

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO STA. ANA Y TUPIG, ACCUSED-APPELLANT.*G.R. Nos. 115657-59. June 26, 1998*

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-115657-59/>**PANGANIBAN, J.:**

A rape case presents a “he said, she said” scenario. In this appeal, the Court is tasked to decide whom to believe -- the appellant or the private complainant? This is not an easy undertaking. On the one hand, the Court has to keep in mind that a rape victim is a victim many times over. She is physically, psychologically, emotionally and socially scarred. Oftentimes she suffers in silence, and this may last a lifetime. Justice must be rendered to her. On the other hand, the Court must also remember that an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even harder for the accused, though innocent, to disprove.[1] The charge of rape must be proven with moral certainty, lest there be a miscarriage of justice.

The Case

Domingo Sta. Ana was charged with rape committed on three different occasions against Judilyn Obara. Before the Regional Trial Court of Kalookan City, Branch 120, three Criminal Complaints, treated as Informations,[2] were filed against him on August 10, 1992, setting forth identical allegations save for the dates of the commission of the offenses:

“That on or about the 22nd day of April 1992 (in Criminal Case No. 40645)[3], in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of threats and intimidation, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with JUDILYN OBARA Y PROVIDO a minor of 12 years of age (11 years of age in Criminal Case No. 40647) against her will and without her consent.

CONTRARY TO LAW.”[4]

On arraignment, the appellant, with the assistance of Counsel de Oficio Ernesto Gaboy,[5] pleaded not guilty to all the charges against him. The three criminal cases were jointly tried and, thereafter, the trial court rendered a Decision dated April 22, 1994, finding him guilty beyond reasonable doubt of three counts of rape. The dispositive portion of the assailed Decision[6] reads:

“WHEREFORE, finding that the prosecution evidence established the guilt of the accused beyond reasonable doubt in the three (3) crimes of rape, the Court hereby imposes [the] penalty of [r]eclusion [p]erpetua for each rape committed by the accused as provided under Article 335 of the Revised Penal Code and to indemnify the offended party the sum of P50,000.00.

SO ORDERED.”[7]

Hence, this appeal.[8]

The Facts

The Version of the Prosecution

The prosecution presented five witnesses: Judilyn Obera,[9] the complainant; Margarita Obera,[10] mother of the complainant who testified to the victim's age; SPO1 Leonardo Balinang,[11] one of the four policemen who apprehended the appellant and brought him to the police station; SPO3 Bienvenido Santianes,[12] the investigating officer who received the complaint, took down complainant's sworn statement and sent the team which arrested the appellant; and Dr. Juan B. Zaldariaga, Jr.,[13] the NBI medico-legal officer who examined the victim.

The solicitor general summarized the People's version of the facts as follows:

"On November 28, 1991, at around 6:30 in the evening, private complainant Judilyn Obera, who was born on February 11, 1980, was walking along Lawaan Alley, Macaneneng Street, Bagong Barrio, Kalookan City towards her house at 69 Miralle Street, Bagong Barrio, Kalookan City when appellant Domingo Sta. Ana saw her and pulled her towards appellant's house which is located at 233 Lawaan Alley, Bagong Barrio of the same city. Appellant then poked a knife at Judilyn's neck, covered her mouth with a handkerchief and, thereafter, raped her. Judilyn cried because of the severe pain she felt. After raping Judilyn, appellant threatened her not to tell anybody about the incident, or else, he would kill her as well as her parents, brothers and sisters (Exh. "B", p. 159, Records; tsn., Nov. 9, 1992, pp. 3-5 and 13).

On February 17, 1992, at around 7:00 in the evening, Judilyn was at her house when Didel Sta. Ana, appellant's daughter and friend of Judilyn, called and told Judilyn to help her in preparing barbecue. However, when Judilyn went to Didel's house (she lives with appellant), the latter was not in the house as she had left already. Appellant, who was in the house, called Judilyn and suddenly poked a knife at her neck. Appellant then embraced Judilyn, kissed her lips and ears and pulled down her panties. He then took off his pants and had sexual intercourse with her for about five minutes. Thereafter, appellant told Judilyn to wait on one of the chairs inside the house for another five minutes and then told her to go home. Appellant also threatened to kill Judilyn (tsn., Nov. 9, 1992, pp. 4-7).

On April 22, 1992, Didel Sta. Ana invited Judilyn to see a movie. Didel told private complainant that the former's father, appellant, was not going with them. However, when Judilyn met with Didel, the latter was with appellant. When told by Didel that appellant would not sit beside her, Judilyn finally agreed to see a movie with Didel and appellant. Thereafter, at around 7:00 in the evening and after watching a movie, Judilyn went with Didel and appellant to the latter's house. Appellant then sent her [sic] daughter Didel to the market for an errand. After Didel left, appellant poked a knife at Judilyn's neck and threatened to kill her if she would tell anybody about the incident. He then pulled down her panties and took off his pants and his briefs. Appellant had Judilyn sit on a chair and then had sexual intercourse with her. Appellant then told Judilyn to go home (tsn., Nov. 9, 1992, p.4, 7-9; tsn., Jan. 14, 1993, pp. 9 and 15).

Judilyn kept the three rape incidents to herself because she was afraid of the threats made by the appellant (tsn., Jan. 14, 1993, pp. 10-11).

