

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERARDO “GERRY” EVINA Y PADUAL, APPELLANT.

G.R. Nos. 124830-31. June 27, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is the appeal of appellant Gerardo Evina from the Decision[1] of the Regional Trial Court, Tacloban City, Branch 9, finding him guilty of two counts of simple rape and sentencing him to suffer the penalty of reclusion perpetua for each count.

On November 21, 1991, two Informations[2] were filed with the Regional Trial Court of Tacloban City charging the appellant with rape. The accusatory portion of each of the Informations respectively read as follows:

That on or about the 3[rd] day November, 1991, in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did, then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of one AAA (sic) against her will and consent.

CONTRARY TO LAW[3]

...

That on or about the 7[th] day November, 1991, in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did, then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of one AAA (sic) against her will and consent.

CONTRARY TO LAW[4]

Upon arraignment on October 16, 1992, the appellant, assisted by his counsel de oficio, pleaded not guilty to both charges.[5] Thereupon, joint trial ensued.

The Case for the Prosecution[6]

Spouses Basilio Catcharro and Luciana Evaller lived in a one-bedroom house in Paseo de Legaspi, Tacloban City.[7] They had a daughter, AAA, who was born on July 15, 1980[8] and was then a Grade III pupil at the Anibong Community School.[9] The appellant was the son of Luciana's second cousin and lived nearby. There were times when the appellant and an older brother of AAA slept in the attic of the Catcharro residence. An older sister slept in the bedroom, while the couple and their other children, including AAA, slept in the sala. The appellant eked a living as a porter at a bus terminal located within the city's reclamation area.[10]

In the evening of November 3, 1991, Luciana, along with the appellant's mother, went to the barangay captain to check out a cash loan transaction.[11] Left in the house were Basilio, AAA, the latter's older sister, and some visitors. Basilio was at the balcony whiling away time,[12] and AAA was busy playing by herself.[13] Meanwhile, a drinking spree was on-going at the living room.[14] At around 9:00 p.m., AAA decided to retire for the night. She proceeded to the bedroom and though it was not lighted,[15] she saw the appellant inside the room, just sitting there.[16] Unconcerned, AAA went to bed to sleep. But before she finally dozed off, she noticed that

the appellant had locked the door.[17] AAA was suddenly awakened by the appellant, who immediately gagged her mouth with her red dress.[18] The appellant tied her hands with a big handkerchief and poked a knife at her.[19] He ordered AAA to keep quiet.[20] He then took off her undergarment[21] and undressed himself.[22] He mounted AAA and thrust his penis into her vagina. The appellant's penis penetrated her vagina by about half an inch.[23] He then made a push and pull movement.[24] AAA felt excruciating pain.[25] While pumping, he ejaculated.[26] AAA felt something come out from the appellant's penis.[27] Satiated, he dismounted and untied AAA.[28] He warned her not to breathe a word of what had happened, otherwise he would kill her and the rest of her family.[29] The appellant then ordered AAA to leave the room.[30] AAA did as she was told, and went to the sala where she watched television.[31] AAA did not tell her father about the harrowing incident because she feared that she and her family might indeed be killed.

Much later, Luciana returned home from her errand and noticed the appellant coming out of the bedroom. She did not suspect that anything was amiss. She went into the room and saw her daughter AAA, already sleeping.[32]

At about 5:00 p.m. of November 7, 1991, AAA was left at home alone.[33] Her mother had earlier gone to her father's place of work.[34] AAA was playing at the balcony when the appellant arrived, apparently looking for something.[35] Thereafter, the appellant called AAA to the bedroom and told her to lie down.[36] When she refused, the appellant forced her to lie down, gagged her mouth and tied her hands.[37] He poked a knife at her and touched her thigh. The appellant undressed her, then himself, and inserted his penis into AAA's vagina.[38] The penis, as before, penetrated the vagina by about half an inch. Again, AAA experienced excruciating pain.[39] After satisfying his lust, the appellant warned her not to tell anyone about the incident, otherwise he would kill them all. Because AAA had already seen the appellant kill someone,[40] she feared that the appellant might make good his threat. She did not reveal her traumatic ordeal to her parents or to anyone.

On November 13, 1991, the appellant arrived at the Catcharro residence and proceeded to the bedroom. AAA, who was inside the bedroom, ran out and told her mother who was about to leave: "Mama, do not leave us alone. Papa Gerry might rape me again." [41] Luciana was shocked at her daughter's revelation. She examined the vagina of AAA and saw pus cells and blood. Luciana brought her daughter to the police station, where she was advised to have AAA examined by a doctor.[42]

The following day, AAA was brought to the Tacloban City Medical Center where she was examined by Dr. Giovanni Zilmar and Dr. Ma. Joyce R. Liao. The physicians' findings were as follows:

OB-GYNE findings:

External genitalia — grossly normal

Introitus — negative hymenal laceration noted

Pelvic exam — patient refused pelvic exam.

