

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUSSEL MURILLO Y CARLA, RESTITUTO CABLAYAN Y CADIENTE AND MARLON LOGAN Y ILARDE, ACCUSED-APPELLANTS.

G.R. Nos. 128851-56. February 19, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This case is before this Court on automatic review from the Regional Trial Court, Branch 171, Valenzuela, Metro Manila, which found accused-appellants guilty of raping Eulogia G. Jimenez, sentenced them to death and ordered them to pay the victim P50,000.00 in damages plus costs.[1]

Six (6) identical informations were filed against accused-appellants for rape, docketed as Criminal Cases Nos. 5129-V-95, 5130-V-95, 5131-V-95, 5148-V-95, 5149-V-95, and 5150-V-95, substantially alleging as follows:

That on or about the 13th day of September 1995 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, conspiring together and mutually helping one another, by means of force and intimidation employed upon the person of EULOGIA GAGALATE-JIMENEZ, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with said EULOGIA GAGALATE-JIMENEZ against her will and without her consent.[2]

On November 29, 1995, the three (3) accused-appellants were arraigned and each one pleaded not guilty.

After trial, the lower court rendered judgment, finding all three (3) accused-appellants guilty beyond reasonable doubt of rape in Criminal Cases Nos. 5129-V-95, 5130-V-95 and 5131-V-95, sentencing them to death and ordering them to indemnify the victim the amount of P50,000.00 in each case, with costs; and acquitting them in Criminal Cases Nos. 5148-V-95, 5149-V-95 and 5150-V-95 for failure of the prosecution to establish their guilt beyond reasonable doubt.

The antecedent facts are as follows:

On September 12, 1995, private complainant Eulogia Gagalate-Jimenez was arrested for six (6) counts of violation of Batas Pambansa Bilang 22. She was 28 years old, jobless,[3] three months pregnant and recently separated from her live-in partner, who fathered the child she was carrying.[4] Unable to post bail, she was temporarily detained at the warrant section office, located at the second floor of the Valenzuela Police Station, from the day of her arrest until September 16, 1995.[5]

On the second day of her detention, September 13, 1995, at around 10:30 or 11:00 in the evening, she was left in the said office by SPO1 Oscar Dilag, the police officer guarding her, because somebody allegedly wanted to talk to him.[6] After a few minutes, Russel Murillo, a traffic aide of the Valenzuela traffic auxiliary, knocked at the door of the office and entered, accompanied by Major Restituto Cablayan and PO2 Marlon Logan.[7]

Inside the room, Murillo asked complainant the reason for her detention and what was the criminal charge against

her. All the while, complainant noticed that the accused-appellants smelled bad and their faces appeared unusual.[8] The three (3) were in plain clothes. Murillo pulled complainant and hit her buttocks with his hands. The two (2) others looked on while Murillo made her sit on a chair and began to undress her. Then, Logan and Cablayan approached her and asked her to recline on the table. Thereafter, Cablayan poked a gun at her[9] and squeezed her breasts.[10]

Accused-appellants held complainant's hands and feet. Then, one of them turned off the two (2) fluorescent lamps.[11] Complainant felt that Cablayan raped her first after placing the gun on top of her abdomen. She pleaded and cried for them to stop as she was on the family way. However, one of them retorted, "walang buntis-buntis sa amin." [12]

One of the accused-appellants made her lie on her left side and raised her left foot. Logan ravished the complainant while she was in that position.[13] After Logan finished, Murillo instructed her to change her position by making her raise her buttocks.[14]

Complainant claimed that she was raped six (6) times, starting 10:30 or 11:00 p.m. up to 4:00 a.m. or 5:00 a.m.[15] Thereafter, the accused-appellants instructed her to dress up.

At around 6:00 a.m., SPO1 Dilag arrived. He noticed her swollen lips and saw her brassiere under the table. Complainant reported to him that she was raped and that she did not know the names of the perpetrators, but she can identify them. She informed SPO1 Dilag that the perpetrators were policemen as she saw their guns, handcuffs, and badges hanging from their pants.[16] She told SPO1 Dilag that the accused-appellants threatened to kill her and her relatives if she reveals to anyone what happened.[17]

After this conversation, SPO1 Dilag brought her to the ADD Store located in front of the police station so that she can take a bath. Afterwards, they had breakfast with Capt. William Macabenta.

