

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. BENJAMIN C. MAGPAYO, ACCUSED/APPELLANT.

G.R. Nos. 92961-64. September 01, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

Appellant Benjamin C. Magpayo was charged with Rape, Robbery, Robbery with Hold-up and Forcible Abduction with Rape before the Regional Trial Court of Malabon in four (4) separate complaints and informations allegedly committed as follows:

Criminal Case No. 6436 (RAPE)

“That on or about the 10th day of April, 1988, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, and by means of force and intimidation, wilfully, unlawfully, and feloniously did, then and there, have sexual intercourse with the undersigned complainant, (Lilibeth Bobis) against her will, a minor who is under 11 years old.

“CONTRARY TO LAW.” (Rollo, p.8)

Criminal Case No. 6437 (ROBBERY)

“That on or about the 10th day of April, 1988 in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of the Honorable Court, the above-named accused with intent to gain, by means of force, violence and intimidation and without the consent of the owner did, then and there, wilfully, unlawfully and feloniously take, rob and divest one LILIBETH BOBIS y BUGAYONG of her cash money amounting to P27.00; to the damage and prejudice of the said LILIBETH BOBIS y BUGAYONG in the aforementioned amount of P27.00.

“CONTRARY TO LAW.” (Rollo, p.9)

Criminal Case No. 6438 (ROBBERY WITH HOLD-UP)

“That on or about the month of February, 1988, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain by means of force, violence and intimidation and without the consent of the owner, did, then and there, wilfully, unlawfully and feloniously take, rob and divest one JACQUILINE YUTUC-JAIME of her gold erring (sic) and gold ring, worth P1,000.00; to the damage and prejudice of the said JACQUILINE YUTUC-JAIME.

“CONTRARY TO LAW.” (Rollo, p.10)

Criminal Case No. 6443 (FORCIBLE ABDUCTION WITH RAPE)

“That sometime during the month of November, 1987, in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, take the person of MARA N. CHICO, who is under 12 years of age, at knife point to a vacant lot where the said accused did, then and there, wilfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge

with the undersigned complainant against her will and consent.

“CONTRARY TO LAW.” (Rollo, p.11)

Upon arraignment, appellant entered a plea of not guilty to all the charges. After trial, he was found guilty at all the offenses charged in a joint decision rendered by the trial court, the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

“1. In Criminal Case No. 6436, finding accused Benjamin C. Magpayo guilty beyond reasonable doubt of the crime of Rape and sentences him to suffer the penalty of reclusion perpetua, to indemnify Lilibeth Bobis in the amount of P30,000.00 as moral damages and to pay the costs;

“2. In Criminal Case No. 6437, finding accused Benjamin C. Magpayo guilty beyond reasonable doubt of the crime of Robbery and sentences him to an indeterminate penalty of one (1) year, seven (7) months and eleven (11) days of prision correccional, as minimum, to six (6) years, one (1) month and eleven (11) days of prision mayor, as maximum, to indemnify Lilibeth Bobis in the amount of P26.00 and to pay the costs;

“3. In Criminal Case No. 6438, finding accused Benjamin C. Magpayo guilty beyond reasonable doubt of the crime of Robbery and sentences him to an indeterminate penalty of one (1) year, seven (7) months and eleven (11) days of prision correccional, as minimum to six (6) years, one (1) month and eleven (11) days of prision mayor, as maximum, to indemnify Jacqueline Yutuc Jaime in the amount of P1,000.00 and to pay the costs; and

“4. In Criminal Case No. 6443, finding accused Benjamin C. Magpayo guilty beyond reasonable doubt of the complex crime of Forcible Abduction with Rape, as defined and penalized under Articles 335 and 342, in relation to Article 48 of the Revised Penal Code and sentences him to suffer the penalty of reclusion perpetua, to indemnify Mara Chico in the amount of P30,000.00 as moral damages and to pay the costs.

“SO ORDERED.” (Rollo, p. 98)

Appellant appeals from the aforementioned joint decision of the court a quo and assigns the following as errors:

I

“THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT IN CRIMINAL CASE NOS. 6436-MN, 6437-MN, 6438-MN AND 6443-MN, DESPITE ABSENCE OF PROOF THAT HE IS THE PERPETRATOR OF THE CRIMES CHARGED.

II

“THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF ROBBERY IN CRIMINAL CASE NOS. 6437 AND 6438 NOTWITHSTANDING FAILURE OF THE PROSECUTION TO ESTABLISH THE ESSENTIAL ELEMENTS OF THE OFFENSE, ASSUMING ARGUENDO, THAT APPELLANT IS THE PERPETRATOR THEREOF.