— With yellowish slight mucoid discharges noted.

Vaginal smear for TMG — positive pus cells.

Gram negative diplococci

X-X-X-X-X-X-X-X

Extracellular

(+++) Vaginal smear- spermatozoa seen

Intracellular

(+++)[43]

Because the appellant admitted the authenticity of the Medico-Legal Report, Dr. Giovanni Zilmar's testimony was dispensed with.

The Evidence of the Appellant

The appellant denied the charges and raised the defense of alibi. He claimed that he was a victim of circumstances, and that the charges were fabricated by AAA' family, who hated his guts.[44]

The appellant testified that on November 3, 1991, he was at a bus terminal in Tacloban City working as a porter until 10:00 p.m.[45] After work, he left the terminal and went home.[46] On November 7, 1991, he left early, at around 7:00 a.m., and worked the entire day at the bus terminal until 10:00 p.m. Afterwards, he went straight to his house,[47] which was about one kilometer away.[48] He testified that it took him ten to fifteen minutes to walk from his house to the terminal, and vice-versa.[49]

The appellant declared that Basilio and his family were his neighbors and distant kin, but averred that he had not been to their house for several years.[50]

On August 14, 1995, the trial court rendered judgment convicting the appellant of two counts of rape, the decretal portion of which reads:

WHEREFORE, premises considered, the Court hereby finds accused GERARDO EVINA Y PADUAL guilty beyond reasonable doubt of the crime of Rape on two (2) counts and considering the age of the victim to be ten (10) years old, the Court hereby imposes upon said accused the penalty of Reclusion Perpetua on each of the above-named cases.

SO ORDERED.[51]

In convicting the appellant, the trial court discounted the defense of alibi put up by the defense. It ratiocinated that it was not physically impossible for the appellant to be at the scene of the crime, taking into account the geographical proximity of the appellant's house to the Catcharro residence. The trial court ruled that AAA' positive identification of the appellant prevailed over the latter's uncorroborated and self-serving alibi. The trial court further stated that the appellant's adamant insistence that he had not visited the Catcharro residence for years was far-fetched and contrived, considering that they lived in the same neighborhood and were even blood-related.

The appellant seeks the reversal of the trial court's decision, contending that:

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE

EVIDENCE OF THE PROSECUTION THAN THAT OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[52]

The appellant argues that the evidence of the prosecution failed to achieve the test of moral certainty. He contends that rape is hard to prove, but harder for him to disprove, even though he is innocent. The testimony of AAA should be carefully scrutinized, and he should not be convicted unless her testimony is found to be impeccable.[53]

The appellant also asserts that AAA' testimony is incredible as well as inconsistent; hence, barren of probative weight. At first, AAA testified that the appellant followed her to the room and then raped her. But when queried by the court a quo, AAA narrated that the appellant was already inside the bedroom when she got there; that she slept, then the appellant woke her up and raped her. The appellant alleges that the inconsistency in her testimony impaired her credibility.[54] AAA' testimony is even discordant with her mother's account of events: AAA testified that it was on November 7, 1991 when she told her mother that the appellant had raped her, while Luciana testified that AAA made the revelation on November 3, 1991.

The contention of the appellant does not persuade.

The inconsistency in AAA' testimony is too minor and trivial to impair the integrity of the prosecution's evidence as a whole. It cannot affect the veracity or the weight of her testimony. Whether the appellant preceded or followed AAA in the bedroom pertains only to a collateral matter which does not have anything to do with the essential elements of the offenses with which the appellant was charged. What is of primordial importance is that AAA positively, categorically and in a straightforward manner, narrated how and when the appellant raped her. AAA testified, thus:

Pros. Homeres

Q: When you woke up what did he do?

A: He tied my mouth.

Q: What did he use to tie your mouth?

A: My red dress.

Q: Why did he tie your mouth?

A: I do not know.

Q: After your mouth was tied with your dress what did he do?

A: He also tied my hands.

Q:

With what material did he use in tying your hands?

A: Handkerchief.

...

Q: After Benedicto Evina alias Gerry tied your mouth and hands what else did he do if any?

A: He pointed a knife at me. (witness points to the left side of her body)

Q: After he pointed a knife to your body what else did he do to you?