On September 14, 1995, complainant insisted that she be brought to the hospital because she was running a fever and was bleeding. Dr. Hernandez, of the Hernandez Maternity and Lying-In Clinic, attended to her.[18] When asked by Dr. Hernandez if she had recent sexual contact, complainant answered in the negative, as she was still afraid of accused-appellants' threats.[19] Complainant was confined until September 19, 1995.

Upon her release from the hospital, complainant chose to be kept at the Valenzuela jail rather than at the warrant section office of the Valenzuela Police Station. Finally, she was able to post her bail bond and was released on September 20, 1995. She was only able to recount her ordeal to her friend the following day.[20]

On September 22, 1995, complainant reported the rape incident to the National Bureau of Investigation, which ordered several police line-ups where complainant positively identified accused-appellants.

In his defense, accused-appellant Logan testified that he was assigned to a mobile patrol unit along with SPO1 Jeric Goyenchea and SPO2 Rodolfo Reyes.[21] On September 13, 1995, at around 8:32 p.m., they started patrolling the streets of Valenzuela.[22] At around 9:12 p.m., they received a radio message advising them to return to the headquarters.[23] They stayed at the Valenzuela police station for about two (2) minutes only, after which they went back to the streets to continue their rounds. At around 10:51 p.m., the headquarters radioed again instructing them to return to base.[24] They briefly stayed at the headquarters. Again, at around 11:14 p.m., their base radioed and requested them to proceed to Ram Boys Restaurant along Maisan Road, to respond to a complaint regarding trouble between one of the waitresses and her boyfriend.[25] The matter was settled immediately, so they did not have to bring the parties to the police station.[26]

Logan further testified that they went to Shakey's Marulas that night after receiving a report of a commotion there.

At exactly 12:35 a.m., they called the headquarters to inform the base that they were bringing a certain Venancio Bernardo and another Romy Ponce for treatment at the Caloocan General Hospital. Said persons were involved in the brawl at Shakey's.[27] Thereafter, they brought them to the Valenzuela Police Station.[28] He stressed that they only stayed at the ground floor of the police station. Having concluded their business, the members of the mobile patrol unit continued their patrol without incident until 7:00 a.m. of September 14, 1995.[29]

On cross-examination, Logan stated that he did not meet the complainant on September 13, 1995.[30] His only encounter with her was when she singled him out from a police line-up. He claimed that perhaps complainant mistook him for the actual rapist. Complainant might have seen her that day as he changed his clothes near his locker which was located in front of the office of the warrant section. He admitted that on that day while changing his clothes, he saw a woman inside the warrant section office along with several persons. However, he was not certain whether it was complainant.[31]

The defense presented the testimonies of SPO1 Jeric Goyenechea and SPO2 Rodolfo Reyes, the other members of his mobile patrol unit, to corroborate Logan's story.

Accused-appellant Murillo testified that he was a traffic aide of the Valenzuela traffic auxiliary from July 28, 1993 to June 30, 1995.[32] Since his appointment was not renewed, his grandmother advised him to go to their province at Bonliw, Torejos Marinduque. There, he stayed at the residence of Leticia Velarde, his aunt, and worked as conductor of his uncle's public utility jeepney.[33] He stayed in Marinduque until September 30, 1995. The first time he met complainant was on October 6, 1995, when he was arrested by the NBI.[34]

To bolster his defense of alibi, the defense presented Leticia Velarde, who substantially corroborated Murillo's testimony.

Likewise, accused-appellant Cablayan presented his version of the story. He reported for duty on September 13-14, 1995 at 6:00 p.m., wearing his complete uniform.[35] On September 13, 1995, Cablayan was the designated night supervisor.[36] He participated in the police line-up on October 18, 1995 where he was pinpointed by complainant as one of her rapists.[37] He had not met nor known complainant prior to October 18, 1995.[38] During the line-up, complainant was assisted by the district officer of the police district command. Complainant was brought in front of him and was held and stopped.[39] Then, she pointed at him and fainted. Cablayan testified that he was unaware of any ulterior motive for complainant's accusation against him.[40]

On the witness stand, Cablayan further recounted that he had no knowledge of complainant's previous detention at the Valenzuela police station.[41] He admitted that he knew accused-appellant Murillo as he was a member of the Valenzuela traffic auxiliary. He learned of the rape case against Murillo from a television news report.[42]

Mr. Dante Salonga, a member of the Valenzuela police station, testified that he did not see accused-appellant Cablayan go to the second floor of the police station on September 13, 1995. SPO2 Arthur Quiñones likewise testified that he did not see accused-appellant Cablayan go to the second floor.