However, on July 23, 1992, something happened which forced Judilyn to tell her parents about the rape incidents. Judilyn's parents were wondering why the former's stomach was getting large, thus prompting the latter to bring their daughter to an "albulario" to determine whether private complainant was pregnant or not. When informed by the "albulario" that she was pregnant, Judilyn thereupon told her parents that she was raped by the appellant (tsn., Nov. 9, 1992, p. 9; tsn., Jan. 14, 1993, p. 12).

Thereafter, three (3) separate complaints for rape were filed against appellant (Exhs. "I", "J" and "K"; tsn., Nov. 9, 1992, pp. 10-11). On December 14, 1992, Judilyn gave birth (tsn., Nov. 9, 1992, p. 9)."

The Version of the Defense

Appellant Sta. Ana contends that he could not have committed the purported rapes against Private Complainant Obera because she was the friend of his daughter^[14] and, on the dates of the alleged rapes, he was at his barbecue stall.^[15] He adds that he was forced by the police to admit the accusation against him and that, while he was in the custody of the lawmen, he was not allowed to secure his own counsel.

During the trial, the defense presented three witnesses: the appellant himself, who denied the charges; Beatriz Doktor, a balut vendor who testified that, on the dates of the alleged rapes, appellant was vending beside her in Macaneneng Street, Bagong Barrio, Kalookan City; and Didel Sta. Ana, appellant's daughter who was also the complainant's best friend.

In his Brief,^[16] appellant submitted the following Statement of Facts:

- "1. Accused-Appellant is a widower, 47 years old, with three grown children, whose main source of livelihood was vending meat barbecue in the neighborhood of Bagong Barrio, Kalookan City (TSN of the direct examination of Accused-Appellant dated 01 February 1994, at p. 2).
2. On 06 August 1996, while walking along Macaneneng Street, Bagong Barrio, Kalookan City, Accused-Appellant was accosted by four policemen from Bagong Barrio Police Station. The policemen, after having ascertained his identity, informed him that someone filed a complaint of rape against him (TSN of testimony of SPO1 Leonardo Balinang, 06 October 1992, at p. 4).
3. Immediately, Accused-Appellant was handcuffed, forced to board the police service vehicle and brought by the apprehending policemen to the police station (TSN, 01 February 1994, at p. 4).
4. Upon arrival at the police station, the Accused-Appellant was interrogated by said policemen, who forced him to admit to the accusations of Ms. Judilyn Obera. Accused-Appellant insisted on his innocence. He was punched on the stomach and at the back (TSN, supra, p. 4); thereafter, he was brought inside a cell and was not allowed to leave, except only to appear before the inquest prosecutor the following day, 07 August 1993, for inquest proceedings (TSN of cross-examination of SPO3 Bienvenido Santianes, Jr, 07 October 1992, at p. 9).
5. All the while that he was under the custody of the police, Accused-Appellant was not allowed to secure his own counsel; neither was he given the assistance of one. (TSN, 06 October 1992, at p. 7).
6. Subsequently, three separate Informations for rape were filed against him in the court a quo docketed as Criminal Cases Nos. 40645, 40646 and 40647.
7. During the trial, the prosecution presented the following witnesses: Margarita Obera, the mother of the complainant, who testified as to the victim's age; SPO1 Leonardo Balinang, one of the four policemen who apprehended Accused-Appellant and brought him to the police station; SPO3 Bienvenido Santianes, the investigating officer who received the complaint, took down the sworn statement of the complainant and sent the team which arrested the Accused-Appellant; the complainant, Judilyn Obera; and Dr. Juan Zaldariaga, the NBI medico-legal officer who examined the complainant and who testified as to the physical condition of the victim as of 03 August 1992, the date of medical examination.
8. On the other hand, the defense presented Accused-Appellant himself who denied the charges; Beatriz Doktor, a balut vendor who testified that on the dates of the alleged rapes, Accused-Appellant was vending beside her in Macaneneng Street, Bagong Barrio, Kalookan City; and Didel Sta. Ana, Accused-Appellant's daughter who was also the complainant's best friend.
9. After trial, Accused-Appellant was convicted by the trial court and sentenced to suffer the penalty of reclusion perpetua."

The trial court, on the other hand, presented the following summary of the evidence of the defense:

“Evidence for the defense, as per testimony of the accused, Domingo Sta. Ana, shows that he is a vendor residing at 233 Lawaan Alley, Bagong Barrio, Kalookan City. As a vendor, he woke up everyday at 5:00 o’ clock in the morning to go to the market at Balintawak to buy meat for barbecue. He went home at 6:30 in the morning to prepare the barbecue and finished at 3:00 in the afternoon. At 4:30 in the afternoon, he started selling in Bagong Barrio and went home at 11:00 o’ clock in the evening.

On August 7, 1992, he was caught by the police and brought to the precinct. They were forcing him to admit the crime and when he refused, they maltreated him. There was no investigation that took place and there was no lawyer who assisted him.

He further testified that on November 28, 1991, February 17, 1992 and April 22, 1992, a balut vendor was beside him when he was vending.

Beatriz Doktor, a balut vendor, testified that on November 28, 1991, February 17, 1992 and April 22, 1992, she and the accused were vending from 6:30 in the evening to 12 midnight.

