

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY S. PLURAD, ROBERTO BERNADAS (AT LARGE) AND JUVANIE CANEDO (AT LARGE), ACCUSED, JIMMY S. PLURAD, ACCUSED-APPELLANT.

G.R. Nos. 138361-63. December 03, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the Decision[1] dated August 14, 1998 of the Regional Trial Court of Davao City, Branch 17, in Criminal Case Nos. 39,846-97, 39,847-97, 39,848-97 finding accused-appellant Jimmy S. Plurad guilty of three counts of rape and sentencing him to suffer the penalty of reclusion perpetua in each count.

Three informations were filed against Jimmy Plurad, Roberto Bernadas and Juvanie Cañedo in the Regional Trial Court of Davao City, to wit:

CRIMINAL CASE NO. 39,846-97

That on or about October 22, 1997, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above named accused, JIMMY PLURAD, conspiring and confederating with accused JUVANIE CAÑEDO and ROBERTO BERNADAS, while NORIELENE B. RANAO, a 14 year old minor, was intoxicated with beer and gin, willfully and feloniously had sexual intercourse said NORIELENE B. RANAO against her will in the following manner:

That while accused JIMMY PLURAD was on top and having sexual intercourse with her, accused ROBERTO BERNADAS and JUVANIE CAREDO watched and prevented her from resisting.

CONTRARY TO LAW.

CRIMINAL CASE NO. 39,847-97

That on or about October 22, 1997, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above named accused, ROBERTO BERNADAS, conspiring and confederating with accused JIMMY PLURAD and JUVANIE CANEDO, while NORIELENE B. RANAO, a 14 year old minor, was intoxicated with beer and gin, willfully and feloniously had sexual intercourse said NORIELENE B. RANAO against her will in the following manner:

That while accused ROBERTO BERNADAS was on top and having sexual intercourse with her, accused JUVANIE CANEDO and JIMMY PLURAD watched and prevented her from resisting.

CONTRARY TO LAW.

CRIMINAL CASE NO. 39,848-97

That on or about October 22, 1997, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above named accused, JUVANIE CAÑEDO, conspiring and confederating with accused JIMMY PLURAD and ROBERTO BERNADAS, while NORIELENE B. RANAO, a 14 year old minor, was

intoxicated with beer and gin, willfully and feloniously had sexual intercourse said NORIELENE B. RANAO against her will in the following manner:

That while accused JUVANIE CAÑEDO was on top and having sexual intercourse with her, accused ROBERTO BERNADAS and JIMMY PLURAD watched and prevented her from resisting.

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded “not guilty” to each of the charge while accused Roberto “Dodong” Bernadas and Juvanie “Jojo” Cañedo remained at large. Trial on the merits ensued.

The facts, as established by the prosecution, are as follows:

At around 9:30 in the evening of October 21, 1997, 14 year old Norielene Ranao and several of her friends were drinking beer and gin at the Siony Store in Ulas, Davao City. They were joined by accused Roberto Bernadas alias “Dodong”, Jimmy Plurad alias “Junjun”, and Juvanie Cañedo alias “Jojo”.^[2] By midnight, accused Roberto Bernadas invited the entire group to his house, which is also located in Ulas, to continue drinking. They stayed there until the wee hours of the morning.

An hour and a half past midnight, after Norielene consumed half a glass of gin handed to her by accused Bernadas, she began to feel dizzy. Norielene fell asleep on the lap of her friend, Jigger Ibañez. At around 3:00 in the morning, Norielene woke up and found that she was being carried by the three (3) accused towards the bedroom of accused Bernadas. Since she still felt dizzy, Norielene fell fast asleep in the room. She later woke up when accused Bernadas was removing her shorts and panties.^[3] Norielene tried to shout for help but her mouth was covered by Bernadas. When she was already naked, accused Bernadas placed himself on top of her, inserted his sex organ into her private parts and performed pumping motions. Both hands of the victim were held by the accused Jimmy Plurad and Juvanie Cañedo.^[4] After Bernadas finished raping her, Jimmy Plurad took his turn and had sexual intercourse with Norielene while fondling her breasts.^[5] Norielene struggled to free herself but Bernadas held her hands while Plurad covered her mouth with a handkerchief.^[6] When Plurad was through, Cañedo also had sexual intercourse with her while Bernadas and Plurad held her hands.^[7]

After the three accused left the room, Norielene stood up and cried. She immediately left the house of Bernadas together with her friends and proceeded to Siony’s store before going home.^[8]

Prosecution witness Cristina Cruz, a friend of Norielene, witnessed how the three accused raped the victim. She alleged that she was sleeping inside the room of Roberto Bernadas when she was awakened by accused-appellant Jimmy Plurad who had accidentally stepped on her left hand. She saw Plurad and his co-accused carrying Norielene. She attempted to prevent the three accused from raping Norielene but was prevented by Tata, a brother of Roberto Bernadas. Jimmy Plurad also advised her to remain quiet.^[9]

In the morning of October 22, 1997, Norielene’s father, Norijinar, learned from his wife that his daughter did not come home the night before because she was afraid of him. The following morning, or on October 23, 1997, Norielene’s father discovered that she spent the night at the residence of one of her male friends.

