

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERVACIO SAGUBAN, ACCUSED-APPELLANT.

G.R. No. 96287. April 25, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

Criminal Case No. 6401, tried and concluded in the Regional Trial Court, Branch 36, of Dumaguete City, in the Province of Negros Oriental, is now before this Court for review. In its decision* dated 31 July 1990, the court a quo found the accused Gervacio Saguban guilty of the crime of Rape committed against Susana Casido; sentenced him to suffer the penalty of reclusion perpetua; and ordered him to pay Casido the sum of P12,000.00 as moral damages, and to pay the costs.

In an Information filed by 4th Asst. Provincial Fiscal Wilfredo R. Salmin, the accused Gervacio Saguban was charged with the crime of Rape,[1] committed as follows:

"That on or about April 13, 1984, at 1:00 o'clock in the afternoon, more or less, in Sitio Danapo, Bgy. Alangilan, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a hunting knife, by means of violence and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the complainant SUSANA CASIDO Y RODA, a married woman, against her will, the latter not having given provocation for the offense, and in the process accused inflicted the following injuries on victim, to wit:

1. Abrasion multiple back;
2. Abrasion coccyx area;
3. Medical aspect hypothenar area right; and
4. Vaginal examination showed:

Introitus parous with mucoid whitish vaginal discharge.

Contrary to Article 335 of the Revised Penal Code, as amended."

On 2 March 1989, the accused, assisted by counsel, was arraigned and entered a plea of not guilty. Thereafter, trial on the merits ensued.

At the trial, the prosecution presented the following witnesses: Dra. Wevina Fuentes,[2] Alangilan Barangay Captain Jose Lacpao,[3] Atty. Gloria Cynthia Icao,[4] and the complaining witness Susana Casido.[5]

The prosecution set out to prove its theory that on 13 April 1984, at about 1:00 o'clock in the afternoon, while the complaining witness Susana Casido was at a creek in Sitio Danapo, Barangay Alangilan, Municipality of Sta. Catalina, Province of Negros Oriental, taking a bath after she had been washing clothes, all of a sudden the accused Gervacio Saguban approached from behind her and immediately held her two (2) hands; that Casido

shouted for help but Saguban poked a hunting knife on her diaphragm and he hugged her; that Casido shouted for help but the more she shouted, the more Saguban poked his hunting knife on her body and because of fear, she stopped shouting.

The prosecution set out to further prove as follows:

That Saguban pulled and dragged Casido to a secluded place, then removed her panty and dress; that he opened her legs by inserting his knees in-between them, and then he removed his trousers and forcibly placed himself on top of Casido and inserted his penis into her vagina and had carnal knowledge of the latter against her will; and that she exerted efforts in resisting Saguban but she was overpowered by his strength until he was able to consummate the carnal act on her.

That after Saguban was through with the rape, he wanted to rape her a second time but Casido was able to extricate herself from his hold and ran away, covering her private parts with her clothes and as she was running, she met a young girl who helped her by throwing stones at Saguban who was then chasing Casido. It was only when he was stoned by the young girl that he stopped running after Casido.

That right after the incident, Casido told her husband David Casido what had happened to her and immediately they reported the matter to their Barangay Captain Jose Lacpao, and the following day, Casido and her husband were accom-panied by Lacpao in reporting the incident to the P.C. detachment in Barangay Cawitan, Sta. Catalina, Negros Oriental; that when Lacpao issued summons for Saguban and the Casidos to have a conference with him. Lacpao could no longer locate Saguban who, according to his parents, had already left their home.

That Casido was examined by a lady physician who issued a medical certificate stating that she suffered abrasions at the back of her body.

The prosecution also offered in evidence Saguban's previous conviction for rape in Criminal Case No. 6353, for which he was then serving sentence, in order to prove the accused's penchant for committing crimes against chastity.

