

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDMUND EMPLEO Y MAQUILAN, ACCUSED-APPELLANT.

G.R. No. 96009. September 15, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

In a complaint[1] filed by Elisa Cordova y Urdaneta, herein accused-appellant Edmund Empleo y Maquilan was charged with the crime of rape allegedly committed as follows:

"That on or about the 14th day of March, 1989, at about 8:20 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, by the use of force upon the undersigned complainant, Elisa Cordova y Urdaneta, to wit: by grabbing her under a point of a gun, forced her to lie on the ground and forcibly tore her underwears, kiss (sic) and with the use of superior strength, did then and there wilfully, unlawfully and feloniously have carnal knowledge with said Elisa Cordova against the latter's will."

on the basis of which he was arraigned and, on his plea of not guilty, thereafter tried on the merits with the assistance of his counsel de parte at all stages.

Considering the importance and primacy given by appellate courts to the factual findings of trial courts, especially on the issue of credibility of testimonial evidence, we reproduce hereunder the ambient facts of the sexual assault as culled from the prosecution's evidence and the submissions of the defense in its version of the incident, all as perspicaciously synthesized by the court a quo:

"On March 14, 1989, at 8:00 o'clock in the evening, private complainant, Elisa Cordova, a 16 year old student in the local university, went with her friends and classmates, namely: Collen Parreño, Robert de la Cruz and Gemma Amadeo, to the Top Hills in Lahug, Cebu City, to view the scenic lights of the city. While they were enjoying the scenic attractions and windy atmosphere atop the hill, three (3) men approached them. One of them, whom complainant later identified, was accused Edmund Empleo, who dragged her under gun point to the bushes some 24 meters away from her friends. She was forcibly laid on the rocky ground amidst the bushes. She pushed and kicked her attacker on the stomach and struck him with stone, but the accused, with his gun pointed at her, boxed her in the abdomen or her solar plexus, causing her to lose consciousness, her skirt was raised, her panty removed, and she felt excruciating pains on her vagina.

"When the accused left her, she crawled and a person from nowhere, whom she did not recognize, lifted her and brought her to a house near the bridge. She was later taken to the Cebu City Medical Center for the injuries she sustained.

"On the following day, March 15, 1989, she was examined by Dr. Suga Sotto-Yuvienco, at her clinic. She reported the incident to the Mabolo Police Station and described to them the appearance of the person who molested her. She did not know the name of the accused then. She came to know about the arrest of Edmund Empleo when she was fetched by a PC soldier and brought her to the Mabolo Police Station, where she was made to indentify the accused. She readily identified the accused, Edmund Empleo, as the man who ravished

her.

"Gilberto Magallon, a Physician of the Cebu City Medical Center, issued medical certificate, Exh. 'A'. He treated the victim, Elisa Cordova, on March 14, 1989 when the latter was admitted to the Emergency Room of the hospital as a victim of rape. He examined the patient's genitalia and his examination revealed the following pertinent findings:

Genitalia - Grossly, normal, female

Introitus - Hyperemic, including the labia majora

- Sand particles noted

Hymenal ring - with old laceration at 6 o'clock (Exh. 'A-2')

He explained that the entrance of the vagina was hyperemic. There was noted an increase of vast blood flow in the area because of an injury which may have been caused by hard object. Immediately after he examined the patient, he referred her to the Surgery Department because of the bruises which the victim also sustained.

"Collen Parreño, corroborated the testimony of the victim, Elisa Cordova, being one of the latter's companions on the date and time of the incident. She narrated that when the three (3) unidentified persons approached them, they introduced themselves as PC soldiers and announced that they were under arrest. Although surprised as they have not committed any crime, they pleaded for mercy. She was hogtied instead. Gemma Amadeo, likewise. Their male companion, Robert de la Cruz, was mauled. The victim, Elisa Cordova, was pulled from (them) to a grassy place about 15 meters away, by one of the men, whom (they) later recognized as the accused, Edmund Empleo. Her friend, Elisa Cordova, struggled. When the latter was able to free herself, she ran away. Edmund Empleo overtook her. From her place she witnessed when accused forced Elisa Cordova to lie down against the bushes. She did not know what happened thereafter because Elisa was dragged further to the thicket. They were taken to a place, farther from the scene of the incident where they were untied by the companions of the accused, who took pity on them. They asked help from the house of her friend, Gemma Amadeo, and when they returned to the place, the policemen were already there and took the victim to the hospital.