Didel Sta. Ana, daughter of the accused, testified that everyday, she helped her father in preparing barbecue and in selling them at Peta Street. Her father started vending from 5:00 o’ clock in the afternoon and went home at 12:00 midnight. In 1991, every night, the victim and her brother bought barbecue in their store. Sometime in January, 1992, the victim told her that her (victim) birthday was lonely because her brother did something wrong to her. She told the victim to tell her parents what happened to her but she did not tell her parents.

She further testified that in 1992, the victim stop[p]ed going [to] their store. She came to know that the victim was pregnant when she was informed by the victim’s brother. One time, she saw the victim [pass by] their store and noticed that the latter like[d] to eat sour foods. She heard from the brother of the victim that their mother noticed that the victim’s neck became darker and her stomach [was] getting bigger. She was brought by her mother to a quack doctor (nagtatawas).

She declared that the victim Judilyn Obera Y Provido was her childhood friend and that on April 22, 1992, she and her father were in their house “nagtutuhog ng barbecue” (t.s.n., p. 11, February 23, 1994).”[17]

The Ruling of the Trial Court

The lower court gave full credence and probative weight to the evidence of the prosecution, especially to that of the victim, Judilyn Obera. Pertinent portions of the Decision are reproduced below:

“On the first rape, the private complainant has described in a clear, straightforward manner the details how the accused forced her inside the house, then poked a knife at her neck, removed her panty and inserted his penis into her vagina. She said that she cried because of the pain which was the natural reaction for a virgin like the private complainant for she was only less than 12 years old at that time.

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The second alleged rape was committed when she was called by Didel to go to the house but when the private complainant arrived in the house, Didel was not in the house. Then and there, the accused embraced her on the lips and ears and then pulled her party and insert[ed] his penis into the vagina for about five (5) minutes. He threatened her that he would kill her and her family if she would tell her parents about the incident and the third time was on April 22, 1992 at 7:00 o’ clock in the evening, again inside the house. The accused forced the private complainant as he pulled down her panty, took off his pants and brief and insert[ed] his penis and he ordered her to sit down on the chair and the accused inserted his penis into her vagina four (4) times.

There is no doubt in the court’s mind that physical force and fear had overcome without much difficulty the 12 year old victim’s resistance. Details of the sexual intercourse as she was forced to sit down on the chair could

only come from one who was indeed ravished in the manner so described.

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One is hard put to believe that a[s] young and inexperience[d] as the complainant was, [she] would willingly and voluntarily accept the bestial advances of the accused unless she was at that time forced or intimidated by the accused.

The defense of the accused is alibi which is unavailing in view of the positive identification of the accused and the fact that the store from where he was selling his goods to the house where the rape was committed, was only about 2 to 3 minutes walk.

Well settled is the rule that for alibi to be accorded credence, it does not suffice for an accused to merely prove that he was at some other place, but that the distance was such render it physically impossible for him to be at the scene of the crime shortly before, during or after it was committed.”[18]

Assignment of Errors

The appellant submits that the Decision of the trial court “should be reversed and set aside because the following circumstances will show that the guilt of the accused has not been proven beyond reasonable doubt”:[19]

“A. The conduct of the complainant before and after the alleged sexual assaults belied that she was raped by accused-appellant, based on human experience.

B. The alleged dates of the rape did not coincide with the age of the fetus.

C. The complainant had the motive to cry rape to salvage her sullied reputation brought about by a pregnancy at a tender age.

D. The complainant’s credibility is lacking, especially in her identification of the accused.”

At the core of this case is the credibility of the private complainant, Judilyn Obera, upon whose testimony the appellant was convicted.

The Court’s Ruling

The appeal is bereft of merit.

First Issue:

Complainant’s Conduct and Her Credibility

The general rule is that the findings of the trial court on the credibility of witnesses are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[20] This is so because the trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying.[21]

It must be noted too that, in the review of rape cases such as this one, jurisprudence has laid down the following guiding principles:

“(a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge;

(b) considering that, in the nature of things, only two (2) persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and

(c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.”[22]

As earlier stated, the trial court gave credence to testimony of the complainant that she was raped by the appellant thrice and that, on each occasion, he poked a knife at her as he threatened that she and her family would be harmed, should she tell anyone of the incident. We sustain the assessment by the trial court of the complainant’s testimony, which we find to be clear, credible and straightforward. The complainant testified as follows :

“Q xxx now you stated that sometime on November 28, 1991, you were raped by Domingo Sta. Ana at his house[. W]here is that place located?

A At 233 Lawaan Alley, sir.

Q What is that municipality of that barrio or baranggay [sic]?

A Bagong Barrio, Kalookan City, sir.

Q What time were you raped by the accused?

A 6:30, sir.

Q In the morning or evening?

A In the evening, sir.

Q Can you tell the Honorable Court why were you at that place at about 6:30 in the evening on November 28, 1991?

A While I was walking going to our house at Lawaan Alley, Macaneneng Street, Kalookan City, he saw me and pulled me towards his house, sir.

Q What happened when he pulled you towards his house?

A He poked a knife on my neck.

Q What happened after the knife was placed on your neck?

A And then he inserted his penis into my vagina, sir.

Q For how long?

A For several minutes, sir.