Also called to the witness stand was Dr. Florante Hernandez, complainant's attending physician during her confinement at the Hernandez Lying-In and Maternity Hospital. Dr. Hernandez testified that sometime on September 16, 1995, at around 7:30 to 8:00 p.m., Eulogia Jimenez went to the clinic escorted by SPO1 Oscar Dilag complaining of hypogastric pain. He made a detailed history examination, review of system and proceeded with a very gentle pelvic examination.

Complainant was confined in the hospital for 2 days. There were instances when they were alone. However, she never mentioned any unusual incident that transpired one week before her confinement.

He had the impression that complainant was suffering from a threatened abortion because the pelvic examination showed that the cervix was closed, there was no bleeding and yet the patient was complaining of hypogastric pain. Complainant had slight difficulty in breathing so she had to be hooked to an oxygen and was given an anti-pyretic.

The trial court gave credence to complainant's version of the story. In its decision, it observed that:[43]

There appears to have no question that complainant Eulogia G. Jimenez was temporarily detained in the office of the warrant section of the Valenzuela Police Station in the evening on September 13, 1995 after her arrest on account of the criminal case for Violation of B.P. 22. That the Office of the Warrant Section is located on the second floor of the Valenzuela Police Station. There is also no issue that accused Restituto Cablayan was a Major and the Deputy Station Commander of Valenzuela Police Station while PO3 Marlon Logan is a member of the Valenzuela Police Station detailed at the mobile patrol on September 13, 1995. Accused Russel Murillo was formerly a traffic aide in the Valenzuela Police Station.

The essence of the offense of rape was the loss of the complainant's treasured asset, virtue, by means of carnal knowledge effected and carried out through the use of force, threats and intimidation. The sexual act must be committed with the use of force, threat or intimidation. The force is such that it destroys any resistance that may be put up and the intimidation is such that breaks down the victim's moral resistance that makes her submit to the evil motive of her abusers.

To ascertain the sufficiency of the evidence for the prosecution, the testimony of the complainant is always the pivotal point. It should be closely and seriously examined to ascertain with moral certainty that the accused committed the offense.

The Court is called upon to decide which of the colliding versions of the incident has inspired its belief and gained acceptance. With and under the variant stories, the issue of credibility assumed primary importance. The conviction and acquittal of the accused depends almost entirely upon the credibility of the victim's testimony, for the crime of rape is committed in secrecy and almost always without an eye witness. Courts should, therefore, examine with great care the victim's story to determine its veracity in the light of human nature and experience. (People vs. Ilagan, L-36560, May 28, 1975). Complainant's testimony must be clear, positive and convincing or supported by other undisputed facts and strong circumstantial evidence. (People vs. Poblador, L-44129, April 29, 1977). This is because the charge of rape is easy to make and difficult to defend. (People vs. Barba, L-30980, March 28, 1974).

A close assessment of the foregoing two versions which were pieced together from the testimonies of the principal complaining witnesses and the defense, unservedly point to the prosecution story as the version endowed with truth and credibility.

Complainant's testimony is clear, convincing, natural and credible. She pinpointed to accused Restituto Cablayan, Marlon Logan and Russel Murillo as her abusers. She described the manner how she was sexually molested by each of the accused. There is no reason not to believe her story. There is no convincing facts and/or circumstances from which it could be reasonably inferred that the complainant falsely testified or she was actuated by improper motive. The absence of clear and convincing evidence of the existence of improper motive sustain the conclusion that no improper motive exist and the testimony of the victim should be given full faith and credit. It is presumed that the complainant would not have imputed the crime with which the accused are charged unless they are guilty thereof. The complainant showed no sign of hostility but an interest to bring the malefactors to Justice.

The Court is persuaded by the sincerity and candor of the complainant. Not only did she appear convincing with her straight forward answers but hers was more coherent and believable version.