A: He took off my panty and then he also took off his pants.

Q: After that what happened?

A: And then he placed his penis in my vagina.

Q: Did his penis penetrate your vagina?

A: It was not able to penetrate deeply.

Q:

How long did the penetration take place?

A: It did not take long.

Q: How deep was the penetration of his penis to your vagina, if you can demonstrate?

A: Witness showed her middle finger and showed a length of a little more than ½ of an inch.

Q: Do you know if anything happened to his penis when it slightly penetrated your vagina?

A: There was a whitish substance.

Q: Coming from where?

A: It came from his organ.[55]

...

Pros. Homeres

Q: What happened when you refused to lie down?

A: He was the one who laid me down.

Q:

When you were laid down by him what happened?

A: He tied my mouth as well as my hands.

Q: After your mouth and hands were tied what happened?

A: He pointed a knife at me.

Q: Did he touch your private parts?

A: Yes.

Q: What part of your body was touched by him?

A: My thighs.

...

Q: What happened when you were laid down?

A: He took off my pantie (sic) and he also took off his pants.

Q:

After he took off your pantie (sic) and he also took off his pants what happened?

A: He place (sic) his penis in my vagina.

Q: Did his penis penetrate your vagina?

A: A little.

Q: How deep?

A: Witness showed about ½ inch of her forefinger.[56]

The appellant avers that Luciana's credibility was impaired when she testified that it was on November 3, 1991 when AAA revealed that the appellant had raped her when, in fact, it was actually on November 7, 1991. Luciana indeed erred on this point in her testimony. However, we agree with the findings of the trial court that although Luciana had her dates mixed up, it was but an honest mistake:

In answer to the question as to how she came to know about the rape of her daughter on November 3 and 7, 1991, Mrs. Catcharo (sic) made the following answer:

"Last November 3 when I was about to leave the house, Gerry Evina (Gerardo Evina) came up the house. He went directly to the room. Afterwards, AAA (sic) came out and said, 'Mama, do not leave us alone, Papa Gerry might rape me again.' After which I brought my daughter to the police station. The following day, I had her medically examined."

Apparently, witness Luciana Catharo (sic) was mistaken about the date of November 3, 1991. She must have been mistaken of what she meant by November 3, was actually November 7. ...[57]

Likewise barren of merit is the appellant's contention that AAA could not have identified him as the rapist, considering that it was 9:00 p.m. when AAA was raped and it was pitch dark in the bedroom where the crime was committed.[58] We agree with the encompassing ruminations of the Office of the Solicitor General on the matter, to wit:

Firstly, it must be stressed that the victim personally knew appellant since the latter is a relative who frequents their house and who lives only one house away from the victim (pp. 4, 12, TSN, November 12, 1992; p. 7, TSN, September 16, 1994). Secondly, appellant was positively identified in court by the victim who testified in a categorical, straightforward, spontaneous, and frank manner and remained consistent in cross-examination (p. 4, TSN, November 12, 1992). Thirdly, by the victim's account, it can be deduced that there was enough light in the bedroom which enabled the victim to see and recognize appellant even if the first rape occurred at about 9:00 in the evening. Besides, appellant did not raise this issue during the trial nor was the victim cross-examined on whether it was dark or not inside the bedroom on November 3, 1991 at 9:00 o'clock in the evening. Moreover, it must be pointed out that the second incident of rape occurred at 5:00 in the afternoon only, thus the bedroom may be illuminated by natural light since it was still daytime (p. 7, November 12, 1992). And significantly, appellant repeated almost all the same acts he did during the first incident of rape. This, therefore, points to no other conclusion than that it was appellant who violated appellant on November 3, 1991.[59]

The room may have been unlit at the time of the rape, but this does not mean that there was total darkness as to preclude AAA from identifying the malefactor. We do not consider the circumstance of nighttime as a hindrance to AAA' identification of the appellant as the rapist. The bedroom door was open when AAA entered, and the light in the sala illumined the bedroom.[60]

During rape incidents, the offender and the victim are as close to each other as is physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act.[61] Moreover, the appellant often slept in the attic of the Catcharro's, and was a frequent visitor thereat. Not surprisingly, therefore, AAA readily and positively identified the appellant in court during the trial as the man who raped her on November 3 and 7, 1991.[62]

Neither do we find merit in the appellant's contention that: (1) it was impossible for him to have raped AAA in a cramped one-bedroom house with so many people within earshot, without anybody noticing; and, (2) AAA' failure to shout for help when she was being raped is contrary to human experience.[63] As succinctly expostulated by the Office of the Solicitor General:

