

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO PAGCU, JR., ACCUSED-APPELLANT.

G.R. Nos. 112973-76. July 06, 1995

Ponente: PUNO, J.

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PUNO, J.:

Appellant FERNANDO PAGCU, JR., was convicted for raping four (4) times a thirteen-year old girl, who became pregnant and bore a child. He now seeks his acquittal on the ground that the prosecution failed to prove his guilt beyond reasonable doubt.

The records show that on October 28, 1988, the prosecution filed four (4) separate Informations against appellant reciting identical allegations save for the dates of the commission of the offenses:

"That on or about the 15th day of May 1988, (12th day of June 1988), (17th day of July 1988), and (13th day of August 1988), in barangay Sta. Ines, Municipality of Bacolor, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court the above-named accused, FERNANDO PAGCU, JR., with lewd designs, by means of force and intimidation, with the use of a kitchen knife, did then and there willfully, unlawfully, and feloniously have carnal knowledge of LILIA VILLAROMAN y TUAZON against her will and without her consent.

All contrary to law."[1]

The cases were consolidated and assigned to Branch XLI of the Regional Trial Court of San Fernando, Pampanga. At arraignment, appellant pleaded not guilty. The four (4) criminal cases were tried jointly and the trial court rendered judgment as follows:

"WHEREFORE, premises considered, judgment is hereby rendered finding the accused Fernando Pagcu, Jr., guilty beyond reasonable doubt of the crime of rape committed four (4) times against the person of Lilia Villaroman and hereby sentences him to suffer the penalty of reclusion perpetua for each said crimes and to pay the private offended party the amount of P50,000.00 as moral damages and P25,000.00 as exemplary damages.

The accused is likewise ordered to pay moral damages to the parents of the offended party in the amount of P25,000.00.

Finally, the accused is hereby ordered to support the child of Lilia Villaroman named Mary Grace in the amount of P500,00 a month until she reaches the age of majority, such support being retroactive from the day the child was born.

Cost de officio.

SO ORDERED."[2]

The prosecution presented five (5) witnesses, namely: complainant, LILIA VILLAROMAN;[3] her mother, RAMONA VILLAROMAN;[4] her auntie, TINA MARIE LUSUNG;[5] police investigator, GODOFREDO

ALFONSO;[6] medical tech-nologist, SHERLINDA BACANI;[7] and DR. ANTONIO ONG.[8] On the other hand, the following witnesses testified for the defense: appellant, FERNANDO PAGCU, JR.,[9] his wife, AURORA PAGCU;[10] and his co-worker, STEVE NAVARRO.[11]

The records show that complainant is the third of five children. Born on October 24, 1974,[12] she was thirteen (13) years old and a second year high school student at Don Honorio Ventura School of Arts and Trades when she was sexually molested several times in 1988. She lives in Sta. Ines, Bacolor, Pampanga. Appellant is known to complainant and her family, for they are neighbors. Complainant's house is thirty (30) meters away from appellant's hut which was occupied by her auntie, Tina Marie Lusung. Appellant's hut lies within the land where his hollow blocks factory is located.[13]

The evidence for the prosecution shows that at around two o'clock in the afternoon of May 15, 1988, a Saturday, complainant went to her auntie's hut to baby-sit her two-year old son, Michael Lusung. Appellant then sent her auntie, Tina Marie to Guagua, a neighboring town to deliver money to a certain Rebecca. He was sitting on the papag when her auntie and her niece left.[14] While complainant was rocking the crib of Michael, appellant closed the hut's window and plywood door.[15] He approached complainant, then embraced and kissed her. When she pushed him away, appellant poked a kitchen knife at her right neck.[16] He then ordered her to lie down and shed off his short pants and brief. He also removed complainant's shorts and panty. She tried to stand up but appellant's strong hands held her thigh.[17] Her cry was muffled. Appellant then placed himself on top of her and forcibly penetrated her.[18] She was hurt and found blood in her private parts. After satisfying his lust for five (5) minutes, appellant warned her, "Do not report or I will kill you." [19] He opened the hut's window and door and drove away in his jeep. Fearful of her life, complainant kept her lips sealed.

