

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR S. ALOJADO, ACCUSED APPELLANT.

G.R. Nos. 122966-67. March 25, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In rejecting this appeal, this Court reiterates two time-tested doctrines: (1) the finding, of the trial court on the credibility of the witnesses and their testimonies, will not be disturbed on appeal, absent any arbitrariness or oversight of any, fact or circumstance which, if considered, would affect the judgment; and (2) positive identification prevails over alibi.

The Case

Edgar S. Alojado appeals the December 13, 1995 Decision[1] of the Regional Trial Court of Angeles City Branch 58, in Criminal Case Nos. 94-10-705 and 94-10-706, convicting him of two counts of rape and sentencing him to two terms of reclusion perpetua.

In two separate but identically worded Complaints[2] dated October 18, 1994, Ma. Julette G. Peñaranda and Gerra Q. Rustia, both assisted by their respective mothers Lolita G. Peñaranda and Gemma Q. Rustia, charged appellant with statutory rape. On November 11, 1994, both Complaints were amended to include the allegation that the accused used a deadly weapon in committing the offense. The accusatory portion of each of the two Amended Complaints reads as follows:

"That on or about the 11[th] day of October, 1994, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of the tender age and innocence of the complainant, who is below 12 years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant against her will and consent.

"That in the commission of this offense[,] accused used a deadly weapon against herein victim.

"CONTRARY TO LAW:"[3] (Underscoring found in the original.)

Upon certification by Third Assistant City Prosecutor Vicente U. Pornillos that a preliminary investigation had been conducted, the Complaints were subsequently treated as Informations.

Upon his arraignment on December 22, 1994, appellant, assisted by Counsel de Parte Juanito O. Velasco, pleaded not guilty.[4] The two cases were jointly tried. Thereafter, the court a quo rendered the assailed "Hatol," the dispositive portion of which reads:

"Sapagkat napatunayan nang walang pasubali na nagkasala si Edgar S. Alojado ng panggagahasa ng dalawang (2) beses, una[,] kay Julette Peñaranda (Crim. Case No. 94-10-705), at pangalawa kay Gerra Rustia (Crim. Case No. 94-10-706), ang nasabing si EDGAR S. ALOJADO ay hinatulan ng hukumang ito na mabilanggo ng 'RECLUSION PERPETUA' sa bawat isang kaso. Gayundin, siya ay hinahatulang magbayad ng tig-[l]ilimampung [l]ibung [p]iso (P50,000.00) bawat isa, sa mga biktimgang sina Julette Peñaranda at Gerra

Rustia."[5]

Hence, this appeal direct to this Court.[6] On April 24, 1996, appellant filed a Motion for New Trial, alleging newly discovered evidence. After the Office of the Solicitor General filed its Comment, this Court denied the motion in its December 3, 1997 Resolution.[7]

The Facts

Evidence of the Prosecution

In the Appellee's Brief,[8] the Office of the Solicitor General[9] presents the prosecution's version of the facts:

"On October 11, 1994, Julette Peñaranda and Gerra Rustia went to Amsic Elementary School where they were Grade III pupils. During the recess at around 10:00 a.m., both girls went to the house of Julette to get a dress which Julette intended to show to her teacher. (pp. 11-12, TSN, January 25, 1995). On their way back to school, appellant talked to them, showed them a picture of a woman and asked them if they knew the woman in the picture. Julette told appellant that she did not know the woman. Appellant told them to help him look for the woman (pp. 13-14, TSN, January 25, 1995). The two girls accompanied appellant who was then riding a green bicycle. The three of them rode towards Amsic. In view of an obstruction on the road, appellant told the girls to go down and walk as they made a turn towards Plaridel. Thereafter, the two girls rode the bicycle again. This time it was Julette who stayed at the back while Gerra was placed at the front of the bicycle.

