

THIRD DIVISION

[G.R. No. 120579, November 05, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN ERESE Y BALINGIT, ACCUSED-APPELLANT.

D E C I S I O N

PANGANIBAN, J.:

In denying this appeal, the Court reiterates some familiar doctrines in rape cases: (1) the sole testimony of complainant, if clear and credible, is enough to sustain the conviction of appellant, and (2) alibi and denial cannot prevail over positive identification of the malefactor.

The Case

This is an appeal from the Decision^[1] promulgated November 25, 1994 in Criminal Case No. 735-92, convicting accused-appellant of rape and sentencing him to *reclusión perpetua*.

On complaint^[2] of Emelinda T. Luna, First Asst. Provincial Prosecutor Rodolfo E. Oribello, in an Information dated October 21, 1992, charged Appellant Allan Erese y Balingit with rape committed as follows:^[3]

"That on or about the 8th day of August, 1992 in the [M]unicipality of San Marcelino, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge with Emelinda T. Luna, a girl of 11 years old, (sic) against her will."

After arraignment^[4] and trial in due course, the Regional Trial Court of Olongapo City, Branch 74, rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations and in the light of the above-quoted decisions of the Supreme Court, and finding the evidence presented by the prosecution against the accused to be sufficient, this Court finds said accused guilty beyond reasonable doubt and with moral certainty of the crime of RAPE defined and punishable under the provisions of Article 335 of the Revised Penal Code and pursuant to the said law, this Court hereby sentences him to an [sic] imprisonment of RECLUSION PERPETUA, to pay the amount of P30,000.00 by way of moral damages and to pay the costs, without subsidiary imprisonment in case of insolvency. The accused is entitled to the full period of his preventive imprisonment."

Hence, this appeal.^[5]

The Facts

Version of the Prosecution

In the appellee's brief, the Solicitor General summarized the testimonies of the prosecution witnesses as follows:^[6]

"In the evening of August 8, 1992, [C]omplainant Emelinda T. Luna, barely 13 years old,^[7] was inside the house of [A]ppellant Allan Erese situated at Barangay Consuelo Sur, San Marcelino, Zambales (p. 8, tsn, Nov. 25, 1993). Complainant, at that time, was living, together with her elder brother, in the house of appellant who is the common-law husband of her mother (p. 10, tsn, Ibid.). The two were left there by their mother who left to work in Singapore (pp. 10-11, tsn, Ibid.). Their father is still alive but is living in Isabela province, because he is separated from their mother (pp. 8-9, tsn, Ibid.).Jlexj

Complainant ate her supper alone (p. 18, tsn, Ibid.). After she was through, appellant handed her a glass of water (p. 18, tsn, Ibid.). Several minutes thereafter, complainant felt dizzy so she lay down on the bed situated on the ground floor of the house, while appellant and her brother went out of the house and continued talking with each other in front of the window (pp. 19-20, tsn, Ibid.).

When complainant woke up, she saw appellant, half-naked and holding a knife on top of her (pp. 21-22, 24, tsn, Ibid.). She readily recognized appellant from the light coming from the kerosene lamp beside her (pp. 22-24, tsn, Ibid.). Complainant pleaded to appellant not to do anything bad against her (p. 24, tsn, Ibid.). Appellant merely smiled and started to kiss complainant who resisted by pushing and kicking him (pp. 24, 26, tsn, Ibid.). When finally, appellant was able to remove her clothes, he succeeded in having carnal knowledge of her (p. 26, tsn, Ibid.). Afterwards, appellant called up complainant's brother and told him: "ikaw naman" (p. 36, tsn, Nov. 25, 1993). Complainant's brother followed as he was asked to do and likewise had carnal knowledge of complainant (p. 39, Ibid.).

Since complainant's mother was abroad, she sought the assistance of the friend of her mother, her [A]untie Nelia, who lost no time in referring her complaint to the San Marcelino Police Department (p. 3, Exh. "B").^[8]

Ten days after the incident, complainant was brought to the San Marcelino District Hospital, Zambales by her [A]untie Nelia (p. 40, tsn, Ibid.). Thereat, she was physically examined by Dr. Ricardo Eclarin, Medical Officer of the hospital (pp. 13-14, tsn, April 27, 1994).^[9] Thereafter, a certificate was issued showing: 'Multiple healed laceration - hymen at 4:00-8:00 o'clock position (Exh. "D").^[10]

When the case was referred to the San Marcelino Police Department, Police Investigator Alfredo Layda, who was assigned to the case, took the statement of complainant (p. 3, tsn, April 27, 1994). Thereafter, her statement was subscribed and sworn to before Municipal Judge Edilberto Fabunan of Subic, Zambales (Ibid.)

A complaint was likewise filed against complainant's brother (p. 37, tsn, Nov. 25, 1993). However, an Affidavit of Desistance was executed by complainant and her mother (p. 37, Ibid.). Hence, trial proceeded only against appellant."

