

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO SAN AGUSTIN Y ROSLIN, ACCUSED-APPELLANT.

G.R. Nos. 135560-61. January 24, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the judgment of the Regional Trial Court of Santa Cruz, Laguna, Branch 28 in Criminal Cases Nos. SC-6680 and SC-6682, convicting appellant Bonifacio San Agustin y Roslin @ "Bony" of two (2) counts of qualified rape committed against his daughter, Jessebelle[1] San Agustin. Appellant was sentenced to suffer the penalty of death for each count.

The instant cases stemmed from two (2) informations for rape filed by the Provincial Prosecutor of Laguna. In Criminal Case No. SC-6680, the indictment reads:

That on or about July 1, 1997, in the municipality of Victoria, province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused while conveniently armed with a fan knife, prompted with lewd design(s) and by means of force, violence, and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his own daughter JESSEBELLE SAN AGUSTIN, a twelve (12) years old girl, against her will and (without her) consent, to her damage and prejudice.

CONTRARY TO LAW.[2]

Except as to the date of the alleged rape, the information in Criminal Case No. SC-6682 was similarly worded. The rape complained of in Criminal Case No. SC-6682 allegedly took place on September 15, 1997.

On December 2, 1997, appellant was arraigned in both cases. With the assistance of counsel de oficio, he pleaded "Not Guilty" to both charges. Appellant waived pre-trial, and a joint trial of the two cases ensued.

Private complainant testified that on the night of July 1, 1997, she was lying inside her room in the upstairs portion of the San Agustin house at Purok 2, Banca-Banca, Victoria, Laguna when appellant suddenly barged in. Without further ado, he proceeded to remove her underwear, mashed her breasts, and fingered her vagina. She could not do a thing as appellant had a knife beside him. Appellant then mounted and deflowered her, causing her excruciating pain as his penis entered her organ. After appellant had spent his lust, he threatened to kill complainant and her siblings if she reported her experience to anybody. She had no problem recalling that her first sexual contact with appellant took place on July 1, 1996, as it was her cousin Sunshine's birthday.

Every night thereafter during that month of July 1997, appellant would force her to submit to his carnal embrace. The forced coupling would usually take place at around 11:00 P.M. As a result of her experience, complainant was wounded in her private parts. She felt pain each time she would urinate.

The victim further testified that appellant likewise raped her every night of August 1997. However, in September 1997, appellant would sexually abuse her only on Saturdays and Sundays, as he was then working in Imus, Cavite and came home only on weekends. Complainant averred that her last sexual intercourse with appellant took place

on September 15, 1997.

Complainant declared that she told her older brother's live-in partner, a certain Ate Ana and her friend, one Abigail, about her experience at appellant's hands. Her problem was referred to the Department of Social Welfare and Development (DSWD), which assisted her in filing the appropriate complaints. The DSWD also took custody of the victim.

On September 17, 1997, Dr. Emelita Pempengco of the Laguna Provincial Hospital examined private complainant at the request of the police. The examination disclosed a healed hymenal laceration at the four o'clock position.[3] Dr. Pempengco testified it was possible that the laceration had been caused when a hard object such as an erect male organ had been inserted in the victim's vagina.[4]

To exculpate himself from the grave charges against him, appellant raised the defense of denial and alibi. Appellant vehemently denied raping his daughter on July 1, 1997 and September 15, 1997. He declared that he was in Brigandala, Imus, Cavite on those dates, working as a laborer in a construction site and would only come home monthly. To corroborate his alibi, appellant presented his sister and neighbor, Eva De Jesus. Eva declared that on the said dates her brother was working in Cavite and could not have raped complainant. Eva also claimed that complainant erred in saying she was raped on July 1, 1997, which complainant claimed was her cousin Sunshine's birthday. Eva averred that as Sunshine's mother, she very well knew that her daughter's birthday is March 5 and not July 1. Eva likewise declared that complainant could not have been raped on September 15, 1997 because that night complainant slept over at her (Eva's) house.

