

## SECOND DIVISION

[ G.R. No. 121997, December 10, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANDRES MASAPOL,  
APPELLANT.**

### DECISION

**CALLEJO, SR., J.:**

Before this Court on appeal is the Decision<sup>[1]</sup> of by the Regional Trial Court of Naga City, Branch 28, convicting the appellant Andres Masapol of the crime of Rape, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim AAA the sum of P50,000.00 as damages.

The appellant was charged of rape in an Information, the accusatory portion of which reads:

The undersigned 2<sup>nd</sup> Assistant Provincial Prosecutor, upon a sworn complaint originally filed by the offended party, accuses ANDRES MASAPOL y DOE of the crime of RAPE, defined and punished under Article 335 of the Revised Penal Code, committed as follows:

That on or about 7:00 o'clock in the evening of July 17, 1992, at Barangay [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge with one AAA, against her will.

ACTS CONTRARY TO LAW.<sup>[2]</sup>

On his arraignment on November 5, 1993 the appellant, assisted by counsel, entered a plea of not guilty. <sup>[3]</sup>

#### The Case for the Prosecution

[REDACTED] and his wife AAA resided in a remote area in Barangay [REDACTED]. It was an area where the community did not as yet have the luxury of electric light in their houses.

At around 7:00 p.m. of July 17, 1992, AAA dropped by the store of Marcial Olitoquit to buy kerosene. The store was about 300 meters away from their house. She lighted the wick and used the kerosene lamp to light her way back home. The road to their house was the path usually taken by carabaos going to farm. The road sides were grassy and strewn with coconut trees.

Suddenly, the appellant Andres Masapol appeared out of nowhere and poked a knife at AAA. Before she could shout for help, the appellant covered her mouth with his hand. He warned her not to shout; otherwise, he would kill her. AAA boxed the appellant on the stomach, in an attempt to remove the latter's hand from her mouth. This enraged the appellant. He forthwith slapped AAA and boxed her on the abdomen and on her back. The appellant dragged her off from the trail to a grassy area and forced her to lie down on the ground. AAA let go of the kerosene. It was then when the wick's flame went off. The appellant removed her short pants and her panties even as she kicked and struggled to free herself. Undeterred, the appellant undressed himself and went on top of her. While his right hand held a knife pressed on the base of her neck, the appellant forced AAA to spread her legs. He then inserted his penis with his left hand into her vagina and had carnal knowledge of her. Satiated, the appellant dismounted. He threatened to kill her if she told anyone what he had done. The appellant then left. AAA put on her shorts and sped back towards her house.

At first, AAA balked at the thought of revealing her ordeal to her husband. She, however, relented and told her husband that she was raped by the appellant. Upon hearing this, [REDACTED] was enraged; instead of consoling his wife, he even mauled AAA. He ordered her not to report the incident to the police authorities because he himself would confront the appellant and avenge the travesty that had been committed against her. [REDACTED] saw that his wife's polo shirt was torn under the armpit and that the buttons of her shorts were missing.

Since then, [REDACTED] was on the lookout for the appellant. On August 29, 1992, [REDACTED] armed himself with a bolo and waited for the appellant in the latter's house. Upon seeing the appellant, [REDACTED] chased him and tried to hack him on the head, but the appellant escaped. When apprised of the incident, Nelia Masapol, the appellant's wife, filed a criminal complaint the following day against [REDACTED] with Barangay Captain Ramon Dimagante. A conference was held. AAA executed a statement where she declared that she was raped by the appellant on July 17, 1992 and that when she reported the incident to her husband, he was so infuriated.<sup>[4]</sup> [REDACTED] informed the barangay captain that he chased the appellant and wanted to stab him with his bolo because the appellant sexually abused his wife. When questioned by the barangay captain, the appellant admitted that he had sexual relations with AAA, but averred that the same was consensual.<sup>[5]</sup>

Unable to settle the case, the barangay captain forwarded the same to the San Fernando Police for investigation. On September 24, 1992, AAA gave a sworn statement to SP04 Roger Atacador. She was examined by Dr. Alcantara of the Rural Health Unit of San Fernando on September 14, 1992, who issued a medical certificate thereon. During the preliminary investigation by the Presiding Judge of the MCTC, the appellant offered to settle the case. The judge commented that if the appellant truly wanted to settle, he should pay P33,000.00. The appellant made an offer of P2,000.00, which AAA did not accept. Although the court required him to submit a counter-affidavit, the appellant could not be located and failed to file any. The court, thus, terminated the preliminary examination and investigation of the case and proceeded with trial.