The second incident happened on June 12, 1988, a Sunday. Complainant assented again to baby-sit Michael as her auntie was doing some laundry. Upon her arrival at the nipa hut, appellant asked her auntie to buy a "tidad" (dinuguan) for merienda at his mother-in-law's house.[20] Her auntie left with her daughter, Ana Marie, at about 2:30 in the afternoon. While complainant was swinging the crib of Michael, appellant went upstairs and shut the hut's window and door. He slid towards her and fondled her infantile breast.[21] She resisted but was overpowered by appellant. Again, he succeeded in sexually assaulting her. After the copulation, he opened the hut's window and door, sat on the papag, and waited for his "tidad" merienda. Though enfeebled, complainant was able to walk home.

The third encounter occurred on July 17, 1988, also a Sunday. Complainant attended Ana Marie's birthday bash held at their Lola's house. After the celebration, she hesitated to obey her auntie's request to keep watch of Michael fearing she might again meet appellant.[22] Nonetheless, she did not want her auntie to suspect anything, hence, she again obeyed her.[23] Complainant fell asleep while attending to Michael. She was rudely awakened when appellant pulled off her panty. She tried to avoid his penetration by twisting her body to the sides. Ultimately, she failed to extricate herself from his powerful grip.[24] The ordeal hurt her private parts. Out of fear, she continued to keep her peace.

The fourth assault transpired on August 13, 1988, another Sunday. Sensing another encounter with appellant, complainant rejected her auntie's request to take care of Michael. Irked, her auntie pulled her to the hut[25] and left for San Fernando, Pampanga. As she feared, appellant appeared and wrapped his hands around her body. She pleaded not to be abused[26] but appellant pointed a knife at her throat and once more bestraddled her. When it was over, appellant again threatened her to remain silent, rested on the papag, and left.

The result of appellant's bestiality was soon to take flesh and blood. On September 13, 1988, complainant confessed to her mother that she was gaining weight and her menstruation had stopped. Her mother and auntie

brought her to the Rural Health Center of Cabambangan, Bacolor, Pampanga for examination. The urine test showed she was pregnant.[27] The discovery shocked them. It was then that complainant revealed that appellant had violated her.[28]

The medical examination conducted by Dr. Antonio B. Ong of the Ricardo P. Rodriguez Memorial Hospital showed "[H]ymen with old healed lacerations at 12, 6, 3, and 9. Admits 2 fingers with slight ease." [29] Dr. Ong concluded that it might have been caused by sexual intercourse with a man.

Appellant denied he sexually abused complainant and anchored his defense on alibi. He denied asking complainant's auntie Tina Marie, to do any errand on May 15, June 12, and August 13, 1988. He alleged that on May 15, 1988, he together with his wife and mother-in-law attended the town fiesta of Tinajero, Bacolor, Pampanga.[30] From there they proceeded to Sta. Rita, Pampanga and came home at seven o'clock in the evening. On June 12, 1988, he said he was at the construction site as the foreman for the creek riprapping at Lambac and Natividad, Pampanga.[31] He added that on July 13, 1988, he fired spouses Lusung from their jobs for getting percentages on the deliveries.[32] They were, however, rehired in the afternoon of July 17, 1988.[33] On August 13, 1988, he averred he was at Sindalan, San Fernando, Pampanga to supervise a fencing project of Engr. Mario Cortez.[34]

Appellant's alibi was corroborated by his wife and co-worker. His wife affirmed that she was with him on May 15 and July 17, 1988. His co-worker testified that he was with appellant at the construction sites on June 12 and August 13, 1988.

As aforesaid, the trial court convicted the appellant. Appellant now assails the Decision of the trial court as follows:

I

THE TRIAL COURT ERRED IN GIVING FULL FAITH TO THE TESTIMONIES OF THE PROSECUTION WITNESSES CONSIDERING THAT THEY DO NOT INSPIRE CREDENCE.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT ON EVIDENCE WHICH IS NOT ONLY RIDDLED WITH GAPING LOOPHOLES AND GLARING INCONSISTENCIES BUT IS ALSO PRACTICALLY CIRCUMSTANTIAL AND HEARSAY.