"Upon reaching a grassy area in Plaridel, appellant brandished a knife, 6 to 7 inches long (TSN, pp. 15-17, January 25, 1995). Appellant said 'Papatayin ko yung babae kasi marami na siyang kasalanan sa akin.' After hearing this, Julette told appellant she wanted to go home because she was already scared. But appellant told them to wait.

"Appellant tied their hands at their back and tied the left foot of Julette to one foot of Gerra with Gerra's belt. Appellant also tied their mouths with Gerra's socks. Appellant made Julette and Gerra suck his sex organ. (pp. 5-11, TSN, February 22, 1995; pp. 11-12, TSN, March 4, 1995).

"Appellant removed the clothes of Julette and raped her by inserting his penis into her sex organ. (pp. 18-22, TSN, January 25, 1995[5]). Appellant knelt down as he raped Julette. Julette saw blood coming from her sex organ.

"Appellant turned to Gerra and spat at her sex organ. He inserted his ' penis into the genitalia of Gerra, who was made to lie down. After appellant raped Gerra, he told the two victims to stay as he would just rest. (pp. 25-30, TSN, January 25, 1995).

"When appellant left, Julette removed the handle of the bag used to tie her hands and their feet. They stood up and walked toward the house of Mrs. Stickle, whom they asked for help. When Mrs. Stickle saw them at the gate of her house, Julette was wearing her shorts while Gerra was wearing nothing. Mrs. Stickle and the neighbors brought them to the Angeles City General Hospital.

"Dr. Hernand Tulud of the Angeles City Hospital attended to the victims. He found blood clot on the genital area of Gerra, which was still bleeding. (p. 13, TSN, April 5, 1995). Dr. Tulud found 'laceration [at the] right vaginal wall, left lateral vaginal wall and periumbilical contusions.' (p. 15, Ibid.).

" Dr. Tulud also examined the vagina of Julette and found 'multiple laceration[s] of the vagina; [and] positive laceration of the posterior wall with penetration to the cul de sac.' (p. 24, *ibid*). After being given intravenous fluids, she was transferred to Jose B. Lingad Hospital because she was complaining of abdominal pains.

"Dr. Efren Natino, the obstetrician and volunteer consultant of Jose Lingad Hospital, examined Julette. He noted [a] laceration in her genitalia, which was profusely bleeding. Dr. Natino opined that the laceration could have been caused by an erect penis. (p. 9, TSN, April 12, 1995).

"Appellant was later brought to the hospital where he was identified by Julette as the person who raped them (pp. 5-11, TSN, February 22, 1995)."

Evidence for the Defense

In his Brief,[10] appellant assails the insufficiency of the prosecution's evidence and alleges alibi, claiming that at 11:00 a.m. on October 11, 1994, when the crimes were committed, he left his house and went to the Day Care Center in Marisol Village to fetch his youngest son, Carl. The defense also presented Geraldine Gamboa, who testified that she was near the vicinity of the locus criminis and that she saw a man, who was not the appellant, emerge from some bushes with bloody arms and legs.

Ruling of the Trial Court

The trial court gave full faith and credence to the testimonies of the two victims, which were corroborated by the medical findings. It also stressed that, considering the tender age of the two minors, it was highly unlikely, for them to have fabricated the rape. The court rejected the defense of alibi which appellant resorted to, since (1) his house was near the scene of the crime; and (2) he failed to present any witness to corroborate his claim that, at the time the crimes were committed, he was at the day center to fetch his son.