### **The Case for the Appellant**

The appellant admitted having consensual sexual congress with AAA for sometime, even before July 17, 1992. He, however, denied having had carnal knowledge of her on July 17, 1992. He asserted that his daughter Amelia celebrated her birthday that day, and on the said date, he was in their house entertaining guests.

Macaria Mayores, the appellant's first cousin, testified that she was the biological mother of Amelia, and that she gave Amelia to the appellant when the girl was still ten months old. She further testified that she did not register Amelia's live birth since she was busy at that time and that Amelia would after all be adopted by the appellant.

Nelia Masapol, the appellant's wife, testified that they had been celebrating Amelia's birthday on July 17 because it was on that date when Amelia was given to them by Macaria Mayores.

Juana Chavez, a neighbor of the appellant, testified that on July 17, 1992, she was at the appellant's residence, and helped prepare the food and serve the guests at Amelia's birthday party. The appellant was in the house the whole day, while Juana testified that she stayed there from 4:00 p.m. until around 8:00 a.m. the following day.

Teresita Canaco, a barriomate of both AAA and the appellant, testified that she had a conversation with AAA in the courthouse during the trial. AAA admitted to her that she only concocted the story of rape because her husband [REDACTED] had maltreated her while being asked to confess. To stop the beating, AAA just told her husband that she was raped by the appellant.

On rebuttal, the prosecution adduced in evidence the baptismal certificate of Amelia Masapol, showing that she was born on September 19, and not July 17.<sup>[6]</sup>

After the parties adduced their testimonial and documentary evidence, the trial court rendered its Decision on November 21, 1994, finding the appellant guilty beyond reasonable doubt of the crime charged, sentencing him to suffer the penalty of *reclusion perpetua*. The decretal portion of the decision reads:

WHEREFORE, in view of all the foregoing findings that the prosecution was able to prove the guilt of accused ANDRES MASAPOL of the crime of rape of which he is presently charged beyond reasonable doubt, judgment is hereby rendered whereby the accused is sentenced to suffer the penalty of *reclusion perpetua* and to pay the complainant damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS. With costs de oficio.

SO ORDERED.<sup>[7]</sup>

In his appeal brief, the appellant assails the decision of the trial court, alleging that:

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED OF THE CRIME AS CHARGED DESPITE INSUFFICIENCY OF EVIDENCE TO WARRANT SUCH CONVICTION.<sup>[8]</sup>

The appellant asserts that the prosecution failed to prove that he forced and intimidated AAA into having intercourse with him. He contends that the testimony of AAA is inconsistent with her statement to the barangay captain. The prosecution even failed to adduce any medical certificate to corroborate her testimony. He contends that the fragility of the evidence for the prosecution is highlighted by the following:

*First.* AAA testified that the kerosene lamp she was holding fell on the side while she was being dragged by the appellant, and its light went out. However, in her statement to the barangay captain, she declared that it was the appellant who blew the light off.

*Second.* AAA testified that she was dragged for about 100 meters away from the trail to a grassy place, and that the appellant had boxed and slapped her. However, the prosecution never presented any medical certificate showing that she sustained bruises or other injuries. The prosecution likewise failed to adduce in evidence the panty and shorts AAA was wearing to show that her clothings had been torn.

*Third.* AAA declared that she could not shout because the appellant's hand was covering her mouth, and even if she shouted, no one would hear her as there were no houses nearby. However, she contradicted herself when she declared in her statement to the barangay captain that she was raped near the house of one Manuel Calinog.

*Fourth.* AAA testified that after she was raped by the appellant, she put on her panty and shorts and walked home crying and upon arriving home immediately told her husband, [REDACTED], about the incident. However, in her statement to the barangay captain, she declared that it was only three days after she was raped by the appellant that she told her husband [REDACTED] about it.

The appeal has no merit.

For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused.<sup>[9]</sup> Even if the offended party may have erred in some aspects of her testimony, the same does not necessarily impair her testimony nor corrode her credibility. The modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case. The doctrine of *FALSUS IN UNO FALSUS IN OMNIBUS* deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application.<sup>[10]</sup> What is vital is that the act of copulation be proven under any of the conditions enumerated in Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.<sup>[11]</sup>

The general rule is that contradictions and discrepancies between the testimony of a witness in contrast with what was stated in an affidavit do not necessarily discredit her.<sup>[12]</sup> Affidavits given to police and barangay officers are *ex parte*. Such affidavits are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer. <sup>[13]</sup> The discrepancies in AAA' affidavit (Exhibit "B") and her