

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO SAN JUAN Y SALAZAR, ACCUSED-APPELLANT.**

G.R. Nos. 112449-50. July 31, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the joint decision dated September 1, 1993, of the Regional Trial Court of Kalookan City, Branch 129, convicting appellant (1) of robbery with rape in Criminal Case No. C-41463 and (2) highway robbery in Criminal Case No. C-41464. He was sentenced in the first case to suffer the penalty of reclusion perpetua; and in the second case, to the indeterminate penalty of imprisonment from 14 years, 8 months and 1 day as minimum to 17 years, 4 months and 1 day as maximum, of reclusion temporal.

The facts are as follows:

In an Information dated November 11, 1992, the Office of the City Prosecutor of Kalookan City, charged herein appellant, Marcelino San Juan, with robbery with rape allegedly committed as follows:

"That on or about the 6[th] day of November 1992, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and by means of force and intimidation employed upon the person of one GINA ABACAN y SANCHEZ, did then and there wilfully, unlawfully and feloniously take, rob and carry away the following articles, to wit:

Cash money worth

P40.00

Seiko 5 watch

P500.00

earring gold

P500.00

gold lady's ring

P1,000.00

Total

P2,040.00

with the total amount of P2,040.00 belonging to said GINA ABACAN y SANCHEZ, while the latter was walking along Gardenia street, BF Homes,. Phase III, Kalookan City; that on the occasion of said robbery, said accused, through the use of a knife, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of said GINA ABACAN, against her will.

"Contrary to law."[1]

An Information for violation of Presidential Decree No. 532 was also filed against Marcelino, the accusatory portion of which reads:

"That on or about the 6[th] day of November 1992, in Kalookan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and by means of force and intimidation employed upon the person of one ANGELA ONG y YANGUES, did then and there wilfully, unlawfully and feloniously take, rob, and carry away the following articles, to wit:

"Cash money

P300.00

"College ring (gold)

P1,500.00

"Seiko lady's wristwatch

P6,000.00

"Earrings (gold)

P2,200.00

Total

P10,000.00

with the total amount of P10,000.00 belonging to said ANGELA ONG y YANGUES, while the latter was walking along Gardenia St., BF Homes, Phase III, a public highway, this city, to the damage and prejudice of said ANGELA ONG y YANGUES in the aforementioned total amount of P10,000.00

"Contrary to law."[2]

On December 16, 1992, appellant was arraigned, with the assistance of counsel, and entered a plea of "Not Guilty" to both charges.[3] He then waived pre-trial and agreed to a joint trial of both cases, considering that he alone stood charged in both offenses.

The prosecution's evidence in Criminal Case No. C-41463 shows that on November 6, 1992, at about 9:30 in the evening, private complainant Gina Abacan was walking home along Gardenia St., BF Homes, Phase 3, Kalookan City. She had just come from Dr. Carlos Lantin College in Tandang Sora, Quezon City where she was a senior nursing student. One meter ahead of her, a man was likewise walking in the same direction. Suddenly, the man ahead stopped. Thinking that he was just going to answer a call of nature, she ignored him and continued walking. When she came near him, however, he suddenly grabbed her and pointed a knife at her neck.[4] He then dragged her to a grassy vacant lot near the road, keeping the knife pointed at her, and warned her not to shout under pain of death. He asked for her money and jewelry.[5] Due to extreme fear, she gave him all the items mentioned in the charge sheet in Criminal Case No. C-41463, with a total value of P2,040.00.

Shortly thereafter, appellant told her to kneel and bend over, with her face almost touching the ground ("pinatuwad ako sa damuhan").[6] Still keeping the knife pointed at her, appellant pulled down her pants and panties, touched her private parts, and mashed her breasts. Private complainant pleaded with appellant not to rape her, but appellant threatened her with the knife if she made any noise.[7] Appellant then forcibly thrust his penis into her vagina and had carnal knowledge of her, dog-style.[8] After satisfying his lust, appellant warned her to keep quiet about the incident.