On the other hand, the defense called on the following witnesses: accused Gervacio Saguban,[6] Rosario Tinaa,[7] and Mario Sienes.[8]

The theory of the defense was basically denial of the commission by the accused of the rape on Casido. To support his defense, the accused alleged that he was nowhere near the place of the commission of the crime at the time it was committed as he was plowing his field situated in Barangay Jantianon, Municipality of Amlan, Negros Oriental. More-over, accused Saguban denied having gone even once to the place of complainant Casido. Finally, Saguban denied ever having known the complainant until he was summoned in court to answer the rape charge.

In arriving at its judgment, the court a quo gave credence to the evidence offered by the prosecution. It held:

“ . . . the Court sees the natural and logical sequence of acts constituting the incident; first, the complaining witness told the Court that at about 1:00 o'clock in the afternoon of April 13, 1984, when she was in a creek at Sitio Danapo, Barangay Alangilan, Sta. Catalina, Negros Oriental while taking a bath after washing clothes, the accused Gervacio Saguban coming from behind her attacked her by suddenly grabbing her hands; secondly, right then and there, she shouted for help, an act as necessary consequence of a sudden assault on a woman who felt distress; thirdly, her shouts ceased when a knife was poked on her body by the accused Gervacio Saguban threatening her of (sic) bodily harm if she would shout more; fourthly, she was grabbed and dragged to a secluded place, this is believable because the complainant is a small woman and at the time of the incident she might be at least 33 years of age, while the accused at that time might have been only 20 years of age; fifthly, the alleged offended party was made to lean on a big rock where she was undressed, her panty

pulled out, her legs opened and there the accused inserted his male organ until he achieved what he wanted; and sixthly, after the accused had consummated his acts, he wanted to do it again but failed because the alleged offended party ran away when the accused prepared for a second assault on the aggrieved party's womanhood." [9]

On the other hand, the court a quo completely dis-regarded the defense of the accused. As it observed:

"... the defense of the accused contain several flaws: first, he orally declared in open court that he doesn't know the complainant Susana Casido and he only saw her in court when she appeared to testify. This cannot be given any weight and merit. No person would denounce another of a grave offense if she or he had not seen that person when she or he claims to have done the act complained of; second, the defense has not presented evidence the reason why the complaining witness brought this case in court against him; and thirdly, the accused Gervacio Saguban has been positively identified by the complainant who orally testified in open court. In other words, the defense of the accused is alibi which is easy to contrive and make, and therefore, weak and cannot stand." [10]

Finally, the court a quo, in convicting the accused, took note of the accused's previous conviction for rape in Criminal Case No. 6353 and appreciated the same against him by making a finding that said previous conviction of the accused showed his propensity to commit the crime against chastity. [11]

As earlier stated, the court a quo sentenced the accused Saguban to suffer the penalty of reclusion perpetua. The case is now before us on appeal by said accused.

In his appeal brief, accused-appellant Saguban prays for the reversal of his conviction. To support his prayer, accused-appellant makes a lone assignment of error, i.e., that the trial court disregarded his defense of alibi.

We note, however, that in his discussion of this lone assignment of error, accused-appellant interposed arguments, a number of which indeed expounded on the said assignment of error, but the rest of the arguments raised issues unrelated to said lone assignment of error. [12]

Nonetheless, we will take up accused-appellant's arguments in seriatim.

First. In invoking the defense of alibi, accused-appellant insists that he was not present at the scene of the crime at the time of its commission, and that he does not at all know the offended party Casido. With these submissions, he concludes that his defense of alibi should overcome the positive identification made of him by Casido.

The foregoing premises and conclusion posited by the accused-appellant are untenable. In the case of *People vs. Ernesto Asenas*, [13] we recently had occasion to rule:

"Finally, accused-appellant's defense of alibi is much too weak and incredible against prosecution witnesses' positive identification of accused-appellant (Ernesto Asenas) and that of his companion Jimmer Bolado, by prosecution witnesses. It has been stated time and again that for the defense of alibi to prosper, it must be established by clear and convincing evidence that the accused was at some other place for such a period of time as would negate his presence at the time and place where the crime was committed."

