

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VILLAMOR ACZON ALIAS “AMOR,”
ACCUSED-APPELLANT.**

G.R. No. 93029, August 10, 1993

Ponente: NOCON, J.

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NOCON, J.:

Accused-appellant Villamor Aczon claims that he could not have kidnapped and raped the complaining witness, Emily Miranda, as he was in jail at the time the alleged kidnapping and rape took place. Nevertheless, the trial court found Aczon guilty as charged and sentenced him to suffer the penalty of reclusion perpetua, to indemnify the offended victim the sum of P25,000.00 and to pay the cost.[1] Aczon reiterates his alibi before us and asks us to acquit him. Meticulous examination of the records before us reveals with moral certainty the guilt of Villamor Aczon for the crime charged. Accordingly, we affirm his conviction.

On December 26, 1987, Emily Miranda and her cousin, Jocelyn Calderon, arrived at Roxas, Isabela at around 7:00 to 8:00 P.M. for a connecting trip to Sandiat, San Manuel, Isabela. Both girls came from Bayombong, Nueva Vizcaya. Finding no transportation to Sandiat, they repaired to the house of Freddie Simtioco, Emily's boy friend, to stay overnight. After supper, the three, together with Albert Diaz, Freddie's friend, went to watch a free movie being shown at the Roxas municipal park. After the one-hour movie, the foursome proceeded to the Roxas Central School to spend the rest of the evening just chatting.[2]

After sometime, the two girls answered the call of nature at the rear of the school building. When they returned, they saw and heard a man (later identified as one Diosdado Aczon), in fatigue uniform and with a cap on his head, accusing Freddie and Albert of smoking marijuana.[3] He identified himself as a PC soldier. The two denied the accusation but the man persisted in accusing them. When the foursome invited him to go to the police station, Diosdado, together with his companion (accused-appellant Villamor Aczon), who suddenly came from the dark,[4] brought them to one of the rooms of the school building where Freddie and Alberto were divested of their money, wallet and watch, by Diosdado who then passed the articles to Villamor.[5]

Thereafter, threatening the girls with his gun if they would not follow him, Diosdado brought them at the back of the school building.[6] Villamor, who was momentarily left behind to guard the two boys, joined Diosdado in bringing the girls to a banana grove about a kilometer away from the school building.[7] He had in his possession a hunting knife with which he threatened both girls as they were bringing them to the banana grove.[8]

Upon reaching the place, Diosdado pulled Emily towards him, but the latter was able to wrench herself free and run towards Jocelyn, so much so that instead of Emily, Diosdado pulled Jocelyn and pushed Emily to Villamor. The girls were brought by the men to separate places to be raped.[9] Kneeling before Villamor, Emily pleaded with him not to violate her, saying that if he had a sister and this will happen to her, it would pain him so much. Deaf to her protestations, Villamor ripped off her bra and panty after taking off her pants. All the while, Emily fought Villamor, but being stronger, he overcame her resistance and raped her. Hardly had she dressed up, when,

thirty minutes later, it was now Diosdado's turn to rape her. She fought his advances, but considerably weakened by her first experience, Diosdado was able to remove her clothes and rape her.[10]

Both girls were set free by Diosdado and Villamor after threatening to kill them if they would relate what happened to them to others. They rushed to the house of Freddie where they related their experiences to Freddie's mother as Freddie was out with the police looking for them.[11] The next morning the girls went to the police station and reported what had happened to them. Emily's statement was taken and her complaint was filed (Exhibit "A") after she was medically examined by Dr. Elvis Amurao (Exhibits "B" and "B-1").[12]

Villamor Aczon, together with Diosdado Aczon who is still at large, was thus charged in an amended information for kidnapping with rape.[13] Arraigned, Villamor Aczon pleaded "Not Guilty."

As found by the trial court, Villamor Aczon's defense is as follows:

"Accused Villamor Aczon (29), testified for himself. He claims that at about 7:00 to 7:30 o'clock in the evening of December 26, 1987, he was at the jeepney terminal at Roxas, Isabela, waiting for a ride bound for Masigun. Three police officers nabbed him. They were Pat Rosqueta, Pagulayan and Camato, of the Roxas Police Station. He was suspected of carrying a gun. He did not resist by telling them he did not have a gun because he was not aware of any fault on his part. He claims that he was brought to the Municipal Hall where he was maltreated and forced to bring out the gun. He was brought to a detention cell where the police put pepper on his penis. That night when he was detained, he was brought out to a culvert a little bit far from the Municipal Hall. The next morning, there were two ladies who came to his detention cell. Pat. Rosqueta pulled one of the ladies and told her to point at him. The lady whom Rosqueta made to point at him did not appear in Court, however, her companion was the one who testified in Court.