Upon reaching home, Gina reported the incident to her brother, Erwin Abacan, who brought her to the police station where she reported the robbery with rape committed against her.[9]

On November 7, 1992, Gina submitted herself to a medical examination at the PNP Crime Laboratory. The medico-legal examiner made the following findings and conclusions:

"GENITAL:

"There is abundant growth of pubic hair. Labia majora are full convex and coaptated with the dark brown hypertrophied labia minora presenting in between. On separating the same are disclosed a fresh laceration at the posterior fourchette and an elastic, fleshy type hymen with deep, fresh lacerations at 3, 7, and 9 o'clock. External vaginal orifice offers strong resistance to the introduction of the examiner's index finger. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency with moderate amount of whitish secretion.

"Vaginal and peri-urethral smears are negative for...spermatozoa.

"CONCLUSION:

"Subject is in non-virgin state physically.

"There are no external signs of recent application of any form of trauma."[10]

In Criminal Case No. C-41464, victim Angela Ong testified that she was walking home on November 6, 1992, at about 9:15 p.m., along Gardenia St., BF Homes, Phase 3, Kalookan City,[11] having come from Ramon Magsaysay High School (Manila) where she worked as a head teacher. Suddenly a man, whom she identified in open court as appellant, repeatedly tried to lasso her neck with a piece of abaca rope. She tried to evade and as a result, fell to the ground, suffering bruises as a result.[12] Appellant then grabbed her, twisted her neck, and pointed a knife at her. She was then brought to a nearby vacant lot, where she was ordered to bend over, face down to the ground, and give him all her money and jewelry. She complied at knifepoint, with appellant all the while asking her all sorts of questions about her occupation and her family.[13] Appellant then shook her hand

and asked her to accept him as a "friend." [14] She was then made to take the longer, circular way home.

Upon arriving home, Angela sought the assistance of her neighbor and prosecution witness, Antonio Borbon. The latter accompanied her to the police station where she gave her sworn statement, a few minutes ahead of Gina, private complainant in Criminal Case No. 41463. [15]

The two successive crimes were brought to the attention of the BF Homeowners Association. Its members then tried to assist the police in the manhunt for the malefactor.

On November 9, 1992, at around six o'clock in the evening, appellant and some companions, arrived at the house of prosecution witness Lilia Kibir, then president of the BF Homeowners Association, asking for the address of the "rape victim." They purportedly wanted to help the victim identify the culprit. [16] Lilia dismissed them, saying she did not know the victim's address. Five minutes later, appellant and a companion returned to Lilia's place, asking again for the address of the "rape victim." Appellant claimed that he wanted to help the raped woman identify her ravisher. Since there was a brown-out, Lilia told them to return when the lights were back.

At around 9:30 p.m. of the same date, appellant and another companion returned to the Kibir residence. Appellant was very eager to know where the rape victim's house was. [17] He claimed he could be a witness for the victim, having seen the incident. [18] In view of his insistence, Lilia and Antonio Borbon brought appellant and his companion to Gina's house. It was there that Gina told Lilia that appellant had robbed and sexually assaulted her three (3) nights earlier. [19] The police were summoned and appellant was arrested. Before the law enforcers could haul off appellant for investigation, Angela arrived and positively pointed to him as the person who had robbed her on November 6, 1992.

Appellant denied any involvement in the incidents of November 6, 1992. Appellant claimed that he was at home on said date, busy repairing his motorized tricycle from 1:00 p.m. to 11:30 p.m. [20] One of his regular fares, Violeta Guilalas arrived at his house at around 9:00 p.m. to ask why he had failed to fetch her and drive her home that evening. [21] She found him tinkering with his tricycle.