Q Can you tell the Honorable Court your feeling, if any, when [you] said that his sexual organ was inserted in your vagina?

A I cried because of the severe pain that I felt, sir.

Q After the accused ha[d] already his penis inside your vagina, what happened next?

A After he was finished, he threatened me that he will kill me, sir.

Q What did he do later or afterwards?

A After he said that, he also told me that he would also include my parents as well as my brothers and sisters, sir.

Q What do you mean include?

A That he would also kill them, sir.

Q For what reason?

A If I will tell the incident in our place.

Q What incident are you talking about?

A About the rape he committed against me, sir.

Q You also stated that sometime last February 17, 1992, the said accused also raped you[. C]an you tell the Honorable Court what time this rape was committed?

A About 7:00 o' clock, sir.

Q In the evening or in the morning?

A In the evening, sir.

Q Can you tell also why you were there at that time about 7:00 of February 17, 1992?

A Yes, sir.

Q Why were you there?

A I was called up by his daughter, Idel, sir.

Q For what purpose?

A She told me to help her in preparing the barbecue, sir.

Q What is your relationship with the daughter named Idel?

A She is my friends [sic], sir.

Q Can you tell also the Honorable Court what happened when Idel called you to go to their house on that date February 17, 1992 at about 7:00 o' clock in the evening?

A When I arrived there, I found out that Idel was no longer there and she left already, sir.

Q What did you do, when she [was] no longer there?

A He suddenly called me, sir.

Q Who called you?

A Mang Ingo, sir.

Q Is this Mang Ingo referring to the accused Domingo Sta. Ana?

A Yes, sir.

Q After he called you, can you tell us what happened?

A He suddenly poked a knife on my neck, sir.

Q What happened next?

A Then after that she [sic] embraced me, sir.

Q Is that what he did?

A There were others, sir.

Q What are those?

A He kissed me on my lips and on my ears, sir.

Q What else, if any?

A Until he pulled down my panty, sir.

Q Tell us what happened after he pulled down you[r] panty?

A He took off his pants, sir.

Q What happened next?

A He inserted his large penis into my vagina, sir.

Q For how long did he insert his penis into your vagina?

A About five (5) minutes, sir.

Q After that, what did he do, if any?

A I felt pain when he did that to me, sir.

Q Now, kindly tell this Honorable Court, what did you do after he finished inserting his penis into your vagina?

A Yes, sir.

Q What did you do?

A He told me to wait on one of the chair[s], sir.

Q Did you do that?

A Yes, sir.

Q What were you doing while waiting in that chair and for how long?

A About 5 minutes and after he told me that he will kill me, sir.

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Q Now again, sometime on April 22, 1992, you said that the same accused, Domingo Sta. Ana molested or raped you[. C]an you tell where this molestation or rape took place?

A In their house, sir.

Q What time?

A About 7:00 o' clock, sir.

Q Why were you there at about 7:00 o' clock in the evening on April 22, 1992?

A Idel and I came from a movie.

Q The same daughter that you were saying before who called you?

A Yes, sir.

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Q You said that on the evening at about 7:00 o' clock, you were raped[. W]as the daughter present when you were raped?

A She was no longer there, sir.

Q How about you, where were you then?

A I was in their house and I was left by [his] daughter, sir.

Q When you were left at their house by the daughter of the accused, Domingo Sta. Ana, what happened there, if any?

A He poked a knife on my neck, sir.

Q After that, what happened?

A He threatened me that he will kill me, sir.

Q For what?

A If I will tell the incident in our place and to anybody, sir.

Q Why, what happened at that evening?

A After that, he pulled down my panty, sir.

Q What happened after he has pulled down your panty?

A Then after[wards] he took off his pants and his brief, sir.

Q What happened after his brief was already pulled out?

A He inserted his penis into my vagina, sir.

Q What was his position and your position?

A He told me to sit down on one of their chairs, sir.

Q When he said that, was the knife still poked on your neck?

A Yes, sir.

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Q Now, on April 22, 1992, you said that Domingo Sta. Ana accused herein has raped you[. C]an you tell the Honorable Court how the rape was done?

A Yes, sir.

Q How?

A He told me to sit on their chair, sir.

Q After you have sat on the chair, what next did Domingo Sta. Ana do to you, if any?

A He inserted again his penis into my vagina, sir.

Q Did you feel the penetration of his penis into your vagina[?]

A Yes, sir.

Q Can you tell us how this was done, how many times did he go inside and outside your vagina?

A Yes, sir.

Q How many times, more or less.

A About four times, sir.

x x x"[23]

The rule is that "an affirmative testimony is far stronger than a negative testimony, especially so when it comes from the mouth of a credible witness." [24] Appellant has not given us a sufficient justification to modify or reverse the findings of the trial court, and we find none in the records.

