cover her mouth with her hands as she answered. Eye contact was fair. Mood generally anxious. Affect was adequate.

Claimed she was brought to the Center, 'para magpatingin dahil sa kaso na rape'. She reported being raped last January 27, 1989. Narrated that she went to the house of her cousin to help in the preparation for a wedding. At around 8:30 p.m., while standing outside the house of her cousin she was allegedly approached by 3 men whom she named as 'Victor Hayag, Frankie Arenas at Noel Serrano'.

Further continued that, 'tinutukan ako ni Victor ng icepick at sabi ay sumama ako sa kanila kung ayaw kong masaktan.' She was then brought near a river where 'pinaghahalikan ako, hinubaran at pinasok ni Victor ang kanyang titi sa puwerta ko habang hinahawakan ang kamay ko nila Frankie at Noel'. Noted to be teary eyed as she related her experience. Denied any perceptual disturbance. Negates any homicidal nor suicidal inclinations. Sensorium was clear. Oriented to 3 spheres. Memory is fair. She can give fair account of herself. Claimed that she is 19 years old, born on August 28, 1969, 6th of 8 siblings. Can do simple mathematical calculations like $10-4=6$, $30-5=25$, answered that there are 4, 25 centavos pcs. in one peso.

When asked to interpret the saying 'ang lumakad ng matulin kung matinik ay malalim' she replied 'hindi ko po alam iyon'. Denied mental illness.

PSYCHOLOGICAL REPORT:

Test Administered:

Raven's Progressive Matrices

Bender Visual Motor Gestalt Tests

Rorschach Psychodiagnostic Tests

Draw a person

Test results and evaluation

Raven's Progressive Matrices

T. Score = 14

Grade V = intellectually defective her score lies below the 5th percentile for her age group.

Rigidity can be seen the way she answers the Raven's Progressive tests.

Projective data connote a person whose emotional life is so inhibited and constricted to be able to generate any response hence she tends to be sensitive and critical in social relationship.

Failure in establishing her true sexual role is seen.

Overall reproduction of the Bender Visual Motor Gestalt tests shows distortions like rotation, simplification, concretion, fragmentation retrogression, as well as crossing and closing difficulty which can be attributed to psychological malfunctioning.

REMARKS AND RECOMMENDATIONS

Based on the observations and examination done on Agustina Aranas, she was found to be suffering from Moderate Mental Retardation. She is not psychotic or insane hence has the capacity to answer questions to be propounded (sic) by court.

(SGD.) JOSE T. LOVERIA, M.D.

Attending Physician

APPROVED BY:

(SGD.) EDUARDO T. MAABA, M.D.

Medical Specialists

In-charge, Out-Patient Service"

(Rollo, pp. 79-88)

The defense version is summarized by the appellant as follows:

"Accused Almario Bigalbal, 18 years old, single, jobless, resident of Punta, Tanza, Cavite denied the charge. He claimed that on January 27, 1989 at about 7:00 o'clock in the evening he was at home watching T.V., and at about 8:00 o'clock he was playing 41 with Isagani Arenas, Jacinto Alarca and Romulo Bigalbal, his brother up to 12:00 o'clock (pp. 2-3, TSN, Nov. 3, 1989). That accused Frankie Arenas, Victor Hayag, Noel Serrano, Rey Fojas and Nolie Pareja are known to him because they are his barriomates (p. 4, TSN, Nov. 3, 1989).

On January 27, 1989 in the evening he did not see them and the last time he saw them was when subpoenas were handed to them about this rape case (P. 4, TSN, November 3, 1989). He denied to have seen Agustina Arañas in the evening of January 27, 1989. He also denied to have assisted raping Agustina Arañas. He corroborated the testimonies of Isagani Arenas and Cecilio Arenas with respect to the number of houses in Bo. Punta, the location of the house of Elpidio Tahimik, and on the sketch (Exh. "2") which he drew and indicated bahada, the stores, the house of Tahimik, and the electric post along the highway (pp. 7-9, TSN, Nov. 3, 1989). He also testified on the time the lights on the stores and electric posts are lighted and out. He declared that there is shorter time in going to the house of Tahimik from his house than going to the bahada from his house which is double the time (p. 13, TSN, Nov. 3, 1989), and one will spend about five (5) minutes from his house before one could reach the house of Tahimik and from his house to bahada 5 to 6 minutes (p. 14, TSN, Nov. 3, 1989). He states that he doesn't know any reason why Agustina Arañas will point to him as the one who assisted in raping her (p. 22, TSN, Nov. 3, 1989).

