THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.ALIPIO CARBONELL AND DIONISIO CARBONELL, ACCUSED-APPELLANTS.

G.R. Nos. 140789-92. September 28, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated September 20, 1999, of the Regional Trial Court, Branch 50, Villasis, Pangasinan, finding accused-appellants Alipio and Dionisio Carbonell guilty of four counts of rape and sentencing both of them in each case to suffer the penalty of reclusion perpetua and to pay the victim, Rowena Tabunda, the amount of P50,000.00 as civil indemnity.

The informations against accused-appellants alleged:

> Crim. Case No. V-0707:
>
> That on or about the 10[th] day of December, 1995, in the morning, at Barangay San Blas, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Rowena Tabunda y Carbonell, against the latter's will and consent, to the damage and prejudice of said Rowena C. Tabunda.
>
> Contrary to Art. 335 of the Revised Penal Code.
>
> Villasis, Pangasinan, August 9, 1996.[2]
>
> Crim. Case No. V-0709:
>
> That on or about the 15th day of November, 1995, in the morning at Barangay San Blas, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Rowena Tabunda y Carbonell, against the latter's will and consent, to the damage and prejudice of said Rowena C. Tabunda.
>
> Contrary to Art. 335 of the Revised Penal Code.
>
> Villasis, Pangasinan, August 9, 1996.[3]

The informations in Crim. Case Nos. V-0708[4] and V-0710[5] were identically worded as those in Crim. Case Nos. V-0707 and V-0709.

Upon arraignment, accused-appellants pleaded not guilty[6] to the charge, whereupon a joint trial of the cases was held.

The prosecution presented two witnesses, Rowena Tabunda[7] and Angelyn Tabunda.[8] Their testimonies established the following:

At the time of the incident, Rowena was living with her sisters, Angelyn and Divine Grace Tabunda, and two brothers, a 17-year old young man and a 10-year old boy, in San Blas, Villasis, Pangasinan. Their mother, Concepcion Tabunda, was working in Saudi Arabia, while their father was already dead. Rowena's eldest sister, Angelyn, then 18 years old, was studying at the University of Pangasinan and was staying in a boarding house in Dagupan City, going home to Villasis only on Fridays and returning to Dagupan City on Sundays. On the other hand, Divine Grace was studying in Lipay, Villasis, Pangasinan. Both her brothers were also attending school. Accused-appellants are brothers and both are unmarried, the second cousins of Rowena's mother.[9]

In the morning of November 15, 1995, the victim Rowena Tabunda, then 15 years old, was alone in their house. Accused-appellant Dionisio Carbonell came and asked for some rice which he said he would replace later. He asked Rowena to deliver the rice to the house where he and his brother, accused-appellant Alipio Carbonell, were staying. The house was about 20 meters away. An uninhabited house, which formerly belonged to Rowena's grandmother, stood between their house and accused-appellants'.[10]

Rowena placed the rice in a plastic bag and dutifully delivered it to accused-appellants' house. Dionisio asked her to come in and then closed the door behind them as soon as she was inside. Rowena was surprised as Alipio held a scythe to her neck. Dionisio embraced her and laid her on a bamboo bed. Rowena resisted, but Alipio threatened her with the scythe pointed to her neck. Dionisio took off his clothes and, after undressing Rowena, lay on top of her. He then forcibly inserted his penis into her vagina, as a result of which Rowena felt pain. After he was through, he got up from the bed and took the scythe from Alipio to let the latter take his turn in abusing Rowena. Alipio lay on top of her and inserted his penis into her vagina. Rowena estimated Alipio must have been inside her for 10 minutes. Rowena felt her vagina bleeding. She was warned not to tell anyone what accused-appellants had done to her. Then she was allowed to go home. When Rowena arrived home, she did not report the incident to anybody for fear of accused-appellants.[11]

In the morning of December 10, 1995, while Rowena was alone in the house, accused-appellant Alipio again came asking for some rice to be replaced later. Rowena told him that they had no rice, but Alipio pulled her and dragged her out of the house. She was taken to the house shared by the brothers, herein accused-appellants. Dionisio stood by the door, leaving Rowena alone with Alipio. Rowena was crying as she begged accused-appellants not to rape her, but accused-appellants were unmoved by her pleas. After undressing her, Alipio lay on top of her, inserted his penis into her vagina, and stayed there for about five minutes. Rowena felt something come out of his penis. When Alipio was through, Dionisio took his turn in ravishing her. Then Rowena was told by accused-appellant to get dressed and go home, after warning her not to report what they had done.[12]

However, Rowena experienced changes in her body as time passed. She felt dizzy in the morning and stopped menstruating. Her stomach started to grow bigger.[13] Sometime in April 1996, Angelyn Tabunda noticed that her sister Rowena had not been menstruating since January and that her stomach was growing bigger. As there had been rumors that someone in their neighborhood was pregnant, Angelyn confronted Rowena regarding her condition. Rowena then disclosed what had happened to her.