It is axiomatic that there is no rule or standard behavior specifying how witnesses to a crime must react thereto

(People v. Pontilar, Jr., 275 SCRA 338 [1997]). In People v. Pardillo, Jr., 282 SCRA 286 [1997]), this Honorable Court noted that a rape victim who is a girl of such tender age could easily be intimidated and cowed into silence even by the mildest threat against her life, for silence is not an odd behavior of rape victim. Thus, although other people may have shouted for help if given the chance, the young victim in the instant case might have been overcome by fear and wasn't able to shout for help. Besides, appellant covered the victim's mouth with her dress (p. (sic) TSN, November 12, 1992). Moreover, the crime of rape, as in the instant case, could be committed even in a short while.[64]

We reiterate the dictum, drawn from judicial experience, that lust is no respecter of time and place. As we have often held, rape can be committed even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. Rape was held to have been committed in the same room while the rapist's spouse was asleep, or in a small room where other family members of the victim also slept.[65]

The absence of laceration in the hymen does not negate rape. The bare fact that the hymen of AAA was still intact does not impair her testimony that she experienced excruciating pain when the appellant ravished her. It has been the consistent ruling of the Court that absence of hymenal lacerations does not disprove sexual abuse especially when the victim is of tender age.[66] A freshly broken hymen is not an essential element of rape. Even the fact that the medical report states that the hymen of the victim is still intact does not negate rape.[67] Full penetration is not even required, as proof of entrance showing the slightest penetration of the male organ within the labia or pudendum of the female organ is sufficient.[68] It must not be forgotten that AAA was merely eleven years old when she was twice ravished by the appellant. She felt great pain because in both instances, the shaft of the appellant's phallus penetrated her vagina by half an inch. Surely, such a modicum intrusion was enough cause for AAA, who was still a virgin, to experience such excruciating pain. In People v. Mahinay,[69] we held that in proving sexual intercourse, it is enough that there is the slightest penetration of the male organ into the female sex organ. The mere touching by the male organ or instrument of the labia of the pudendum of the woman's private parts is sufficient to consummate the crime.

On the whole, we have found nothing in the records that would compel us to disturb the findings of fact and assessment of credibility of the witnesses made by the trial court. There is nothing to indicate 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. Thus, we must yield to the oft-repeated rule that the trial court's evaluation of the testimony of a witness is accorded the highest respect because it had the direct opportunity to observe the witnesses on the stand and to determine if they were telling the truth or not. Appellate magistrates, on the other hand, do not have this privilege. As this Court has reiterated often enough, the matter of assigning values to declarations at the witness stand is best and most competently performed or carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in light of the accused's behavior, demeanor, conduct and attitude at the trial.[70]

The court a quo was correct in discarding the appellant's alibi. Alibi, like denial, is inherently weak and easily fabricated.[71] For the defense of alibi to prosper, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was somewhere else. Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of the access between the two places.[72] In the case at bar, the element of physical impossibility is absent because the appellant's place of work, where he alleged he was at the time the rapes were committed, was only one kilometer away from the Catcharro residence. The appellant admitted that the distance could be

negotiated by a ten to fifteen minute walk. The appellant even failed to adduce any documentary evidence that he reported for work on November 3 and 7, 1991 and the exact time when he left. Moreover, the alibi of the appellant must crumble as he was positively identified by AAA as the rapist.[73]

Although the special aggravating circumstance of the use of a weapon[74] and the aggravating circumstance of dwelling were proven, these aggravating circumstances cannot be considered in fixing the penalty because they were not alleged in the information as mandated by Rule 110, Sections 8[75] and 9[76] of the Revised Rules of Criminal Procedure. Although the crimes charged were committed before the effectivity of the said rule, nevertheless, the same should be applied retroactively being favorable to the appellant.

Although the aggravating circumstances in question cannot be appreciated for the purpose of fixing a heavier penalty in this case, they should, however, be considered as bases for the award of exemplary damages, conformably to current jurisprudence.[77]

The trial court failed to award civil damages ex delicto, moral damages and exemplary damages against the appellant in favor of the victim. The decision of the trial court shall thus be modified.

The victim, AAA, is entitled to an award of civil indemnity ex delicto in the amount of P50,000 for each count of rape. In addition, the victim is entitled to an amount of P50,000 as moral damages for each count of rape, without need of pleading or proof of the basis thereof. The victim's injury is concomitant with and necessarily resulting from the odiousness of the crime to warrant per se the award of moral damages.[78]

Conformably to the ruling in *People v. Catubig*,[79] the victim is entitled to an award of P25,000 as exemplary damages for each count of rape.