Version of the Defense

The defense alleges alibi and denial -- that appellant was not at his house when the alleged rape occurred. He denied raping the complainant, testifying that between 12:00 midnight on August 8, 1992 and 1:00 a.m. on August 9, 1992, appellant attended a wake.^[11] Afterwards, he returned home and immediately left for his neighbor's house which, being five to eight houses away, took him only four minutes to reach.^[12] There, he and his neighbor Rudy Ancheta butchered a hog. At 4:00 a.m., appellant proceeded to the public market where he worked as a butcher.^[13]

He added that he had been living in his grandmother's house with the complainant's mother for two months, when the latter left for abroad. He knew of no grudge or hatred between the complainant and himself and, prior to the incident, they were on speaking terms with each other.^[14]

In corroboration, Ancheta was presented to show that appellant was at his house between twelve midnight of August 8, 1992 and one o'clock early morning of the following day.^[15] According to him, it took them at least three hours to finish butchering a hog, because they had to immerse the butchered pig in boiling water first, before it could be cleaned and chopped into pieces. He insisted that appellant was with him until about four o'clock the following morning.^[16]

Ruling of the Trial Court

The trial court observed that the complainant's testimony, being straightforward and candid, had a ring of truth. It ruled that appellant's moral ascendancy over the complainant facilitated the commission of the crime. While it was true that no witness corroborated complainant's testimony, the lower court concluded that she would not have dared stand the rigors and humiliation of a public trial if she had not indeed been raped by the appellant.

On the other hand, appellant's defense was rejected by the trial court because it consisted merely of alibi and denial. In the absence of clear and convincing evidence, this defense could not prevail over the complainant's positive and categorical testimony.

The Issue

As his lone assignment of error, appellant^[17] submits:

"The lower court erred in finding accused-appellant guilty of the crime of rape without his guilt proven beyond a reasonable doubt."

This Court's Ruling

The appeal is bereft of merit.

Elements of Rape

Carnal knowledge of a woman under any of the following instances constitutes rape: (1) when force or intimidation is used; (2) when the woman is deprived of reason or is otherwise unconscious; and (3) when she is under twelve (12) years of age.^[18] In this particular case, complainant testified that appellant used a knife to force himself upon her. She testified:^[19]

"FISCAL:

q: And what did you do when you woke up?

a: I saw my step father on top of me.

q: When you saw him on top of you, will you describe to the Court how he was attired?

a: He was wearing a short sir and he was half naked up.

q: Now, you said he was on top of you, what was he doing?

a: He brought out his private part sir.

q: What else did he do if any when you saw him on top of you?

a: He kept on kissing my neck sir.

q: You said that your step father or the common law husband of your mother was on top of you, now, what else did you do if any?

a: I was crying sir.

q: How did you know that it was the common-law husband of your mother that was on top of you and who put out his private part and was kissing you?

a: Because there was a light beside me.

x x x

x x

x

x x x

q: Other than your neck, will you tell the Court if you are also kissed by your uncle elsewhere?

a: My neck and my chest sir. (Witness is pointing to her chest).

x x x

x x

x

x x x

q: You said that your uncle was on top of you when you saw him

because of the lighted kerosine (sic) lamp room, what else happened?
a: When he was on top of me, he was holding a knife sir, I kept on pleading to him.

q: What kind of knife was it if you could remember?
a: It was like this long. (Witness indicating about a foot and it was sharp and pointed).

q: What did you tell him if any?
a: I was pleading and crying to him sir not to do anything against me but he just kept on smiling.

q: And did you resisted (sic) or did you tell him to go away or push him when he was on top of you?

a: Yes, sir.

x x x

x x

x

x x x

q: You said that he put out his private part, what did he do with his private part if any?Edâp

a: He inserted it to my vagina sir.

q: When he did that did you resist?

a: Yes, sir.

q: And what actually did you do to resist against the action of the accused in putting his private parts in your vagina?

a: I kicked him sir. (Witness is demonstrating by kicking)..

q: Will you describe to the Court how he was able to put his private part in your vagina?

a: He took hold of his penis sir and inserted to my vagina."

The force employed by the appellant on the victim need not be irresistible. Only such force sufficient to consummate the criminal purpose of the accused is required.

[20] The rape of the complainant is further corroborated by Dra. Margarita Ciervo who reported multiple healed lacerations of the complainant's hymen at the four and eight o'clock positions.[21]

In comparison, appellant's alibi is manifestly puerile. Appellant claims that he attended a wake from 12:00 midnight of August 8, 1992 until 1:00 the following morning. Thereafter, he proceeded to Ancheta's house to butcher a pig. In all, his alibi showed only that he was not at his house after the crime occurred. According to the complainant, she woke up in the middle of the night and found her common-law father on top of her. Appellant's alibi did not preclude his presence at the locus criminis before he went to Ancheta's house, which was barely four minutes away. Aside from its inherent weakness, his alibi was unavailing as against complainant's compelling positive identification of him as her sexual aggressor.[22] That she was able to clearly identify him is shown in her testimony narrating the circumstances of