In *People vs. Fernando C. Ocampo*, [14] we held that:

"The defense of (the) alibi by accused-appellant is unavailing in the face of Mary Jane's positive identification of accused-appellant as the author of the rape-killing of Evelyn. For the defense of alibi to be tenable, the accused must prove that it was physically impossible for him to be at the scene of the crime at the time of its commission."

Thus this Court has consistently ruled that for alibi as a defense to prosper, two (2) requirements must be satisfied -- (1) that the accused was not at the scene of the crime at the time it was committed; and (2) that it was physically

impossible for the accused to be at the scene of the crime at the time of its commission.

In the case at bench, the only support offered by the accused-appellant for his defense of alibi is his own allegation that he was not at the scene of the crime at the time it was committed in Barangay Alangilan because he was plowing his field in Barangay Jantianon. While accused-appellant offered corroborative evidence as to his plowing his field in Barangay Jantianon at the time of the rape in question, in the testimonies of defense witnesses Tinaa and Sienes, he however offered no conclusive evidence that it was physically impossible for him to be at the scene of the crime when actually committed. That is probably because accused-appellant was of the belief that he had complied with all the elements of physical impossibility when he testified that since his birth, he never set foot in Barangay Alangilan. Thus, according to him, it was impossible for him to be present in said place at anytime.[15]

And yet, the positive testimony of Jose Lacpao, barangay captain of Alangilan, Sta. Catalina, Negros Oriental reveals otherwise. He declared thus:

"Q - Are you familiar with the people living there in your barangay?

A - Yes.

Q - Do you know a person by the name of Gervacio Saguban?

A - Yes.

Q - If he is in the courtroom, would you be able to identify him?

A - Yes.

Q - Will you please step down and touch the shoulder of this person?

(Witness, Jose Lacpao steps down from the witness stand approaches a person sitting on the bench intended for the accused and tapped the right shoulder of the said person, and said..)

A - He is the one.

INTERPRETER: Addressing (to) the person being tapped by the witness (stand) on its right shoulder.

Q - What is your name?

A - Gervacio Saguban.

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Q - Did you call him up immediately after Susana Casido y Roda complained to you that after-noon? Or you scheduled it to some other time?

A - I had scheduled it.

Q - How many days did you have it (sic) schedule to come to you for confrontation with Susana Casido y Roda from the time that Susana Casio y Roda complained to you that afternoon of April 13, 1984?

A - Two (2) days.

Q - Who sent the notice to Gervacio Saguban to appear before you on April 13, 1984?

A - A barangay tanod.

Q - And when the scheduled date for confrontation between Susana Casido y Roda and Gervacio Saguban came, did Gervacio Saguban appear before your office as barangay captain of barangay Alangilan, Sta.

Catalina, Negros Oriental?

A - No.

Q - If you know, why?

A - He escaped from the place according to his father and mother.

Q - Do you (know) the father and mother of Gervacio Saguban?

A - Yes.

Q- During that period of time, that month of April, 1984, this Gervacio Saguban used to be a resident of this barangay Alangilan, Sta. Catalina, Negros Oriental?

A - Yes.

Q - And because he did not appear before you, what did you do?

A - We reported him to the Station Commander of Sta. Catalina.

Q - Together with whom?

A - With the victim."

Clearly, the testimony of Jose Lapaco, Barangay Captain of Alangilan, Sta. Catalina, Negros Oriental established that accused-appellant, contrary to the latter's pretense that he had never set foot in Barangay Alangilan, was in fact a resident of Alangilan, particularly during the month of April 1984 (when the rape involved in this case was committed).

Besides, juxtaposing the following excerpts from the testimonies of accused-appellant and those of his alleged neighbors who corroborated his alibi, the Court finds them riddled with inconsistencies. Thus:

DIRECT EXAMINATION OF ACCUSED, FEB. 7, 1990

Q - You live with your parents?

A - Yes, sir.

Q - Who are your parents?

A - My father is Benito Saguban and my mother is already dead.

Q - In what year did your mother die?

A - As far as I can remember it was in 1980.

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Cross-examination of witness Rosario Tinaa, March 15, 1990, p. 12

Q - You said that the mother of Gervacio Saguban is Patrocinia Pispos. Where is she now?