However, appellant and his witness failed to convince the trial court of his innocence. On August 28, 1998, the trial court adjudged him guilty, concluding as follows:

WHEREFORE:

Under Criminal Case No. SC-6680, this Court finds the accused BONIFACIO SAN AGUSTIN GUILTY BEYOND REASONABLE DOUBT AS PRINCIPAL OF CONSUM[M]ATED RAPE defined and punished under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, otherwise known as the Death Penalty Law and hereby sentences him to suffer the SUPREME PENALTY OF DEATH and to pay the private offended party JESSEBELLE SAN AGUSTIN the following sums:

P50,000.00 - as civil indemnity;
50,000.00 - as moral damages and
50,000.00 - as exemplary damages.

Under Criminal Case No. SC-6682, this Court finds the accused BONIFACIO SAN AGUSTIN GUILTY BEYOND REASONABLE DOUBT AS PRINCIPAL OF CONSUM[M]ATED RAPE defined and punished under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, otherwise known as the Death Penalty Law and hereby sentences him to suffer the SUPREME PENALTY OF DEATH and to pay the private offended party JESSEBELLE SAN AGUSTIN the following sums:

P50,000.00 - as civil indemnity;
50,000.00 - as moral damages and
50,000.00 - as exemplary damages.

The accused is further ordered to pay the costs of both the instant suits.

SO ORDERED.[5]

In refusing to credit appellant's defense, the trial court observed that as per appellant's own admission, the average travel time between his place of work in Imus, Cavite and his residence in Victoria, Laguna was only five (5) hours. Hence, it was not physically impossible for him to be at the crime scene as he could leave Imus after his work for the day ceased at 5:00 P.M. and easily be at Victoria by ten o'clock in the evening. It pointed out that the victim asserted that she was usually ravished at eleven o'clock in the evening.

Capital punishment having been imposed, the cases were elevated to this Court for automatic review.

In his brief, appellant assigns as errors the following:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN COMPLETELY DISREGARDING THE DEFENSE OF ALIBI AND DENIAL OFFERED BY ACCUSED-APPELLANT.[6]

The issues for our resolution are: (1) Is complainant's testimony credible and sufficient to sustain appellant's conviction? (2) Is appellant's defense of denial and alibi worthy of credence?

Appellant points out that private complainant averred she was raped only on Saturdays and Sundays inasmuch as the appellant was working in Imus, Cavite. However, July 1, 1997 is a Tuesday while September 15, 1997 is a Monday. Since neither of the two dates when the rapes allegedly took place are Saturdays nor Sundays, appellant claims the victim's truthfulness is placed in serious doubt. Appellant further points out that the victim claimed she was sure the first rape took place on July 1, 1997 because July 1 is the birthday of her cousin, Sunshine. But it turned out the correct birthday of Sunshine is March 5. Appellant stresses that these inconsistencies and material discrepancies in private complainant's testimony cast doubt on her reliability and veracity. Thus, he concludes it was error for the trial court to sustain appellant's conviction.

For the State, the Office of the Solicitor General argues that the inconsistencies pointed out by appellant are minor matters. The OSG asks us to note that the victim here is a thirteen (13) year-old barrio lass who only reached Grade II. She could not be expected to give an error-free testimony particularly where specific dates are concerned. On the contrary, according to the OSG, complainant's minor inconsistencies strengthen her credibility as they show that she was relying upon her memory alone and her testimony is neither coached nor rehearsed.

In rape trials the issue, more often than not, is the credibility of the victim. Since the participants are usually the only witnesses in the trial of crimes of this nature, the conviction or acquittal of the accused would virtually depend on the credibility of the complainant's testimony. Hence, the testimony of the offended party should not be received with precipitate credulity.[7] But when a rape victim's testimony is straightforward, unflawed by any material or significant inconsistency, then it deserves full credit. If found credible, the declaration of facts given by the offended party alone would be sufficient to sustain a conviction.[8]

Appellant claims the error-ridden testimony of complainant cannot overturn the presumption of innocence in his favor. Note, however, that appellant's assertion that private complainant claimed she was raped only on Saturdays and Sundays is inaccurate. A scrutiny of complainant's testimony shows that complainant was referring only to the rapes allegedly committed in September 1997.

TRIAL PROSECUTOR:

Q -

How about in the month of September (stress supplied), do you recall if your father inserted his penis inside your vagina?

A -

Only on Saturdays and Sundays, sir.

Q -

Why only on Saturdays and Sundays?

A -

Because he was working in Cavite, sir.[9]

It could not apply to Case No. SC-6680 involving the rape committed on July 1, 1997.

