

SECOND DIVISION

[G.R. No. 131200, February 15, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO CASTILLO Y FELICILDA, ALLAN ESPLANA Y BONCODIN, OLIVER VAIDAL Y ALMOGEN, AND PABLITO JAVIER JR. Y CASTRO, ACCUSED-APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] of the Regional Trial Court of Pasay City, Branch 109, in Criminal Cases Nos. 97-9946 and 97-9947 involving gang rape. Appellants Mario Castillo, Allan Esplana, Oliver Vaidal and Pablito Javier, Jr., were found guilty beyond reasonable doubt of two counts of rape, and each was sentenced to suffer the penalty of *reclusion perpetua*.

Two charges of rape were brought against them under two separate informations, which read:

Crim. Case No. 97-9946

That on or about the 25th day of February, 1997, in Pasay, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MARIO CASTILLO Y FELICILDA, in conspiracy with his co-accused ALLAN ESPLANA Y BONCODIN, OLIVER VAIDAL Y ALMOGEN and PABLITO JAVIER, JR., Y CASTRO, while under the influence of liquor, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, MA. CHALET (sic) AGUSTIN Y ADUYUGAN, a minor 15 years of age, against her will.

Contrary to law.^[2]

Criminal Case No. 97-9947

That on or about the 25th day of February, 1997, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, ALLAN ESPLANA Y BONCODIN in conspiracy with his co-accused MARIO CASTILLO Y FELICILDA, OLIVER VAIDAL Y ALMOGEN, and PABLITO JAVIER JR. Y CASTRO, while under the influence of liquor, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, MA. CHANET AGUSTIN Y ADUYUGAN, a minor 15 years of age, against her will.

Contrary to law.^[3]

When arraigned on April 21, 1997, appellants pleaded not guilty^[4] to both charges. