

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO P. PADAO, APPELLANT.

G.R. Nos. 140734-35. September 11, 2002

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PANGANIBAN:

By her own testimony, complainant lost her consciousness after being knocked out by appellant. Thus, she could not have really known what actually happened during the time she was unconscious. Mere suspicion or speculation that she was raped does not constitute proof beyond reasonable doubt.

The Case

Before us for automatic review is the “Joint Decision”[1] of the Regional Trial Court (RTC) of Sindangan, Zamboanga del Norte (Branch 11), dated September 10, 1999. The RTC Decision convicted Ernesto P. Pado of two (2) counts of incestuous rape and sentenced him to death in Criminal Case No. S-2800, and to reclusion perpetua in Criminal Case No. S-2801. The dispositive portion of the Decision reads as follows:

“WHEREFORE, judgment is hereby rendered as follows:

“IN Criminal Case No. S-2800, ACCUSED Ernesto Pado is found guilty beyond reasonable doubt of Incestuous Rape and is sentenced to suffer the mandatory penalty of DEATH and to indemnify the offended party Ruth D. Pado P75,000.00 (People vs. Panis, G.R. No. 127903, July 9, 1998).

“COSTS de oficio.

“IN Criminal Case No. S-2801, ACCUSED Ernesto P. Pado is found guilty beyond reasonable doubt of Incestuous Rape and is sentenced to suffer RECLUSION PERPETUA and to indemnify the offended party Ruth D. Pado P75,000.00 (People vs. Panis, G.R. No. 127903, July 9, 1998)

“COSTS de oficio.”[2]

During his arraignment on February 14, 1997, appellant, with the assistance of his counsel,[3] pled not guilty to the rape charges.[4]

In two (2) separate Informations both dated October 3, 1996, appellant was accused of raping his daughter as follows:

In Criminal Case No. S-2800

“That, in the morning, on or about the 8th day of July, 1996, in the [M]unicipality of Salug, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, armed with a hunting knife, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one RUTH D. PADA, his 15 year old daughter, against her will and without her consent.

“CONTRARY TO LAW (Viol. Of Art. 335, Revised Penal Code), with the aggravating circumstance of the use of deadly weapon.”[5]

In Criminal Case No. S-2801

“That, in the morning, on or about the 20th day of September, 1993, in the [M]unicipality of Salug, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, armed with a hunting knife, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one RUTH D. PADAO, his 15 year old daughter, against her will and without her consent.

“CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code), with the aggravating [circumstance of the use] of deadly weapon.”[6]

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) presents the facts of the case as follows:

“At around 3:00 a.m. of September 20, 1993, Ruth D. Padoa was awakened by the arrival of her father, appellant in the instant case. She noticed appellant turn off the light provided by the kerosene lamp hanging at the wall. Appellant walked towards Ruth, hugged her, then pointed a hunting knife at her neck and thereafter, removed her underwear. Appellant mounted himself on top of Ruth and proceeded to have carnal knowledge with his own daughter. Afterwards, appellant threatened Ruth with death should she mention the incident to anyone.

“Several years later, the incident happened again. At around 7:00 a.m. of July 8, 1996, appellant went towards Ruth who was then ill and while the latter’s mother Felisa Padoa was away. Appellant boxed Ruth in the right eye and struck her head with the handle of the hunting knife, the same knife used during the first rape incident. Ruth fell unconscious. When she regained consciousness, she discovered that she was no longer wearing any underwear and felt pain in her vagina.

“On July 11, 1996, Ruth was in her aunt Florian Matonug’s house on Calamba, Misamis Occidental. Ruth confided to her aunt the sad fate she suffered in the hands of her own father. On July 26, 1996, Ruth went to x x x the Municipal Health Office for Physical Examination. The same day, Ruth filed two (2) separate complaints for two (2) counts of rape against her father.”[7]

Version of the Defense

Appellant, for his part, offered the defenses of alibi and denial and gave his version of the facts thus:

“Evidence for the defense shows that on September 19, 1993 or a day before the feast day of Barangay Dinuan, Salug, Zamboanga del Norte, accused-appellant Ernesto Padoa left their house at about 1:00 o’clock in the afternoon with a certain Jerry Lihaylihay as his companion. The duo went to the barrio hall and watched basketball games, afterwhich they proceeded to Sitio Patag which is also a part of Dinuan, and ate supper thereat. After eating, they played Piat-Piat which lasted until 6:00 in the morning of the following day, June 20, 1993. They returned to the barrio hall and continued watching basketball games. Then, they proceeded to a place where another game called ‘hantak’ was being held and hang [sic] in there until 11:00 o’clock in the morning. At around 1:00 o’clock in the afternoon, they went to the cockpit arena and watched cockfighting which ended at 4:00 o’clock. Thereafter, they returned to the barrio hall and watched an amateur singing contest. It was only after the fiesta on September 21, 1993 at about 7:00 o’clock in the morning that accused-appellant returned home.

“Regarding the other charge of rape, it was shown that on July 8, 1996 at around 7:00 o’clock in the morning, accused-appellant was outside his house, tethering their carabao.

“Testifying for her husband, Felisa Padoa told the court that accused-appellant could not have possibly

committed the charge against private complainant because on that particular date at around 7:00 o'clock in the morning, she was there inside their house together with her daughter. They even discussed with each other the possibility of harvesting corn at their neighbor. She remembered that her daughter complained of headache at that time, hence Felisa gave her P5.00. At around 8:00 o'clock in the morning, Felisa went to their neighbor's farm to harvest corn while Ruth bought some medicine. When Felisa returned in the afternoon, Ruth has not yet arrived and was nowhere to be found.”[8]

Ruling of the Trial Court

In finding appellant guilty, the trial court gave full credence to complainant's testimony and disbelieved appellant's alibi. It ruled in this wise:

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“x x x [W]ith the Prosecution evidence proving beyond reasonable doubt that accused raped his daughter two times, his denial of the charges collapses. Denial is an intrinsically weak defense which must be buttressed by strong evidence of nonculpability to merit credibility.

“ACCUSED, hoping to re[i]nforce his denial, interposed alibi. This has been pronounced, time and again, as also being a weak defense. No daughter can possibly be mistaken about the identity of her father who forces himself on her two times in their house, there being no evidence that there were other male occupants who could have gained unlawful entry into the house.

“In the cases at bench, no improper motive could (be) ascribed to complainant. Clearly, she was actuated by none other than the desire to tell the truth and obtain redress for the loathsome wrongs inflicted on her. Courts have time and again ruled that the testimony of a rape victim is credible where she has no motive to falsely testify against the accused. Courts usually lend credence to the testimonies of young girls, especially where the facts point to their having been victims of sexual assault. Youth and immaturity are generally badges of truth and sincerity.”[9] (Citations omitted)

Hence, this automatic review.[10]

The Issues

Appellant submits the following alleged errors for our consideration:

“I

The court a quo gravely erred in finding that the guilt of the accused-appellant for the crime charged has been proven beyond reasonable doubt.

“II

The court a quo gravely erred in imposing upon the accused-appellant the supreme penalty of death despite the prosecution's failure to prove the minority of the alleged victim.”[11]

The Court's Ruling

The appeal is partly meritorious.

First Issue:

Sufficiency of the Prosecution's Evidence

On the First Rape

The defense argues that the prosecution's evidence is insufficient to prove appellant's guilt beyond reasonable doubt. We disagree. A careful review of the records of the case reveals that the victim gave a clear, consistent and candid narration of the first time she had been raped by her own father. With the use of a hunting knife, he employed force and intimidation to advance his bestial desire, according to her testimony which we quote:

“Q: Please tell the Court what happened at 3:00 in the morning of September 20, 1993 when you were raped by your own father Ernesto Padoa?

A: During that time my father was at the dancing hall. Together with me was my elder sister and my elder sister informed that you just sleep here in our house together with our father because I will be going to my parents-in-law and at about 3:00 dawn, my father arrived home from the dancing hall and when [he] arrived he put off the lamp and pointed the hunting knife at me.

Q: Where were you at the time when your father arrived in your house?

A: I was sleeping.

Q: In what part in the house were you sleeping?

A: In the kitchen.

Q: You said that when your father arrived, he put off the light, how do you know when you said you were already sleeping at that time?

A: During the time when I was sleeping in the kitchen, when my father arrived I heard the sounds of the door opened and I was awoken[ed].

Q: So, you were awoken[ed] when your father arrived at 3:00 dawn on September 20, 1993?

A: Yes, sir.

Q: And you noticed that he put off the light?

A: Yes, sir.

Q: What kind of lamp do you have at that time?

A: A kerosene lamp.

Q: And after he put off the lamp, what did he do?

A: He approached towards me and he hugged me and pointed his double-bladed hunting knife.

Q: You actually saw the hunting knife that he was bringing with him?

A: Yes, sir.

x x x x x x x x

Q: You said that after he off [sic] the lamp he approached you and then poked the double bladed hunting knife at you, what part of the body the double bladed hunting knife was pointed?

A: In my neck.

Q: And then while he was pointing the hunting knife at your neck, did he say anything to you?

A: Yes, sir.

Q: What did he tell you while he was pointing the knife at you?

A: If I will shout he will slap me.

Q: And what did he do to you while he was pointing his knife in your neck?

A: He took off my panty.

Q: Was he able to take off your panty?

A: Yes, sir.

Q: Then later on after your panty was taken off by him, what did he do to you?

A: He mounted himself on top of me.

Q: After he mounted on top of you, what did he do?

A: He was pumping.

Q: And while he was pumping at you, what did you feel, or what did you notice?

A: There was pain on my vagina.

Q: What cause the pain of your vagina?

A: Because he inserted his penis on my vagina.

Q: And when he inserted his penis in your vagina and you felt hard, he was then pumping on you?

A: Yes, sir.

Q Since you felt hard, you felt pain, what did you do?

A: I kicked him.

Q: Are you sure that his penis penetrated your vagina because you felt it inside you, is that correct?

A: Yes, sir.

Q: Aside from feeling pain with his penis when inserted in your vagina, what else did you notice in your vagina?

A: There was blood oozing from my vagina.

Q: In that incident, how many times did he [insert] his penis inside your vagina?

A: 2 times.

Q: After that or after he finished having sexual intercourse with you, what did he do next?

A: He slept.

Q: Did [he] say anything to you after he raped you?

A: There was.

Q: What did he tell you?

A: He warned that if I will reveal those things to my mother, he will kill me.

Q: So, did you tell anybody after that incident on September 20, 1993 in the morning?

A: None, sir.”[12]

Indubitably, the foregoing testimony shows how, by poking a hunting knife on the neck of his own daughter and threatening her with bodily harm, appellant succeeded in perpetrating the dastardly act against her. She was not able to resist or thwart the sexual transgression committed against her because of fear for her personal safety. Verily, she had no choice but to yield to the lecherous advances of her father who not only exercised moral ascendancy over her, but exerted actual violence and intimidation as well.

Indeed, the evidence for the prosecution established with moral certainty the fact of forcible sexual coitus committed by appellant against his daughter. To be sure, her clear, coherent and detailed narration of the rape bears all the earmarks of credulity and sufficiently justifies a conviction under the circumstances. Indeed, the accused may be convicted of rape solely on the testimony of the victim, provided such testimony is credible, natural, convincing and consistent with human nature and the normal course of events.[13] Moreover, the testimony of a rape victim is accorded utmost credence where she has no motive to testify against the accused; and where such testimony is simple, straightforward and unflawed by any inconsistency or contradiction.[14]

This Court has consistently held the no young and decent lass will publicly cry rape, particularly against her father, if such were not the truth or if justice were not her sole objective.[15] Certainly, a daughter would not accuse her own father of such an unspeakable crime as incestuous rape, had she really not been aggrieved.[16] Truly, a rape victim's testimony is entitled to even greater weight when she accuses her own father of having raped her.[17]

For his defense, appellant denies having committed the alleged sexual abuses against his daughter and interposes alibi as his defense. According to him, he was with his neighbor Jerry Lihaylihay in Sitio Patag, attending the festivities there on September 20, 1993, the date of the first rape. As to the second rape on July 8, 1996, he claims to have been out of the house taking care of their carabao while his daughter was inside the house. When queried by the RTC as to what could have motivated his daughter to file the rape charges against him, he could not give any answer except that the accusations were untrue.[18]

Well-settled is the rule that alibi, when not supported by clear and convincing evidence, deserves no weight in law, because it can easily be fabricated or contrived.[19] In order for alibi to prevail, the accused must establish by clear and positive evidence that it was physically impossible for him to have been at the scene of the crime when it happened, not merely that he was somewhere else.[20] In other words, appellant must prove that he was so situated from the crime scene or its immediate vicinity that the possibility of his presence there is remote or improbable. Otherwise, the defense of alibi will not hold.[21]

In the instant case, appellant has failed to establish that it was physically impossible for him to be present at the crime scene when the alleged rapes were committed. Although he claims to have been in another barrio attending a fiesta on September 20, 1993, he readily admitted that the said place was not very far from his house, and that it would take less than an hour to negotiate the distance.[22] Thus, even if it were true that appellant was in Sitio Patag to attend a fiesta, the possibility of his presence in his home at 3:00 a.m. on September 20, 1993 could not be precluded.

Moreover, his testimony regarding his whereabouts appears to be inconsistent and contrived. While he had said in his direct testimony that he was at home on September 20, 1993,[23] later during cross-examination he contravened this earlier statement and even denied having made it. He testified as follows:

“Q: Now, do you remember that you were asked by your counsel where were you on September 20, 1993?

A: Yes, sir.

Q: And your answer was: you we[r]e in your house, do you remember that?

A: Yes, sir.

Q: Because that is the truth?

A: Yes, sir.

Q: So, it is now very clear that on September 20, 1993 you were just in your house?

A: I was not there.

x x x x x x x x

Q: Now, I will remind you, and may I refer you to the record wherein you were asked by your counsel Atty. Saladaga on the early stage of the direct-examination where were you on September 20, 1993, and you answer was 'I was in the house', do you remember that? We will refer to the record your Honor.

A: I was not there on September 20 because that was the eve of the Fiesta.

Q: You are telling to this Honorable Court now that you are lying when you gave your answer to your lawyer when he asked you where were you on that September 20, 1993, and on that question you gave your answer that you were in your house, so, you were then lying in answering that question to this Honorable Court?

A: What I answered before is that on the 19th I was not around and on the 20th I was not in the house.”[24]

Clearly then, his alibi must necessarily fail for not meeting its requisite elements and for its lack of veracity. Indeed, denials and alibis, unsubstantiated by clear and convincing evidence, are negative and self-serving. They deserve no weight in law and cannot be given greater evidentiary weight over the testimonies of credible witnesses who testify on affirmative matters.[25]

On the Second Rape

However, as regards the second rape allegedly committed on July 8, 1996, we find the prosecution evidence insufficient to warrant a conviction beyond reasonable doubt. As can be gleaned from the testimony of complainant, it appears that she had initially been subjected to physical maltreatment until she was rendered unconscious. During this period, she did not really know what had happened and could not tell for sure whether appellant had carnal knowledge of her. She merely suspected that the latter had raped her because she was no longer wearing her panty when she woke up while her father was asleep beside her. Thus, she testified on the incident as follows:

“Q: Can you again tell the Court what happened on July 8, 1996 at 7:00 in the morning while you were in Dinuan, Salug, Zambo. Del Norte?

A: He commanded my mother to get the hammer from our neighbor and then he approached me and boxed my eye and struck my forehead with the handle of the hunting knife?

Q: Where were you at the time when he again attacked you?

A: In the house.

Q: What were you doing at that time? v A: I was lying because during that time I was not feeling well.

Q: So, you mean to say that on July 8, 1996 you were then lying down because [you] felt ill?

A: Yes, sir.

Q: And then your father commanded your mother to get out from the house to get a hammer?

A: Yes, sir.

Q: And when your mother acceded to the command of your father you were lying in your house and who were living in your house?

A: The 2 of us.

Q: And at that time you were lying down because you were ill?

A: Yes, sir.

Q: And after your mother left, your father approached you to where you were lying and then boxed you, is that correct?

A: Yes, sir.

Q: Were you hit when he boxed you?

A: Yes, sir.

Q: What part of your body were you hit?

A: In my eye.

Q: Aside from hitting you in your eye, what eye were you hit?

A: My right eye.

Q: Aside from hitting your right eye by boxing, what else did your father do to you?

A: He struck my head by using the handle of the double bladed hunting knife.

Q: The same double bladed hunting knife that he used when he raped you on September 20, 1993?

A: Yes, sir.

x x x x x x x x

Q: After you were boxed by your father and hit with the handle of this double bladed hunting knife, what happened to you?

A: I felt unconscious and I don't know what happened next.

Q: When you woke up, will you please tell the Court what happened next?

A: I have no more panty.

Q: And what else did you notice from the fact that you have no more panty?

A: There was pain in my vagina.

Q: Aside from the pain in your vagina, what else did you notice?

A: I have a headache.

Q: How about your father, where was your father when you woke up?

A: He was sleeping.

Q: And what did you feel after you were conscious already?

A: There was pain.

Q: And what was your suspicion that there was pain in your vagina?

A: He had intercourse with me.

Q: You mean to say that you suspected while you were unconscious he has sexual intercourse with you?

A: Yes, sir.

Q: And that is the cause why your vagina was painful after you woke up?

A: Yes, sir.

Q: Plus the fact that you have no more panty with you?

A: Yes, sir.”[26] (*Italics supplied*)

In *People v. Tayag*, [27] the accused, who was armed with a bolo, abducted the victim and tied her to a coconut tree. There he pressed the bolo against her legs, then kissed and bit her on the lips. Thereafter, he hit her on the stomach and she lost consciousness. When she came to, she noticed that her panty had been removed and her private part was aching. This notwithstanding, the Court declared that “the removal of underwear, a reddening hymen, an aching private part and blood on the underwear” did not necessarily prove carnal knowledge. Likewise, in *People v. Daganta*, [28] the Court found the complainant’s testimony insufficient to prove that the accused had raped her as defined in the Revised Penal Code, even when it was sufficiently shown that the accused had already been kissing her before she lost consciousness. It ruled thus:

“The foregoing testimony does not prove that appellant in fact raped the victim. Significantly, it fails to give a picture of what happened during the alleged rape. While the alleged victim positively testified that appellant kissed her moments before she had lost consciousness, this fact alone does not establish with moral certitude that raped occurred.”[29]

In this case, what can clearly be derived from complainant’s testimony is that appellant inflicted physical injuries upon her, causing her to lose consciousness. Upon waking up, she saw that her underwear was already missing, and she was feeling pain in her vagina. She then speculated that she had been raped by her father. In criminal cases, speculations cannot take the place of proof beyond reasonable doubt -- the standard by which all criminal convictions must be based. Indeed, “suspicion or accusation is not synonymous with guilt.”[30]

Second Issue:

Proper Penalty

Appellant also avers that the RTC erred in imposing the death penalty despite the failure of the prosecution to prove the minority of the victim. Considering, however, that appellant has already been acquitted in Criminal Case No. 2800 in which the death penalty had been imposed, this issue is already moot and academic.

Be that as it may, we may well mention the fact that such argument involving lack of proof of the victim’s minority would not have succeeded for purposes of reducing the death penalty to reclusion perpetua. It must be emphasized that the RTC imposed the death penalty on appellant, but not on the basis of the qualifying circumstances of minority and relationship, the concurrence of which would have warranted a mandatory death sentence under the law. Instead, the trial court based its conviction on the finding that appellant committed the rape with the use of a deadly weapon which, under the first paragraph of Article 266-B of the Revised Penal Code, prescribes the penalty of reclusion perpetua to death. Moreover, the alternative circumstance of relationship was appreciated by the RTC as an aggravating circumstance that justified the imposition of death. This greater

penalty was in accordance with Article 63 of the Revised Penal Code, the pertinent portions of which are as follows:

“x x x. In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. x x x” (Italics supplied)

Thus, even if the qualifying circumstance of minority had not been sufficiently established by the prosecution, it would still be of no moment, because the death sentence was imposed without reference to or irrespective of the minority of the victim.