"Aczon denies the accusation of Emily against him. He claims that he could not have committed the crime imputed to him because he was picked up by the three (3) police officers at 7:30 P.M., December 26, 1987, and detained in jail at 8:10 p.m., same evening (Exh. '1-A')."[14]

As abovestated, the trial court found Villamor Aczon guilty as charged and sentenced him accordingly. Hence, this appeal.

The appeal has no merit.

Accused-appellant's defense is anchored on alibi - that at around 7:00 to 7:30 o'clock in the evening of December 26, 1987 he was nabbed by the police and detained at the Roxas Police Station at 8:10 that evening on suspicion of illegally possessing a gun. Consequently, it would be physically impossible for him to have raped complainant in spite of his positive identification by the complaining witness, Emily Miranda, that he was the person who abducted and raped her at past 10:00 o'clock that evening.

He offers[15] as part of his defense the blotter of the police station of the Municipality of Roxas, Province of Isabela,[16] to prove that he was in jail at around 8:15 P.M. while the alleged abduction and rape happened at past 10:00 P.M. of the same date.

In his brief accused-appellant focuses on that part of the police blotter as testified to by Major Uy, one of the prosecution's witness, as follows:

"Q - I will give you this blotter which you brought along and state before the Honorable Court what are the entries on December 26, 1987, if there are entries there?

"A - There are entries on December 26, 1987, Sir. Entry No. 118737 dated 26-12-87, time: 2000 hrs., it is 8:00 in the evening.

"Fiscal Nunez:

May we request the major to read the entry on that date?

"A - The entry on that date states that one Alberto Diaz, maiden name unknown, 18 yrs. old, single and resident of Rizal, Roxas, Isabela, reported to this police station that when they were at the Roxas Central School together with their girl friends namely Emily Miranda and Jocelyn Calderon with one Freddie Simtioco, two unidentified armed men poked their guns (short) and divested their watch and wallet. Another entry is 118738 dated 26-12-87 at 2010 hrs., that is 8:10 in the evening. Upon receipt of the report, police Cpl. Rosqueta, Pfc. Macadangdang and Pat. Camato responded to said report but girl friends-victims and robbers were not already there. Another entry 118739, same date, time: 2015 hrs. Police Corporal Rosqueta, Pfc. Macadangdang, and Pat. Camato further proceeded to Sitio Caragsacan, Rizal, this municipality to establish checkpoints for possible way out of the suspects. And when they were walking along the road proceeding to that place, they met a man with a bandoler around his waist walking hurriedly with a hunting knife and a fanknife. They easily identified him as one Villamor Aczon of Masigun West, this municipality and revealed when they were already inside the police station that he and one Diosdado Aczon, his cousin, were the ones who robbed the victims and further alleged that the two girl victims Emily and Jocelyn were raped/abused at Sitio Caragsacan, Rizal, this municipality near the river bank and when asked the whereabouts of the victims he answered that they were already set free and accompanied by them up to the road near the poblacion of Roxas. Entry 118740, 26-12-87, 2035 hrs. S/Sgt. Bucad, this police station with three INP members left the station and proceeded to Alemana, San Placido, this municipality to track down Diosdado Aczon but returned station with negative result. Another entry 118741, 26-12--87, time: 2050 hrs., OIC/Sgt. Bucad with three INP members proceeded to Masigun West, this municipality to the residence of Diosdado Aczon, and when they were walking along the barangay road, they met suspect handing short firearm and flashlight; there was a shoot-out between the INP members but the suspect was quick enough to evade arrest by the INP members and lost in the dark.' (TSN September 11, 1989, pp. 5-7)[17]

Unfortunately, the very same police blotter relied upon by accused-appellant proved to be his undoing. Rather than corroborating his alibi, the police blotter and the testimony of Major Uy proved that, indeed, complainant was abducted and raped after her companions were robbed. This is very clear from the time sequence of the police blotter which is as follows:

