

SECOND DIVISION

[G.R. Nos. 124830-31, June 27, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERARDO "GERRY"
EVINA Y PADUAL, APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is the appeal of appellant Gerardo Evina from the Decision^[1] of the Regional Trial Court, Tacloban City, Branch 9, finding him guilty of two counts of simple rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count.

On November 21, 1991, two Informations^[2] were filed with the Regional Trial Court of Tacloban City charging the appellant with rape. The accusatory portion of each of the Informations respectively read as follows:

That on or about the 3rd day November, 1991, in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did, then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of one AAA (*sic*) against her will and consent.

CONTRARY TO LAW^[3]

...

That on or about the 7th day November, 1991, in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did, then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of one AAA (*sic*) against her will and consent.

CONTRARY TO LAW^[4]

Upon arraignment on October 16, 1992, the appellant, assisted by his counsel *de oficio*, pleaded not guilty to both charges.^[5] Thereupon, joint trial ensued.

The Case for the Prosecution^[6]

Spouses [REDACTED] and [REDACTED] lived in a one-bedroom house in [REDACTED].^[7] They had a daughter, AAA, who was born on July 15, 1980^[8] and was then a Grade III pupil at the Anibong Community School.^[9] The appellant was the son of [REDACTED]'s second cousin and lived nearby. There were

times when the appellant and an older brother of AAA slept in the attic of the █████ residence. An older sister slept in the bedroom, while the couple and their other children, including AAA, slept in the sala. The appellant eked a living as a porter at a bus terminal located within the city's reclamation area.^[10]

In the evening of November 3, 1991, █████, along with the appellant's mother, went to the barangay captain to check out a cash loan transaction.^[11] Left in the house were █████, AAA, the latter's older sister, and some visitors. █████ was at the balcony whiling away time,^[12] and AAA was busy playing by herself.^[13] Meanwhile, a drinking spree was on-going at the living room.^[14] At around 9:00 p.m., AAA decided to retire for the night. She proceeded to the bedroom and though it was not lighted,^[15] she saw the appellant inside the room, just sitting there.^[16] Unconcerned, AAA went to bed to sleep. But before she finally dozed off, she noticed that the appellant had locked the door.^[17] AAA was suddenly awakened by the appellant, who immediately gagged her mouth with her red dress.^[18] The appellant tied her hands with a big handkerchief and poked a knife at her.^[19] He ordered AAA to keep quiet.^[20] He then took off her undergarment^[21] and undressed himself.^[22] He mounted AAA and thrust his penis into her vagina. The appellant's penis penetrated her vagina by about half an inch.^[23] He then made a push and pull movement.^[24] AAA felt excruciating pain.^[25] While pumping, he ejaculated.^[26] AAA felt something come out from the appellant's penis.^[27] Satiated, he dismounted and untied AAA.^[28] He warned her not to breathe a word of what had happened, otherwise he would kill her and the rest of her family.^[29] The appellant then ordered AAA to leave the room.^[30] AAA did as she was told, and went to the sala where she watched television.^[31] AAA did not tell her father about the harrowing incident because she feared that she and her family might indeed be killed.

Much later, █████ returned home from her errand and noticed the appellant coming out of the bedroom. She did not suspect that anything was amiss. She went into the room and saw her daughter AAA, already sleeping.^[32]

At about 5:00 p.m. of November 7, 1991, AAA was left at home alone.^[33] Her mother had earlier gone to her father's place of work.^[34] AAA was playing at the balcony when the appellant arrived, apparently looking for something.^[35] Thereafter, the appellant called AAA to the bedroom and told her to lie down.^[36] When she refused, the appellant forced her to lie down, gagged her mouth and tied her hands.^[37] He poked a knife at her and touched her thigh. The appellant undressed her, then himself, and inserted his penis into AAA's vagina.^[38] The penis, as before, penetrated the vagina by about half an inch. Again, AAA experienced excruciating pain.^[39] After satisfying his lust, the appellant warned her not to tell anyone about the incident, otherwise he would kill them all. Because AAA had already seen the appellant kill someone,^[40] she feared that the appellant might make good his threat. She did not reveal her traumatic ordeal to her parents or to anyone.

On November 13, 1991, the appellant arrived at the [REDACTED] residence and proceeded to the bedroom. AAA, who was inside the bedroom, ran out and told her mother who was about to leave: "Mama, do not leave us alone. Papa Gerry might rape me again."^[41] [REDACTED] was shocked at her daughter's revelation. She examined the vagina of AAA and saw pus cells and blood. [REDACTED] brought her daughter to the police station, where she was advised to have AAA examined by a doctor.^[42]

The following day, AAA was brought to the Tacloban City Medical Center where she was examined by Dr. Giovanni Zilmar and Dr. Ma. Joyce R. Liao. The physicians' findings were as follows:

OB-GYNE
findings:

External genitalia	— grossly normal
Introitus	— negative hymenal laceration noted
Pelvic exam	— patient refused pelvic exam. — With yellowish slight mucoid discharges noted.
Vaginal smear for TMG	— positive pus cells.
Gram negative diplococci	

X-X-X-X-X-X-X-X-X

Extracellular	(+++)	Vaginal smear- spermatozoa seen
Intracellular	(+++)	^[43]

Because the appellant admitted the authenticity of the Medico-Legal Report, Dr. Giovanni Zilmar's testimony was dispensed with.