The Court is constrained to reject the defense interposed by the accused. Alibi and denial are the thrust of their

defense, the weakest of all defenses. It is easy to concoct and difficult to disprove. Alibi can be easily fabricated. The rule is well settled that the defense of alibi must be received with utmost caution. (People vs. Dorico, 54 SCRA 172; People vs. Beltran, L-31860, November 20, 1974). In order to be given full faith and credence, alibi must be clearly established and must not leave any room for doubt as to its plausibility and veracity. (People vs. Lingao, L-28508 January 31, 1972). The defense of alibi is worthless in the face of positive identification by the witness. (People vs. Dorico, 54 SCRA 172; People vs. Abrogar, 73 SCRA 460).

Accused-appellants filed separate briefs with their corresponding assignment of errors, viz:

Accused-appellant Logan

- The trial court erred gravely in finding that, under the facts and evidence presented by the prosecution, a case of rape was made out against appellant Logan.
- The trial court erred gravely when it ruled that the defense put up by appellant Logan was one of alibi and therefore unworthy of belief in the face of complaining witness' positive identification. Oblivious of the ruling of the Supreme Court that alibi assumes significance when prosecution's evidence is unworthy of belief and does not prove the guilt of the accused beyond reasonable doubt.
- The trial court erred gravely when it made a finding for the prosecution and against the herein Logan.

Accused-appellant Murillo

- The trial court gravely erred for failing to appreciate and give credence to the testimonies of Dr. Florante Hernandez and the medico-legal officer of the NBI, Dr. Annabel L. Soliman, in deciding the case.
- The trial court gravely erred when it misapplied some facts or circumstances, weight and substance on the testimony of the complainant which are full of contradictions and inconsistencies.
- The trial court gravely erred in not taking into consideration accused-appellant Murillo's defense of alibi.

Accused-appellant Cablayan

- The court below erred in giving full credence and weight to the shaky, incredible, untrustworthy and uncorroborated testimony of Eulogia Galalate Jimenez.
- The lower court erred in convicting all the accused in the absence of proof of conspiracy.
- The lower court erred in finding appellant Restituto Cablayan guilty of rape on three (3) counts and in not acquitting him on grounds of lack of evidence to prove his guilt beyond reasonable doubt.

After a thorough review of the case, we sustain the conviction of the accused-appellants.

It is argued that the trial court erred in finding that the guilt of the accused-appellant was established beyond reasonable doubt. First, complainant's testimony in open court was replete with inconsistencies. Specifically, she denied to Dr. Hernandez, the attending doctor at the Hernandez Lying-In and Maternity Clinic, the fact of recent sexual intercourse because SPO1 Dilag was looking at her. Contrary to her statement, Dr. Hernandez testified that SPO1 Dilag was not present when she was examined regarding the matter.

We do not share accused-appellant's perceived inconsistency. The records are clear on what actually transpired between the complainant and the doctor. First, the complainant testified in this manner:

Q: What was asked of you by Dr. Hernandez?

A: If I was used.

Q: And what did you tell Dr. Hernandez?

A: I was not able to answer I was looking at him.

Q: What was your reason?

A:

Because SPO1 Oscar Dilag was standing beside me and he was looking at me and I was able to get what he meant and then he talked to the doctor they went out of the emergency room.[44]

However, she clarified her statement during cross-examination.

A:

I just kept silent and not to talk because I have in my mind the statement of Dilag that I better follow the instruction of the rapist because if I will tell to anybody the incident he will be implicated and then when I was at the hospital the doctor and Dilag went out and talk and when they returned the doctor told me that he will clean me and let me sleep.[45]

Complainant was still under detention when she was confined in the hospital. Understandably, her fear for the wrath of accused-appellants compelled her to keep her silence. Even SPO1 Dilag, to whom she confided the incident, informed her that the persons involved were higher in rank than him, and that it was better for her to heed the rapists' warning.

It is argued that the alleged rape could not have taken place as the situs where the rape took place and the manner in which accused-appellants allegedly raped complainant simply cast doubt on the credence of complainant's claim. Moreso, it was impossible that rape could have taken place as one's libido is not enhanced by the presence of other persons.[46] Accused-appellants question the occurrence of the alleged rape because the table where they supposedly raped the victim was too small to hold them and, besides, there were too many people milling around the second floor of the police station.