Assignment of Errors

In the Appellant's Brief,[11] appellant interposes the following errors allegedly committed by the lower court:

- "1. In holding that the victims, Peñaranda and Rustia were raped and not merely sexually abused[;]
2. In holding that the testimonies of Peñaranda and Rustia and the medical findings sustain the conclusion that they were raped;
3. In holding that because of the tender age or minority of the two (2) victims[,] they were incapable of weaving lies by claiming they were raped if they were not really raped;
4. In holding that a bladed weapon was used in the commission of the alleged rape;
5. In holding that the accused was the one who committed the crime of rape;
6. In disregarding appellant's evidence that he was at his residence and not at xxx Plaridel II, Brgy. Amsic, Angeles City, on October 11, 1994; [and]
7. In intentionally disregarding defense witness Gamboa's testimony that on October 11, 1994[,] she saw a man in the bushes not far from the scene of the crime wiping blood on his hands and feet and was warned to keep silent and threatened with death if she disclose[d] what she saw."[12]

In the main, appellant questions the sufficiency and the credibility of the prosecution's evidence. In resolving this appeal, the Court will also determine the weight of his alibi and of Defense Witness Gamboa's testimony.

The Court's Ruling

The appeal is devoid of merit.

First Issue:

Sufficiency of Prosecution Evidence

Appellant contends that Julette Peñaranda and Gerra Rustia were not raped, but merely sexually abused. In support of his claim, he assails the testimony, of Julette that she was is raped while lying on her back and appellant was in a kneeling position. He submits that "human experience will demonstrate that a man [i]n a kneeling position cannot possibly insert his penis [into] a girl, or even a woman, who [is i]n a supine position, lying on her back, unless he [lifts] the buttocks of the girl or woman or place[s] himself on top of the girl or woman." [13] He also cites the testimonies of the two physicians that a hard object other than the male organ could

have penetrated the victims private parts.

The contentions of appellant are incorrect. Julette vividly narrated that he inserted his penis into her private part and, subsequently, into Gerra's, viz.:

"Q: In what manner did that man who brought you to the grassy area rape or abuse you?

A: Ipinasok po ang ari niya.

x x x

Q:

And you said that it was inserted. To what part of your body was it inserted?

A: Sa ari ko po.

x x x

Q: When he was able to insert his penis to your private part, what did you feel, if you felt anything?

A: Opo.

Q: What did you feel?

A: Masakit po.

x x x

Q: You said that after you were raped, Gerra Rustia was next to be raped. How was Gerra Rustia raped?

A: Pinasok po yun(g) ari ng lalake sa ari ni Gerra Rustia.[14]

Gerra Rustia herself testified that the two of them were raped, as clearly indicated below:

"Q:

Sabi mo noong huling nagbista, sinabi mo na iyong lalakeng umalis ay rapist. Bakit mo nasabi na ang umalis na lalaki ay rapist?

x x x

A: Kasi po ginahasa kami.

Q: Sabi mo'kami. 'Sinong kasama mo?

A: Julette, po.

x x x

Q: Paano ka at ni Julette ginahasa ng lalaki?

A: Pinasok ang titi niya.

Q: Saan niya ipinasok?

A: Dito, po.

[witness touching the lower part of her body]

Court: What part of the body?

Interpreter: In between her legs sir.

x x x

Q: Sinabi mo may kasama ka. Anong pangalan niya?

A: Julette, po.

Q: Sinabi mo siya rin ay ginahasa.

A: Opo.

Q: Sino'ng unang ginahasa?

A:

Si Julette, po."[15]

Appellant's conviction hinges on the credibility of the victims and their testimonies. In this case, the trial court, which had the opportunity to observe the manner and demeanor of the witnesses, was convinced of their credibility. We find no reason to reverse or alter its holding, for "[I]t is a time tested doctrine that a trial court's assessment of the credibility of a witness is entitled to great weight -- even conclusive and binding if not tainted -with arbitrariness or oversight of some fact or circumstance of weight and influence." [16] The appellant has not given us reason -- and we do not find any -- to depart from this rule or to make an exception therefrom.