Upon learning of the rape, Norielene’s father, Norijinar, immediately brought her to the police station where Norielene reported to the police investigators that she has been sexually abused. They then proceeded to the city health department where Norielene was examined by Dr. Danilo Ledesma, the city’s medico-legal officer,^[10] who made the following medical findings:^[11]

EXTRAGENITAL PHYSICAL INJURIES:

Contusion, purplish, left breast, outer lower quadrant, 3.2 x 2.2 cms.

xxx xxx xxx

3) Hymen, intact and its orifice wide as to allow complete penetration by an averaged-sized male organ in erection without causing hymenal injury. REMARKS: Semenology: NEGATIVE FOR SPERMATOZOA

A “follow-up operation” was conducted by the city police to track down the perpetrators. They were able to apprehend accused-appellant Jimmy Plurad at Victoria Plaza where he was employed. He was positively identified by Norielene as one of her rapists.[12] Thereafter, she filed a formal complaint[13] for rape against him.

On the other hand, accused-appellant claimed that: (1) he left the premises of accused Dodong Bernadas on October 22, 1997 at 1:30 in the morning, or one hour before the alleged crime was committed; (2) prosecution witness Cristina Cruz cannot positively identify him because she was asleep when the alleged crime was committed; (3) “non-flight” strengthens his claim of innocence; and (4) the rape charge was merely motivated by the victim’s fear of his father for failing to go home.

The defense presented Rodel Salas and Norjon Bucao. Rodel Salas stated that he left the group at 1:00 in the morning and while waiting for a ride to fetch his wife, he saw accused-appellant who was on his way home.[14] Meanwhile, Bucao, a friend of accused-appellant, testified that on October 22, 1997 at around 1:30-2:00 in the morning, he saw accused-appellant pass by the gasoline station where he was employed as a pump boy.[15]

After trial, judgment was rendered against accused-appellant, the dispositive portion of which reads:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused, Jimmy Plurad of the offense charged beyond reasonable doubt, accused JIMMY PLURAD pursuant to Article 335 of the Revised Penal Code as amended by Rep. Act 7659 of Sec. 11, par. 2 thereof, is sentenced to suffer the penalty of reclusion perpetua for three counts, under criminal case nos. 39,846-97, 39,847-97 and 39,848-97, subject however to the provision of Art. 27 of the Revised Penal Code, together with all accessory penalties as provided for in Art. 30 of the Revised Penal Code.

Moreover, in accordance with Art. 100 in relation to Art. 104 of the Revised Penal Code governing civil indemnity, accused Jimmy Plurad, is furthermore ordered to pay complainant, NORIELENE RANAO, the amount of Fifty Thousand (P50,000.00) Pesos as moral damages and another amount of Twenty-Five Thousand (P25,000.00) Pesos, by way of exemplary damages, for the sufferings, humiliation and emotional sufferings she suffered as the result of the rape committed by accused Jimmy Plurad and his co-accused.

Finally, it appearing that accused, Jimmy Plurad, is detained charged of a heinous offense without recommendation for his provisional liberty, he shall be entitled and credited in the service of his sentence with the full time during which he had undergone said preventive imprisonment subject to the rules governing convicted prisoners pursuant to Art. 29 of the Revised Penal Code as amended by Act 6127 and furthermore amended by E.O. No. 214, promulgated on July 10, 1987.

On the two other accused, ROBERTO BERNADAS alias DODONG and JUVANIE CANEDO alias JOJO, still at large, issue warrant for their arrest.

SO ORDERED.[16]

Hence, this appeal, where accused-appellant alleged that the trial court erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of rape.[17]

The defense of accused-appellant Jimmy Plurad is basically one of alibi. He testified that he had left the house of

the accused Bernadas at around 1:30 in the morning of October 22, 1997, or one hour before the alleged crime was committed, because he had to wake up early to go to work that same morning at the Victoria Plaza.[18]

It has been ruled that alibi is an inherently weak defense.[19] Neither can plain denial, a negative self-serving evidence, stand against the positive identification and categorical testimony given by a victim of rape.[20] A mere denial is seldom given greater evidentiary rule than the testimony of a witness who creditably testifies on affirmative matters.[21]

Well-settled is the rule that no woman would concoct a story of defloration, allow an examination of her private parts and submit herself to public humiliation and scrutiny via an open trial, if her sordid tale was not true and her sole motivation was not to have the culprit apprehended and punished. A young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as a mere concoction.[22] Needless to say, it is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.[23]

Accused-appellant's contention that the trial court erred in giving full credit to the declarations of the prosecution witnesses despite inconsistencies in their testimonies deserves scant consideration.