"Manuel Ampo, also a physician, attended to the victim, Elisa Cordova. She was referred to him, from the Obstetrics Gynecology Department of the Cebu City Medical Center. He conducted a medical examination on the patient, who suffered more or less 8 injuries, consisting of linear abrasions in the neck, left breast, anterior chest, right forearm, right hand, left knee and back, as shown in the Medical Certificate (Exh. 'B') he issued. The injuries could have been due to the forcible contact of the skin with rough objects.

"The gravity of the abrasions in the forearm, chest, breast and knee indicated that the victim, was held by the hands and those found below the scapula may have been caused when the patient was forcibly laid down on a rocky or rough surface. These abrasions at the time of his examination were fresh. Scab formations were absent. His findings, as well as that of the OB-GYNE Department were reflected in the Emergency Logbook of the hospital and it appeared in Entry No. 2,383. The patient, who was a rape victim, was examined by the OB-GYNE people twice, on March 14, 1989 at 10:30 in the evening and on March 15, 1989, at 1:30 in the afternoon (Exh. '1').

"The defense, upon the other hand, presented one Reynaldo Orofeo, a close friend and neighbor of the accused, Edmund Empleo. He averred that on March 14, 1989, at 7:30 o'clock in the morning, while he was on his way to work, he met the accused. The accused (had) just arrived from Butuan City. Not having seen his friend for a year, he wanted to have a longer conversation with him. He invited the accused to his house that evening. At 6:00 o'clock in the evening of that same day, after having supper together at his residence, they partook of drinks and (he) even invited the accused anew for the advanced birthday celebration of his daughter. During the time that they were having a drink, he remembered that the accused went out of the house only to urinate in

their yard. They parted at 9:40 in the evening, with his friend going home to the residence of Col. Tiburcio Fusillero at Green Valley Subdivision, Capitol Hills, Cebu City, 40 meters from the center of Top Hills. The accused works at the residence of Col. Fusillero.

"They met each other again during the birthday celebration of his daughter on March 19, 1989 where accused took his lunch and left at 2:00 o'clock in the afternoon. (O)n that same evening, he learned from his nephew, Arturo Orofeo, that Edmund Empleo was arrested by elements of the Visayas Command (VISCAM).

"As a very close friend of the accused, he visited the latter at the Mabolo Police Station and inquired as to the reason of his arrest and detention. The accused informed him that he was a suspect in a rape case which happened at the Top Hills and requested him to testify for him.

"Virgilio Oronan, Security Officer of the Land Bank, and who resides more or less 100 meters from the Top Hills, could not remember of (sic) any unusual incident that happened in their vicinity in the evening of March 14, 1989. When accused was flashed on the TV screen, as the one who committed rape, he could not believe that Edmund Empleo would commit such crime because there were previous incidents of rape which happened in the same place while the latter was still in Mindanao. He knew the accused for the first time only when he visited him at BBRC, because the latter's brothers and sisters are his friends.

"Accused, Edmund Empleo, averred that he lives in the house of Col. Tiburcio Fusillero at Green Valley Subd., Capitol Hills, Cebu City. He enlisted in the Philippine Army and while waiting for the oath-taking, Col. Fusillero sent him to Butuan City to work in a logging company owned by a certain Magsaysay, in July 1988. On March 13, 1989, he left Butuan City, after he received a letter from his brother informing him that the Civil Engineering Battalion was receiving applicants for enlistment at Camp Lapulapu of this city. He arrived in Cebu City on March 14, 1989 at 6:00 o'clock in the morning.

