

THIRD DIVISION

[G.R. No. 143432, April 09, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TERENCIO FUNESTO Y LLOSPARDAS, ACCUSED-APPELLANT.**

DECISION

PUNO, J.:

Through a complaint filed by [REDACTED] on behalf of her minor daughter, AAA, appellant Terencio Funesto y Llospardas was charged with the crime of rape in an information which reads:

“That on or about the 11th day of November, 1991, at 9:00 o’clock in the evening, more or less, in (*sic*) the residence of [REDACTED] located at Barangay [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with criminal intent, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA (*sic*), an eleven-year old minor, against her will.

CONTRARY TO LAW (Article 335, Revised Penal Code).”^[1]

Upon arraignment, Funesto with the assistance of counsel entered a “not guilty” plea. Thus, trial on the merits followed.^[2]

Three witnesses were presented by the prosecution, to wit: AAA, the victim; complainant [REDACTED], the mother of the victim; and Rhodora Gliceria Monton Anino, the doctor who examined the victim.

The evidence for the prosecution shows that the charge of rape occurred on November 11, 1991 in the house of the victim at [REDACTED]. AAA lives in the house with her mother, [REDACTED], her younger sister, [REDACTED], a baby, [REDACTED] and appellant Funesto.^[3] The house has only one room, with Funesto sleeping inside a mosquito net on one side, and AAA inside another mosquito net with her mother and sister at the other side of the room.^[4]

AAA testified that in the evening of November 11, 1991, she was outraged by Funesto, while her mother was leading a prayer in the house of a neighbor and her sister was watching TV.^[5] She was awakened by a stabbing pain in her vagina when Funesto inserted his penis inside it.^[6] She could not move because Funesto was on top of her, with his short pants and brief lowered to his knees. She recognized him because there was a light from the lamp on the floor which illuminated the room. After he was done with his beastly act, he warned AAA not to tell her mother or else he would kill all of them, including the baby.^[7]

In the morning of November 12, 1991, AAA was bleeding and could not stand up. She also had fever which ran for three (3) days. Her mother thought she had just reached the age of puberty and performed on her a ritual usually done on girls reaching puberty. She desisted from informing her mother of the outrage done on her honor for fear that Funesto would kill them. She informed her mother only after Funesto was placed behind bars for another charge of rape he allegedly committed against [REDACTED], her sister. Upon learning of the fate of AAA in the hands of Funesto, [REDACTED] immediately brought her to the hospital where she was examined by Dr. Rhodora Gliceria Monton Anino, and to the police station where their statements were taken.^[8]

Dr. Anino testified that she is a Medical Officer III of the Cabadbaran District Hospital and that she examined the victim, AAA, on February 13, 1992.^[9] Her examination showed that the victim's hymen was already broken and that the "(i)ntroitus admits 1 small finger and virginal vaginal speculum easily."^[10] The witness explained that she inserted her small finger into the victim's vagina and discovered that the finger can be admitted easily as there was no resistance. This procedure is used to determine if the vagina is already slacked. Thus, if the patient is a virgin when the finger is inserted, resistance can be felt. In AAA's case, her vagina admitted the finger inserted by Dr. Anino easily, without any resistance.^[11]

She also found the presence of spermatozoa when she got a specimen from the cervix of the victim. On questions by the court regarding the life span of a spermatozoa, the witness answered that it is variable. She stated that the longest life span of a spermatozoa is seventeen (17) days. Thus, she explained that in the case of AAA, the presence of a spermatozoa in her body even after about three (3) months from the act charged, could be due to further sexual intercourse, the dates of which she could not determine and the victim could not remember.^[12]

[REDACTED], the mother of AAA, claimed that on November 12, 1992, she noticed her daughter bleeding. Thinking that the latter had reached the age of puberty, she performed the old custom done on girls reaching the age of puberty, like brushing her cheek with a red flower, putting cotton on her braided hair and letting her jump three steps on the stairs. However, she said that AAA refused to jump because she could hardly stand. Moreover, she had fever which incapacitated her from going to school for more than a week. [REDACTED] likewise declared that her daughter reported the rape committed by Funesto only on February 13, 1992 because she was warned by Funesto that they would all be killed if she reported the incident.^[13]

[REDACTED] claimed tearfully that as the natural mother of the victim, she could not describe what she felt when she heard about the outrage on the honor of her daughter. Her worries allegedly cannot be compensated by money because her two daughters were raped by the appellant. She demanded justice for them.^[14]

After the prosecution rested its case, the defense presented four (4) witnesses comprised of appellant Funesto, Rosa Acabado, Faustino Traqueña and Jessie Josue.