Appellant claimed that on November 9, 1992, a certain Butch Arciaga arrived and asked him to repair his tricycle. They proceeded to Butch's place and appellant fixed the tricycle. [22] That evening, Butch told him that there was another tricycle to be repaired in another house. Appellant agreed to go with Butch. They went to a certain house where several people were gathered, including Gina Abacan, Antonio Borbon, and others. Angela Ong was nowhere around. Suddenly, several policemen arrived and arrested him. He was brought to the police station where the police boxed him. They brought him next to a police safehouse where he was tortured and forced to admit having robbed and raped her. He never saw Angela, either at Gina's house or at the police station. [23]

Violeta Lusung Guilalas, a moneychanger working in Novaliches, Quezon City also testified on appellant's behalf. She claimed that appellant regularly fetched her every Friday afternoon with his tricycle and transported her home. On the evening of November 6, 1992, appellant failed to fetch her. [24] On her way home, she passed by appellant's house at around nine o'clock in the evening and found him repairing his tricycle. Appellant apologized to her for failing to fetch her and invited her to have dinner with his family. She accepted the invitation and stayed until 9:30 p.m. [25] When she left, appellant was still engaged in making repairs to his vehicle.

Appellant's spouse, Priscila San Juan, corroborated the testimonies of appellant and Violeta. [26]

On September 1, 1993, the trial court rendered its decision in the two criminal cases, the decretal portion of which reads:

"WHEREFORE, premises considered, this Court finds the accused Marcelino San Juan y Salazar in Criminal

Case No. C-41463 guilty beyond reasonable doubt of Robbery with Rape as defined and penalized under Article 294, paragraph 2 of the Revised Penal Code, as amended by P.D. No. 767. Accordingly, he shall serve the penalty of reclusion perpetua, with all the accessory penalties under the law.

"Pursuant to Section 7, Rule 117 of the 1985 Rules on Criminal Procedure, as amended, the accused shall be credited with the period of his preventive detention.

"By way of civil liability, and pursuant to Article 2202 of the Civil Code, the accused shall indemnify private complainant Gina Abacan in the amount of P2,040.00 representing the value of articles and cash forcibly taken from her, without subsidiary imprisonment in case of insolvency.

"By way of moral damages under Article 2217 of the Civil Code, the accused shall also pay private complainant Gina Abacan the sum of P50,000.00, without subsidiary imprisonment in case of insolvency.

"As regards Criminal Case No. C-41464, this Court also finds the accused Marcelino San Juan y Salazar guilty beyond reasonable doubt of violation of the Anti-Highway Robbery Law, as defined and penalized under Section 2(e) and Section 3 (b) of P.D. No. 532. Accordingly, he shall serve the indeterminate penalty of imprisonment from 14 years, 8 months, and 1 day of reclusion temporal, as minimum, to 17 years, 4 months, and 1 day of reclusion temporal, as maximum, with all the accessory penalties under the law.

"Pursuant to Section 7, Rule 117 of the 1985 Rules of Criminal Procedure, as amended, the accused shall be credited with the period of his preventive detention.

"By way of civil liability, and pursuant to Article 2202 of the Civil Code, the accused shall indemnify private complainant Angela Ong in the amount of P9,800.00, representing the value of articles and cash forcibly taken from her, without subsidiary imprisonment in case of insolvency.

"SO ORDERED."[27]

On appeal before this Court, appellant assigns the following errors:

- THE TRIAL COURT ERRED IN NOT FINDING THAT BECAUSE OF THE SUBSTANTIAL AND MATERIAL INCONSISTENCIES IN THE TESTIMONIES AND STATEMENTS OF THE PROSECUTION WITNESSES THE PROSECUTION FAILED TO ESTABLISH GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.
- THE TRIAL COURT ERRED IN NOT HOLDING THAT THE ACTUATION OF THE ACCUSED IN SEEKING FOR THE VICTIM'S HOUSE TO OFFER ASSISTANCE IN THE APPREHENSION OF THE REAL CULPRIT AND THE RAPING OF THE VICTIM IN THE "NAKATUWAD" POSITION TO BE INCONSISTENT WITH THE NORMAL COURSE OF EVENTS AND BEHAVIOR OF AN ORDINARY HUMAN BEING, HENCE, IT MUST BE RULED IN FAVOR OF THE INNOCENCE OF THE ACCUSED.
- THE TRIAL COURT ERRED IN HOLDING THAT THE OFFENSE (sic) PUT UP BY THE ACCUSED VIA HIS OWN TESTIMONY AND THOSE OF HIS WITNESSES TO BE WORTHLESS.