"On his way to the residence of Col. Fusillero, he passed by the house of his friend, Reynaldo Orofeo in Camputhaw, about 80 to 100 meters from the Top Hills and which would take him 2 to 3 minutes by walking. They had a brief conversation. He returned to his friend's house in the evening, upon the latter's invitation. After partaking dinner, they dr(a)nk 5 bottles of 'macho beer'. After 9:00 o'clock in the evening, he went straight home and did not leave the house thereafter. On March 19, 1989, he returned to his friend's house, to attend the birthday of the latter's daughter and as usual, they dr(a)nk together until 2:00 o'clock in the afternoon. In the evening, he met his brother, Edgar, who was in the company of two (2) PC soldiers.

"Shortly after 8:00 o'clock in the evening, his brother returned with Sgt. Estelito Parreño. The latter talked to him in private and inquired as to the whereabouts of a certain Jack, who also lived in the residence of Col. Fusillero, and who was responsible for a series of robberies at Top Hills.

"When he informed Sgt. Parreño that he has not seen Jack since his return from Mindanao, he was fingered by said Sergeant, that he was the one who held up his daughter, Collen Parreño. He was then arrested and brought to VISCAM Headquarters where he was interrogated. He was detained at the Mabolo Police (Station). On March 20, 1989, he was brought to the Fiscal's Office and was investigated regarding the rape and the robbery cases filed against him. Presently, he is detained at the BBRC. The case for Robbery which was filed by Roberto de la Cruz, one of the companions of complainant is now pending with RTC Branch 13. He came to know Elisa Cordova and Collen Parreño only at the Fiscal's Office. But he had no reason to suspect that they would testify against him." [2]

On September 28, 1990, the court below rendered judgment [3] finding appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, with all the accessory penalties, and to indemnify the victim, Elisa Cordova, in the sum of P30,000.00, as well as to pay the costs.

I. Appellant contends that the trial court erred in finding him guilty beyond reasonable doubt of the crime of rape on the basis of the testimonies of complainant Elisa Cordova and prosecution witness, Collen Parreño, which are

allegedly replete with contradictions and inconsistencies on material point. His impugnation of complainant's testimony[4] may be condensed in the following precis:

1. In the second paragraph of her affidavit, she declared that while she was lying on the ground appellant tore her underwear and she was denuded but in her testimony on cross-examination, she told the court that she was not naked when appellant's penis penetrated her vagina. Her panty was removed and she was also undressed.
2. In the third paragraph of said affidavit, complainant alleged that she became unconscious after the incident in question happened, but in her direct testimony, she told the court that while appellant was having carnal knowledge of her, she resisted, but she was boxed and lost consciousness and when she regained consciousness, appellant told her to lie down. Again, appellant boxed her and she lost consciousness.
3. During her testimony, complainant stated that while she was lying flat on the ground and while appellant was already on top of her, she picked up a stone and struck his head but she failed to hit it. She picked up the stone while the penis of appellant was already inside her vagina. During cross-examination, she testified that she was forced to lie down and at the point of a gun she was boxed on the stomach, particularly on her solar plexus, for which reason she became unconscious. After she was sexually abused, she was again boxed by appellant on her abdomen because she resisted and again she became unconscious. She was boxed only two times, that is, before and after she was sexually abused. This material matter was never alleged by complainant in her sworn affidavit.
4. Complainant further alleged during the cross-examination that she reported the incident to the police authorities only after appellant was arrested and brought to the police station, that is, on March 19, 1989 or five days after the incident in question. Before said date, she did not execute any affidavit because appellant was not yet arrested and she did not know whether he was the same person who sexually abused her. In other words, before the arrest of appellant, complainant did not know his identity until he was arrested and brought to the Mabolo Police Station, Cebu City. However, in answer to the question propounded by the trial court, she testified that at the time of the incident she knew the person of appellant but she did not know his name, which was the reason why she executed the affidavit only after appellant was arrested.
5. During her cross-examination, complainant told the court that the scene of the incident was dark, with no electric light posts, but at the time of the incident the moon was very bright. However, as shown by the calendar for the month of March, 1989, the new moon emerged on March 8 and the first quarter was on March 15, 1989, hence it cannot be said that at the time of the incident the moon was really very bright.
6. Complainant even failed to present before the court the panty which, according to her, was forcibly taken from her body and the school uniform she was wearing at the time, to show how the panty was torn and how the school uniform got dirty since, according to her, she forcibly resisted by moving her body to evade the sexual attack of appellant.