Julette Peñaranda's statement that appellant was in a kneeling position does not rule out rape. Granting arguendo

that appellant's organ did not completely penetrate the victim's private part, this Court has consistently held that "for rape to be committed, full penetration is not required. It is enough that there is proof of entrance of the male organ within the labia or pudendum of the female organ. Indeed, even the slightest penetration is sufficient to consummate the crime of rape." [17]

Citing, the findings of the two doctors, appellant stresses the probability that "a blunt instrument, other than an erect penis," caused the vaginal lacerations of the two girls. [18] Appellant's reference to these testimonies is erroneous. The two physicians did state that the lacerations found on the vaginal walls of the victims could have been caused by a hard object other than an erect male organ, but they definitely did not rule out the latter cause. Dr. Hernand Tulud testified thus:

"PROS. PORNILLOS:

Q. Could you, give some objects that could have caused this laceration?

A. Considering the size of the patient, a blunt object that could penetrate the vaginal canal, sir.

Q Like what?

COURT:

Q. What are those blunt objects you are referring to?

A. A finger or any instrument that can be pushed inside the vaginal canal. sir

Q. What are those blunt objects which you are referring to which may fall under this category?

A. An [erect] sexual organ of a male and a finger, sir." [19]

Identity of Appellant Established

We are not convinced by appellant's argument that he did not fit the rapist's physical appearance as described by, the two children, who declared that their assailant was "semi-bald, with moustache, dark with flat nose." It should be stressed that the descriptions given by the victims are subjective terms, whose meanings vary with each individual. The children may have described their assailant as semi-bald, although he may have had only a wide forehead. The gap between his teeth may have been referred to as bungi by some, but not by others. On the other hand, the moustache, which their assailant allegedly had, can be disregarded because it can easily be shaved.

We are not persuaded by appellant's allegation that the police conditioned the minds of the victims to point to appellant as the assailant. In fact, the two children identified him at the hospital when he was brought before them and again during the trial. Thus, even when the defense counsel tried to confuse her during cross-examination, Julette remained steadfast, as shown by her testimony:

"Q: When Edgar Alojado was presented to you if he was the person who abused you, you said to the policeman 'Hindi iyan, hindi iyan,' is it not?

A: Tinuro ko po siya.

Q: Is it not true, Miss Peñaranda when he was presented to you, you said 'Hindi iyan, hindi iyan,' and he was brought outside the room?

Pros. Pornillos:

Misleading, Your Honor. She said she pointed to him.[20]

On her part, Gerra sufficiently explained why she had failed to immediately identify appellant at the hospital. She had just awakened and, prior to that, had undergone blood transfusion.[21] What is important is that when she was asked again, she promptly tried to be more alert; gathering her senses, she admitted her mistake and subsequently pointed to appellant as the culprit. She was probably just being careful not to point to anybody as the culprit, especially when she had not yet gotten hold of her senses. Instead of destroying her credibility and creating the impression that she was coaxed by the police, the foregoing circumstances show her conscious awareness that appellant was the man who had abused her and Julette. Thus, during the trial, she again identified him. Indeed, the natural reaction of a victim is to point to the guilty party, for to inculcate the wrong person is to let the malefactor go unpunished and free to repeat the same outrage.

We are not persuaded by the argument that the first time appellant was identified was not in a police lineup, but in the hospital where the police brought him alone to face the two victims. The fact remains that the victims were able to recognize him at the time and again during the trial.

Moreover, there is no law that requires a police lineup as the only means by which culprits may be identified.[22]

Use of a Knife

Appellant also contends that the "court a quo erred in holding that a bladed weapon was used in the commission of the alleged rape." [23] This contention is utterly devoid of merit. First, the trial court itself did not rule that rape was committed with the use of a deadly weapon. This is clear from its finding, that "batay sa ebidensiya o salaysay ni Julette Penaranda, ang panggagahasa ay hindi ginamitan ng nakamamatay na sandata." [24]

Second, evidence of force or intimidation is not material in this case, because appellant was charged with statutory rape, which is established upon proof that the accused had carnal knowledge of a girl below twelve years of age. In this case, the prosecution proved that, on October 11, 1994, appellant raped Julette G. Peñaranda and Gerra Q. Rustia, born on December 1, 1985,[25] and December 15, 1984,[26] respectively.