In *People v. Gecomio*,[47] we ruled that:

We are not impressed with the validity of said argument, as we have repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where there are other members of the family who are sleeping. Lust, we now repeat, is no respecter of time and place.

In this case, accused-appellants were already emboldened to carry out a particularly evil act because of accused-appellant Cablayan's rank as police major and his position as night supervisor. Hence, the mere size of the table nor the presence of other persons are not enough to deter them from consummating their plan.

Furthermore, inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of his testimony in terms of truthfulness or weight. Often, these discrepancies result from the natural inability of the mind to capture all details,[48] particularly when confronted with strong or traumatic events. In fact, these inconsistencies bolster the credibility of the witness's testimony as it erases the suspicion of the witness having been coached or rehearsed.[49]

It is further argued that the complainant's failure to put up any semblance of resistance belies her claim of rape.[50] This argument does not persuade. It is well-established that the law does not impose a burden on the rape victim to prove resistance.[51] So long as it is sufficiently proved that the accused used force or intimidation to have sexual intercourse with the victim,[52] rape exists. The force or intimidation necessary in rape is relative,[53] for it largely depends on the circumstances of the rape as well as the size, age, strength and relation of the parties.

We recognize how pointless it would have been for complainant to struggle as she was detained at the police station and coerced by accused-appellants at gunpoint. The rape took place at night time when only the colleagues of the accused-appellants were within the vicinity. These circumstances are sufficient to constitute the force and intimidation contemplated by law.

It is contended that the medical findings of Dr. Hernandez belie the existence of rape. Accused-appellants emphatically state that not only did complainant herself deny to Dr. Hernandez the occurrence of a recent sexual intercourse, the doctor's medical findings objectively discount the possibility of rape due to the absence of abrasion, laceration or hematoma on the vulva. Likewise, the testimony of prosecution witness, Dr. Annabel L. Soliman, an NBI Medico-Legal Officer, refutes the prosecution's case.

We are not persuaded.

The issue of complainant's concealment from the doctor of a recent sexual intercourse has been sufficiently explained as one committed simply out of fear for her life and limb, which was successfully ingrained in complainant by accused-appellants.

Secondly, the doctor himself explained that his findings are not conclusive to rule out sexual intercourse. He said:

ATTY. GUARDINO: (To the witness)

Q:

What did you ask her?

A:

I asked her about any presence of vaginal bleeding.

Q:

And what was her answer?

A:

There was none, or any presence of bowel or urinary problem or very recent sexual intercourse, all of which I thought maybe related to her present complaint

Q:

Now, what was her answer when you asked her if she had any recent sexual intercourse?

A:

There was none, sir.

Q:

When you asked her recent sexual intercourse, would you inform this Honorable Court the length of time you are referring to of any sexual intercourse?

A:

Around 24 to 48 hours.

Q:

Now, you stated you likewise physically examined her, what was the result of your examination in relation

with her vagina?

A:

On examination of the vulva externally, it was normally looking, there was no external abrasions or lacerations, hematomas and lacerations noted, on speculum examination, the cervix was violaceous, there was no bleeding per cervical os, the uterus was enlarged from 16 to 17 weeks age of gestation, there was no adnexal masses or tenderness, the fetal heart tone was 140 beats per minute, so after my examination, my impression was threatened abortion, 16 to 17 weeks by uterine size, GIPO status pose artificial insemination primary fertility.

Q:

Now, with those findings, would you confirm to this Honorable Court the statement of the complaining witness Eulogia Jimenez that actually, she had not had any sexual intercourse within 24 to 48 hours?

A:

I cannot say, I just relied on her words.

Q:

Now with your findings as you stated, could you tell this Honorable Court whether actually, she has not had any sexual intercourse within the 24 to 48 hours.

A:

The only evidence that we could confirm a very recent sexual intercourse is to do a wet mount of the sperm which I did not do because she denied any recent sexual intercourse. (Underscoring provided).[54]

The Solicitor General correctly interposed that an absence of hymenal laceration does not negate rape. In the case of *People v. Madridano*,^[55] where the victim was an adult and the medical examination conducted on her after the rape yielded no sign of violence on her body and the lacerations in her hymen were old and healed. In this connection, this Court held:

As for the healed lacerations, there was no allegation from the prosecution that the victim was a virgin at the time she was raped, only that she was raped. Rape does not necessarily mean defloration. A freshly broken hymen is not an essential element of rape. The fact that the lacerations are old and healed - which could have been, according to the doctor, "two weeks old, one month old, one year old" - does not disprove that Perlita was raped on March 2, 1989.