Similarly, the testimony of the other prosecution witness, Collen Parreño, allegedly contradicts that of complainant. Appellant asserts' that nowhere in the testimony of Parreño can it be gleaned that the person who allegedly raped the victim had a gun, whereas complainant claimed that appellant was carrying a gun. Said witness also testified that the place was then lighted by a 15-watt bulb, contrary to the testimony of complainant that at the time of the incident there was no illumination, except the light coming from the moon.

The basic issue posited here primarily devolves on the credibility of complainant and her witness. As we have earlier noted, the long settled proposition is that when an appealed conviction hinges on the credibility of witnesses, the assessment of the trial court is accorded the highest degree of respect. Absent any proper reason to depart from this fundamental rule, factual conclusions reached by the lower court, which had the opportunity to observe and evaluate the demeanor of the witnesses while on the witness stand, should not be disturbed.[5]

In the case at bar, we are persuaded to uphold the finding of guilt by the trial court in light of its pronouncement as to the demeanor of the complainant during her testimony which, according to the court, "bears the hallmark of truth and sincerity," and "was straightforward, though punctuated by her shyness, naivet(e) and tearful increments, that stood the test of rigorous cross-examination by the defense counsel." Be that as it may, we shall judiciously discuss and assay the validity of the alleged errors imputed to the lower court by appellant.

First, while there may exist a variance between some statements of complainant in her affidavit and her testimony in open court, the alleged inconsistencies are more apparent than real. The truth is that in her testimony before the trial court, complainant merely gave a more detailed narration of how appellant sexually abused her on that fateful night of March 14, 1989. Such fact, of course, does not necessarily signify that her open court testimony conflicts with her affidavit.

The contradiction between the affidavit and the testimony of a witness may be explained by the fact that an affidavit will not always disclose all the facts and will oftentimes and without design incorrectly describe, without the deponent detecting it, some of the occurrences narrated.[6] Being taken ex parte, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject.[7] It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to him.[8]

The exception to the rule is where the omission in the affidavit refers to a very important detail such that the affiant would not have failed to mention it, and which omission could affect the affiant's credibility. Such exceptive circumstance does not obtain in the present case. The alleged omissions in the affidavit of complainant are not that vital and substantial as to affect her credibility. The more important detail which is really material to the case, and which is categorically declared and explained both in the affidavit and in complainant's testimony, is the fact that appellant had carnal knowledge of complainant without her consent.

Second, there is no discrepancy in the statements made by complainant in her affidavit, where she declared that she was stripped naked during the assault, and in her oral testimony, where she said that she was not naked when appellant did the sexual act. This seeming inconsistency was later clarified by complainant in her testimony where she explained that what she really meant by the word "naked" is that she had no underwear but she had her uniform on.[9]

Third, the defense claims that if it were true that complainant was able to recognize her assailant, it is highly questionable why she came to know the identity of appellant only after the latter had been arrested and brought to the Mabolo Police Station. The argument is specious.

Complainant testified in no uncertain terms that although she did not know the name of her assailant at that time, nevertheless she was able to describe him as a fat person with a big stomach, long hair and dark complexion, thus:

"Q Did you give any description of (sic) identifying marks of the person or suspect to the police authorities?

A Yes, sir.

Q What identifying marks did you give or furnish the police authorities?

A At that time, he was still fat with big stomach.

ATTY. DAITOL:

Q Fat and big stomach. What else?

A Long hair and now his hair is already short.

Q What else?

A Black complexion."[10]

Even during her cross-examination wherein the defense counsel tried to mislead and confuse her as to the identity of her assailant, this excerpt of the transcript shows that complainant did not waver in her identification of appellant as the one who raped her:

"ATTY. DAITOL:

Q But he did not mention to you the name of Edmund Empleo?

A No, sir.

Q As a matter of fact, Miss Cordova, there are several persons residing near Top Hills. Right?

A Yes, sir.