The testimony of the victim was corroborated by the testimony of the prosecution witness Cristina Cruz who gave straightforward, detailed and consistent narrations on what she had witnessed in the early morning of October 22, 1997. More particularly, she categorically testified that after accused-appellant and his co-accused, Bernadas and Cañedo, carried Norielene inside Bernadas' bedroom, the three men took turns in raping the victim, who was then still tipsy. Cristina further testified that the victim resisted the accused's intrusion but she looked enervated from the liquor that she had drunk. The victim tried to shout for help but her mouth was gagged with a handkerchief. Cristina likewise testified that she attempted to help the victim but was prevented by a certain Tata.[24]

We likewise find that complainant was steadfast in her declaration that in the morning of October 22, 1997, she was roused from her sleep and carried by the three accused to the bedroom of Bernadas, where she was raped successively by the three accused. Complainant's testimony that she was raped at 2:00 or 3:00 in the morning is but a minor inconsistency, which tends to bolster rather than weaken her testimony. The Court has ruled on numerous occasions that minor inconsistencies in rape cases will not necessarily derail the testimony of the offended party for rape victims cannot be expected to be precise in the recount of details of a clearly harrowing experience.[25]

In rape trials, the issue, more often than not, is the credibility of the victim. But when a rape victim's testimony is straightforward, unflawed by any material or significant inconsistency, then it deserves full faith and credit. If found credible, the declaration of facts given by the offended party alone would be sufficient to sustain a conviction.[26]

Conspiracy was correctly appreciated by the trial court because the individual acts of the accused when taken together as a whole showed that they acted in concert and cooperated to achieve the same unlawful objective.[27] The evidence clearly shows that conspiracy existed between the three accused shown by their obvious concerted efforts to perpetrate, one after the other, the crime of rape.[28] It was established during the trial that while accused-appellant raped the victim, his co-accused covered the latter's mouth or restrained her hands. We have repeatedly held that in cases of multiple rape, each of the defendants is responsible not only for the rape committed by him but also for those committed by the others.[29] Accused-appellant, therefore, is responsible not

only for the rape committed personally by him but also for the two other counts of rape committed by his co-accused.

The failure of the complainant to immediately inform her parents of the rape before reporting it to police authorities does not detract from her credibility or indicate that the charge was fabricated.[30] A perusal of the records shows that the victim informed her mother of the incident before she left the house in the morning of October 22, 1997.[31] It should be noted that she was initially afraid to tell her father of the incident.[32]

Similarly, it is highly inconceivable that complainant would file rape charges against accused-appellant just because her father will scold her for failing to go home one night. No motive was given for her to falsely impute a heinous crime against accused-appellant. As held in the case of *People v. Dimailig*:[33] “Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith. It has been repeatedly held that no young and decent Filipina would publicly admit that she was ravished and her honor tainted unless the same were true, for it would be instinctive on her part to protect her honor and obtain justice for the wicked acts committed upon her.”[34]

As regards accused-appellant’s assertion that his non-flight was proof of his innocence, this Court has ruled time and again that while flight may be an indicium of guilt, there is no case law holding non-flight to be conclusive proof of innocence.[35]

Accused-appellant’s allegation that the prosecution failed to prove that violence attended the sexual assaults on the victim is likewise without merit. It is true that the medical record shows no physical injuries on the victim. Yet, the absence of external signs of injuries does not necessarily negate the commission of rape.[36]

We cannot sustain the accused-appellant’s claim that the absence of lacerations and contusions in the victim’s genitalia negate the commission of rape. We have consistently held that the rupture of the hymen or laceration of the vagina is not an essential element of rape, for mere knocking at the door of the pudenda by the accused’s penis suffices to constitute the crime of rape.[37] Penile invasion, as it has often been held, necessarily entails contact with the labia where even the briefest of contact under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence. Hence, neither the penetration of the penis beyond the lips of the vagina nor the rupture of the hymen is indispensable to justify conviction.[38] A medical examination is not even indispensable in a prosecution for rape. The lone testimony of the victim, if credible, is sufficient to sustain a conviction.[39]

We therefore find no reason to disturb the ruling of the trial court finding accused-appellant culpable on three counts of rape and imposing upon him the penalty of reclusion perpetua for each act. The penalty for rape as prescribed by Article 335 of the Revised Penal Code is reclusion perpetua. When the crime of rape is committed by two or more persons, such as in the case at bar, the penalty shall be reclusion perpetua to death. Reclusion perpetua and death are two indivisible penalties. There being no aggravating or mitigating circumstance present, the lesser penalty of reclusion perpetua should be imposed on accused-appellant in each of the three criminal cases, pursuant to Article 63(2) of the Revised Penal Code.