The same ruling applies in this case. Complainant is not a virgin, in fact, she was three-months pregnant on the day of the rape. The lacerations may have been old and may have been caused by a coitus with another man, perhaps, with the father of her unborn child. Hence, the absence of any physical mark on her hymen from the incident on September 13, 1995 does not indicate that she was not raped.

In *People v. Palicte*^[56] and in *People v. Castro*,^[57] the victims involved were minors. The medical examination showed that their hymen remained intact even after the rape, however, it was no proof that rape was not committed.

As in most rape cases, the testimony of the complainant remains uncorroborated. It is settled that the trial court findings on the credibility of the complainant are entitled to great respect since it had the opportunity to closely examine the demeanor and countenance of the witness as she testified on the witness stand. The trial court was in the position to properly determine whether the complainant was telling the truth or not.^[58]

Upon careful examination of the records, we sustain the trial court's findings that, indeed, complainant's testimony was clear, convincing, natural and credible. Her narration of the succession of events on September 13, 1995 was in detail.

Further, the complainant positively identified the accused-appellants as her rapists, to wit:

Q:

Now when they entered inside the room of the warrant section of the PNP Valenzuela Police Station, what happened?

A:

Russel Murillo asked me what is my case all about. I answered him that I was charged of a case of BP 22, that is why I was being detained. And I noticed that they smell bad odor and their face appearance are unusual.

Q: And then what happened next?

A: Russel pulled me and then he hit my buttocks.

Q: What instrument was used by Russel Murillo in hitting your buttock?

A: His hands.

Q: Right or left hand?

A:

Right hand.

Q: After that, what happened next?

A: He made me sit at the chair at the side of the table.

Q: After that what happened?

A: After that they started to undress me.

Q: Who in particular started to undress you?

A: Russel Murillo, sir.

Q: While Russel Murillo was starting to undress you, what were the two others doing?

A: They were sitting in front of the table.

Q: What was first removed from you?

A: My t-shirt, sir.

Q: What is the color of your t-shirt?

A: Peach, sir.

Q: Afterwards, what happened?

A: The two stood up and approached me and asked me to incline on the table.

Q: When you said two, who are you referring?

A: Marlo Logan and Restituto Cablayan.

Q: Then, what happened next?

A: One of them poked a gun at me.

Q: Who in particular poked a gun at you?

A: Cablayan, sir.

Q:

And inside the room that you were referring to you were staying at that time, could you tell me is it lighted or not?

A: When they entered the room and they undressed me, the room was lighted.

Q:

What kind of light was it provided?

A: Fluorescent lamp, sir.

Q: How big is the fluorescent lamp?

A: Two long fluorescent lamp.

Q: As big as we are using for?

A: Two forty watts.[59]

On cross-examination, she recounted:

Q:

Madam witness, it seems to me that you have a photographic memory, considering the fact that based on what you have testified it has been a lapse of more than a month within which you were able to identify all your alleged three (3) rapists. In connection with this, Madam Witness, may I ask you, since based on your direct testimony and on cross examination you have stated that it was only a couple of minutes after the arrival of these three (3) accused after which the light was put off. How were you able to identify these three (3) accused after a lapse of one month?

A:

I did not testify and said that after a couple of minute they put off the light. What I said is that while they were undressing me, I could see them because the light was still on.

Q: During that time would you agree with me, Madam Witness, that the three (3) alleged rapists are very fast in such undressing?

A: They are not so fast because while they were undressing they were mashing my body.

Q:

In your estimate, Madam Witness, since you are a college student and you have testified repeatedly that you have a watch. In your estimate, Madam Witness, would it take about 1 or 2, 3 or 5 minutes?

A: I would not be able to get my wrist watch that's why I cannot calculate anymore.

Q:

I am asking you, Madam Witness, to answer in your estimate how many minutes will consume for that alleged

incident. Just a rough estimate.

A: From 5 to 10 minutes, sir.