These assigned errors may be subsumed into one issue for our resolution: Did the trial court err in finding him guilty beyond reasonable doubt of the charges against him and in imposing upon him their respective penalties?

On the first assigned error, appellant vehemently contends that the police arrested the wrong man. He argues that the description of the offender given by both victims at the police station immediately after the incidents took place do not match him at all. According to the complainants, the suspect was muscular, 5 feet 7 inches in height, and around 35 to 40 years old.[28] Appellant asks us to note that he is chubby, standing 5 feet 3 inches, and is only 23 years old. He also faults the victims for failing to mention the mole on his left cheek during the police investigation. Appellant now insists that where the sworn statements given during the preliminary investigation

conflict with the testimony in open court and the variances are both greatly disturbing and irreconcilable, the testimony of the complaining witnesses should not be given any credit. Appellant points to *People v. Casim*, 213 SCRA 390 (1992), which held that serious inexplicable discrepancies between a previously executed sworn statement of a witness and her testimonial declarations as to the appellant's participation in the commission of a crime raise a grave doubt on the veracity of the account.[29]

At the outset, we should recall that the purpose of presenting a witness on the stand is to ascertain the truth. If in the process of questioning, inaccuracies are revealed, the witness should be given a chance to clarify them. In the instant case, we find that the alleged material inconsistencies relied upon by appellant were sufficiently explained and clarified by Angela Ong. She testified on rebuttal that the accused looked taller and older at the time she was robbed because of his different hairstyle and his rugged clothing.[30] Moreover, we note that Angela Ong's statements respecting appellant's physical characteristics were descriptive estimates. An estimate contains room for inaccuracy. With respect to her failure to mention appellant's cheek mole in her sworn statement, there is no evidentiary rule to the effect that the omission of certain particulars in an affidavit would preclude or estop an affiant from making an elaboration thereof during the trial.[31] Discrepancies between statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit the witness. For it is a matter of judicial notice, based on experience, that an affidavit, being taken *ex parte*, is almost always incomplete and often inaccurate.[32]

What is significant in this case is that both complainants were able to unerringly and positively identify appellant as the malefactor, not only in open court but to their kin and neighbors. This positive identification by both victims was never debunked by the defense, even under rigorous and intense cross-examination. Note that it is but natural for victims of criminal violence to strive to know the identity of their assailants and observe the manner the crime was committed.[33] Where conditions of visibility are favorable, (such as in this case where both victims were held up beneath a street lamp post)[34] and the victims had no ax to grind against appellant prior to the incidents, the assertion of the complaining witnesses as to the identity of the wrongdoer commands the greater weight[35] over the denials of suspected offender.

On the second assigned error, appellant contends that the prosecution's evidence on his alleged offer to assist in apprehending the culprit is contrary to human nature and experience. For it is not natural for a suspect to volunteer such assistance to the police. He further theorizes that it would have been unlikely for a criminal to commit two grave offenses, one after another in the same place, given the possibility that should the first victim immediately report the earlier crime to the police, there would be a high risk of the authorities catching him in the act of robbing and raping the second victim. Finally, appellant assails the testimony of Gina Abacan that he raped her in the "nakatuwad" position. For he claims that if the victim was in that position, it would have been impossible for him to have pulled down her pants and underwear. He faults the trial court for accepting the rape victim's uncorroborated testimony.

That appellant admits being at Gina Abacan's house on November 9, 1992 at around 9:30 p.m., is on record.[36] He insists, however, that he was there because he was misled into believing that there was a tricycle to be repaired. Prosecution witnesses contradict appellant. They claim he was there because he wanted to see the rape victim and pretended to offer his assistance, alleging that he had witnessed the crime. That the court *quo* accepted the testimony of the prosecution witnesses only means they are more credible than appellant. Moreover, we find appellant's version adding credence to the prosecution's version of the circumstances which led to his arrest. Absent any fact or circumstance of weight and influence which may have been overlooked or misconstrued as to impeach the findings of the trial court, this Court will not interfere with the trial court's findings on the credibility of the witnesses. For the trial court is usually in a better position to decide the question of credibility,

having heard and observed the demeanor of the witnesses themselves during the trial.[37]

Appellant would make us believe that because he did not flee like a guilty man, he should be exonerated. It is true that the flight of an accused is competent evidence against him, tending to establish his guilt.[38] However, no law nor jurisprudence holds that non-flight per se is conclusive proof of his innocence.[39] It simply does not follow as a matter of logic.