Angelyn sought the advice of an aunt, who told her to call her mother abroad and inform her about Rowena's condition. Upon learning what had happened to her daughter, Rowena's mother immediately came home from Saudi Arabia. She accompanied Rowena to the police to report the matter.[14]

Rowena was taken to the Don Amadeo J. Perez, Sr. Memorial General Hospital where she was examined by Dr. Noel U. Obedoza. The medical certificate, dated June 21, 1996, of Dr. Obedoza stated:

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> TO WHOM IT MAY CONCERN:
>
> This is to certify that ROWENA TABUNDA 15 yrs., of San Blas, Villasis, Pangasinan was examined and treated/confined in this hospital on/from June 21, 1996 to OPD
>
> - No sign of any fresh/recent external injuries such as abrasion, contusion, hematoma on examination.
> - Breast-enlarged with highly pigmented and enlarged areola mamae at 5-6 cm. in diameter.
> Abdomen (+) linea negra.
> - Uterus enlarge-fundus 5-6 cm. above the umbilicus, w/ palpable fetal parts, (+) for fetal movements.
> - Hymen-ruptured with old healed lacerations at 7, 12, 3 o'clock.
> - Vaginal introitus admits tip of forefinger with ease.
> - Cervix softish non tender with minimal whitish mucoid discharge.
> - PU 7½ months A/G not in labor.[15]

Dr. Obedoza testified that Rowena's hymen had healed lacerations at the 7, 12, and 3 o'clock positions, indicating that she was no longer a virgin. Dr. Obedoza opined that the lacerations could have been caused by repeated sexual intercourse. He said that the enlarged and highly pigmented nipples and mid-line linear hyperpigmentation on Rowena's abdomen were signs of pregnancy. He examined Rowena's abdomen and found that the height of the topmost level of the uterus was about two inches above the navel. Rowena's cervix was soft, another indication of pregnancy. Dr. Obedoza also sensed some fetal movements inside the womb. He determined the age of the fetus in Rowena's womb to be 7½ months old, fixing the date of conception around December or the latter part of November 1995.[16] On August 26, 1996, Rowena gave birth to a baby boy.[17]

Accused-appellants denied Rowena's allegations. They contended that they could not have raped Rowena because they regarded her as a daughter. From the time she was in the elementary school until she was in the third year of high school, Rowena would ask Dionisio for money, it was explained. According to Dionisio, she stopped doing so only when she went to Manila in April 1996. When she came back from Manila, both accused-appellants had already been arrested for raping her.[18]

Accused-appellants alleged that the filing of the charges against them was due to a quarrel which Dionisio had with Rowena's uncle, Gregorio Carbonell, who also happened to be accused-appellants' second cousin. The quarrel was caused by the noise from Gregorio's radio. Another reason they cited was a disagreement between Alipio and a certain Lito Bino, a cousin of Rowena, over the payment of a case of beer. It appears, however, that Dionisio's quarrel with Gregorio occurred after the filing of this case, while Alipio's quarrel with Lito Bino took place after the first rape incident on November 15, 1995, but before the filing of this case.[19]

Accused-appellants claimed that Rowena was friendly to men and that several men often visited her in their house at all hours of the day. It was claimed that Rowena's brothers and sisters would look for her whenever she was late in coming home. Another witness for the defense, Teresita Navalta, who was also a second cousin of accused-appellants, corroborated the latter's claim. She likewise claimed that Rowena talked to her and told her that Rowena did not really want to file a case against accused-appellants, but that she was afraid of her relatives who wanted to cover up her pregnancy by claiming it was due to rape.[20]

On September 20, 1999, the trial court rendered its decision finding accused-appellants guilty of four counts of rape and sentencing them to suffer the penalty of reclusion perpetua for each count of rape. Hence, this appeal.

Accused-appellants make the following assignment of error:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME OF RAPE WHEN THEIR GUILT HAVE NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

The contention has no merit.

First. Accused-appellants contend that there is no showing that force, violence, or intimidation was employed against complainant during the second incident on December 10, 1995 as she in fact admitted that accused-appellant Alipio was not armed when he took her to their house.

For force or intimidation to exist, however, it is not necessary that a weapon be used by the accused in committing the crime. The force necessary in rape is relative, depending on the age, size, and strength of the parties. What is essential is that the force used is sufficient to consummate the purpose of the offender. Likewise, intimidation is subjective. It is addressed to the mind of the victim and must thus be viewed in light of her perception and judgment at the time of the consummation of the offense. It cannot be tested by any hard-and-fast rule.[21]

In the case at bar, Rowena testified that on November 15, 1995, when she was raped for the first time, a scythe was held to her neck and she was threatened with harm if she shouted for help. On December 10, 1995, when she was raped for the second time, Rowena testified that Alipio dragged her and took her to their house. Alipio clearly had superior strength. He is male, about 50 years old at the time of the rape, and a farmer by occupation.[22] Rowena was just a 15-year old young woman. Female that she is, she was clearly no match to Alipio.

Indeed, at the time of the incidents, Rowena was alone in the house. Her mother was away, working in Saudi Arabia. Her father was dead, while her eldest sister went home only during weekends. Considering these circumstances, it was easy for accused-appellants, exercising some moral ascendancy over Rowena and using threats of violence, to subdue her and make her submit to their lust. Clearly, force and intimidation were employed on both occasions that Rowena was raped.

Second. Accused-appellants question Rowena's credibility as a witness. They claim that the fact that Rowena continued asking for money from accused-appellant Dionisio after the dates she claimed to have been sexually assaulted by them belies her claim of rape. But this claim, even if true, is insufficient to place Rowena's credibility in doubt. If it is true that Rowena would sometimes be given money by Dionisio, this circumstance would have deterred her from imputing so serious an offense as rape to him.

The evaluation of the credibility of witnesses is best performed by the trial judge who had the opportunity to observe the witnesses' demeanor during the trial. The findings of trial courts on questions of credibility are given the highest degree of respect and will not be disturbed on appeal unless it is shown that they have overlooked matters of substance which might have affected the result of the case.[23] When Rowena testified about the first time she was raped by accused-appellant Dionisio, Rowena cried.[24] When asked why she cried, she said that it was because she never thought her uncles could do such a thing to her.[25] Her emotional condition is evidence of the veracity of her claim.[26]

Indeed, Rowena's testimony is straightforward and categorical. It is sufficient to overcome the presumption of innocence in favor of the accused. For when a victim of rape says she was violated, she says in effect all that is necessary to show that rape has been committed against her.[27] Accused-appellants need stronger evidence than mere insinuations to create doubt as to the truth of Rowena's testimony. They simply deny the allegations against them. But denial, like alibi, is an inherently weak defense which cannot prevail over the positive identification of the accused by the victim. Unless buttressed by strong evidence of non-culpability, it is self-serving and deserves no greater evidentiary value than the testimony of the victim who testified on affirmative matters.[28]

Third. Accused-appellants likewise attempts to impute ill motive to Rowena. They allege that these cases were filed because they and Gregorio Carbonell and Lito Bino, both of whom are relatives of Rowena, were at loggerheads with each other. They claim that Rowena was actually impregnated by another person as she was

very friendly with men. Accused-appellants claim that they were merely used by Rowena's relatives as fall guys to hide Rowena's disgrace.

We think the trial court correctly dismissed these allegations. Accused-appellants are relatives of the complainant. The latter could have pointed to some other persons as the culprits had this been her reason for charging rape.

It is also inconceivable that Rowena's relatives would concoct a story of rape over a petty quarrel involving noise from someone's radio and thus subject Rowena to humiliation and shame when precisely her purpose in claiming that she had been raped was allegedly to hide her shame. It is noteworthy that accused-appellant Dionisio's quarrel with Gregorio Carbonell occurred after the filing of these cases. This fact, therefore, could not have been the motive for charging accused-appellants falsely with a crime. As there is no evidence to show any improper motive for filing these cases, complainant's testimony must be accepted and given full faith and credit.[29]

Fourth. Nor did the trial court err in finding that accused-appellants had conspired on both occasions to commit the crime of rape. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The agreement may be deduced from the manner in which the offense was committed. It must be shown that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.[30]

In this case, accused-appellant Dionisio lured Rowena inside accused-appellants' house on November 15, 1995 on the pretext of "borrowing" rice from her. Once she was inside the house, Rowena was held by accused-appellant Alipio, who put a scythe to her neck and warned her that she would be harmed if she did not submit to accused-appellants' desires. Accused-appellants then took turns in abusing her. On December 10, 1995, accused-appellants again helped each other in raping complainant, with one of them guarding the door while the other was raping her. Clearly, accused-appellants acted in concert and with a common design.