Q:

Madam Witness, based on human experience, this 5 to 10 minutes existing seeing of three (3) persons, it would seem impossible for you to be able to recall the identity of these three (3) rapists, especially so, Madam Witness, that according to you, these three (3) rapists were identified by you individually and my next question, Madam Witness is this: Do you still remember during the line up whether these three (3) rapist were in the same attire during the time of the alleged incident of rape?

A:

About the five to 10 minutes that I mentioned during the time that they were undressing me it is not the only time that I saw their faces when they entered that room I saw their faces and on the following day I saw them also.

Q:

So, in your estimate, the five to ten (10) minutes estimate of yours starts from the time of the arrival of these three (3) alleged rapists up to the alleged incident of the raping you by the three (3) alleged rapists, that is according to you, as you have stated, is that correct?

A: No, sir, that 5 to 10 minutes is the time that I was actually being undressed.

x x x x x x x x

Q:

So Madam Witness, after the alleged incident of mashing your body, as you have alleged, the light was put off? Am I correct?

A :After I was undressed.[60]

It should be noted that complainant had no improper motive to implicate the accused-appellants in such a hideous act. In fact, she was not even aware of accused-appellants' name. Accused-appellant Murillo was only apprehended by virtue of a cartographic sketch made by the National Bureau of Investigation, while accused-appellants Logan and Cablayan were pinpointed by her through an exhaustive police line-up which took place for several days. The absence of ulterior motive in implicating the accused further bolsters the credibility of the complainant.[61]

It is argued that this Court should give more consideration to the accused-appellants' defense of alibi and denial. However, we cannot sustain the defense of alibi and denial in the light of complainant's positive identification of the accused-appellants and her clear and convincing testimony. Alibi is one of the weakest defenses.

Accused-appellants Logan and Cablayan were unable to prove that they were not within the premises of the police station at the time of occurrence of the crime. Cablayan was holding his office in the very building where the rape took place. At best, his witnesses proffered only negative testimonies, i.e., they did not see Cablayan proceed to the warrant section office where complainant was detained. Under the rules of evidence, a negative testimony cannot prevail over the positive statements of witnesses.[62] Likewise, the defense evidence discloses Cablayan's presence at the police station on that fateful night. As correctly observed by the trial court:[63]

Accused Russel Murillo's defense is not convincing. There was no ticket/fare for his travel to Marinduque (TSN, p. 13, July 10, 1996) nor even a communication that he was in the said place. His aunt witness Leticia

Velarde categorically states that it was only the first time that accused Russel Murillo visited them in Marinduque. That Russel Murillo stays with his mother in Valenzuela, Metro Manila since childhood (TSN, p. 4, August 20, 1996). Accused Russel Murillo was positively identified by the complainant as one of her abusers. No reason was given by the accused why he went to Marinduque. Furthermore, accused Russel Murillo is a nephew of witness Leticia Velarde. (TSN, p. 2, August 20, 1996)

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For the defense of alibi to prosper, it is not enough that the accused were somewhere else when the crime was committed, but they must show that they were at another place for such a period of time that it was impossible for them to have been at the place where the crime was committed at the time of its commission. x x x If the required impossibility of being present at the scene of the crime is not proved, alibi as defense becomes unavailing to the accused. x x x The impossibility of the accused to be in the scene of the crime on the date and time in question was not clearly and convincingly proved.

The trial court properly held each accused-appellant liable for three (3) counts of rape on the ground that conspiracy among them was clearly proved. The actuation of the accused-appellants is a textbook illustration of the existence of conspiracy. The evidence shows that while one of the accused-appellants ravished the victim, the two others would either hold her hands or feet. Accordingly, each of the accused-appellant is properly liable for the act of rape committed by the other.[64]

Article 335 of the Revised Penal Code, as amended by Section 11 of the Republic Act No. 7569, prescribes the penalty of reclusion perpetua to death where the crime of rape is committed with the use of deadly weapon or by two or more persons. In the case at bar, the information sufficiently alleged that in the commission of the crime, accused-appellants conspired together and mutually helped one another.