Appellant argues that it was incredible for him to have committed two grave crimes, one after the other in the same situs. That, he says, would increase a suspect's exposure to the risk of immediate arrest should the first victim report her ordeal to the authorities while the suspect is perpetrating the second offense. However, this argument is merely conjectural. Facts on record reveal the contrary.

Angela Ong was robbed at approximately 9:15 p.m. on the evening of November 6, 1992.[40] Her house is approximately one kilometer away from the scene of the robbery.[41] The robbery lasted around ten (10) minutes.[42] Appellant then made her take a long and circuitous route to her home, so that she had to walk for twenty (20) minutes before she could reach her house.[43] It was 9:45 p.m. when she got home. Gina Abacan was robbed and raped at around 9:30 p.m. of the same evening at the same place.[44] The foregoing clearly shows that by making the first victim take the long way home, appellant had ample time to commit the second crime before the first victim could blow the whistle on him. On record, the first victim had not yet reached her house, much less reported to the police, when the second victim was robbed and sexually assaulted.

Appellant next assails Gina Abacan's testimony on how she was raped. According to him, her testimony is lacking in sincerity and candor. It is riddled with inconsistencies and impossibilities, he claims.

In reviewing rape cases, the Court is guided by the following principles: (1) an accusation for rape can be easily made, but to disprove it is difficult, although the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in rape, the testimony of the complainant should be scrutinized with the greatest caution; and (3) the evidence for the prosecution must stand and fall on its own merits and must not be allowed to draw strength from the weakness of the evidence of the defense.[45]

Applying the foregoing guidelines to the instant case, we do not find that the trial court committed any error in giving credence to Gina Abacan's testimony. On the witness stand, she narrated her defilement in a categorical, straightforward, spontaneous and candid manner. She remained consistent in her sorry tale of ravishment at the hands of the appellant, on cross-examination. A candid narration by a victim of forced coitus bears the earmarks of credibility, particularly where no motive has been attributed to her that would make her testify falsely against the accused.[46] More so, where the medical examination corroborates her account of outrage. In this case, Dr. Dario Gajardo of the PNP Crime Laboratory, who conducted the medico-legal examination of Gina Abacan testified on his findings that he found deep and fresh lacerations on the hymen and vaginal opening of the victim,[47] indicating recent sexual contact at the time of the examination.[48] A young woman's revelation that she has been raped, coupled with her voluntary submission to medical examination of her private parts and willingness to undergo public trial where she could be compelled to give details of the assault on her chastity and womanhood, cannot be easily dismissed as a mere concoction.[49]

On the third assignment of error, appellant faults the trial court with failing to appreciate his alibi.

For alibi to be validly invoked, the accused must not only prove that he was somewhere else when the crime was committed but must also satisfactorily establish that it was physically impossible for him to be at the locus criminis at the time of the commission.[50] In the instant case, the trial court disbelieved appellant's alibi. Said the court:

"[A]s testified to by accused's wife, it only takes a 25-minute ride by tricycle to negotiate the distance from the accused's house to the locus criminis and it becomes indubitably clear that there was no physical impossibility at all for the accused to be at the scene of the crime when it was committed." [51]

Appellant's alibi failed to convincingly establish that it was physically impossible for him to be at the scene of the crimes at the time of their commission. Moreover, the testimony of appellant's spouse, Priscilla San Juan, and of witness Violeta Guilalas corroborating his alibi cannot prevail over the positive testimony of Angela Ong pinpointing appellant as the person who robbed her at knifepoint and the testimony of Gina Abacan on the fate she suffered at the hands of appellant. Appellant's defense of alibi, which is basically weak, does not gain vigor from the testimony of a close relative, namely his spouse. [52] No error was committed by the trial court in disbelieving his alibi.