III

THE TRIAL COURT ERRED IN DISREGARDING THE EVIDENCE OF ACCUSED-APPELLANT WHICH WAS CONSISTENT, STEADFAST, UNREBUTTED, AND UNWAVERING.

IV

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON GROUND OF REASONABLE DOUBT.

We find no merit in the appeal.

First, appellant contends that it was impossible for him to commit rape in a cramped space[35] in a small hut and in a crowded environment. The hut is located within the compound of appellant's hollow blocks factory. It is two and one-half (2 1/2) meters away from the barrio road. A sari-sari store is in its left portion. There are also houses across the fence of the compound.

Appellant's argument does not impress us. The scene rape cases is not always or necessarily isolated or

secluded.[36] In several instances, this Court has held that rape can be committed even in places where people congregate: in parks, along the road side, within school premises, and even inside a house where there are other occupants.[37] Wisely put, lust is no respecter of time or place.

It will also be noted that the rapes at bench were committed in a manner they could not have been detected by the public. In all the occasions appellant committed the rapes, he closed the window and door of the hut to frustrate prying eyes. He also used a knife, and threatened to kill complainant. Barely thirteen (13) years old, complainant was paralyzed by fear. She could not have attracted the attention of the neighbors. Moreover, the rapes were committed on a Saturday and Sundays during siesta time. We take notice of the fact that there is no work on Sundays and no evidence to the contrary has been presented by appellant.

Secondly, appellant urges that complainant should not be given credence. He contends that it is unnatural for a rape victim to go back to the place of the crime especially to retrieve a comb she left behind.[38] He also underscores the failure of the complainant to report the incidents to her parents, auntie, and to the Bacolor Police Station which is near her house.[39] He also points to the inconsistencies in complainant's testimony.[40]

We are not persuaded. Complainant did return to the hut after the first rape on May 15, 1988. This act does not necessarily imply that complainant fabricated her charges of rape against appellant. Placed in proper focus, we can understand the action of the complainant. It cannot be overstated that at the time of her defloration, complainant was only thirteen (13) years old. She came from a poor family - her father is a carpenter, her mother a laundry woman. She was threatened with death after her sexual abuse. She believed the threat, she remained silent, and she did everything not to stir the suspicion of anybody. Surely, complainant's act of returning to the nipa hut to baby-sit her cousin was dictated by fear. If she did not obey her auntie's subsequent requests to return to the hut and baby-sit her two-year old son Michael, her refusal would provoke questions and she would risk the revelation of her secret. She had to pretend nothing unusual had happened.

Nor can the delay of the complainant in reporting the rapes be counted against her credibility. It is well established that force was used against the complainant. Equally proven is that appellant successfully instilled fear on the mind of the thirteen-year old complainant. Her fear was well-founded. Appellant had poked a knife on her and threatened to kill her. Too, appellant had economic power. He was the employer of her auntie's family. Given these influences, it is understandable why the victim did not immediately reveal to her parents and to the police her unfortunate experience. She spilled the beans, so to speak, only when she stopped menstruating and her urine examination revealed her pregnancy. At that time, she could no longer hide the truth. Complainant's conduct is consistent with reason and cannot impair her credence.

The alleged differences between complainant's testimony in the trial court and the contents of her sworn statement relating to the number of children she took care of and the time of the subject incidents refer to minor details. The rule has always been that discrepancies between the statements of the affiant in prior affidavits and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally incomplete.[41] Affidavits are generally subordinated in importance to open court declarations because they are oftentimes executed when an affiant's mental facilities are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired.[42] These alleged inconsistencies cannot obliterate the fact that the totality of the prosecution evidence established beyond reasonable doubt the essential elements of the crime of rape perpetrated by the appellant against the complainant. To be sure, Tina Marie Lusung corroborated the tragic story of complainant that on May 15, June 12, July 17, and August 13, 1988 she requested her to take care of her son Michael. On the said dates, she ran errands at the request of appellant; left appellant, complainant, and Michael at the hut between two to three o'clock in the afternoon; and came back after one or two hours, enough time for appellant to violate the complainant. She further testified that the bestial acts of appellant so infuriated

them that they abandoned their jobs and home on September 14, 1988.[43]

The trial court properly rejected appellant's defense of alibi. Alibi is a weak defense. It cannot prevail where, as in the case at bench, appellant was positively identified as the perpetrator of the crimes charged.[44] It cannot also succeed when there is no showing that it is not physically impossible for appellant to be at the scene of the crime. We note that appellant owns a jeep and it was not impossible for him to rape complainant in their nipa hut and then drive to the nearby places where he alleged to be at the time of the commission of the crimes at bench. As a fact, he admitted in his cross-examination that he saw complainant in the afternoon of May 15, 1988.[45]

IN VIEW HEREOF, the appealed Decision of August 10, 1993 is AFFIRMED in toto. With costs against appellant.

SO ORDERED.

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

[1] Rollo, pp. 12-15.

[2] Honorable Teodoro A. Bay, Presiding Judge.

[3] Fourteen years old, student, and a resident of Sta. Ines, Bacolor, Pampanga. TSN of September 6, 1989, p. 13.

[4] Married, 38 years old, and a resident of Sta. Ines, Bacolor, Pampanga. TSN of February 8, 1989, p. 3.

[5] Married, 28 years old, and a resident of Sta. Ines, Bacolor, Pampanga. TSN of May 23, 1989, p. 2.

[6] TSN of June 4, 1991, pp. 3, 7, 9.

[7] Thirty-six years old, married, and a resident of Guagua, Pampanga. TSN of March 29, 1989, p. 2.

[8] Thirty (30) years old, married, and a resident of San Fernando, Pampanga and Betis, Guagua, Pampanga. TSN of March 8, 1989, p. 3.

[9] Married, 48 years old, proprietor of a hollow blocks factory, and a resident of Sta. Ines, Bacolor, Pampanga. TSN of November 13, 1991, p. 3.

[10] TSN of February 22, 1993, pp. 6, 10.

[11] TSN of January 18, 1993, p. 7.

[12] TSN of November 29, 1989, p. 28.

[13] TSN of February 8, 1989, p. 22.

[14] TSN of September 6, 1989, p. 18.

[15] Id., pp. 19-20.

[16] Id., p. 21.

[17] Id.

[18] Id., p. 22.

[19] Id.

- [20] TSN of June 14, 1989, p. 9.
- [21] TSN of September 11, 1989, p. 13.
- [22] Id., p. 30.
- [23] Id., pp. 30-31.
- [24] TSN of October 18, 1989, pp. 5-6.
- [25] TSN of November 29, 1989, pp. 5-6.
- [26] Id., p. 9.
- [27] TSN of March 29, 1989, p. 7.
- [28] TSN of May 8, 1989, p. 15.
- [29] Rollo, p. 62.
- [30] Id., p. 10.
- [31] TSN of December 10, 1991, p. 2.
- [32] Id., pp. 13-15.
- [33] TSN of January 8, 1992, p. 5.
- [34] Id., p. 7.
- [35] Appellants Brief, pp. 18-21; Rollo, pp. 98-101.
- [36] People vs. Garcia, G.R. No. 92269, July 30, 1993, 224 SCRA 776.
- [37] People vs. Guibao, G.R. No. 93517, January 15, 1993, 217 SCRA 64; People vs. Viray, No. L-41085, August 8, 1988, 164 SCRA 135.
- [38] Id.
- [39] Id., p. 22.
- [40] Id., pp. 27-28.
- [41] People vs. Sarellana, G.R. Nos. 102056-57, June 8, 1994, 233 SCRA 31.
- [42] Id.
- [43] Id., p. 4.
- [44] People vs. Rejano, G.R. Nos. 105669-70, October 18, 1994, 237 SCRA 627.
- [45] TSN of November 13, 1991, p. 13.

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