Appellant argues that it is "simply contrary to human nature and experience for the complainant to return not just once but twice to the house of the accused-appellant where she was allegedly raped the first time, assuming that she was indeed raped earlier, on 28 November 1991. At her tender age and suffering from intense pain as claimed by her, she should have been traumatized by the initial experience. Yet, complainant went to the same house barely three months later." [25] The appellant also questions private complainant's watching a movie with him and returning to his house on April 22, 1992, the date of the alleged third rape. He cites *People vs. Castillon*, [26] which held that the conduct of the victim immediately following the alleged sexual assault is of utmost importance to establish the truth or falsity of the charge of rape, and that the "normal human reaction would be for the victim to take flight at the first opportunity to avoid her tormentors." Appellant also emphasizes the fact that Judilyn did not tell anyone -- her parents, in particular -- of the alleged instances of rape. This, appellant argues, casts doubt on the veracity of her story. [27]

This argument does not persuade. In *People vs. Montefalcon*, [28] the Court said: "We have had occasion to state and reiterate that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response where one is confronted with a strange or startling or frightful experience." In that case, the appellant was convicted of four counts of rape committed against a ten-year-old girl. He argued, just as Appellant Sta. Ana now argues, that the trial court erred in giving credence to the victim's testimony, which he described as conflicting and improbable, and that the actions of the victim after the alleged rapes were not "the normal behavior of a girl whose virtue has been damaged." [29] The Court, however, held that the victim's failure to tell her parents more promptly of the sexual assaults upon her did not, by itself, diminish her credibility, and that "it is not uncommon for young girls to conceal for sometime the assaults on their virtues because of the rapist's threat on their lives." [30]

In *People vs. Remoto*, [31] the Court ruled: "Suffice to stress, it is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected under the circumstances from mature persons. The range of emotion shown by rape victims is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims." [32]

Verily, the private complainant adequately explained her conduct in going twice to the scene of the crime after the first rape:

"Q Can you tell also why you were there at that time about 7:00 of February 17, 1992?

A Yes, sir.

Q Why were you there?

A I was called up by his daughter, Idel, sir.

Q For what purpose?

A She told me to help her in preparing the barbecue, sir.

Q What is your relationship with the daughter named Idel?

A She is my friends [sic], sir.”[33]

On cross-examination, she further testified:

“Q After the rape on November 28, 1991 and after the rape on February 17, 1992, despite the threats that you testified [to] before this Court by the accused, why did you agree to go with the accused and his daughter to the theater on April 22, 1992?

A Because his daughter Aileen told me that only the two of us will watch the movie.

Q But before you entered the movie house you met the accused[. I]s that correct?

A Yes, your Honor.

Q Considering that you testified that the accused threaten[ed] you during the two alleged rapes, why did you agree to go inside the theater with the accused after you ha[d] seen him?

A I do [sic] not really want to go inside the movie house at that time, your Honor, but his daughter told me that his father [would] not sit beside me, your Honor”.[34]

It is clear from the foregoing that Judilyn went back to the scene of the crime twice because of Didel,[35] the daughter of the appellant who was her childhood friend, a fact which even the latter admitted.[36]

That Judilyn did not immediately inform anyone, especially her parents, about any of the incidents of rape can be attributed to the appellant’s threats which, to her mind, were very real:

“Q Judilyn, will you kindly tell us the reason, if any, why you did not tell your parents that you were raped by the accused herein on November 28, 1991?

A Yes, sir.

Q Why, what was your reason for not telling your parents?

A Because I was afraid, sir.

Q Afraid of what?

A I was afraid [of] his threat against me, sir.

Q Who gave that threat to you, and what was the threat all about?

A Domingo Sta. Ana, sir.

Q The accused?

A Yes, sir.

Q And what was his threat?

A He told me that if I am going to tell the incident to my parents, he will kill me together with my parents and brothers and sisters, sir.

Q And when he said those threatening words, did you believe him?

A Yes, sir.

Q Why did you believe him?

A Because he was holding a knife at that time, sir.

Q On this day, November 28, 1991, how old were you, exactly?

A 11 years old, sir.

Q Regarding also the incident on February 16, 1992 when you were again raped by the accused in this case, will you tell the Honorable Court if you told your parents regarding the incidents?

A No, sir.

Q On this date, February 17, 1992, were both your parents in your house?

A Yes, sir.

Q What was the threat, if any, that the accused again told you?

A He told me that he will kill me if I will tell the incident to my parents, sir.

Q And again, did you believe him when he said those words?

A Yes, sir.

Q Why did you believe him?

A Because he was holding a knife at that time, sir.

Q On April 22, 1992, when the third raped [sic] took place, were you able to tell your parents about the incident?

A No, sir.

Q Why?

A Because he made threats against me, sir. He told me that if I will tell the incident to my parents, he will kill me, sir.

Q On February 17, 1992 and on April 22, 1992, how old were you, respectively?

A 12 years old, sir.

Q Now, did you ever tell your parents how this raped [sic] took place on November 28, 1991, February 17, 1992, April 22, 1992 which was perpetuated by the accused in this case?

A Yes, sir.

Q When was the time you told them?

A July 23, sir.

Q What year?

A 1992, sir.

Q What made you finally [tell] your parents?

A When we went to the “albularyo”, sir.

Q For what purpose?