In regard to the first rape, reclusion perpetua was properly imposed, because the crime happened on September 20, 1993, prior the effectivity of the Death Penalty Law (RA 7659). However, consistent with prevailing jurisprudence,[31] the indemnity ex delicto should be reduced to P50,000, because death was not imposed. Further, moral damages and exemplary damages should be awarded, per *People v. Catubig*.[32]

WHEREFORE, the Joint Decision in reference to Criminal Case No. S-2800 is REVERSED and SET ASIDE; appellant is ACQUITTED on reasonable doubt. However, in regard to Criminal Case No. S-2801, the Decision is hereby AFFIRMED. In addition to serving reclusion perpetua, appellant is hereby ORDERED to pay the heirs of the victim the amount of P50,000 as civil indemnity ex delicto, P50,000 as moral damages and P25,000 as exemplary damages. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Callejo, Sr., JJ., concur.

Sandoval-Gutierrez, J., on leave.

[1] Rollo, pp. 19-51; records, pp. 71-103. The Decision was penned by Judge Wilfredo G. Ochotorena.

[2] Rollo, pp. 50-51; records, pp. 102-103.

[3] Atty. Rodrigo Ladera of the Public Attorney's Office (PAO).

[4] Order dated February 14, 1997; records, p. 24.

[5] Rollo, p. 7; records, p. 17; signed by First Assistant Provincial Prosecutor Soledad A. Acaylar.

[6] Id., pp. 8 & 18.

[7] Appellee's Brief, pp. 3-5; rollo, pp. 121-123. This was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Magdangal M. de Leon and Solicitor Ronaldo B. Martin.

[8] Appellant's Brief, pp. 5-6; rollo, pp. 70-71. This was signed by Attys. Arceli A. Rubin, Amelia C. Garchitorena and Alteza A. Año.

[9] RTC Decision, pp. 31-32; rollo, pp. 49-50.

[10] This case was deemed submitted for decision on April 3, 2001, upon this Court's receipt of appellant's Reply Brief.

- [11] Rollo, p. 66. Original in upper case.
- [12] TSN, November 28, 1997, pp. 5-7.
- [13] *People v. Bayona*, 327 SCRA 190, March 2, 2000.
- [14] *People v. Llambo*, 323 SCRA 791, January 28, 2000.
- [15] *People v. Tabanggay*, 334 SCRA 575, June 29, 2000.
- [16] *People v. Antonio*, 333 SCRA 201, June 8, 2000.
- [17] *People v. Ramos*, 330 SCRA 453, April 12, 2000.
- [18] TSN, July 30, 1999, p. 15.
- [19] *People v. Mayorga*, 346 SCRA 458, November 29, 2000.
- [20] *People v. Seranilla*, 348 SCRA 227, December 15, 2000.
- [21] *People v. Quilloso*, 325 SCRA 747, February 17, 2000.
- [22] TSN, July 30, 1999, p. 13.
- [23] *Id.*, p. 3.
- [24] *Id.*, pp. 7-8.
- [25] *People v. Llambo*, 323 SCRA 791, January 28, 2000.
- [26] TSN, November 28, 1997, pp. 8-10.
- [27] 329 SCRA 491, March 31, 2000, per Puno, J.
- [28] 311 SCRA 716, August 4, 1999, per Panganiban, J.
- [29] *Id.*, p. 725.
- [30] *People v. Muleta*, 309 SCRA 148, June 25, 1999, per Panganiban, J.
- [31] *People v. Rivera*, G.R. No. 139180, July 31, 2001.
- [32] GR No. 137842, August 23, 2001.

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