1. 2000 Hrs. or 8:00 P.M. of December 26, 1987 - Alberto Diaz reported the theft of his watch and the wallet of one Freddie Simtioco at the Roxas Central School;
2. 2010 Hrs. or 8:10 P.M. of same date - 3 policemen of the station investigated the school site but reported that the robbers and girl friends-victims were no longer there;
3. 2015 Hrs. or 8:15 P.M. of same date - the same three policemen reported that they met the accused-appellant who was walking hurriedly with a hunting knife and a fanknife. When they brought him to the police station, said accused-appellant revealed that he and one Diosdado Aczon, his cousin, had earlier robbed the victims and raped their girl friends and had released them;
4. 2035 Hrs. or 8:35 P.M. of same date - four policemen went to Alemana; San Placido, Roxas Municipality to track down Diosdado Aczon but failed to find him;
5. 2050 Hrs. or 8:50 P.M. of same date - the same four policemen went to Masigun West where they met Diosdado Aczon who, however, escaped capture by shooting the policemen.

The above time sequence shows that accused-appellant was arrested only after Alberto Diaz had earlier reported that two men had divested them of their watch and wallet. It is not indicated in the police blotter that Diaz reported that the two men also took their girlfriends but in the entry for 2010 Hrs. or 8:10 P.M. it was stated that the responding policemen did not find both robbers and the girls in the school compound. It was ONLY AFTER

fifteen minutes from the first report that the policemen chanced upon accused-appellant whom they easily identified as Villamor Aczon of Masigun West.

Accused-appellant harps on the fact that the complaining witness Emily Miranda testified that the abduction and rapes occurred after the one-hour movie was finished or past 10:00 P.M.[18] He claims that if he was already in police custody at 8:15 P.M. how could he have abducted and raped Emily Miranda at past 10:00 P.M.?

At this point, the Court notes that:

"In rape cases, the exact sequence of startling events crowded into a brief period of time and productive of excitement and confusion is often a matter of doubt even in the most honest and accurate memory, and in the reiterated narration of such occurrences even the most candid witnesses sometimes make mistakes and fall into apparently confused and inconsistent statements, which, however, should not affect their credibility."[19]

Thus, testifying two (2) years after the commission of the crime of abduction and rapes, it would not be farfetched if the time mentioned by Emily Miranda as to when she was abducted and raped was off by one or two hours, as when she said she must have been abducted and raped at past 10:00 P.M. But since Aczon revealed to the police that at 2015 Hrs. or 8:15 P.M. they had abducted and raped the girls and released them, this would put the abduction and rapes at around 7:00 to 8:00 P.M. It should be remembered further that Emily testified that she was not wearing a watch at all[20] thus, whether the abduction and rapes occurred at around 7:00 to 8:00 P.M. or past 10:00 P.M., the fact remains that Emily positively identified the accused-appellant as the person who indeed abducted and raped her. We quote with approval the trial court's observation on the alleged time difference:

"In a remote rural area like Roxas, Isabela, time moves fast and the night easily rows old even if the hands of the clock tells otherwise. With all the harrowing experience that Emily has undergone in the hands of her sexual tormentors, she cannot be expected to be precise in recalling the exact time, during those anxious moments of her captivity a minute longer must have been like eternity to her.

"Considering also Exhs. 'C', 'D', 'E' and 'F', entries in the police blotter of INP, Roxas, Isabela, the fact that Alberto Diaz and Freddie Simchico reported how they were divested of their belongings and how the two girls were taken away and the subsequent action taken by the police, these entries cannot be taken as hollow ones. There might be variance in time but the fact remains that the events occurred and happened as entered in the blotter.

"The absolute exactitude of time here is not essential to the case. The presence of minor inconsistencies in the testimony of a witness could be an indication of truth. A witness whose testimony is perfect in all aspects, without flaw and remembering even the minutest details which jibe beautifully with one another, too herself open to suspicion of having been coached or having memorized statements earlier rehearsed. (People vs. Ansan, G.R. 49728, 15, July 1987). The rape victim's testimony that she was raped at 'noontime' is not necessarily contradictory to the time stated in the Information, i.e., between 8:00 o'clock to 11:00 o'clock in the morning. (People vs. Ansan, supra)."[21]

Against accused-appellant's bare assertion that he was taken by the police at around 7:00 to 7:30 P.M., without the same having been entered in the police blotter, we have the official entries in the said blotter that Aczon had been arrested at around 2015 Hrs. or 8:15 P.M. and when brought to the police station he revealed that he, together with Diosdado Aczon, had just raped the girls and released them. Accused-appellant has not shown any improper motive on the part of the police officers[22] why they would enter such incident in the police blotter unless revealed to them by the accused-appellant. The presumption of regularity in the performance of said police officers of their duties[23] has not been rebutted.