Allegations of the exact time and date of the commission of the crime are not decisive in a prosecution for rape.[10] First, the precise time of the commission of the rape is not an element of the crime.[11] Second, the precise time or date of the rape has no bearing on its commission.[12] Hence, the exact time the rape was committed is a detail of minor significance.[13]

Inconsistencies in the testimony of witnesses that refer only to minor details and collateral matters do not affect the substance of the declaration, its weight, or its veracity.[14] Errors or inconsistencies as to the exact time or date or day of the week when the rape was consummated do not impair the credibility of the complaining witness, for as long as there is consistency in relating the principal occurrence and positive identification of the assailant.[15] As the Solicitor General correctly points out, error-free testimonies cannot be expected when one is relating the details of a harrowing experience. Mistakes by the victim as to the exact day of the week are matters which can be expected to happen when the victim is recounting her traumatic experience in open court and in the presence of other people. Far from demolishing the veracity of her account, complainant's mistakes buttress, rather than erode, her credibility for it is a clear showing that her testimony has not been tailored or custom-built.[16]

Note also that the trial court found the victim's testimony "credible in its entirety as it was given in a straightforward and convincing manner." [17] Absent any fact or circumstance of weight and influence which may have been overlooked or misconstrued as to impeach the findings of the trial court, this Court will not interfere with the trial court's findings on the credibility of witnesses. For it is the trial court which has the vantage to decide on the question of credibility of witnesses having heard and observed their demeanor during the trial.[18] Her narration of the incidents accords with human experience and the normal course of events of this nature. Thus, with specific reference to the offense subject of Case No. SC-6680:

TRIAL PROSECUTOR:

Q- What did he do to you on that night of July 1, 1997 inside your house?

A-

"Ginapang po ako ng papa ko" he removed my panty, kissed me, (mashed) my breast and held my vagina.

Q- What else did he do to you?

A - He placed himself on top of me and inserted his penis into my vagina.

Q - Was he able to easily insert his penis into your vagina?

A - No, sir.

Q - Was he able to actually insert his penis inside your vagina?

A - Yes, sir.

Q - How did you come to know that he was able to insert his penis inside your vagina?

A - I felt the pain, sir.

x x x

Q - Tell us if your father (did) any body movement at the time his penis was inside your vagina?

A - Yes, sir.

Q - Please tell us what body movement did he do.

A:

(Witness demonstrating up and down movement).[19]

x x x

COURT:

Q - During all the time your father was abusing you for the first time, what was your feeling?

A - It was painful, Your Honor.

Q - What is painful?

A - My vagina, Your Honor.

Q - Do you know the reason why your vagina was painful?

A - Yes, Your Honor.

Q - What caused the pain in your vagina?

A - Because of what my papa inserted into it.

ATTY. DE RAMOS:

Q - You mentioned that when your father inserted his penis into your vagina, it was so painful, correct?

A - Yes, sir.

Q - And according to you the first time your father inserted his penis was on July 1, 1997?

A - Yes, sir.

Q - Were you crying when your father inserted his penis into your vagina?

A - Yes, sir.

Q - Tell the court how you cried.

A - I cried softly only because I was afraid that if my father will hear my cry he might kill me.

x x x

Q - And according to you your father moved his body upward and downward on top of you, is that correct?

A - Yes, sir.

Q - And your father was doing that movement for quite a time?

A - Yes, sir.

Q - Were you crying during that time?

A - Yes, sir, I cried during the first thrust.

Q - But you were not crying when your father was doing that movement?

A - No more, sir.

Q - Why were you not crying?

A - There was already (a) wound, sir.

Q - There was (a) wound in your vagina?

A - Yes, sir.[20]

Complainant's testimony is rendered even more convincing as it is supported by medico-legal findings of a "healed hymenal laceration 4 o'clock position." [21] Recall that Dr. Pempengco testified that it was possible that such hymenal laceration was caused by the insertion of an erect male organ in the victim's vagina. [22] Clearly in our view, the prosecution has presented evidence sufficient to overturn the presumption of innocence in appellant's favor, insofar Case No. SC-6680 is concerned.