Q And you cannot be positive that there is only one (1) person living there at (sic) with a big stomach, a fat person, long hair and black skin?

A I was informed by the people there that there is no other person who has a big stomach, long hair and fat.

Q Did you examine or see one by one the residents living in that locality known as Top Hills?

A After the incident, I did not go to that place anymore.

Q And as a matter of fact, the description of a person with a (sic) long hair, big stomach, black skin and fat was given only to you by somebody?

x x x

WITNESS:

A I really saw him and (he) has a big stomach."[11]

More importantly, it is significant that complainant was able to identify appellant in open court despite the fact that the latter, obviously to evade identification, had already had his hair cut short and there was a slight change in his physical build. Hence, by the bare fact alone that complainant did not know the name of herein appellant, we cannot safely conclude that the identity of the assailant was not sufficiently established. In one case we held that:

"x x x It is the appellants' view that the identities of the malefactors of a crime can be established only if the witnesses know the names of the malefactors.

"This is puerile reasoning. Identification of a person is not established solely through knowledge of the name of that person. Familiarity with the physical features, particularly those of the face, is actually the best way to identify the person.

"x x x One may be familiar with the face but not necessarily the name. It does not follow therefore, that to be able to identify a person, one must first know his name."[12]

Fourth, the fact that complainant testified that she was able to recognize appellant because at that time the moon

was very bright, when in truth and in fact it was a first quarter moon, does not serve to discredit her entire testimony. Even where a witness is found to have deliberately falsified the truth in some particulars, and it was not shown that there was such intended prevarication by complainant in this case, it is not required that the entire testimony be rejected, since such portions thereof deemed worthy of belief may be credited.[13] It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts.[14]

At any rate, the declaration of complainant is not really incredible. The other prosecution witness, Collen Parreño, testified that the place was lighted by a lamp post with a 15-watt bulb. It is not inconceivable that complainant may have wrongly perceived the light coming from the lamp post as having come from the moon. Furthermore, even assuming that there was no electric light which directly illuminated the spot where she was sexually abused, that does not suggest that there was total darkness in the area, preventing her from identifying her assailant. Appellant did not conceal his identity with a mask or the like. Evidently, it was during the struggle, between them, which lasted for some time, that complainant was able to recognize the face of appellant and to take note of his complexion and physical build.[15]

Finally, the allegation that the failure of the prosecution to present the underwear and torn uniform of complainant casts doubts on the latter's credibility, has no logical or rational leg to stand on. Time and again, we have said that the non-presentation of the torn dress and underwear of the complainant does not destroy the case for the prosecution, there being sufficient and convincing evidence to prove the rape charged beyond reasonable doubt. Those clothes are not essential, and need not be presented, as they are not indispensable evidence to prove rape.[16] The absence thereof does not negate the truth of a rape complaint and the credibility of a victim's testimony.[17]

Contrary to appellant's pretension, the testimony of complainant is consistent with and amply corroborated by the testimonies of prosecution witnesses Dr. Manuel Ampo and Collen Parreño. Dr. Ampo declared as follows:

"COURT/to witness:

Q Dr., what must have caused these abrasions you found on the body?

A The patient there has (sic) some sort of resistance.

Q What do you mean by your answer?

A Probably as I gathered in this case, this patient was raped.

Q We want facts, what could have caused these abrasions?

A Actually, these are (sic) forcible contact with rough objects.

Q When you said that there was contact of that body with rough objects, how could it happen on the basis of your findings as to the gravity of the abrasions and the durations?

A The forearm, the chest, the breast and the knee.

Q What must have been done to her?

A Maybe she was held by the hand.

Q You mean, she must have been held forcibly?

A Forcibly.

Q That abrasion you found below the scapula, what must have caused that abrasion?

A Maybe the patient laid (sic) on the ground, Your Honor.

Q If she just lay on the ground normally, without the use of force, could that abrasion be indicated therein?

A No, Your Honor.

Q In other words, that abrasion below the scapula may have been caused when the patient was forcibly laid down. Is that what you want to say?