A Because they wanted to know whether or not I [was] pregnant at that time, sir.”[37]

It is important to note that delay in reporting rape does not by itself undermine the charge, where the delay is grounded on death threats from the accused.[38]

Second Issue:

Rape and Pregnancy

Appellant cites Dr. Juan Zaldariaga, Jr., the NBI medico-legal officer who testified that the age of the fetus at the time of Judilyn’s examination was eighteen (18) weeks and two (2) days, a finding that was confirmed by ultrasound.[39] He averred:

“From the foregoing medical findings and testimony, it is clear that the complainant’s pregnancy was eighteen (18) weeks and two days (2) days in term when she was examined on 03 August 1992. It follows that she could not have been impregnated [i]n the alleged rape on 28 November 1991, or on 22 April 1992, because, if that were so, she would have been at least thirty-five weeks pregnant counted from 28 November 1991, or only fourteen (14) weeks counted from the date of the second rape on 22 April 1992. Similarly, it cannot be claimed that the complainant was impregnated when she was allegedly raped on 17 February 1992, because she would have been pregnant for about twenty-four (24) weeks.[40]

In *People vs. Adora*,[41] the appellant argued that the medical finding showed that the complainant was already pregnant long before she was allegedly abused. Addressing this contention, the Court turned to the dissertations of experts in the field and held that:[42] “[A]uthorities in forensic medicine agree that the determination of the exact date of fertilization is problematic. The exact date thereof is unknown; thus, the difficulty in determining the actual normal duration of pregnancy.”[43] Citing a Filipino authority, the Court further elucidated: “The average duration of pregnancy is 270 to 280 days from the onset of the last menstruation. There is, however, no means of determining it with certainty. Evidence derived from pregnancy following a single coitus is trustworthy, but inasmuch as some authorities consider more than two weeks as the life span of the spermatozoa in the vaginal canal, it is hard to ascertain the exact date of fertilization. There is no synchrony between coitus and fertilization.”[44]

Even Dr. Zaldariaga, on redirect examination, implied that his finding on the age of the fetus was not conclusive.[45]

Be that as it may, it must be stressed that pregnancy is not an element of the crime of rape and is, therefore, totally immaterial to the resolution of this case. Article 335 of the Revised Penal Code defines rape as “having carnal knowledge of a woman under any of the following circumstances:

- by using force or intimidation;
- when the woman is deprived of reason or otherwise unconscious
- 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.”

In rape cases, the essential element that the prosecution must prove is the absence of the victim’s consent to the sexual congress. The People must establish that the sexual assault was committed using force or intimidation, or that it was committed against a woman deprived of reason or otherwise unconscious. On the other hand, in statutory rape, all that needs to be proven is that the accused had sexual intercourse with a woman under twelve

years of age -- her consent and other circumstances relating to the sexual intercourse being immaterial.

It bears emphasis that this is a criminal prosecution for rape, not a civil action involving paternity and filiation. That the alleged age of the fetus did not coincide with the dates when the victim was raped, as appellant insists, is insignificant. Of greater import and relevance is the fact that appellant had carnal knowledge of the victim on three occasions without her consent. In fact, lack of consent is not even an element in Criminal Case No. 40647 because Judilyn was 11 years of age only on the date she was assaulted.

Third Issue:

Alleged Improper Motive

Citing Castillon once more, appellant submits that Judilyn “must have reasoned that it is better to cry ‘rape’ and bring suit thereon to salvage her honor in part than to have her reputation sullied by being bruited around and stigmatized as a woman with loose morals.”[46]

Appellant’s argument is devoid of merit, for it is utterly oblivious to the disgrace that is forever etched in the rape victim’s being. The cultural obstacles that rape victims have to overcome in their pursuit of justice have long been recognized by the Court, which held that “rape stigmatizes the victim worse than the perpetrator, as our culture puts premium into purity and virginity as virtues.”[47] Thus, it further declared that “no young Filipina of decent repute would publicly admit that she was criminally abused unless it is the truth.”[48] Indeed, it is callously insensitive for the appellant to argue that the complainant fabricated the charge of rape “to salvage her honor.”

Moreover, it cannot be said that Judilyn had an evil motive in imputing the revolting charges to appellant, who conceded this fact in his testimony:

“xxx xxx xxx

Q Is it not a fact that Judilyn Obara was always in your house and your store, [that] she treats you as a father?

A Yes, I also treat her as my daughter because she is a friend of my daughter.

Q November 28, 1991, April 22, 1991 and February 17, 1992, Judilyn Obara has no grudge against you , is that correct?

A Yes, sir, she has no grudge against me.

Q Nothing at all?

A Nothing at all against me.

xxx xxx xxx”[49]

If Judilyn had no grudge against him, why would she concoct such repugnant charges against him? And if, as appellant submits, she only cried rape to save her reputation, why would she pinpoint him, whom she treated like a father, as the culprit of not just one count, but three counts of rape? The Court is inclined to believe that, absent any circumstance indicating the contrary, Judilyn brought the charges against the appellant for one simple reason: She wanted justice.

Fourth Issue:

Alleged Inconsistencies

Appellant likewise claims that Judilyn’s testimony shows serious inconsistencies, which cast doubt on her credibility as a whole. He specifically points to the fact that, in the latter’s Sinumpaang Salaysay and on direct

examination, she did not mention that her mouth was covered by a handkerchief which prevented her from shouting. Only on cross-examination did she mention this.[50]

The argument is not persuasive. Even if there are discrepancies in Judilyn's testimony, the same are insignificant. Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall.[51] What is important is that Judilyn was emphatic in describing each rape and in identifying the appellant as the one who raped her. Jurisprudence holds that "when a woman says she has been raped, she says in effect all that is necessary to show that the rape has been committed and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof." [52]

Defense of Alibi Weak

Appellant's defense of alibi must be rejected. "Where the accused was positively identified by the victim herself who harbored no ill motive against the accused, the defense of alibi must fail." [53] Alibi is an inherently weak defense. To establish such, the accused must show that he was in some other place for such a period of time, and that it was impossible for him to have been at the locus criminis or its immediate vicinity at the time of its commission.[54] In this case, appellant, while asserting that he could not have committed the rape, reveals that the place where he was supposed to be at the time the rape was thrice committed was a walking distance of only a few minutes from the crime scene.[55] It was therefore not impossible for him to have been at the place where the crime was committed at those particular instances.