Further, with regard to Case No. SC-6682, appellant points out that while his alibi may be weak, it was nonetheless corroborated by complainant herself when she testified that her father was working in Cavite and violated her only on Saturdays and Sundays. Thus, appellant argues that since the alleged rape of September 15, 1997, subject of Case No. SC-6682, took place on a Monday, it was highly improbable for said rape to have occurred. He concludes it was error for the trial court to have disregarded his alibi altogether. There is, however, no showing it was improbable that a sexual encounter beginning 11 P.M. of Sunday could last till past midnight (or early Monday).

The Office of the Solicitor General counters that appellant failed to present any evidence nor any witness to corroborate his allegation that he was working in Cavite when the rapes occurred. This failure further weakens his already fragile defense. The testimony of appellant's sister, Eva de Jesus, cannot be deemed corroborative, since she was not with appellant in Cavite on material dates alleged. Her testimony was not based upon her personal knowledge, but only on mere presumptions.

For alibi to prosper as a defense, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the locus criminis. [23] The requirements of time and place must be strictly met. In the present cases, both requisites are wanting. First, appellant offered nary a scintilla of proof to show that he was actually in Imus, Cavite on July 1, 1997 and September 15, 1997 when the rapes happened. As already stated, appellant cannot rely upon the testimony of Eva de Jesus on this score. A careful reading of her testimony in court would show that nowhere did Eva claim that

she personally saw him much less accompanied him, in Cavite on both dates. All that she knew was that appellant was supposed to be a construction worker in Cavite, and this led her to believe that he was at the construction site on the days of the alleged offenses.

As pointed out by the trial court, appellant's alibi cannot be considered in his favor, since the place where he was supposed to be is only five (5) hours travel time away from the locus criminis. If appellant got off from work in Cavite at 5:00 P.M., it would not be physically impossible for him to be in his Laguna house by 10:00 P.M.. Recall that complainant testified that in September 1997 she was usually raped by appellant at around 11:00 P.M. of a Saturday or Sunday, which is really close to midnight and early Monday. Thus, appellant's alibi miserably failed to satisfy the two (2) requisites for the defense of alibi to prosper.

Furthermore, the defense of alibi cannot prevail over the positive and unequivocal identification of appellant by private complainant as her rapist. Categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over the appellant's defense of denial and alibi. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[24]

Given the evidence presented in this case, we find that the trial court did not err in holding the appellant guilty of the offenses charged. But was capital punishment correctly imposed on him for each of the two counts of rape?

Under Republic Act No. 7659, the imposition of the death penalty in rape cases becomes mandatory when the offended party is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The qualifying circumstances of age and relationship of the victim to the accused must specifically be alleged and proved.[25] In sentencing appellant to death by lethal injection for each count of rape, the trial court observed that "it has been alleged and proved that in both cases it involved accused-father BONIFACIO SAN AGUSTIN against daughter-complainant JESSEBELLE SAN AGUSTIN who was merely thirteen (13) years old at the time the offense(s) were committed." [26] It went on to point out that "that the age of Jessebelle was 13 years old was confirmed and acknowledged by the accused...as could be gleaned from his testimony." [27]

The testimony of appellant relied upon by the court a quo concerning the victim's age reads:

COURT:

Q - How about your wife?

A - She is already dead, Your Honor.

Q - When did she die?

A - In 1966, Your Honor.

Q - So since 1966 up to the present you are living with your six children?

A - Yes, Your Honor.

Q - What are the ages of your six children? From the eldest to the youngest.

A -

My eldest child is MARIO, 19 years old; RICKY BOY, going to be 16 years old; RANDY, about 14 years old, DYESEBEL [Jessebelle], 13 years old, ROQUE, 8 years old and JENNIFER, 5 years old.[28]

Note, however, that other than the foregoing admission by appellant, the records are bare of any other proof,

documentary or otherwise, submitted by the prosecution to show the victim's minority. In fact, complainant herself is not too sure as to her exact age or as to when her mother died, as shown in complainant's testimony:

TRIAL PROSECUTOR:

Q - Do you remember when you were born?

A - I was born on August 25, 1993, sir.

Q - Are you sure you are (sic) born in 1993 or 1983?

A - It is only now that I came to know that I was born on this date, it is that woman who knows, sir.

Q - So you do not know the year you were born?

A - I don't know, sir.

Q - Is your mother still living?

A - She is already deceased, sir.

Q - Can you recall in what year did she die?

A - I can't remember, sir.

Q - For how many years is she already dead?