A Yes, possible."[18]

Along the same vein, prosecution witness Collen Parreño affirmed these facts:

"Q What was she doing when you and your other female companion were tied by an old man, companion of the accused?

A Edmund Empleo forced Elisa to lie down.

Q In other words, you could still see Elisa being forcibly laid down while you and your companion were being tied by an old man?

A Yes, sir.

Q The Court heard you say that Elisa Cordova when forced to lay (sic) down on the ground struggled to free herself and succeeded in freeing herself, what did Elisa Cordova do in freeing herself from the clutches of Edmund Empleo?

A So, she ran away going towards us but she was again chased by Edmund Empleo.

x x x

Q Now, the Court heard you say that Edmund Empleo caught her up (sic). When she was caught up (sic) by Empleo, what did the latter do to her?

A Edmund Empleo forced Elisa again to lie down on the ground."[19]

On her part, complainant testified in the following manner:

"Q Are you trying (sic) this Court to understand that while the accused was holding a gun in his right hand, at the same time the accused held your two (2) hands in his right hand?

A Yes, sir.

x x x

Q And as a matter of fact, when the accused had his pe(n)is penetrated into your vagina, he was no longer holding your left and right hands?

A His right hand was still holding me.

x x x

Q When your two (2) legs were released from his holds (sic), did you use your legs to kick the accused?

A I tried to wriggle from himself (sic) but he boxed me.

Q You tried to wriggle hard and harder in order to release from the holds (sic) of the accused. Right?

A Yes, sir.

Q And the very place where you were lying down was a stony place?

A Yes, sir.

Q In other words, it was a rock surface?

A Yes, sir."[20]

II. Appellant further argues that the trial court erred in not taking into consideration the results of the medical examination conducted on private complainant, the report on which was admitted as Exhibit B.

The medical report shows that the complainant gave the information that she was raped at about 6:00 P.M. of March 14, 1989. However, in her testimony she claimed that the incident happened at around 8:30 in the evening. Additionally, in the information in Criminal Case No. CBU--15094 for robbery filed against appellant by Roberto de la Cruz, one of the companions of complainant, it is stated that appellant robbed De la Cruz at around 9:30 P.M. Appellant contends that it was impossible for him to have raped the victim at 6:00 P.M. and then again at 8:30 P.M., and thereafter rob the victim's companion at 9:30 P.M., all on the same night. Such sophistry in reasoning betrays desperation in argument.

An erroneous reckoning or mis-estimation of time is too trivial and immaterial to discredit the testimony of a complainant,[21] especially in this case where time is not an essential element or has substantial bearing on the fact of commission of the crime. Minor inconsistencies are not sufficient to blur or cast doubt on straightforward attestations. Far from being badges of fraud and fabrication, the inconsistencies in the testimonies of witnesses may on the contrary be justifiably considered as indicative of the truthfulness on material points of the facts testified to. These minor deviations also confirm that the witnesses had not been rehearsed. The most candid witness may make mistakes sometimes but such honest lapses do not necessarily impair his intrinsic credibility,[22] more so where the alleged inconsistencies do not touch on the very facts constitutive of the actual commission of the crime.[23] Furthermore, where the prosecution witnesses are able to positively identify the appellant as the author of the crime and the testimonies are, on the whole, consistent on material points, the contradictions become insignificant.[24]

Also, it is not denied, as in fact complainant admitted, that she was drinking beer prior to the incident. Appellant now contends that since she was in a state of drunkenness, it would have been impossible for her to identify her assailant, considering further that the night was dark.

Such postulation is premised on the erroneous assumption that complainant was drunk at that time. The medical findings of the physician who examined complainant shows that she was positive for alcoholic breath, but this fact alone does not sufficiently establish that she was in such a state of intoxication as would completely deprive her of her sense of perception and which would pervert her otherwise coherent and credible testimony. At most, she could only have been tipsy and it would not have been impossible for her to know what was happening, as in fact she was able to vividly recall and narrate with candidness every important and material detail of the sexual assault committed against her.