A - She is in Jantianon, Amlan.

Q - At present?

A - Yes.

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Q - On April 13, 1984, was the mother of Gervacio Saguban living with him?

A - Yes.

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Cross-examination of accused Feb. 7, 1990

Q - ... Since when have you been residing at Jantianon, Amlan, Negros Oriental?

A - Since birth up to the time I was incarcerated.

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Cross-examination of Mario Sienes, March 15, 1990, p. 8

Q - When was the first time you know (sic) Gervacio Saguban, where was he living?

A - In Jantianon.

Q - And he was already twenty (20) years old at that time?

A - Yes.

Q - If you know, when [sic] did he come from?

A - From Siapo.

Q - Where is Siapo?

A - In the mountains of Amlan.

Q - How far is that from Jantianon?

A - About fifteen (15) kilometers."

Rosario Tinaa, as well as Mario Sienes, both admitted in open court that accused appellant wrote them asking them to testify in his behalf. Rosario even claimed that it was only during the trial that she learned that the accused was being charged with rape. For his part, Mario admitted that he had prior knowledge that he was going to testify to corroborate Gervacio's alibi.[16]

Evidently, accused-appellant's contention that the positive identification made of him by Casido cannot overcome his defense of alibi has no legal basis. In the same case of *People vs. Asenas*,[17] we held:

"... The rule is well-settled that in the absence of evidence to show that the witnesses for the prosecution were actuated by improper motive, the identification of the accused-appellant as the assailant should be given full faith and credit."

In the present case, the proof of absence of improper motive on the part of the victim and her witnesses in prosecuting the complaint against accused-appellant was supplied by accused-appellant himself when he testified and argued that he did not know Casido. It would be logical to conclude that the complaining witness (Casido) and accused-appellant (Saguban), being strangers to each other, Casido brought Saguban to court on a rape charge for the simple reason that she was indeed raped by him (Saguban) and that she was seeking justice for the dastardly crime committed against her. The fact that even the accused-appellant could not proffer any explanation as to why Casido implicated him in the rape charge, logically proves that no improper motive impelled her to accuse the appellant of such a serious offense.

Additionally, the contention of accused-appellant that he could not have raped Casido because he did not know her is unacceptable. Knowledge of the victim by the offender is not an indispensable element in the crime of rape.[18]

Second. Accused-appellant contends that the ten-day gap or interval between the alleged rape of the complaining witness and her physical examination is material in the establishment or non-establishment of the offense. The contention does not impress us. In *People vs. Julian Rostata, Jr., et al.*, [19] this Court held that:

"It is true that Gemma (Rosario) submitted to a medical examination only on 14 April 1982. Such delay (from 18 February 1982) does not, however, diminish the credibility of her declaration that she was raped. A medical examination is not an indispensable element in a prosecution for rape as the finding of guilt on the part of the accused depends upon the evidence offered as long as the evidence on hand convinces the court, a conviction for the crime of rape is proper."

Third. Accused-appellant questions the sufficiency of the evidence of the prosecution that formed the basis of his conviction. Principally, he questions the non-presentation of the child who allegedly stoned Saguban as he was chasing Casido. Accused-appellant argues that the testimony of the child would have been crucial as a direct corroboration of the victim's story.

We do not find the non-presentation of the child witness crucial to the sufficiency of the evidence for the prosecution. In *People vs. Lucio Martinez*, [20] this Court made the following pronouncement which equally applies to the present case:

"Over the years, certain principles have been laid down in decisions involving the analysis and assessment of evidence in cases of rape; and, having been so often invoked and applied, have become so completely familiar and prosaic as to seem platitudinous. Such propositions as that rape is not normally perpetrated in the presence of third persons; hence, in prosecutions therefor, the only evidence against the accused is usually the testimony of the offended woman herself, her sole testimony being sufficient for conviction if it rings true and is otherwise credible...."