Accused-appellant's alibi, it seems to us, has been carefully contrived to fit the entries in the police blotter and to

harmonize with the testimony of the complaining witness that the abduction and rapes occurred after the one-hour movie, which started at 9:00 P.M. at the Roxas Central School, had ended to create a doubt as to accused-appellant's guilt as shown in the second to the last sentence of his brief which reads:

"The only conclusion that can be drawn is that she was not raped. She merely put up a story to cover up the nocturnal escapade that she had with her boy friend, TO ASSURE AND PLACATE HER WORRIED AND IRATE MOTHER who arrived at Roxas, Isabela on December 27, 1989 to look for her truant daughter." [24] (Emphasis supplied)

The statement with reference to complainant's mother "who arrived at Roxas, Isabela on December 27, 1989 to look for her truant daughter" is utterly false as accused-appellant's counsel, Atty. Francisco V. Marallag knew from the very beginning that complainant is an orphan, her mother having died two (2) years before the incident in question, as elicited by him on cross-examination of said complaining witness, to wit:

"Q You are an orphan, is that correct?

"A My mother died, sir.

"Q When did your mother die?

"A I cannot remember, sir.

"Q In December, 1987, was your mother still alive?

"A No, sir.

"Q How many years before 1987, did she die?

"A If I am not mistaken, two (2) years, sir." [25]

For his attempt to mislead the court, Atty. Benjamin M. Dacanay was disbarred in *Adez Realty, Inc. v. Court of Appeals* [26] "for intercalating a material fact in the judgment of the court a quo (therein) thereby altering and modifying its factual findings with the apparent purpose of misleading the court in order to obtain a favorable judgment" For the same reason, counsel for accused-appellant should be made to explain his actuation by his irresponsible statement in the appellant's brief calculated to mislead the Court in favoring his client's appeal.

Clearly, Emily Miranda's positive identification of accused-appellant as the short man who abducted and raped her at knifepoint prevails over his contrived alibi. [27]

Accused-appellant's claim that the allegation of rape is "amusing" because the doctor who examined Emily Miranda the day after the rape did not find any other injuries, aside from fresh hymenal lacerations, on her body, [28] thereby contradicting the latter's testimony that she allegedly fought accused-appellant when he was forcibly removing her T-shirt, bra, pants and panty, and, when overpowered, her naked body was pushed to the ground, did not affect complainant's credibility.

The fact that no contusions, bruises, scratches, abrasions and other similar injuries were found on complainant's body only indicates that accused-appellant had so thoroughly intimidated Emily Miranda, with the hunting knife he carried [29] that she had no choice but to submit to his lecherous desires.

The relevant testimony of Dr. Amurao, confirming the rape, is as follows:

"Q Now, do you remember having examined one by the name of Emily Miranda on December 27, 1986?

"A Yes, sir.

“Q What time did you conduct the examination?

“A About 8:00 o'clock in the morning.

“Q And what was the complain(t) if you can still remember doctor, of Emily Miranda, reason for which she sought your services?

“A She came with a complain(t) that she was sexually abused twice by two different persons.

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“Q Will you indicate, doctor, what were your findings?

“A Upon examination of one Emily Miranda, there was no physical injury noted but that of fresh hymenal laceration at 12:00 o'clock, 4:00 o'clock and 10:00 o'clock, on the region of the hymen.

“Q You stated here, doctor, that the laceration of the hymen is fresh. What do you mean by that fresh hymenal laceration?

“A That the laceration is quite recent.

“Q By the way, can you describe the pigmentation or the color of the laceration when you examined the same?

“A The laceration is somewhat reddish in appearance with torn edges.

“Q Now, can you determine from the appearance of the laceration upon examination the approximate time when this laceration was inflicted?

“A Less than twenty-four (24) hours, sir.

“Q Now, doctor, you stated before the Honorable Court what could have caused the fresh hymenal laceration which you found after examination?

“A The hymen is lacerated during the first sexual intercourse but this is not always the case.

“Q What could have caused the laceration?

“A Since the patient came in and that she said she was sexually abused by two different men, then that might have been the cause of the laceration.

“Q To amplify, it could have been caused by the insertion of the male organ into the vagina, is that what you mean?