This Court takes judicial notice of the fact that generally a person under the influence of liquor, even if not to the point of inebriation as in this case, is prone to be impulsive, irascible, or combative and less inhibited in his reaction to whatever offends him.[25] Hence, contrary to appellant's contention, the physical condition of complainant at that time only served to fortify, rather than debilitate, her testimony to the effect that she struggled hard to resist the assault upon her, to wit:

"COURT: /to witness:

Q The Court heard you say that you resisted. In what did your resistance consist of?

A I picked up a stone.

Q What did you do with the stone?

A I struck his head.

Q Was he hit?

A No, sir.

Q What did he do when you struck him?

A He squeezed my hand.

Q When did you strike him with the stone, when you were already lying on the ground?

A When I was lying flat on the ground.

Q When he was already on top of you?

A Yes, Your Honor.

Q How did you pick up a stone?

A Near the place where I was lying flat, there were plenty of stones.

Q Was it before he inserted his penis (i)n your vagina, doing the sexual intercourse?

A Yes, Your Honor.

Q In other words, you struck him with a piece of stone while he was on his sexual act maneuver?

A Yes, Your Honor.

Q When you were forced to lie down, did you expect him to do something evil against you?

A Yes, Your Honor.

Q What did you expect him to do when you (were) first made to lie down?

A That he will rape me.

Q So, expecting him to rape you as you were made to lie down, what did you do?

A I tried my best to run away.

Q Were you able to run away?

A Yes, but he chased me.

Q The Court heard you say that you were already lying flat on the ground; he mounted on you and he removed your underwear. Why, what was your attire then?

A I was in uniform, skirt and blouse.

Q Who removed your underwear?

A (Witness pointing to the accused Edmund Empleo)

Q What did he do with your skirt?

A He opened my skirt.

Q When he opened your skirt, what resistance did you do to prevent him?

A I kicked him.

Q Was he hit?

A He was hit on his stomach but he was strong."[26]

To round off her account, we present her testimony on further cross-examination, a part of which has earlier been quoted:

"Q When your two (2) legs were released from his holds (sic), did you use your legs to kick the accused?

A I tried to wriggle from himself (sic) but he boxed me.

Q You tried to wriggle hard and harder in order to release from the holds (sic) of the accused. Right?

A Yes, sir.

Q And the very place where you were lying down was a stony place?

A Yes, sir.

Q And because of wriggling hard and harder in order to release from the holds (sic) of the accused, you suffered bruises in your body especially that you were naked at that time?

A Yes, sir.

Q Particularly at the back of your body?

A In my thighs.

Q Only on your thighs?

A At my back also and my uniform was dirty.

Q In other words, while you were sexually abused by the accused, your uniform was still there?

A Yes, sir.

Q As a matter of fact, your uniform got dirty because you were still wearing it?

A Yes, sir."[27]

It is true that while complainant testified that appellant had sexual intercourse with her, the medical findings showed that she was negative of sperm cells. However, in *People vs. Balane, et al.*, [28] we held that:

"x x x The accused-appellants argue that if there was really sexual intercourse, much more rape, it would be the height of improbability, that nothing unusual was found, not even a smear of spermatozoa in the vagina of the victim by the examining physician.

"We ruled in *People vs. Selfaison* (1 SCRA 235) that such a defense lacks merit. This Court stated: 'The absence of such spermatozoa, however, does not necessarily mean that the complainants had not in fact been raped. The very authority cited stated that such absence does not necessarily mean that the girl subject of examination has not had any sexual intercourse. It need hardly be said here that in the crime of rape, the slightest penetration is enough.'

"Resolving a similar issue in *People vs. Carandang* (52 SCRA 259) and *People v. Ytac* (95 SCRA 644) this Court ruled that the absence of spermatozoa in the vagina is no legal obstacle to holding that rape has been committed."

Consequently, the rule is that the absence of spermatozoa does not disprove the fact of rape. What is essential is that there was genital penetration, which was unequivocally testified to by complainant.[29]

III. In the present case, the defense relies heavily on denial and alibi. We need merely to point out that denials constitute self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[30] On his defense of alibi, appellant avers that at the time of the incident, he was at the house of his friend, Reynaldo Orofeo, and that he left at past 9:00 P.M. The distance between the house of Orofeo and Top Hill where the incident took place is more or less 80 to 100 meters and can be negotiated by walking for two to three minutes. From Top Hill to the house of Col. Fusillero, where accused lives, is a distance of 180 to 200 meters.[31] It was, therefore, not physically impossible for appellant to have been at the scene of the crime at the time of its commission.