IN THE LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Tacloban City, Branch 9, in Criminal Cases Nos. 91-12-759 and 91-12-760 is AFFIRMED with MODIFICATIONS. Appellant Gerardo "Gerry" Evina y Padual is found guilty beyond reasonable doubt of two counts of simple rape, and is hereby sentenced to suffer the penalty of reclusion perpetua for each count. The appellant is hereby ordered to pay the victim AAA the amounts of P50,000 as civil indemnity; P50,000 as moral damages; and P25,000 as exemplary damages for each count.

Costs against the appellant.

SO ORDERED.

Bellosillo, (Chairman), and Quisumbing, JJ., concur.

Austria-Martinez, J., on official leave.

[1] Penned by Judge Walerico B. Butalid.

[2] The Informations were amended changing the name of the accused from BENEDICTO EVINA Y PADUAL to GERARDO "Gerry" EVINA Y PADUAL; see TSN, 18 July 1994, pp. 6-7.

[3] Records, Criminal Case No. 91-12-759, p. 1.

[4] Id., Criminal Case No. 91-12-760, p. 1.

[5] Id. at 33; Id., Criminal Case No. 91-12-759, pp. 13-14.

[6] The prosecution presented the following witnesses: AAA and Luciana E. Catcharro.

- [7] TSN, 18 July 1994, p. 2.
- [8] Records, Criminal Case No. 91-12-759, p. 73.
- [9] TSN, 18 July 1994, p. 18.
- [10] Ibid.
- [11] Id. at 9.
- [12] TSN, 12 November 1992, p. 10.
- [13] Id. at 4.
- [14] TSN, 12 November 1992, p. 6.
- [15] TSN, 8 December 1992, p. 2.
- [16] Id. at 3.
- [17] Id. at 2.
- [18] TSN, 12 November 1992, p. 5.
- [19] Ibid.
- [20] Id. at 13.
- [21] Id. at 5.
- [22] Id.
- [23] Id. at 6.
- [24] Id. at 15.
- [25] Id. at 8.
- [26] Id. at 6.
- [27] Id.
- [28] Id.
- [29] TSN, 8 December 1992, p. 4.
- [30] TSN, 12 November 1992, p. 6.
- [31] Id. at 15.
- [32] TSN, 18 July 1994, p. 9.
- [33] TSN, 12 November 1992, p. 7.
- [34] TSN, 18 July 1994, p. 9.
- [35] Ibid.
- [36] TSN, 12 November 1992, p. 7.
- [37] Ibid.

- [38] Id. at 8.
- [39] Id.
- [40] Id. at 6.
- [41] TSN, 18 July 1994, pp. 4-5.
- [42] Id. at 7-8.
- [43] Records, Criminal Case No. 91-12-759, p. 6.
- [44] TSN, 16 September 1994, p. 5.
- [45] Id. at 3.
- [46] Id.
- [47] Id. at 4.
- [48] Id. at 10.
- [49] Id. at 9.
- [50] Id. at 7-8.
- [51] Records, Criminal Case No. 91-12-759, p. 99.
- [52] Rollo, p. 51.
- [53] Id. at 5-6.
- [54] Id. at 56-57.
- [55] TSN, 12 November 1992, pp. 5-6.
- [56] Id. at 7-8.
- [57] Records, Criminal Case No. 91-12-759, p. 96.
- [58] Rollo, p. 58.
- [59] Id. at 101.
- [60] TSN, 8 December 1992, p. 2.
- [61] *People v. Dela Torre*, 272 SCRA 615 (1997).
- [62] TSN, 12 November 1992, p. 4.
- [63] Rollo, p. 58.
- [64] Id. at 102. (Emphasis ours.)
- [65] *People v. Perez*, 296 SCRA 17 (1998).
- [66] *People v. Llanita*, 364 SCRA 505 (2001).
- [67] *People v. Bernabe*, 370 SCRA 142 (2001).
- [68] Ibid.

[69] 302 SCRA 455 (1999).

[70] People v. Pelen, 313 SCRA 683 (1999).

[71] People v. Cabiles, 284 SCRA 199 (1998).

[72] People v. Appegu, G.R. No. 130657, April 1, 2002.

[73] People v. Santos, 270 SCRA 650 (1997).

[74] The appellant used a knife.

[75] Sec. 8. Designation of the offense.— The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[76] Sec. 9. Cause of the accusation.— The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[77] People v. Durohom, G.R. No. 146276, November 21, 2002.

[78] People v. Baway, 350 SCRA 29 (2001).

[79] 363 SCRA 621 (2001).

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