After the testimony of the accused, Atty. Beltran asked for an ocular inspection to determine the distance between the house of Elpidio Tahimik up to the bahada where the victim was taken by the accused, the location of the houses, the stores and the electric post, which was granted by the Court.

On November 7, 1989, the court had an ocular inspection of the place where the incident happened together with Atty. Raymundo Beltran, defense counsel, Asst. Provincial Prosecutor Solomon N. Villanueva, the parents of the complaining witness and prosecution witnesses. A report was made and marked as Exh. "3" for the defense (p. 64, Rec.)." (Rollo, pp. 61-63)

After trial, the lower court rendered a decision convicting the accused-appellant, the dispositive portion of which states:

"WHEREFORE, foregoing considered, the Court finds Almario Bigalbal GUILTY beyond reasonable doubt of the crime of Rape and hereby sentences said accused to suffer a penalty of reclusion perpetua; to indemnify Agustina Aranas the amount of P30,000.00 and to pay the costs.

SO ORDERED.

Trece Martires City, January 18, 1990"

(Rollo, p. 33)

In his appeal, the appellant assigns the following errors allegedly committed by the trial court:

I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF AGUSTINA ARANAS THAT SHE WAS TAKEN BY VICTOR HAYAG AND HIS COMPANIONS FROM THE HOUSE OF ELPIDIO TAHIMIK IN THE EVENING OF JANUARY 27, 1989 UNDER THREAT OF BEING KILLED IF SHE DID NOT GO WITH THEM.

II

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINANT THAT SHE WAS DRAGGED FROM THE HOUSE OF ELPIDIO TAHIMIK THAT EVENING TO THE 'BAJADA' (Rollo, p. 46-a)

III

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF AGUSTINA ARANAS THAT SHE WAS RAPED BY VICTOR HAYAG, FRANKIE ARENAS AND NOEL SERRANO WITH THE ALLEGED HELP OF THE ACCUSED REY FOJAS AND ALMARIO BIGALBAL.

IV

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED ALMARIO BIGALBAL OF THE CRIME OF RAPE, CONSIDERING THAT THE COMMISSION OF THE CRIME HAS NOT BEEN PROVEN AND EVEN IF THE CRIME HAS BEEN PROVEN, THE PARTICIPATION OF THE ACCUSED APPELLANT ALMARIO BIGALBAL HAS NOT BEEN ESTABLISHED BEYOND REASONABLE DOUBT." (Rollo, p. 46-b)

As to the first assignment of error, the appellant contends that Agustina's allegation that she was forcibly taken by Hayag, Arenas and Serrano is unbelievable considering that there was a wedding preparation going on and it was impossible for her relatives not to see these three accused forcibly taking her.

The Court finds the appellant's argument unmeritorious. The complainant testified that her relatives went inside the aunt's house and she was left alone in the terrace when Hayag, Arenas and Serrano arrived (TSN, pp. 6-7, September 11, 1989). This explains why none of the victim's relatives witnessed her abduction.

Bigalbal likewise maintains that Agustina's testimony that she was dragged for one hour up to the "bajada" defies credibility. He points out that if she was indeed dragged for almost an hour, then there should have been bruises on her hands and arms but surprisingly, the medico-legal report did not disclose any unusual finding of medical significance.

On this issue, we quote with approval the observation of the Solicitor General:

"Appellant makes much importance to (sic) the word 'dragged'. It is not clear in the records whether or not the word 'dragged' reflects the correct translation into the English language when complainant, who was testifying in the local dialect, testified as to the manner she was forcibly taken out of the house. It is still possible that somebody may be 'dragged' while still capable of walking. Under the circumstances of the instant case, rape can still be committed without unusual significant marks on the victim's neck, legs, thighs, hands or arms."

(Rollo, p. 91)

Moreover, the psychiatric report on the victim (Exhibit "C", Original Records; Rollo, pp. 21-24) shows that the victim is suffering from moderate mental retardation. Agustina stated that she was dragged from her aunt's house to the "bajada" for an hour. But when asked how long an hour is, she replied, "It was a long time" and when asked if she knows how many minutes there are in an hour, she answered, "No, Sir, I do not know" (TSN, page 16, September 11, 1989). The ocular inspection report of the crime scene (Exhibit 3, Records, page 64) indicates that it took only ten minutes ordinary walk from the house of the victim's aunt to the "bajada". It is therefore possible that her claim that she was "dragged" for an hour is incorrect, grounded on a distorted perception of time.

Even assuming that there really were no physical injuries inflicted, the absence of such injuries does not negate the commission of rape. (See *People v. Abonada*, 169 SCRA 530 [1989]; *People v. Mustacisa*, 159 SCRA 227 [1988]; *People v. Alfonso*, 153 SCRA 487 [1987].

The appellant attempts to highlight other inconsistencies in Agustina Aranas' testimony. He directs this Court's attention to her previous statement that she was raped by accused Rey Fojas (TSN, page 38, September 11, 1989) and her later claim that Fojas only held her hands (TSN, page 40, September 11, 1989). This apparent conflict may be reconciled by the fact that the appellant, being moderately mentally retarded, has, every now and then, a different grasp of the question propounded to her and is confused as to the meaning of rape:

"Q. Rey Fojas also raped you?

A. Yes, sir.

Q. Do you know what is the meaning of rape?

A. Yes, sir.

Q. What does it mean?

A. They kissed me and put kiss marks on my neck.

Q. That is what you know about rape?

A. No, sir.

Q. What do you mean when you said you were raped?

A. If I was raped I got pregnant. (TSN, p. 36, September 11, 1989)

The Court finds, however, that the complainant is nonetheless consistent in her testimony with respect to the identity of those accused who had carnal knowledge with her.

The appellant moreover challenges the truth of the victim's statement that while Hayag, Serrano and Arenas took turns in raping her, Vic Hayag poked an icepick at her right waist while the appellant, Fojas and Pareja took turns holding her hands and feet. Almarion Bigalbal reasons that there simply was no need for him to hold the hands of the complainant since Hayag was already poking an icepick at her. The Court does not agree with him. Agustina testified that Hayag poked the icepick at her right waist to keep her from shouting and despite the icepick, she was still struggling (TSN, p. 10, September 5, 1989). It was therefore necessary for the appellant and the other accused to hold her hands and feet in order to facilitate the consummation of the rape.

The fact that Agustina kept silent for two days before revealing the rape to her mother does not diminish the reliability of her testimony. Her silence was rooted on her fear for her life since she was warned, at the risk of being killed, not to tell anybody about the rape. Considering her mental state, such threat produced an

overpowering effect on the victim, sufficient to conceal her ordeal from her relatives until she was grilled by her mother. (See *People v. Manaay*, 151 SCRA 31 [1987]).

In retrospect, the appellant's assigned errors principally relate to the credibility of the rape victim, Agustina Aranas. On the issue of credibility of witnesses, the Court has always stressed that findings of the lower court are accorded great weight and are not to be disturbed unless the court overlooked certain facts of substance and value that, if considered, might affect the result of the case. (*People v. Somera*, 173 SCRA 684 [1989]; *People v. Baysa*, 172 SCRA 706 [1989]; *Aguirre v. People*, 155 SCRA 337 [1987]).

As to the probative value of the complainant's testimony, the lower court made the following observation:

"The manner in which she answered the questions propounded (sic) to her on direct examinations and cross examinations, her obvious sincerity and readiness to disclose the facts injured (sic) of her of course characterized boldness when she identified and pointed to Almario Bagalbal with tears flowing from her eyes impressed the court with truthfulness of her testimonies. (Original Records, pp. 86-87)

On the other hand, with respect to the credibility of the appellant, the lower court had this to say:

"Accused Almario Bigalbal's demeanor on the witness stand and each time that he was in Court during the hearing of this case denied credence of (sic) his story. He appeared to the Court as one who does not appreciate the gravity of the offense imputed against him, to whatever penalty may be imposed upon him. The unconvinced (should be unconcerned) demeanor of the accused on the witness stand as if the crime is not serious gives an impression of incredibility to his defense to the rape charge. (*People v. Marbebe*, 128 SCRA 537). (Original Records, p. 89)

We defer to the foregoing findings of the lower court which, having had the opportunity to assess the behavior of the witnesses, gave more credence to Agustina Arenas' testimony.

The other inconsistencies in Aranas' testimony that are adduced by the appellant are minor contradictions that do not detract from her credibility. (*People v. Velasco*, 175 SCRA 442 [1989]) Besides, the Court cannot expect a rape victim to recall every sordid detail of her traumatic experience.

The appellant was positively identified by the victim as one of those who held her hands while she was being raped. Where there is no evidence to show that the victim, a 19-year old moderately mentally retarded provincial lass, was actuated by improper motives, her identification of the accused as one of the culprits should be given full faith and credit. (See *People v. Aragon*, 164 SCRA 78 [1988]; *People v. Ladrera*, 150 SCRA 113 [1987]).

The appellant's defense of alibi cannot likewise prevail over positive identification by the complainant. (*People v. Demecillo*, 186 SCRA 161 [1990]).

Moreover, the appellant has not shown that it was physically impossible for the accused to be present at the crime scene or at the vicinity thereof at the approximate time the crime was committed. (*People v. Alejo Cuyo y Mortero and Felix Buen y Paredes*, G.R. No. 76211, April 30, 1991; *People v. Roberto Soriano y Bruan, et al.*, G.R. No. 74783, April 22, 1991; *People v. Marapao*, 188 SCRA 243 [1990]; *People v. Reunir*, 157 SCRA 686 [1988]).

In a final attempt to exculpate himself, the appellant presented Cecilio Arenas whose testimony suggested that the complainant voluntarily went with Hayag, Arenas and Serrano. (TSN, pp. 9-11, October 6, 1989) The Court however doubts the veracity of Arenas' statement considering that he is the father of one of the accused, Frankie, who is still at large. Moreover, the defense has not presented any evidence to show that Agustina is a woman of ill-repute or of a flirtatious and wanton nature to incite or provoke Hayag, Arenas and Serrano to have sexual intercourse with her. (See *People v. Pena, Jr.*, 151 SCRA 638 [1987]. On the contrary, the psychiatric report on

the victim portrayed her as an emotionally inhibited and socially sensitive and critical person. (Exhibit C, Original Records; Rollo, p. 23)

We cannot overlook the fact that all the appellant's co-accused have remained in hiding. The Court has always repeated that flight of an accused signifies an awareness of guilt and a consciousness that he has no tenable defense to the rape charge (See *People v. Dante Bartulay*, G.R. No. 83696, December 21, 1990; *People v. Tangliben*, 184 SCRA 220 [1990]; *People v. Rey*, 172 SCRA 149 [1989]; *People v. Averro*, 165 SCRA 130 [1988]). The disappearance of the five accused lends credence to Agustina's charge of rape. While the appellant did not take flight, he was nevertheless positively identified by Agustina.

As previously mentioned, the rest of the accused were never charged and arraigned before the lower court. Without necessarily prejudging their cases until jurisdiction over them is acquired and their respective defenses are thereafter presented, the Court nevertheless finds that the commission of rape has been established beyond reasonable doubt and that appellant Bigalbal's participation therein is undeniable. The records, however, do not clearly indicate that Bigalbal participated in all the three rapes allegedly committed upon the victim. Under the circumstances, the Court holds that the appellant may be found guilty, as co-conspirator and principal, of only one count of rape.

That conspiracy accompanied the commission of rape is borne out by the evidence on record. The combined actuations of all the accused, including the appellant, indicate a common design to commit the crime of rape. While the appellant himself did not have carnal knowledge of the victim, his tacit and spontaneous cooperation by holding her hands, instead of preventing the rape, makes him a co-conspirator. As such he becomes a principal in the commission of rape.

WHEREFORE, the appealed judgment is hereby AFFIRMED subject to the modification that the civil indemnity is increased to P40,000.00 in accordance with the Court's recent ruling in *People v. Banayo* (G.R. No. 86938, March 22, 1991).

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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