As the trial court held, each of the accused-appellants is guilty of four counts of consummated rape. For each is responsible not only for the rape committed by him, but also for the rape committed by the other.[31]

The trial court correctly sentenced each of the accused-appellants to suffer the penalty of reclusion perpetua and to pay civil indemnity of P50,000.00 for each count of rape, pursuant to prevailing jurisprudence.[32] In addition, however, accused-appellants should be ordered to pay moral damages in the amount of P50,000.00 for each count of rape.[33] This award requires no proof of mental, physical, or psychological suffering, which is presumed.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 50, Villasis, Pangasinan, is AFFIRMED, with the MODIFICATION that accused-appellants Dionisio and Alipio Carbonell are ordered to pay complainant Rowena Tabunda y Carbonell moral damages in the amount of P50,000.00 for each count of rape in addition to the award of P50,000.00 for civil indemnity for each count of rape ordered by the trial court.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Rosario C. Cruz.

[2] Records (Crim. Case No. V-0707), p. 26.

[3] Records (Crim. Case No. V-0709), p. 37.

[4] Records (Crim. Case No. V-0708), p. 28.

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[5] Records (Crim. Case No. V-0710), p. 11.

[6] Records (Crim. Case No. V-0709), pp. 38-40.

[7] TSN (Rowena Tabunda), pp. 2-17, Jan. 13, 1997; TSN (Rowena Tabunda), pp. 2-5, March 3, 1997.

[8] TSN (Angelyn Tabunda), pp. 2-7, March 10, 1997; TSN (Angelyn Tabunda), pp. 2-6, July 2, 1998.

[9] TSN (Rowena Tabunda), pp. 3-5, Jan. 13, 1997.

[10] Id., pp. 5-6,17; Exh. A, Records (Crim. Case No. V-0709), pp. 5-7.

[11] Id., pp. 6-10; id, id.

[12] Id., pp. 10-13; id, id.

[13] TSN (Rowena Tabunda), p. 13, Jan. 13, 1997.

[14] TSN (Angelyn Tabunda), pp. 4-6, March 10, 1997.

[15] Exh. C; Records (Crim. Case No. V-0709), p. 9.

[16] TSN (Dr. Noel Obedoza), pp. 4-9, March 12, 1997.

[17] TSN (Rowena Tabunda), p. 14, Jan. 13, 1997.

[18] TSN (Dionisio Carbonell), pp. 3-5, Jan. 13, 1999; TSN (Dionisio Carbonell), pp. 3-5, Feb. 22, 1999; TSN (Alipio Carbonell), p. 4, May 19, 1999.

[19] TSN (Dionisio Carbonell), pp. 8-9, Feb., 22, 1999; TSN (Dionisio Carbonell), p. 9, Feb. 22, 1999; TSN (Alipio Carbonell), pp. 4-6, May 19, 1999.

[20] TSN (Dionisio Carbonell), p. 6, Feb. 22, 1999; TSN (Teresita Navalta), pp. 5-9, April 12, 1999.

[21] People v. Cagun, 303 SCRA 382 (1999); People v. Marabillas, 303 SCRA 352 (1999).

[22] TSN (Alipio Carbonell), p. 2, May 19, 1999.

[23] People v. Jimenez, G. R. No. 137790-91, April 16, 2001.

[24] TSN (Rowena Tabunda), p. 8, Jan. 13, 1997.

[25] Id., p. 14.

[26] People v. Mosqueda, 313 SCRA 694 (1999); People v. Bea, 306 SCRA 653 (1999); People v. Gecomo, 254 SCRA 82 (1996).

[27] People v. Ambray, 303 SCRA 697 (1999).

[28] People v. Sacapaño, 313 SCRA 650 (1999); People v. Silvano, 309 SCRA 362 (1999); People v. Larena, 309 SCRA 305 (1999).

[29] People v. Abrecinoz, 281 SCRA 59 (1997).

[30] People v. Amazan, G. R. Nos. 136251, 138606 & 138607, January 16, 2001.

[31] People v. Quinanola, 306 SCRA 710 (1999).

[32] People v. Caniezo, G. R. No. 136594, March 13, 2001; People v. Bernaldez, 322 SCRA 462 (2000).

[33] People v. Bernaldez, supra; People v. Docena, 322 SCRA 820 (2000); People v. Garces, 322 SCRA 834 (2000).

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