Once again, we reiterate that for the defense of alibi to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of the commission.[32] The requisites of time and place must be strictly met.[33] In this case, alibi cannot prosper where the residence of the accused is within walking distance from the scene of the crime.[34] Courts always receive with caution, if not suspicion, evidence of alibi, not only because it is inherently weak and unreliable, but also because of its easy fabrication. To overcome the evidence of the prosecution, an alibi must satisfy the test of full, clear, and satisfactory evidence.[35]

Furthermore, alibi is held not to be a proper defense where no improper motive was shown against the witnesses who identified the accused.[36] In his testimony, appellant admitted that he is not aware of any reason why the prosecution witnesses, especially complainant herself, would falsely testify against him.[37] The absence of any evidence as to the existence of an improper motive sustains the conclusion that no such improper motive exists, and the testimony of the witness should be given full faith and credit.[38]

WHEREFORE, the judgment appealed from is hereby AFFIRMED in toto.

SO ORDERED.

Padilla, Nocon, and Puno, JJ., concur.

Narvasa, C.J., (Chairman), on leave.

[1] Original Record, p. 1.

[2] *Ibid.*, 92-96.

[3] Per Judge Generoso A. Juaban.

[4] Appellant's Brief, 15-19; Rollo, 105-108.

[5] *Mendoza vs. Court of Appeals, etc.*, 198 SCRA 312 (1991).

[6] *People vs. Javier, et al.*, 182 SCRA 830 (1990).

[7] *People vs. Jutie*, 171 SCRA 586 (1989); *People vs. Fule*, 206 SCRA 652 (1992).

[8] *People vs. Dumpe, et al.*, 183 SCRA 547 (1990).

- [9] TSN, October 19, 1989, 22.
- [10] TSN, October 19, 1989, 9-10.
- [11] Ibid., id., 12-23.
- [12] People vs. Reception, et al., 198 SCRA 670 (1991).
- [13] People vs. Gohol, et al., 170 SCRA 585 (1989).
- [14] People vs. Arbolante, et al., 203 SCRA 85 (1991).
- [15] Cf. People vs. De Guia, et al., 185 SCRA 336 (1990).
- [16] People vs. Alfonso, 153 SCRA 487 (1987).
- [17] People vs. Poculan, 167 SCRA 176 (1988).
- [18] TSN, January 25, 1990, 7-8.
- [19] Ibid., December 19, 1989, 8-9.
- [20] TSN, October 19, 1989, 17-18.
- [21] Cordial vs. People, et al., 166 SCRA 17 (1988).
- [22] People vs. Manzanares, 177 SCRA 427 (1989).
- [23] Manalaysay, et al. vs. Court of Appeals, 172 SCRA 99 (1989).
- [24] People vs. Doctolero, et al., 193 SCRA 632 (1991).
- [25] People vs. Aguiluz, 207 SCRA 187 (1992).
- [26] TSN, October 18, 1989, 9-11.
- [27] TSN, October 19, 1989, 18.

[28] 123 SCRA 614 (1983).

- [29] People vs. Bacalso, 210 SCRA 206 (1992).
- [30] People vs. Alcantara, 163 SCRA 783 (1988).
- [31] TSN, July 12, 1990, 5-6.
- [32] People vs. Sato, et al., 163 SCRA 602 (1988).
- [33] People vs. Luardo, et al., 167 SCRA 685 (1988).
- [34] People vs. Nolasco, 163 SCRA 623 (1988).
- [35] People vs. Villanueva, 208 SCRA 810 (1992).
- [36] People vs. De Guzman, et al., 164 SCRA 215 (1988).
- [37] TSN, July 12, 1990, 7.
- [38] People vs. De Guzman, 194 SCRA 618 (1991).

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