Irregularity of Arrest

Deemed Waived

Appellant also maintains that he was illegally arrested. This argument, however, comes too late in the day, because appellant failed to allege it prior to his arraignment. In *People v. Salvatierra*, [27] the Court emphasized that an objection to the legality of an arrest must be submitted to the trial court before the accused enters his plea., viz.:

"Appellant is estopped from questioning the legality of his arrest considering that he never raised this before entering his plea. Any objection involving a warrant of arrest or the acquisition of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived."

Consequently, any, defect concerning the arrest of the appellant was cured by his voluntary, submission to the jurisdiction of the trial court, as shown when he entered his plea during his arraignment, and when he actively participated in the trial thereafter.

Second Issue:

Alibi

The defense of -alibi must be rejected, because appellant failed to prove that his presence at the place of the crime at the time it was committed was physically impossible.[28] Appellant allegedly left his residence to fetch his son Carl at the day care center in Marisol Village. However, the distance between Marisol and the locus criminis did not discount his presence at the scene of the crime at the time. Moreover, his testimony that he saw SP02 Soriano on his way back is not "crucial "[29] as he claims. The police officer merely admitted that he knew appellant, not that he saw appellant going to or coming from the day care center. In any event, the latter's defense of alibi cannot overcome the positive identification made by the two victims, who had no improper motive to testify falsely, against him. In several instances, the Court has held:

"On appellants' defense of alibi and denial, it will suffice to say that said defenses cannot prevail over their positive identification by the eyewitnesses who had no improper motive to falsely testify against them as we have mentioned above. Besides, there is no evidence to show that the alleged whereabouts of the [appellant] at the time of the killing [was] far enough to forfeit the possibility of [his] being at the scene of the crime." [30]

Third Issue:

Geraldine Gamboa's Testimony

Appellant claims that the lower court erred in disregarding Geraldine Gamboa's testimony that she saw a bloodied man who emerged from some bushes not far from the scene of the crime, and who threatened her to keep silent on what she had seen. She allegedly saw the same man on three more separate occasions -- once while he was drinking soft drinks across her house, and twice when he rang her doorbell and reminded her to maintain her silence. That man, appellant submits, was the culprit.

We disagree. The lower court correctly stated that Gamboa's testimony was contrary to human experience, since it was quite improbable that she would let a man inside her abode when he had just threatened to kill her. More important, even if she did see a man other than appellant emerge from some nearby bushes, she did not see the commission of the rape. In other words, the defense fails to establish that that man and the malefactor were one and the same.

In any event, Gamboa's testimony cannot overcome the positive identification made by the two victims. The trial court, which had the opportunity to observe them during trial, deemed their testimony credible and rejected Gamboa's.

Crime and Punishment

The evidence presented by the prosecution clearly showed that appellant had carnal knowledge of the two victims who at the time were less than twelve years of age. Thus, he is liable for statutory rape, which is punishable with reclusion perpetua to death.[31] There being no aggravating circumstance, the penalty of reclusion perpetua for each count of rape, which the trial court imposed, is correct. We affirm the award of P50,000 as indemnity ex delicto for each victim,[32] and consistent with jurisprudence,[33] we also grant P50,000 to each victims as moral damages.

WHEREFORE, the assailed Decision is hereby **AFFIRMED** with the **MODIFICATION** that the appellant is additionally **ORDERED** to pay P50,000 to each of the two victims as moral damages. Costs against appellant.

SO ORDERED.