The death sentence given to accused-appellants, however, was based on the following attendant circumstances: (1) when the victim is under the custody of the police or military officers, and; (2) when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.[65]

To merit the punishment of death, the aggravating circumstance of the accused-appellants' membership in the Philippine National Police or complainant's being under police custody must be properly alleged in the information. For the prosecution's failure to do so, these facts cannot be appreciated as aggravating circumstances by this Court.[66]

Therefore, in the absence of either aggravating or mitigating circumstance, the proper penalty imposable in the instant case is reclusion perpetua.

We sustain the award of P50,000.00 civil indemnity to the complainant for each count of rape as well as the costs of suit. Being equally guilty of three counts of rape, the civil liability of the accused-appellants shall be solidary in each case.

WHEREFORE, accused-appellants, Russel Murillo y Carla, Restituto Cablayan y Cadiente and Marlon Logan y Ilarde are found GUILTY beyond reasonable doubt of three (3) counts of consummated rape and, accordingly, sentenced to the penalty of reclusion perpetua in each case. Accused-appellants are ordered to pay solidarily Eulogia G. Jimenez the sum of P50,000.00 as civil indemnity for each of the three (3) counts of consummated rape. Costs against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Joint Decision dated April 7, 1997; penned by Judge Adriano R. Osorio; Rollo, pp. 29-69.

[2] Records, p. 29.

[3] TSN, December 20, 1995, p. 4.

[4] Ibid., p. 48.

[5] Ibid., p. 7.

[6] Ibid., p. 23.

[7] Ibid., p. 7.

[8] Ibid., p. 8.

[9] Ibid., p. 10.

[10] Ibid., p. 12.

[11] Ibid., p. 15

[12] Ibid., p. 16.

[13] Ibid., p. 18.

[14] Ibid., p. 19.

[15] Ibid., p. 20.

[16] Ibid., p. 26.

[17] Ibid., p. 27.

[18] Ibid., p. 35.

[19] Ibid., p. 60.

[20] Ibid., p. 39.

[21] TSN, June 26, 1996, p. 6.

[22] Ibid., p. 7.

[23] Ibid., p. 9.

[24] Ibid., p. 10.

[25] Ibid., p. 11.

[26] Ibid., p. 13.

[27] Ibid., p. 15

- [28] Ibid., p. 16.
- [29] Ibid., p. 18.
- [30] Ibid., p. 25.
- [31] Ibid., p. 26.
- [32] TSN, July 16, 1996, p. 4.
- [33] Ibid., p. 7.
- [34] Ibid., p. 11.
- [35] Ibid., p. 6.
- [36] Ibid., p. 14.
- [37] Ibid., p. 15.
- [38] Ibid.
- [39] Ibid., p. 17.
- [40] Ibid., p. 19.
- [41] Ibid., p. 21.
- [42] Ibid., p. 22.
- [43] Rollo, pp. 57-59.
- [44] T.S.N., December 20, 1995, p. 35.
- [45] Ibid., p. 20.
- [46] Rollo, pp. 111-117.

[47] 254 SCRA 102 (1996).

- [48] People v. Cayago, 158 SCRA 586 (1988).
- [49] People v. Ibal, 143 SCRA 317 (1986).
- [50] Rollo, p. 120.
- [51] People v. Gecomio, supra.
- [52] People v. Segundo, 228 SCRA 691 (1993), as cited in People v. Gecomio, supra.
- [53] People v. Sandico, 307 SCRA 215 (1999).
- [54] T.S.N., June 19, 1996, pp. 5-7.

[55] 227 SCRA 282 (1993).

[56] 229 SCRA 543 (1994).

[57] 196 SCRA 679 (1991).

[58] *People v. de Guzman*, 216 SCRA 754 (1992), as cited in *People v. Jaca*, 229 SCRA 332 (1994).

[59] T.S.N., December 20, 1995, pp. 8-11.

[60] T.S.N., January 15, 1996, pp. 25-27.

[61] *People v. Ulili*, 225 SCRA 601 (1993); *Baliwag Transit, Inc., v. Court of Appeals, et al.*, 147 SCRA 82 (1987).

[62] *Vda de Ramos, et al. v. CA*, 81 SCRA 343 (1978).

[63] *Rollo*, pp. 64-66.

[64] *People v. Quiñanola*, 306 SCRA 736 (1999).

[65] *Rollo*, p. 66.

[66] See *People v. Quiñanola*, *supra*.

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