“A Yes, sir.”[30]

Although the information charged the accused-appellant with the crime of kidnapping with rape, the body of the information alleged a crime of forcible abduction with rape, and the evidence proved at the trial is that of forcible abduction with rape. It is settled that what controls is not the designation of the offense but the description thereof as alleged in the information.[31] And as described therein, the offense imputed to Villamor Aczon contains all the essential elements of forcible abduction with rape, to wit: (1) the taking of a woman against her will; (2) the taking is with lewd designs[32] and (3) the rape of the woman was accomplished through force or intimidation.[33] Here, Emily Miranda testified that the short man, which is accused-appellant, had a knife with which she was threatened.[34] Under the facts proven by the prosecution, accused-appellant committed the complex crime of forcible abduction with rape as the forcible abduction was the necessary means to commit the crime of rape.[35] The element of "lewd design" was established by the actual rape.

Pursuant to Article 48 of the Revised Penal Code, in complex crimes the penalty for the more serious crime shall

be imposed. Article 342 of the said Code penalizes forcible abduction with the penalty of reclusion temporal while Article 335 penalizes the crime of rape with reclusion perpetua. The latter then, is the more serious crime. The penalty to be imposed is, therefore, reclusion perpetua.

WHEREFORE, the decision of the Regional Trial Court convicting the accused-appellant of kidnapping with rape is hereby VACATED and SET ASIDE and a new one entered finding accused-appellant Villamor Aczon guilty of the crime of forcible abduction with rape. He is sentenced to suffer the penalty of reclusion perpetua and to indemnify the offended party, Emily Miranda, in the amount of P50,000.00 and to pay the costs.

Counsel for accused-appellant, Atty. Francisco V. Marallag, is required to explain within ten (10) days from receipt of this decision why he should not be disciplinarily dealt with for fabricating a fact in accused-appellant's brief, which he signed as counsel de oficio, which fact was designed to mislead this Court into considering favorably the appeal.

SO ORDERED.

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

[1] "People v. Aczon," Criminal Case No. 1025, February 16, 1990, penned by the Hon. Juan A. Bigornia, Jr., presiding judge, RTC, Second Judicial Region, Branch 18, Ilagan, Isabela.

[2] TSN, August 3, 1989, pp. 6-16; August 2, 1989, pp. 3-6.

[3] TSN, August 2, 1989, pp. 9-10; August 1, 1984, pp. 24-25.

[4] T.S.N., August 2, 1989, p. 11.

[5] Ibid., pp. 11-12.

[6] Ibid., pp. 13-15; T.S.N., August 22, 1989, pp. 8-11.

[7] T.S.N., August 2, 1989, p. 25; T.S.N., August 22, 1989, p. 12.

[8] T.S.N., August 2, 1989, pp. 25-26; T.S.N., August 22, 1989, pp. 9-10.

[9] T.S.N., August 2, 1989, pp. 18-20.

[10] Ibid., p. 23.

[11] Ibid., pp. 28-29.

[12] Ibid., pp. 29-32.

[13] Rollo, pp. 6-7.

[14] Rollo, p. 19.

[15] TSN, October 24, 1989, p. 20.

[16] Exh. "1" (Exh. "H" for prosecution), Folder of Exhibits.

[17] Appellant's Brief, pp. 7-9; Rollo, pp. 49-51.

[18] TSN, August 2, 1989, pp. 5-20.

[19] People v. Pasco, 181 SCRA 233, 242-243.

- [20] TSN, August 22, 1989, p. 12.
- [21] Rollo, pp. 21-22.
- [22] Reyes v. Eligino, G.R. Nos. 70113-14, December 11, 1992.
- [23] People v. Agustin, G.R. No. 98362, November 13, 1992.
- [24] Appellant's brief, pp. 11-12, Rollo, pp. 53-54.
- [25] TSN, August 1, 1989, p. 14.
- [26] G.R. No. 100643, October 30, 1992.
- [27] People v. Carino, G.R. Nos. 92144-49, December 18, 1992.
- [28] TSN, August 23, 1989, p. 7.
- [29] TSN, August 2, 1989, pp. 25-26.
- [30] TSN, August 23, 1989, pp. 5-8.
- [31] Santos vs. People, 181 SCRA 487.
- [32] TSN, August 23, 1989, pp. 5-8.
- [33] Article 342, Revised Penal Code.
- [34] TSN, August 2, 1989, p. 26.
- [35] People v. Grefiel, G.R. No. 77228, November 13, 1992.

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