Besides, the testimony of the child witness would have focused only on the circumstances subsequent to the rape, when Saguban was already chasing Casido for a second rape. The child, therefore, could testify only as to the act of the accused-appellant in chasing Casido, and not to the rape that occurred before the chase.

Fourth. Accused-appellant bewails the action of the court a quo in appreciating against him his previous conviction also for rape in Criminal Case No. 6353. He posits that notwithstanding the fact of his conviction in another and earlier charge of rape, it was not an all-conclusive and infallible deduction therefrom that he committed another rape. Such attitude, he argues, simply betrays the bias of the court a quo. [21]

We are not persuaded by the conclusion of accused-appellant on this issue. This Court sees no illegality or impropriety in the trial court's action which, in our view, is fully supported by the Rules on Evidence. Rule 130 provides:

4. PREVIOUS CONDUCT AS EVIDENCE

SECTION 34. Similar acts as evidence. -- Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan system, scheme, habit, custom or usage, and the like. (Underscoring supplied)

In upholding the validity of the above-questioned act of the court a quo, we find that not only was the previous conviction of the accused-appellant in Criminal Case No. 6353 for rape duly proved in the course of the trial but,

more importantly, proof of said previous conviction was not made the sole basis of accused-appellant's conviction in the case at bench. Rather, it was the confluence of duly established facts -- positive identification, medical certificate, healed lacerations and body scars, as well as weak alibi -- which, together with proof of said previous conviction, all formed the basis for accused-appellant's conviction in the present case.

WHEREFORE, premises considered, the Court hereby AFFIRMS the judgment of the trial court, with the sole modification that the indemnity to be paid by accused-appellant Saguban to the offended party Casido is hereby increased to P30,000.00 conformably with current jurisprudence. Costs against accused-appellant.

SO ORDERED.

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

* Penned by Judge Constancio E. Jaugan.

[1] Information dated 3 September 1984, and filed on 7 September 1984.

[2] Testimony pertaining to the medical certificate she issued to complainant Susana Casido in connection with the physical examination she conducted on Casido to determine the physical condition of and the physical injuries sustained by Casido by reason of the alleged rape. (TSN, pp. 1-13, 13 April 1989)

[3] Testimony pertaining to the initial complaint for rape lodged by Susana Casido immediately after the alleged rape. (TSN, pp. 14-28, 13 April 1989)

[4] Testimony pertaining to the judgment by the Dumaguete City RTC Branch 33, of which she was Branch Clerk of Court, in Criminal Case No. 6353 wherein the accused Gervacio Saguban was also convicted of the crime of Rape committed against Melitona Quilario. (TSN, pp. 31-34, 14 June 1989)

[5] Testimony pertaining to the circumstances surrounding the alleged rape committed by the accused upon her. (TSN, pp. 1-41, 14 December 1989)

[6] Testimony pertaining to his denial of the charge of rape, and his defense of alibi. (TSN, pp. 37-55, 07 February 1990)

[7] Testimony pertaining to the accused's whereabouts at the time of the alleged rape. (TSN, pp. 57-69, 15 March 1990)

[8] Testimony pertaining to the accused's whereabouts at the time of the alleged rape. (TSN, pp. 72-87, 15 March 1990)

[9] Rollo, p. 8

[10] Ibid.

[11] Rollo, p. 8

[12] His perceived materiality of the 10-day gap between the alleged rape and the time the victim submitted herself to medical examination; the non-presentation of the stone throwing child as witness to corroborate the story of the victim; and the trial court's appreciation against the accused of his previous conviction for rape in Criminal Case No. 5363. (Rollo, p. 58)

[13] G.R. No. 105375, 28 September 1993.

[14] G.R. No. 80262, 01 September 1993.

[15] TSN, 7 February 1990, pp. 46-48.

[16] TSN, March 15, 1990, p. 9; Original Record, pp. 63-64; pp. 79-80.

[17] Supra.

[18] ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or other-wise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

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[19] G.R. No. 91482, 9 February 1993, 218 SCRA 657, 676.

[20] G.R. No. 95849, 4 March 1993, 219 SCRA 502, 509.

[21] Rollo, p. 58

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