A - For four years, sir.[29]

We conclude that the victim's age, while alleged in the information, has not been proven adequately. The failure of the prosecution to present the victim's birth certificate or similarly acceptable proof of her age as a minor bars appellant's conviction for rape in its qualified form.[30] He is guilty only of 2 counts of simple rape, and the proper penalty is not death but only reclusion perpetua for each count.

On the damages awarded, the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of simple rape are in accord with present jurisprudence.[31] However, the exemplary damages should be reduced to P25,000.00 for each count of rape. The rationale behind exemplary damages is to provide an example or correction for the public good and not to enrich the victim. The award of P25,000.00 as exemplary damages provides a deterrent against sexual abuse of young women by their fathers.[32]

WHEREFORE, the appealed decision of the Regional Trial Court of Santa Cruz, Laguna, Branch 28, dated August 28, 1998, in Criminal Cases Nos. SC-6680 and SC-6682, finding appellant Bonifacio San Agustin y Roslin guilty beyond reasonable doubt of two (2) counts of rape is hereby **AFFIRMED** with the **MODIFICATION** that the sentence in each case is reduced to reclusion perpetua. Appellant is ordered to pay the victim, Jessebelle San Agustin, for each count of rape the sum of P50,000.00 as indemnity ex delicto, P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs de oficio.

SO ORDERED.

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

[1] Also spelled "Dyesebel" or "Jessebel" in the records.

- [2] Records, Crim. Case No. SC-6680, p. 1.
- [3] Id. at 9; TSN, January 27, 1998, p. 5.
- [4] TSN, January 27, 1998, p. 5.
- [5] Supra note 2, at 59-60.
- [6] Rollo, p. 50.
- [7] People v. Penaso, G.R. No. 121980, February 23, 2000, p. 5, citing People v. Domogoy, 305 SCRA 75 (1999).
- [8] People v. Cabana, G.R. No. 127124, May 9, 2000, p. 11, citing People v. Gapasan, 243 SCRA 53 (1995).
- [9] TSN, December 17, 1997, pp. 9-10.
- [10] People v. Alvero, G.R. Nos. 134536-38, April 5, 2000, p. 7, citing People v. Bernaldez, 294 SCRA 317 (1998).
- [11] People v. Alicante, G.R. Nos. 127026-27, May 31, 2000, p. 23, citing People v. Bernaldez, supra.
- [12] People v. Lacaba, G.R. No. 130591, November 17, 1999, p. 11.
- [13] People v. Villar, G.R. No. 127572, January 19, 2000, p. 8.
- [14] People v. Valla, G.R. No. 111285, January 24, 2000, p. 8.
- [15] People v. Valla, supra.
- [16] People v. Licanda, G.R. No. 134084, May 4, 2000, p. 12, citing People v. Ching, 240 SCRA 267 (1995).
- [17] Records, Crim. Case No. SC-6680, p. 56.
- [18] People v. San Juan, G.R. No. 112449-50, July 31, 2000, p. 11, citing People v. Hernandez, G.R. No. 130809, March 15, 2000.
- [19] TSN, December 17, 1997, pp. 6-7.
- [20] Id. at 12-13.
- [21] Exhibit "D," Records, Crim. Case No. SC-6680, p.9.
- [22] TSN, January 27, 1998, p. 5.
- [23] People v. Juan, G.R. Nos. 100718-19, January 20, 2000, p. 18, citing People v. Villanueva, 302 SCRA 380 (1999), People v. Realin, 301 SCRA 495 (1999).
- [24] People v. Jose, G.R. No. 130666, January 31, 2000, pp. 10-11, citing People v. Villablanca, 316 SCRA 13 (1999).
- [25] People v. Villaraza, G.R. Nos. 131848-50, September 5, 2000, p. 22, citing People v. Manggasin, 306 SCRA 228 (1999).
- [26] Records, Crim. Case No. SC-6680, p. 57.
- [27] Id. at 58.
- [28] TSN, March 5, 1998, p. 9.

[29] TSN, December 17, 1997, pp. 3-4.

[30] People v. Tundag, G.R. Nos. 135695-96, October 12, 2000, p. 13.

[31] People v. Nogar, G.R. No. 133946, September 27, 2000, p. 14.

[32] People v. Sampior, G.R. No. 117691, March 1, 2000, p. 7.

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