As to the monetary awards granted by the trial court, modification is in order. Pursuant to prevailing jurisprudence, [53] indemnity ex delicto in the amount of P50,000.00 should also be awarded in favor of the rape victim, Gina Abacan, without need of further proof.

WHEREFORE, the appeal is DISMISSED. The decision of the trial court finding appellant, Marcelino San Juan y Salazar, guilty beyond reasonable doubt of robbery with rape in Criminal Case No. C-41463 and highway robbery in Criminal Case No. C-41464, as well as the respective sentences imposed on him for said offenses, is AFFIRMED, with the MODIFICATION that in Criminal Case No. C-41463, he is also ordered to pay offended party Gina Abacan the amount of P50,000.00 as civil indemnity. Costs against appellant.

SO ORDERED.

Mendoza, Buena, and De Leon, Jr., JJ., concur.
Bellosillo (Chairman), J., on official leave.

[1] Records, Criminal Case No. C-41463, p. 1.

[2] Records, Criminal Case No. C-41464, p. 1.

[3] Id. at 10.

[4] TSN, January 19, 1993, pp. 7, 27.

[5] Id. at 8.

[6] Id. at 10.

[7] Id. at 34.

[8] Id. at 12, 38-40.

[9] Id. at 14.

[10] Exhibit "B," Supra Note 3, at 73.

[11] Supra Note 5, at 52.

[12] Id. at 53.

[13] Id. at 57-58.

[14] Id. at 59.

- [15] Id. at 61.
- [16] TSN, February 8, 1993, pp. 4-6, 31-32.
- [17] Id. at 7.
- [18] Id. at 9.
- [19] Id. at 10-11.
- [20] TSN, June 15, 1993, pp. 6-7.
- [21] Id. at 11.
- [22] Id. at 13-17.
- [23] Id. at 18-23, 33-34.
- [24] TSN, April 27, 1993, pp.4-5.
- [25] Id. at 6, 13-14.
- [26] TSN, May 17, 1993, pp. 6-11.
- [27] Supra Note 3, at 147.
- [28] Exhibit "3-A," Supra Note 3, at 108; TSN, March 23, 1993, p. 15.

[29] 213 SCRA 390, 396 (1992).

- [30] TSN, July 14, 1993, pp. 8-9.
- [31] People v. Gabas, 233 SCRA 77, 84 (1994).
- [32] People v. Sanchez, G.R. No. 131116, August 27, 1999, pp. 13-14; People v. Berana, 311 SCRA 664, 674-675 (1999).
- [33] People v. Lopez, G.R. No. 119380, August 19, 1999, p. 11.
- [34] TSN, January 19, 1993, pp. 23, 55.
- [35] People v. Adoviso, 309 SCRA 1, 11 (1999).
- [36] TSN, June 15, 1993, pp. 17-19.
- [37] People v. Hernandez, G.R. No. 130809, March 15, 2000, p. 9.
- [38] People v. Delmendo, 296 SCRA 371, 380 (1998); People v. Tidula, 292 SCRA 596, 617 (1998).
- [39] People v. Galapin, 293 SCRA 474, 490 (1998); People v. Nialda, 289 SCRA 521, 532 (1998).
- [40] TSN, January 19, 1993, pp. 52-53, 76.
- [41] Id. at 84.
- [42] Id. at 89-90.
- [43] Ibid.
- [44] Supra Note 40, at 6.

[45] People v. Brigildo, G.R. No. 124129, January 28, 2000, p. 7; People v. Garces, Jr., G.R. No. 132368, January 20, 2000, pp. 9-10.

[46] People v. Pailanco, G.R. No. 130986, January 20, 2000, p. 11.

[47] TSN, January 26, 1993, p. 5.

[48] Id. at 9, 13-14.

[49] People v. Pambid, G.R. No. 124453, March 15, 2000, p. 10.

[50] People v. Flores, G.R. No. 129284, March 17, 2000, p. 11.

[51] Supra Note 3, at 146.

[52] People v. Magdato, G.R. Nos. 134122-27, February 7, 2000, pp. 10-11.

[53] People v. Reyes, G.R. No. 113781, September 30, 1999, p. 12.

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