Funesto denied the charge of rape. He alleged that in the evening of January 4, 1992, complainant [REDACTED] got inside the mosquito net where he was sleeping. She

wanted to have sexual intercourse, but did not pursue her desire.^[15] He got mad because he “looked upon her as a parent.”^[16]

According to Funesto, he went to his office at the EMCO Compound, Magallanes, Agusan del Norte, on February 3, 1992. He wanted to see his foreman, Faustino Traqueña, and to claim his salary for January 3 and 4. However, the company denied that he is an employee or that he worked on January 3 and 4. When he went out of the company compound, three (3) policemen apprehended and brought him to the Municipal Hall of Magallanes. It was there that he learned that a complaint for rape was filed against him by [REDACTED], who confronted him saying, “You beast. (Y)ou cannot give anything in return. I have allowed you to stay in my house, but you raped my daughters.”^[17] Thereafter, the police locked him up.^[18]

On the night of February 4, 1992, Funesto claimed that policeman Racaza came and offered to withdraw the case if he (appellant) could pay P150,000.00,^[19] which offer was lowered to P80,000.00,^[20] and then to P10,000.00. Finally, Racaza told him that they were willing to withdraw the case if no counter charges would be filed against them.^[21] There were other people who also visited him in his cell on February 4, namely: [REDACTED]’s elder sister, [REDACTED], and her husband, [REDACTED]’s eldest son, [REDACTED], and his wife [REDACTED] and their two children.^[22]

On February 13, Funesto learned about the complaint for rape, subject of the case at bar. He said that the first police blotter presented to him alleged November 28, 1991 as the date of the commission of the crime. He told policeman Racaza that he was at Barangay Agao, Butuan on that date attending the wake of his cousin, one Belen Acabado Rosales.^[23] Racaza left and brought with him the copy of the police blotter. On February 20, another affidavit was given to him (Funesto), this time bearing a different date, November 11, 1991, as the alleged date of commission of the crime of rape.^[24] The incident was also recorded in the police blotter.^[25]

Funesto alleged that in the evening of November 11, 1991, he was working as veneer clipper at EMCO. He presented as proofs the certification^[26] issued by foreman Traqueña and the time sheet^[27] issued by the administration office.^[28]

In his cross-examination, Funesto stated that he owns the house where he, the complainant [REDACTED], the victims, AAA and [REDACTED], and [REDACTED] live. From the said house, the EMCO Compound is about a kilometer away, and around ten (10) minutes by foot. He admitted that even during work, he sometimes goes home to his house from the EMCO Compound.^[29]

Rosa Acabado, a former barangay councilor, testified that on November 25, 1991, her daughter, Belen Rosales, was brought to the Provincial Hospital at Libertad, Butuan City by a group of people, among them Funesto. She asked Funesto to stay at the hospital until November 27 as no one could watch over Belen. In the evening of November 28, 1991, Belen died. Funesto, with other people, brought her cadaver to the funeral parlor. He stayed in her house at Noli Me Tangere Street, Agao, Butuan City, from November 29 until the burial on December 3, 1991.^[30]

Faustino Traqueña, the foreman of the Finishing/Recovery section of the EMCO

Plywood Corporation, also testified for the defense. He declared that the employees of EMCO are not allowed to leave its premises, except on emergency cases, during their shift time. On the 7:00 p.m. to 7:00 a.m. shift, their workers are only allowed a thirty-minute break at 12:00 midnight and they stay within the compound. He has a table in the middle of the section where he could see everything but he did not tell where the workers eat during mealtime. He also said that the production report^[31] showed that the output of Funesto on November 11, 1991 was 132 sheets. He opined that if Funesto got out of the work place, he could not produce 132 sheets.^[32]

Jessie Josue, former barangay captain of Barangay Pigdaulan, Butuan City, corroborated the testimony of Rosa Acabado. She declared that Funesto went to her house in the evening of November 25, 1991 to borrow her tricycle to bring Belen Rosales to the hospital. She stayed with them until 4:00 a.m. She likewise saw him on November 27 in the hospital and in the evening of November 28 during the wake of Belen. She claimed that Funesto was in the house of the deceased during the one-week wake. However, upon cross examination, she admitted that while the wake lasted for nine (9) days, she was not there everyday, but only 3 or 4 times.^[33]

The trial court convicted the appellant, thus:

"WHEREFORE, the court hereby finds accused TERENCE FUNESTO Y LLOSPARDAS guilty beyond reasonable doubt for the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code and accordingly hereby sentences him to suffer the penalty of RECLUSION PERPETUA, condemning and ordering said accused to pay the victim AAA (sic) the amount of P100,000.00 as compensatory and moral damages and the amount of P50,000.00 to [REDACTED], the mother of the victim as moral damages.

The accused, in the service of his sentence shall be credited of (sic) the period of his (sic) preventive imprisonment he has so far undergone pursuant to RA No. 6127.

SO ORDERED."^[34]

From this decision, Funesto appealed and raises the lone argument that the trial court erred in finding him guilty beyond reasonable doubt of the crime of rape.^[35] He points out that the medical examination was conducted some three (3) months after the alleged rape and dead spermatozoa was discovered in AAA's cervix. He contends that the sexual abuse "could have been committed by (a) man other than the herein accused-appellant which the court *a quo* failed to clarify at all."^[36] He asserts that the defense of alibi or denial when duly supported by testimonial and documentary evidence should be given credence.

We do not agree. Funesto's argument entails a re-examination of the credibility of witnesses. Well-settled is the rule that the findings of the trial court, its conclusions culled from said findings and its calibration of the testimonial evidence of the parties are accorded great weight, if not conclusive effect, by appellate courts. This is because of the unique advantage of the trial court in monitoring and observing at close range the demeanor, deportment and conduct of the witnesses.^[37]