Damages

The Court agrees with the solicitor general that a modification of the assailed Decision as regards the civil indemnity is in order. In light of prevailing jurisprudence,[56] appellant should be ordered to pay civil indemnity of P50,000 for each count of rape, and not just a single indemnity for all three cases.

WHEREFORE, the appeal is hereby DENIED, and the questioned Decision of the trial court, finding Appellant Domingo Sta. Ana guilty beyond reasonable doubt of three counts of rape and sentencing him to three terms of reclusion perpetua, one for each act of rape, is hereby AFFIRMED, with the MODIFICATION that the indemnity in favor of Complainant Judilyn Obara is INCREASED to one hundred fifty thousand pesos (P150,000). Costs against appellant.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] People vs. Ramirez, 266 SCRA 335, January 20, 1997; People vs. Capilitan, 182 SCRA 313, February 15, 1990; People vs. del Pilar, 164 SCRA 280, August 11, 1988.

[2] After Assistant City Prosecutor Mary June P. Inciong certified that a prima facie case against the accused existed. Record, pp. 4-4c; Rollo, pp. 9-13.

[3] On the 17th day of February, 1992 in Criminal Case No. 40646, and on the 28th day of November 1991 in Criminal Case No. 40647.

[4] Record in Criminal Case No. 40645, p.4; record in Criminal Case No. 40646, p.1; record in Criminal Case No. 40647, p.2. Brackets supplied.

[5] Record, p. 12.

[6] Rollo, p. 204.

[7] Penned by Judge Arturo A. Romero.

[8] Notice of Appeal was filed by Atty. Ross Bautista (record, p. 206), but the Appellant's Brief was filed by Atty. Mario Ongkiko (rollo, p. 162), who was appointed counsel de oficio by the Court in its Resolution dated November 20, 1995. The case was deemed submitted for resolution on April 16, 1997, when the Appellant's Reply Brief was received by the Court.

[9] TSN, November 9, 1992, p. 2.

[10] TSN, October 5, 1992, p. 2.

[11] TSN, October 6, 1992, p. 2.

[12] TSN, October 7, 1992, p. 2.

[13] TSN, December 8, 1993, p. 2. Dr. Zaldariaga's findings are as follows:

GENERAL PHYSICAL EXAMINATION:

Height: 151.0 cm. Weight: 53.1 kgs.

Fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breast, fully developed, engorged. Labia majora, dark brown, 5.0 cm. in diameter. Nipples, dark brown, protruding, 1.0 cm. in diameter.

Abdomen, globularly enlarged with a palpable mass apparently the uterus, fundus of which is 16.0 cm. above the symphysis pubis.

No extra-genital physical injuries noted.

GENERAL EXAMINATION:

Pubic hair, fully grown, scanty. Labia majora and labia minora, coaptated. Fourchette, tense. Vestibule, violaceous. Hymen, originally annular, moderately thick, tall, with an old healed superficial laceration at 9:00 position, corresponding to a face of a watch, edges of which are rounded and non-coaptable. Hymenal orifice, admits a tube 2.5 cm. in diameter. Vaginal walls, lax. Rugosities, shallow.

Bimanual examination revealed a soft, closed cervix attached to an enlarged mass which is the uterus[,] size of which is compatible to 4 months gestation.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of the examination.
2. Signs positive of pregnancy[,] present age of which may correspond to 18 weeks and two days of gestation.

REMARKS: Single live intrauterine pregnancy[,] 18 weeks and 2 days by parietal diameter and femur length per ultrasound report. (Exh. "M", Record, p. 171.)

[14] TSN, February 1, 1994, p.5; Rollo, p.131.

[15] Ibid.

[16] Appellant's Brief, pp.5-7, Rollo, pp.162G-162I.

