

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABEL ABACIA AND DANILO “BOYET” ALVAREZ, ACCUSED, DANILO “BOYET” ALVAREZ, ACCUSED-APPELLANT.

G.R. Nos. 135552-53. June 21, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Danilo Alvarez alias Boyet and Abel Abacia were both charged with two counts of rape before the Regional Trial Court of Surigao City.

Only accused-appellant Danilo Alvarez was apprehended. Upon being arraigned, he pleaded "not guilty."

At around four o'clock in the afternoon of January 5, 1996, private complainant Rosalinda Caday went to the house of appellant Danilo Alvarez to visit Nenita Cortes, the daughter of appellant's wife with another man. While she was there, appellant Danilo Alvarez and Abel Abacia, an itinerant vendor who sells shirts and pants on credit, arrived at the house. Abacia held her arm and asked her if she knew one Wendy Casio, who bought some shirts from him on credit. Appellant and Abacia were able to persuade Rosalinda to accompany them to Casio's house, located on P. Reyes Street, Surigao City. At the junction of Peñaranda and Navarro Streets, appellant and Abacia suddenly put their arms around Rosalinda and dragged her towards the grounds of the Surigao del Norte National High School. Rosalinda's effort to free herself were in vain because there was no one around. It was already past five o'clock in the afternoon and it was raining.

Appellant and Abacia pushed Rosalinda through an opening in the wall of the school building and brought her to a nearby toilet. Abacia went inside the toilet with Rosalinda in tow while appellant stood guard outside. Inside one of the cubicles, Abacia forcibly removed her blouse, shorts, bra and panties. After undressing her, Abacia embraced and kissed her and touched her private parts. He then knelt down and licked her vagina. When she struggled and shouted for help, Abacia threatened to kill her. Though she did not see a weapon, she felt very scared.

Having successfully cowed private complainant, Abacia spread her legs and had sexual intercourse with her in a standing position. When he ejaculated, Rosalinda cried and shouted. He held her tightly and ordered her to shut up. Abacia then went out of the toilet, bringing with him her clothing.

Crouching in fear on the toilet floor, Rosalinda tried to cover her naked breasts with her hands. She was in that position when appellant entered the toilet and forced her to stand up. She pleaded for mercy, saying, "Uncle, have pity on me." Appellant just told her to keep quiet. He then undressed himself and proceeded to have sexual intercourse with her while they were both standing, with Rosalinda's back against the wall. He lifted her left leg with his right hand to facilitate the entry of his erect penis into her vagina. A few minutes later, he ejaculated inside her. He then laughed and left her inside the toilet crying in anguish.

Shortly, Abel Abacia entered the toilet and wanted to have sexual intercourse again with her. She pleaded with

him, so Abacia relented and gave back her clothing. Appellant and Abacia waited outside the toilet while she dressed up. When she went out of the toilet, Abacia touched private complainant's private parts. She hurriedly walked away while appellant and Abacia walked in the opposite direction laughing.

Disoriented and befuddled, private complainant kept walking until she reached the city park known as Luneta. She went to a public toilet and washed herself. After that, she sat on a park bench not knowing what to do. At 7:00 o'clock in the evening, she went home and told her mother about her ordeal.

Rosalinda was accompanied by her mother to the police station where she reported the incident. However, it was only on January 8, 1996 when she was able to undergo a physical examination. Dr. Ma. Ligaya G. Bernadez issued a medical certificate[1] with the following findings:

Hymen - Healed lacerations at 5:00 and 9:00 position;
Vaginal Smear - Fresh, negative for spermatozoa;
Gram Staining - Positive for N. Gonorrhea.

Dr. Bernardez also testified that the lacerations were about three days old and were probably inflicted by a blunt object such as an erect male organ. She likewise testified that complainant was suffering from gonorrhea possibly as a result of the rape, inasmuch as the incubation period of gonorrhea is from two to eight days after sexual intercourse.

Appellant, on the other hand, denied the charge against him and interposed the defense of alibi. He claimed that he was a butcher by occupation and that at three o'clock in the afternoon of January 5, 1996, he was at the city abattoir slaughtering a pig. He was able to finish his work at five o'clock in the afternoon. He then went home, took a bath and changed his clothes. At five-thirty in the afternoon, he arrived at the public market after a ten-minute tricycle ride. He proceeded to the stall of his employer named Lolong Escandor and stayed there until eight o'clock in the evening. Then, he went home to Sabang in a tricycle.

On his way home, he met Rosalinda's mother, who asked him if he saw Rosalinda. He told her he had not seen her. Thus, he was surprised when, on the following day, Rosalinda accused him of rape. As a result, he and his wife quarreled. He denied the charge of rape, and so on January 11, 1996, he and his wife went to the police station to verify the report about the accusation against him. However, he was detained by the police.

Appellant submits that complainant's family made up the charge of rape against him because they wanted him to pay a monthly rent of P50.00 for the use of the land where he lives. Complainant's family claimed ownership of the land, but he refused to pay rent to them because he believed that the land was public land. According to him, although his wife is related to complainant's family, they are not on speaking terms.

Appellant further claims that he was not with Abel Abacia and Rosalinda in the afternoon of January 5, 1996; that he was at the abattoir and at the public market. He also claims that though he knows Abel Abacia, he was only an acquaintance.

Appellant also presented the testimony of Dr. Emmanuel Plandano, who physically examined him and found him negative for gonorrhea or any sexually transmitted disease.[2] Dr. Plandano based his conclusion on the observation that there was no discharge from appellant's penis, hence, there was no need to take a specimen for laboratory examination.

Appellant also presented Rodrigo Cayasa, a watchman at the Surigao del Norte National High School, who testified that he did not notice anything unusual either in the classrooms or in the school toilets.

After the trial on the merits, the trial court rendered a Joint Judgment,[3] the dispositive portion of which reads:

WHEREFORE, the Court finds the accused, Danilo Alvarez, guilty beyond reasonable doubt in both cases as a principal of the crime of rape under Article 335, paragraph 1, of the Revised Penal Code, and there being no aggravating circumstance to consider, hereby sentences him to suffer the penalty of reclusion perpetua in each of the above-entitled cases; and to pay the costs.

Danilo Alvarez is ordered to indemnify the victim, Rosalinda Caday, in the sum of P50,000.00 for each count of rape, or a total of P100,000.00.

The case with respect to the other accused, Abel Abacia, who is at large, shall be archived and revived or reinstated when he is finally apprehended.

In his appeal, the appellant raised the lone assigned error:

THE REGIONAL TRIAL COURT IN SURIGAO CITY HAS COMMITTED AN ERROR IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED IN THE CRIMINAL COMPLAINTS FILED HEREIN.

Accused-appellant asserts that his guilt has not been proven beyond reasonable doubt. First, he denies having raped complainant and in fact manifested his innocence by entering a negative plea and filing a notice of appeal. He claims that unlike his co-accused, he did not flee. Second, he was at the slaughterhouse and later at the public market when the alleged crime was committed. He claims that his presence at the slaughterhouse and at the public market was never rebutted nor contradicted by the prosecution. Third, while complainant was afflicted with gonorrhea as a result of the alleged rape, he was medically certified to have no such disease. Fourth, the rape was committed during daytime inside a school compound and on a school day. This was corroborated by the school guard. Last, complainant's family had a motive in filing the case against him for his refusal to pay the monthly rental on the land in the amount of P50.00. For all those reasons, accused-appellant claims that he should have been given the benefit of reasonable doubt.

The appeal is unmeritorious.

Contrary to accused-appellant's protestations, a negative plea and the filing of a notice of appeal do not serve as indicia of his innocence. Rather, these are purely legal mechanisms available to an accused to contest the charge against him or to profess his innocence. However, these are not judicial determinations or evidentiary proofs that accused-appellant was not guilty.

Although flight is an indication of guilt, non-flight does not necessarily mean non-guilt or innocence. This judicial doctrine is simply applied to strengthen the evidence of guilt taking into consideration other corroborative pieces of evidence. It cannot be singularly considered as evidence or as a manifestation determinative of innocence.

Accused-appellant's defense of alibi is unconvincing.

This Court agrees with the finding and observation of the trial court, thus:

x x x [T]he accused failed to show that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Judicial notice is taken of the fact that the distance between the Surigao City public market and the premises of the SNNHS is less than one kilometer. It would have been relatively easy for Alvarez to cover that distance in just a few minutes in order to commit the crime.

The alibi of Alvarez was not corroborated by any of his alleged companions in the city abattoir and public market where he claimed to be. This immeasurably weakened his credibility. All told, the said alibi cannot prevail over the positive and credible testimony of Rosalinda Caday that Alvarez was one of two persons who raped her.

Courts have always looked upon the defense of alibi with suspicion and have invariably received it with caution not only because it is inherently weak and unreliable but also because it is easily fabricated. For alibi to serve as basis for acquittal, it must be established with clear and convincing evidence. The requisites of time and place must be strictly met. Where the accused fails to convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission, the defense of alibi must be rejected.[4] There is, therefore, no basis for the defense's claim that the prosecution's failure to rebut and contradict accused-appellant's alibi favors the exculpation of accused-appellant because as it is, the latter's alibi is unconvincing.

Equally untenable is accused-appellant's claim that he could not have raped the complainant who was afflicted with gonorrhea as he was medically found negative for the said disease.

Accused-appellant's argument has no merit. The Office of the Solicitor General satisfactorily rebutted said argument,[5] thus:

Firstly, Dr. Plandano failed to extract from appellant any specimen to confirm his statement that the latter has not contracted venereal disease or any sexually transmitted disease. Secondly, the rape incident took place in the afternoon of January 5, 1996 and appellant was examined by Dr. Plandano more than nine (9) months later on October 14, 1997. And thirdly, there was no showing in the records that Dr. Plandano had any occasion to examine appellant between January 5, 1996 to October 14, 1996. In fact, Dr. Plandano stated that with the right medicine, gonorrhea could be fully treated and cured.

On the other hand, prosecution witness Dr. Ma. Ligaya Bernadez testified that a woman who had sex with a man infected with gonorrhea could possibly acquire the disease after two (2) days thereafter considering that the incubation period of gonorrhea is from two (2) to eight (8) days. Dr. Bernadez's testimony jibed with the earlier testimony of Rosalinda that she contracted the disease after the rape incident. (Citations omitted)

Accused-appellant's reasoning that since the crime occurred during daytime in a school compound during school hours plus the fact that the school guard did not see anything during his rounds, then no rape could have occurred, is flawed and even non sequitur. Suffice it to say that "x x x for rape to be committed, it is not necessary for the place to be ideal, or the weather to be fine, for rapists bear no respect for locale and time when they carry out their evil deed. Rape may be committed even when the rapist and the victim were not alone x x x. The presence of people nearby does not deter rapists from committing their odious act." [6] Moreover, the fact that the guard did not see anything during his rounds does not prove that no rape was committed. It cannot be inferred that since a witness failed to sense any unusual occurrence, the crime did not occur.

Lastly, accused-appellant attributes a motive on the part of complainant's family to file a complaint for rape against him. This Court is not convinced. The motive is too flimsy. Besides, the trial court found the testimony of the complainant to be "positive, truthful and worthy of belief and consideration." [7] As this Court has repeatedly held, the accused may be convicted even on the basis of the lone uncorroborated testimony of the rape victim, provided that her testimony is clear, positive, convincing and otherwise consistent with human nature and the normal course of things. [8] Besides, motive is not necessary in view of the positive identification of accused-appellant by the complainant herself.

In any case, well-settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath -- all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial court's findings are accorded finality, unless

there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[9] This Court finds nothing in the records to disturb the trial court's findings of fact.

We note that the trial court only awarded indemnity to the rape victim. In line with prevailing jurisprudence, complainant should also be entitled to moral damages. They are awarded to victims of rape cases involving young girls between thirteen and nineteen years of age, taking into account the immeasurable havoc wrought on their youthful feminine psyche. Such award is distinct from the indemnity awarded to complainant for the injury that she suffered because of the offense committed on her person.[10] Since complainant was only nineteen years old at the time she was raped, the award of moral damages is likewise justified.

WHEREFORE, the Decision of the Regional Trial Court of Surigao City, Branch 32, finding accused-appellant guilty beyond reasonable doubt of two counts of rape, and sentencing him to suffer the penalty of reclusion perpetua for each count, is **AFFIRMED** with the **MODIFICATION** that accused-appellant Danilo Alvarez is further **ORDERED** to pay the complainant the amount of P50,000.00 as moral damages for each count of rape or a total of P100,000.00, in addition to the civil indemnity of P50,000.00 for each count of rape. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Exhibit "A", Records, p. 9.

[2] Exhibit "3", Records, p. 60.

[3] Penned by Judge Diomedes M. Eviota.

[4] *People v. Javier*, 311 SCRA 122 [1999].

[5] Appellee's Brief, Rollo, pp. 79-80.

[6] *People v. Artech Antonio y Payagan*, G.R. No. 122473, June 8, 2000.

[7] Decision, Records, p. 70.

[8] *People v. Alicante*, G.R. Nos. 127026-27, May 31, 2000.

[9] *People v. Mangat*, 310 SCRA 101 [1999].

[10] *People v. Sagun*, 303 SCRA 382 [1999].

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