Romero (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

- [1] Written in Filipino by Judge Eliezer R. de los Santos; rollo, pp. 64-91.
- [2] Rollo, pp. 5-8.
- [3] Rollo, pp. 9-12.
- [4] Records, p. 127.
- [5] Assailed Decision, p. 28; rollo, p. 91.
- [6] The case was deemed submitted for resolution on October 26, 1998, when this Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.
- [7] Rollo, p. 146. The Court held that "[c]alling [Geraldine Gamboa] to the witness stand to enable her to identify the man she described in her previous testimony as the culprit would be a mere rehash of her earlier testimony and would not constitute 'newly discovered' evidence referred to in the Rules."
- [8] Appellee's Brief, pp. 1-42.
- [9] The Appellee's Brief was signed by Solicitor General Ricardo P. Galvez and Assistant Solicitor General Nestor J. Ballacillo.
- [10] The Appellant's Brief, signed by Atty. Juanito O. Velasco, has no detailed narration of facts.
- [11] Pp. 1-41; rollo, pp. 161-201.
- [12] Appellant's Brief, p. 3; rollo, p. 163.
- [13] Ibid., p. 6; rollo, p. 166.
- [14] TSN, January 25, 1995, pp. 20-29.
- [15] TSN, March 15, 1995, pp. 3-7.
- [16] *People v. Angeles & Nell*, 275 SCRA 19, July 1, 1997, per Panganiban, J.
- [17] *People v. Mangalino*, 182 SCRA 329, 336, February 15, 1990, per Sarmiento, J. See also *People v. Echegaray*, 257 SCRA 561, June 25, 1996; *People v. Abella*, 228 SCRA 662, December 21, 1993; *People v. Tesimo*, 204 SCRA 535, December 4, 1991; *People v. Castillo*, 197 SCRA 657, May 29, 1991; *People v. Faigano*, 254 SCRA 10, February 22, 1996.
- [18] Appellant's Brief, p. 6; rollo, p.166.
- [19] TSN, April 5, 1995, pp. 16-17.
- [20] TSN, March 1, 1995, p. 7.
- [21] TSN, March 15, 1995, p. 28.
- [22] *People v. Rivera*, 245 SCRA 421, June 29, 1995; *People v. Salazar*, 248 SCRA 460, September 20, 1995.
- [23] Appellant's Brief, p. 12; rollo, p. 172.

[24] RTC Decision, p. 9; rollo, p. 210.

[25] TSN May 17, 1995, p. 8.

[26] TSN, May 4, 1995, p. 5.

[27] 276 SCRA 55, 63, July 24, 1997, per Kapunan, J. See also *People v. Macam*, 238 SCRA 306, November 24, 1994; *People v. Briones*, 202 SCRA 708, October 15, 1991; *People v. Rivera*, 245 SCRA 421, June 29, 1995; *People v. Manzano*, 248 SCRA 239, September 15, 1995; and *People v. Manlulu*, 231 SCRA 701, April 22, 1994.

[28] *People v. Canada*, 253 SCRA 277, 286, February 6, 1996; *People v. Tulop*, GR No. 124829, April 21, 1998; *People v. Pili*, GR No. 124739, April 15, 1998; *People v. Balmoria*, GR Nos. 120620-21, March 20, 1998; *People v. Pallarco*, GR No. 119971, March 26, 1998; *People v. Cabebe*, GR No. 125910, May 21, 1998; *People v. Sabalones*, GR No. 123485, August 31, 1998; *People v. Cawaling*, GR No. 117970, July 28, 1998.

[29] Appellant's Brief, pp. 17-18; rollo, pp. 177-178.

[30] *People v. Sotes*, 260 SCRA 353, 366, August 7, 1996, per Kapunan, J. See also *People v. Flores*, 239 SCRA 83, December 8, 1994; *People v. Guamos*, 241 SCRA 528, February 21, 1995; *People v. Umali*, 242 SCRA 17, March 1, 1995; *People v. Lug-aw*, 229 SCRA 308, January 18, 1994, and *People v. Bongadilla*, 234 SCRA 233, July 20, 1994.

[31] Article 335, Revised Penal Code, as amended by RA 7659.

[32] *People v. Atop*, 286 SCRA 157, February 10, 1998; *People v. Caballes*, 274 SCRA 83, June 19, 1997;

[33] *People v. Prades*, GR No. 127569, July 30, 1998.

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