- [17] Decision, pp. 3-4; Rollo, pp. 166-167.
- [18] Decision, pp. 4-5; Rollo, pp. 167-168.
- [19] Appellant's Brief, p.2; Rollo, p.162D.
- [20] People vs. Atuel, 261 SCRA 339, September 3, 1996; People vs. Cura, 240 SCRA 234, January 18, 1995; People vs. Malunes, 247 SCRA 317, August 14, 1995.
- [21] People vs. Nardo, 270 SCRA 672, April 4, 1997; People vs. Lakibul, 217 SCRA 575, January 27, 1993; People vs. Pajares, 210 SCRA 237, June 23, 1992.
- [22] Ramirez, supra, note 1; People vs. Ecija, 258 SCRA 424, July 5, 1996; People vs. Gabris, 258 SCRA 663, July 11, 1996; People vs. Guamos, 241 SCRA 528, February 21, 1995; People vs. Tacipit, 242 SCRA 241, March 8, 1995; People vs. Casinillo, 213 SCRA 777, September 11, 1992.
- [23] TSN, November 9, 1992, pp. 4-8
- [24] Ramirez, supra note 19, citing People vs. Digno, Jr., 250 SCRA 237, November 23, 1995.
- [25] Appellant's Brief, pp.8-9; Rollo, pp.162J-162K.
- [26] 217 SCRA 76, 87, January 15, 1993; Appellant's Brief, p.10; Rollo, p.162.
- [27] Appellant's Brief, p.12; Rollo, p.162
- [28] 243 SCRA 617, April 21, 1995, per Feliciano, J. See also People vs. Villanueva, 254 SCRA 202, February 28, 1996.
- [29] Ibid., p.623.
- [30] Ibid., p. 624.
- [31] 244 SCRA 506, May 29, 1995, per Puno, J.
- [32] Ibid., pp. 519-520.
- [33] TSN, November 9, 1992, pp. 5-6.
- [34] TSN, January 14, 1993, p.15. Italics supplied.
- [35] She was also referred to as "Aidel" and "Idel" in the transcripts.
- [36] TSN, February 23, 1994, p. 4:
- "Q Do you know certain Judilyn Obera?
- A Yes, sir.
- Q Why do you know Judilyn Obera?
- A Because Judilyn Obera is my friend since childhood."
- [37] TSN, January 14, 1993, pp. 10-12.
- [38] People vs. Ramos, 245 SCRA 405, June 27, 1995; People vs. Vallena, 244 SCRA 687, June 1, 1995; People vs. Valdez, 150 SCRA 405, May 29, 1987.
- [39] TSN, April 14, 1993.39

[40] Appellant's Brief, pp.15-16; Rollo, p.162.

[41] GR No. 116528-31, July 14, 1991, per Panganiban, J.

[42] Ibid., citing Douglas Kerr, Forensic Medicine, 5th ed., p. 173.

[43] Ibid., p. 16.

[44] Ibid., citing Pedro Solis, Legal Medicine, p.548, at p.17. Italics supplied.

[45] TSN, December 8, 1993, pp. 9-10. Dr. Zaldariaga stated: "As per textbook, ultrasound is supposed to be very, very accurate, but then, since it will be read by a person xxx human error could complicate on [sic] this case. Because the ultrasound will give you an image and that image will be ready [sic] by an expert, [t]he variable of human error will always be there. Although, allegedly, ultrasound, sir, is supposed to be very accurate." Italics supplied.

[46] Supra, note 22 .

[47] People vs. Ibay, 233 SCRA 15, 27, June 8, 1994, per Puno, J.

[48] People vs. Madaraog, 160 SCRA 153, April 15, 1988, per Padilla, J.; People vs. Hortelana, 148 SCRA 469, March 16, 1987. See also People vs. Eclarinal, 182 SCRA 106, 112, February 12, 1990 (per Padilla, J.), in which the Court held: "Considering the inbred modesty and antipathy of a Filipina in airing in public things that affect her honor, it is hard to conceive that the complainant would assume and admit the ignominy she had undergone if it were not true."

[49] TSN, February 2, 1994, p. 10. Emphasis added.

[50] Appellant's Brief, p.18; Rollo, p.162.

[51] People vs. Perez, 270 SCRA 526, March 26, 1997; People vs. Pasayan, 261 SCRA 558, September 9, 1996; People vs. Mancilla, 173 SCRA 373, May 15, 1989; People vs. Cayago 158 SCRA 586, March 14, 1988.

[52] People vs. Tismo, 204 SCRA 535, December 4, 1991, per Davide, J.; People vs. Barcelona, 191 SCRA 100, October 31, 1990; People vs. Dalinog, 183 SCRA 88, March 12, 1990.

[53] People vs. Cañada, 253 SCRA 277, February 6, 1996, per Bellosillo, J.; People vs. Corrales, 182 SCRA 439, February 29, 1990; People vs. Sambangan, 125 SCRA 726, November 25, 1983.

[54] People vs. Flores, 191 SCRA 176, October 31, 1990; People vs. Santos, 183 SCRA 25, March 6, 1990; People vs. Diño, 160 SCRA 197, April 15, 1988; People vs. Ramilo, 146 SCRA 258, December 15, 1986.

[55] TSN, January 2, 1994, pp. 4-5. Cross-examination of Domingo Sta. Ana.

"xxx xxx xxx

Q The question is, where do you sell?

A Corner of Macaneneng and Intan Streets.

Q And that place is also located at Bagong Barrio, Caloocan City?

A Yes, sir.

Q And that place where you are selling your goods is very close to your house, is that correct?

A The difference is three blocks from our house.

Q You are also residing in Macaneneng?

A Our address is 22c Lawaan Alley, Bagong Barrio, Caloocan City.

Q So in going to your place of work, you usually walk?

A Yes, I only walk.

Q And it will take you only about 2-3 minutes to walk.

A Yes, sir, about 2 to 3 minutes.” (*Italics supplied*).

[56] *People vs. Conte*, 247 SCRA 583, 598. August 23, 1995; *People vs. Joya*, 227 SCRA 9, October 1, 1993; *Tismo*, *Supra* note 47.

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