III

“THE TRIAL COURT ERRED IN APPLYING SECTION 34, RULE 130 OF THE REVISED RULES ON EVIDENCE IN CONVICTING APPELLANT.

IV

“THE TRIAL COURT ERRED IN AWARDING MORAL DAMAGES AND COSTS NOTWITHSTANDING ABSENCE OF CLEAR AND CONVINCING PROOF THAT HE IS GUILTY OR THE PERPETRATOR OF THE CRIMES CHARGED.” (Appellant’s Brief, p.11)

The facts of the cases involved in this appeal are summarized by the Solicitor General as follows:

Criminal Cases 6436 and 6437-MN

“At 9:30 in the morning of April 10, 1988, the 10-year old complainant Lilibeth Bobis, went to the Malabon market to get money from her parents to buy milk for her younger sister. After receiving P26.00 from them, she proceeded to the store near their house but before reaching it, she paused in front of Betsy’s Restaurant near the municipal building. There she was approached by appellant, who accused her of involvement in a theft of coffee. Lilibeth denied the accusation but appellant told her that the thief had a tatoo on the back (tsn, July 25, 1988, pp. 2-3). Appellant then demanded threateningly that she go with him as they would look at some boxes and broken bottles, and for her to tell fully that she had nothing to do with the theft.

“They proceeded to the San Bartolome Church, which they circled twice, and then entered the cemetery beside the church. Once inside, Lilibeth, upon the prodding of appellant, raised her blouse to show that she had no tatoo. But appellant said: “Ano ang gusto mo, kakantutin ka o makakauwi ka ng buhay.” For fear of her life, Lilibeth pleaded with appellant not to kill her. Then appellant removed his shorts and inserted his organ into her mouth while she was seated on the ground. He removed Lilibeth’s shorts and panty and she was made to sit on a bench. Appellant parted her legs and inserted his organ into hers while he was in a standing position.

“After his coitus with her, appellant took the P26.00 of Lilibeth and warned her to keep quiet as he was not alone and that she should not leave until he has gotten out of the cemetery. Lilibeth told appellant to leave and that she would not complain to the police (Ibid., pp. 4-7).

“When she was certain that appellant had already left, Lilibeth put on her clothing and went back to her mother at the market, to whom she told that she was raped. Thereafter, both of them informed her father of the matter and they all proceeded to the police station, where they were advised to go to the National Bureau of Investigation (NBI) to have Lilibeth examined (Ibid., p. 8).

“Upon examination by Dr. Roberto V. Garcia of the NBI at 1:05 PM on the same day, the following findings were revealed:

“Labia majora, gaping. Labia minora, coaptated. Fourchette, tense. Vestibular mucosa, contused. Hymen, originally annular, moderately tall and thick, with healing complete laceration at 3:00; deep laceration at 9:00; and superficial laceration at 7:00 o’clock positions, edges of these are edematous, with fibrin formation, and bleeding on slight manipulation. Hymenal orifice, admits a tube, 2.0 cm. in diameter, with marked resistance. Vaginal walls, tight. Rugosities, prominent.

“CONCLUSIONS:

“1. No evident sign of any extragenital physical injury noted on the body of the subject at the time of examination.

“2. Healing hymenal lacerations present, consistent with sexual intercourse about the time of commission.” (Exhs. “D”, “D-2”)

(Record, p. 47)

“Lilibeth also gave a description of the rapist to the NBI artist, who, on the basis thereof, made a sketch

(Record, p. 52) of the rapist's face, a copy of which was given by her father, Wilfredo Bobis, to the Malabon Police.

"On May 22, 1988, Mr. Bobis was informed that the alleged rapist had been arrested in connection with another case and was being detained at the police station. Lilibeth and her father immediately went to the station where she positively identified appellant as her rapist, after referring to the shape of his nose as "matangos" and the eyes as "singkit". On the same day, Lilibeth was also investigated and she executed a sworn statement (Record, p. 44).

Criminal Case No. 6438 (For Robbery Hold-Up)

"Sometime in February, 1988, private complainant Jacqueline Yutuc Jaime, then 8 years old, was walking alone on Rivera Street in Malabon, Metro Manila, when she was accosted by appellant who accused her of stealing a cart. Despite her denials, appellant insisted that they go to the police station, and Jacqueline consented. Instead, she was brought to the cemetery beside San Bartolome Church where she was divested of her gold earrings and a ring with red stone, valued at P1,000.00, given by her father as a birthday gift. Thereafter, appellant told her to go home (tsn, January 16, 1989, pp. 2-4). Upon arriving home, she told her parents about the incident, after which they immediately went to the police authorities to report the matter.