The Evidence of the Appellant

The appellant denied the charges and raised the defense of alibi. He claimed that he was a victim of circumstances, and that the charges were fabricated by AAA' family, who hated his guts.^[44]

The appellant testified that on November 3, 1991, he was at a bus terminal in Tacloban City working as a porter until 10:00 p.m.^[45] After work, he left the terminal and went home.^[46] On November 7, 1991, he left early, at around 7:00 a.m., and worked the entire day at the bus terminal until 10:00 p.m. Afterwards, he went straight to his house,^[47] which was about one kilometer away.^[48] He testified that it took him ten to fifteen minutes to walk from his house to the terminal, and vice-versa.^[49]

The appellant declared that [REDACTED] and his family were his neighbors and distant kin, but averred that he had not been to their house for several years.^[50]

On August 14, 1995, the trial court rendered judgment convicting the appellant of two counts of rape, the decretal portion of which reads:

WHEREFORE, premises considered, the Court hereby finds accused GERARDO EVINA Y PADUAL guilty beyond reasonable doubt of the crime of Rape on two (2) counts and considering the age of the victim to be ten (10) years old, the Court hereby imposes upon said accused the penalty of Reclusion Perpetua on each of the above-named cases.

SO ORDERED.^[51]

In convicting the appellant, the trial court discounted the defense of alibi put up by the defense. It ratiocinated that it was not physically impossible for the appellant to be at the scene of the crime, taking into account the geographical proximity of the appellant's house to the [REDACTED] residence. The trial court ruled that AAA's positive identification of the appellant prevailed over the latter's uncorroborated and self-serving alibi. The trial court further stated that the appellant's adamant insistence that he had not visited the [REDACTED] residence for years was far-fetched and contrived, considering that they lived in the same neighborhood and were even blood-related.

The appellant seeks the reversal of the trial court's decision, contending that:

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE EVIDENCE OF THE PROSECUTION THAN THAT OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.^[52]

The appellant argues that the evidence of the prosecution failed to achieve the test of moral certainty. He contends that rape is hard to prove, but harder for him to disprove, even though he is innocent. The testimony of AAA should be carefully scrutinized, and he should not be convicted unless her testimony is found to be impeccable.^[53]

The appellant also asserts that AAA's testimony is incredible as well as inconsistent; hence, barren of probative weight. At first, AAA testified that the appellant followed her to the room and then raped her. But when queried by the court *a quo*, AAA narrated that the appellant was already inside the bedroom when she got there; that she slept, then the appellant woke her up and raped her. The appellant alleges that the inconsistency in her testimony impaired her credibility.^[54] AAA's testimony is even discordant with her mother's account of events: AAA testified that it was on November 7, 1991 when she told her mother that the appellant had raped her, while

██████ testified that AAA made the revelation on November 3, 1991.

The contention of the appellant does not persuade.

The inconsistency in AAA' testimony is too minor and trivial to impair the integrity of the prosecution's evidence as a whole. It cannot affect the veracity or the weight of her testimony. Whether the appellant preceded or followed AAA in the bedroom pertains only to a collateral matter which does not have anything to do with the essential elements of the offenses with which the appellant was charged. What is of primordial importance is that AAA positively, categorically and in a straightforward manner, narrated how and when the appellant raped her. AAA testified, thus:

Pros. Homeres

Q: When you woke up what did he do?

A: He tied my mouth.

Q: What did he use to tie your mouth?

A: My red dress.

Q: Why did he tie your mouth?

A: I do not know.

Q: After your mouth was tied with your dress what did he do?

A: He also tied my hands.

Q: With what material did he use in tying your hands?

A: Handkerchief.

...

Q: After Benedicto Evina alias Gerry tied your mouth and hands what else did he do if any?

A: He pointed a knife at me. (witness points to the left side of her body)

Q: After he pointed a knife to your body what else did he do to you?

A: He took off my panty and then he also took off his pants.

Q: After that what happened?

A: And then he placed his penis in my vagina.

Q: Did his penis penetrate your vagina?

A: It was not able to penetrate deeply.

Q: How long did the penetration take place?

A: It did not take long.

Q: How deep was the penetration of his penis to your vagina, if you can demonstrate?

A: Witness showed her middle finger and showed a length of a little more than ½ of an inch.

Q: Do you know if anything happened to his penis when it