We note, however, that the trial court omitted to award to complainant civil indemnity. Pursuant to recent jurisprudence, an indemnity in the amount of P50,000.00 must be given to victims of rape. Civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the trial court in the exercise of sound discretion.[40] Hence, the Court awards civil indemnity of P50,000.00 to the victim Norielene Ranao for each of the sexual assaults, or a total of P150,000.00. This is in addition to the moral damages of P50,000.00 for each

offense, consistent with prevailing jurisprudence.[41]

The trial court's award of exemplary damages should be deleted. Exemplary damages are intended to serve as deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or punishment for those guilty of outrageous conduct.[42] Under Article 2230 of the Civil Code, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party. Considering that no aggravating circumstance attended the commission of the crimes in this case, accused-appellant cannot be ordered to pay exemplary damages.

WHEREFORE, the decision of the Regional Trial Court of Davao City, Branch 17, finding accused-appellant guilty beyond reasonable doubt of rape on three counts and sentencing him to suffer the penalty of reclusion perpetua in each case, is AFFIRMED with MODIFICATION. He is ordered to pay complainant the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of rape. he award of exemplary damages is DELETED for lack of factual and legal basis.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.
Azcuna, J., on official leave.

[1] Penned by Judge Renato A. Fuentes; Records, pp. 110-153.

[2] TSN, March 26, 1998, pp. 5-6.

[3] Ibid., pp. 10-11.

[4] Id., pp. 11-13; pp. 43-45.

[5] TSN, March 26, 1998, pp. 12-13; pp.45-46.

[6] Ibid., p. 46.

[7] Id., pp. 13 & 47.

[8] TSN, March 16, 1998, pp. 14-15; pp. 48-49.

[9] TSN, April 17, 1998, pp. 18-25, 40-48; TSN, March 26, 1998, pp. 47-48.

[10]TSN, April 1, 1998, pp. 7-9.

[11] Exhibit "B".

[12] TSN, April 17, 1998, pp. 4-8, 11-14.

[13] Exhibit "A".

[14] Ibid., p. 18.

[15] TSN, June 24, 1998, p. 2.

[16] Rollo, pp. 61-62.

[17] Rollo, p. 90.

- [18] TSN, July 17, 1998, pp. 7 and 12.
- [19] *People v. Alipayo, et al.*, 324 SCRA 447 (2000).
- [20] *People v. Remoto*, 244 SCRA 506 (1995).
- [21] *People v. Marquez*, 347 SCRA 510 (2000).
- [22] *People v. Nardo*, 353 SCRA 339 (2001).
- [23] *People v. de Villa*, 351 SCRA 25 (2001).
- [24] Plaintiff-Appellee's Brief, pp. 21-22; TSN, April 17, 1998, pp. 18-25.
- [25] *People v. Agüero, Jr.*, G.R. No. 139410, September 20, 2001.
- [26] *People v. San Agustin*, 350 SCRA 216 (2001).
- [27] *People v. Honra, Jr.*, 341 SCRA 110 (2000).
- [28] *People v. Quiñanola, et al.*, 306 SCRA 710 (1999).
- [29] *People v. Laray*, 253 SCRA 654 (1996).
- [30] *People v. de Guzman*, 333 SCRA 269 (2000).
- [31] TSN, March 26, 1998, p. 16.
- [32] *Ibid.*, pp. 31-32 and p. 50.

[33] 332 SCRA 340 (2000).

- [34] *People v. Villamor*, 297 SCRA 262 (1998).
- [35] *People v. Palma*, 308 SCRA 466 (1999).
- [36] *People v. de Guzman*, 333 SCRA 269 (2000).
- [37] *People v. dela Cuesta*, 304 SCRA 83 (1999).
- [38] *People v. Tagaylo*, 345 SCRA 284 (2000).
- [39] *People v. Tagaylo*, *supra*.
- [40] *People v. Marabillas*, 303 SCRA 352 (1999).
- [41] *People v. Mirafuentes*, 349 SCRA 204 (2001).
- [42] *People v. Catubig*, G.R. No. 137842, August 23, 2001.

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