"On May 22, 1988, she and her mother Emmanuela Yutuc were fetched by the Malabon Police as appellant had just been arrested in connection with another robbery case. At the police station, Jacqueline positively identified appellant as the one who took her jewelry. On the same day, she executed a sworn statement (tsn, April 17, 1989, pp. 4-7; Record, p. 41).

Criminal Case No. 6443-MN (For Forcible Abduction with Rape)

"At 10:30 in the morning of November 20, 1987, then 11-year old Mara N. Chico, herein private complainant, was with her younger brother Daniel in front of King's Store at the Malabon Central Market, upon instruction of their mother to buy "sago". At said place, they were approached by appellant, who asked her if she was involved in a theft of Nescafe coffee, and to which she answered in the negative. Appellant thereafter asked her if she knew someone by the name of Neneng, and when she answered in the affirmative, appellant suddenly poked a sharp instrument at her neck and forced her and Daniel to go with him (tsn, December 12, 1988, pp. 2-3).

"The three then boarded a pedicab and alighted somewhere in Dagat-Dagatan, Navotas, Metro Manila. They walked to a grassy portion where Daniel was told by appellant to stay at a corner, while appellant brought Mara to another portion with "talahib" growth, about four meters away. Appellant then laid her on the ground and removed her shorts and panty, after which he removed his shorts and brief, placed himself on top of Mara, and inserted his organ into hers. Mara cried out because of the pain. Thereafter, appellant left the place (Ibid., pp. 3-5).

"Mara and Daniel then ran towards a nearby motorshop where they told the owner that they were lost. The motorshop owner asked a jeepney driver to take them back to the market, from where they were able to get home. Mara then told her mother what happened (Ibid., pp. 6-7), and both went to the police station of Malabon where they were advised to go to the NBI for examination. The medical examination conducted by Dr. Louella I. Mario at 4:00 PM of the same day revealed the following findings:

"Pubic hair, no growth. Labia Majora and minora, slightly gaping. Fourchette, tense. Vestibular mucosa, congested. Hymen, thin, narrow, with fresh lacerations, complete at 2:00 o'clock and 9:00 o'clock positions and compound at 6:00 o'clock position extending to the fossa navicularis, edges bleeding profusely. Hymenal orifice, originally annular, admits a tube, 2.5 cm. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.

“CONCLUSIONS:

“1. The above-described extragenital physical injury was noted on the body of the subject at the time of examination.

“2. Genital findings compatible with sexual intercourse with man on or about the alleged date of commission.” (Record, p. 38)

“Mara also gave a description of the rapist to an NBI artist who drew the suspect’s face. She likewise executed a sworn statement of the incident (Record, p. 36). On May 22, 1988, appellant was arrested in connection with another crime and, while being detained at the Malabon Police Station, he was positively identified by Mara as the one who abused her (tsn, December 12, 1988, p. 8).” (Appellee’s Brief, pp. 5-13)

In offenses involving rape, this Court has set three (3) basic guiding principles in reviewing such cases: (1) an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two (2) persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense (*People v. Casinillo*, 213 SCRA 777 [1992]; *People v. Calixtro*, 193 SCRA 303 [1991]).

In other words, in resolving whether or not rape was committed, the evidence for conviction must be clear and convincing to overcome the constitutional presumption of innocence (*People v. Tiwaken*, 213 SCRA 701, [1992]).

Appellant vehemently questions the trial court’s decision finding him guilty beyond reasonable doubt because the prosecution witnesses allegedly failed to positively identify him. He avers that when he was arrested to answer for an alleged wrongdoing on May 22, 1988, complainants were hesitant to point at him and kept on looking at their parents.

Under the circumstances, the Court is of the opinion that the lingering shock caused by such harrowing experience at the hands of appellant could have caused the minor complainants to hesitate in directly identifying him. Hence, the fact that complainants kept on looking at their parents is of no moment. They were simply scared, looked at their parents for assurance, and such initial hesitation could by no means indicate that complainants were guilty of fabrication.

Although Lilibeth Bobis admitted that she was not able to immediately identify the appellant at the police station after his arrest, she declared that she thought it over very carefully if the appellant was indeed the offender (TSN, December 15, 1988, p.11) The crime was committed on April 10, 1988 or one (1) month before Lilibeth Bobis was again confronted with the man who had sexually abused her.

Appellant points out, however, that his actual physical features vary with the sketches prepared by the NBI artists based on the description of the offender given by complainants Bobis and Chico (Exhs. 1 and 2). But this is beside the point. Given the immaturity of complainants, it is of course natural that the sketches of appellant based on the descriptions given by them would somehow differ with appellant’s actual physical features.

What is important is that Bobis remembered the square shape of appellant’s face, his eyes to be “singkit” and his nose as “matangos” (TSN, December 15, 1989, pp. 11-15). Indeed, familiarity with the physical features, particularly those of the face, is actually the best way to identify the person (*People v. Reception*, 198 SCRA 670 [1991]).

Appellant tries to convince Us that the respective testimonies of the three complainants identifying him as the guilty party stemmed from theirs being influenced or conditioned by the police authorities to believe that he was the person guilty of the offenses charged; and thus making it appear that the authorities were able to have solved the crimes reported (Appellant's Brief, pp. 28-29).

It is an oft-repeated rule that police officers are presumed to have performed their duties regularly and in the absence of any evidence to the contrary, their testimonies are entitled to full faith and credit (*People v. Tubora*, 212 SCRA 32 [1992]). There being not a scintilla of evidence to prove ill-motive on the part of the police officers in the instant cases, their testimonies are to be respected.

Appellant also argues that the prosecution failed to establish the essential elements of robbery since no evidence was offered by the prosecution to prove that violence or intimidation was inflicted upon complainants.

We disagree. While it is true that complainant Yutuc testified that the man who took her jewelry did not force or hurt her and just asked for her earrings and ring (TSN, February 27, 1989, pp. 5-6), this does not preclude the findings of the trial court that robbery with intimidation was committed. Intimidation is a relative term, just like force and violence, depending on the age, size and strength of the parties and their relationship with each other (*People v. Alvarez*, 213 SCRA 722 [1992]; *People v. Natan*, 193 SCRA 355 [1991]). The offended parties in these cases are of tender ages - all below twelve years of age.

In accordance with the findings of the court a quo, appellant had imputed on Lilibeth Bobis and Jacqueline Yutuc, the commission of the crime of theft which must have inspired fear in their young minds, prompting them to obey the former and not to resist when the appellant deprived them of their personal property, particularly Lilibeth, who also lost her virginity to appellant (Rollo, p. 96; Joint Decision, p. 7).

With regard to the crime of Forcible Abduction with Rape committed against the person of 11-year old Mara Chico, appellant claims that the testimony of complainant Chico should not have been considered by the trial court since it was not corroborated by Chico's younger brother and the pedicab driver.

We find appellant's contention unmeritorious. It is well settled that the testimony of a single witness, free from any signs of impropriety or falsehood, is sufficient to convict an accused, even if uncorroborated. In the instant case, the testimonies of eight-year old Daniel and the pedicab driver would have been merely corroborative. Furthermore, there is no showing that the privilege to present Chico's brother and the pedicab driver was withheld from appellant. In any event, the prosecution has the prerogative to present as many witnesses it deems proper and the non-presentation of some does not militate against the State for the number of such witnesses is addressed to the sound discretion of the prosecuting officers.

Thus, the testimony of Mara Chico, if positive, reasonable and credible, is sufficient to support a conviction especially if her testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner (*People v. Javier*, 182 SCRA 830 [1990]). Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate (*People v. Dela Cruz*, 207 SCRA 632 [1992]).

In the present case, such criteria were more than met by the testimony of the young and innocent victim who could not have possibly concocted her testimony. Where the victims are of tender years, "there is a marked receptivity on its (the Court's) part to lend credence to their version of what transpired," a matter that is not to be wondered at, since the State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority are not yet able to fully protect themselves (*People v. Cabodac*, 208 SCRA 787 [1992] citing *People v. Baylon*, 57 SCRA 114 [1974]).

Indeed, it is inconceivable for a parent of a child of tender age to fabricate a rape charge, subject her daughter to physical examination and embarrassment of a public trial which, if not true, would taint her reputation for the rest of her life. Moreover, no woman especially of tender age would concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by a desire to have the culprit apprehended and punished (*People v. Yambao*, 193 SCRA 571 [1991]).

Just as unavailing is appellant's defense of alibi. He claims that he was at home at Pilapil, Tondo, Manila on November 20, 1987 with his common-law wife and her three minor children. During those days when the crimes charged were committed, appellant denies having gone to Malabon.

However, appellant failed to show that it was impossible for him to be in the crime scene at the time the said crimes were committed. In order to be given full faith and credit, alibi must be clearly established and must not leave any room for doubt as to its plausibility and verity (*People v. Simon*, 209 SCRA 148 [1992]). Indeed, appellant even admitted that he was familiar with San Bartolome Church in Malabon (TSN, September 4, 1989, p.7) and further testified that he used to reside in Longos, Dagat-dagatan and was arrested near the said church on May 22, 1988 on account of having taken the wristwatch of an eleven year-old girl (*Ibid.*, pp. 7 & 9).

It has been repeatedly held that for alibi to prosper, it is not enough to prove that the appellant was somewhere else when the crime was committed, but must likewise demonstrate that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission (*People v. Ocimar*, 212 SCRA 646 [1992]).

Appellant also assails the application of the doctrine of *res inter alios acta* (Sec. 34, Rule 130 of the Revised Rules of Evidence) allegedly because the similarity of the acts involved (i.e., molestation) was not sufficiently established.

After careful review of the records before us, we hold that the trial court committed no error in applying the exception to the above doctrine. The Rules provide:

“Sec. 34. Similar acts as evidence.---Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.”
(Underscoring supplied.)

As a rule, evidence is not admissible which shows or tends to show, that the accused in a criminal case has committed a crime wholly independent of the offense for which he is on trial. It is not competent to prove that he committed other crimes of a like nature for the purpose of showing that he committed the crime charged in the complaint or information.

An exception to this rule is when such evidence tends directly to establish the particular crime and it is usually competent to prove the motive, the intent, the absence of mistake or accident, a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other, or the identity of the person charged with the commission of the crime on trial.

In the case at bar, evidence was introduced in Criminal Case No. 6443 (Forcible Abduction with Rape) committed by appellant against 11-year old Mara N. Chico on November 20, 1987, not as evidence of similar acts to prove that on April 10, 1988, the said appellant also committed a similar act of rape (and robbery) against the person of 10-year old Lilibeth Bobis (Criminal Case No. 6436). These offenses are separate crimes and are the subject of separate complaints and proofs though jointly tried. Hence, the evidence in one was not offered and admitted to

prove the other but only to show the plan, scheme or modus operandi of the offender.

As aptly noted by the trial court:

“It is to be observed that in all the above-entitled cases, the modus operandi of the offender is that of approaching young girls of not more than twelve years of age, and taking advantage of their innocence, imputed to them the commission of a crime and brought them to an isolated place where the offenses charged were committed. These young girls narrated in detail in a clear and convincing manner what the offender did to them and likewise positively identified said offender as herein accused during the investigation at the Malabon Police Station on May 22, 1988 immediately after the arrest of the accused, as well as during the trial. Thus, Section 34, Rule 130 of the Revised Rules of Evidence provides that evidence that one did or did not do a certain thing at one time may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage and the like.” (Rollo, p.28; Joint Decision, p. 6)

Appellant concludes that the prosecution failed to establish his guilt beyond reasonable doubt. It is well-settled that for a conviction to occur, absolute certainty of guilt is not demanded. Only moral certainty as to the presence of the elements constituting the offense, as well as to the identity of the offender, is required; in short, what is needed is that degree of proof which produces conviction in an unprejudiced mind (*People v. Casinillo*, supra). The conscience must be satisfied that upon the accused could be laid the responsibility for the offense charged: that not only did he perpetrate the act but, that it amounted to a crime (*People v. Ramos*, 162 SCRA 804 [1988]).

In the present case, We see no cogent reason to depart from the ruling of the trial court. The prosecution has satisfactorily established beyond reasonable doubt that appellant was the author of the crimes charged in the aforementioned informations. Appellant should not be allowed to escape the punishment he deserves for his bestial acts. As this Court ruled in *People v. Desuyo* (164 SCRA 210 [1988]):

“Defilers of women are an especially despicable ilk of evil men, and more so those who would inflict their lasciviousness upon innocent and defenseless children. They are filthier than the slime where they belong. Whatever punishment is imposed on them can never expiate their loathsome offense, for which forgiveness itself from a mortal court, at least, would be a sin.”

WHEREFORE the appealed judgment is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Feliciano, Romero, Melo, and Vitug, JJ., concur.

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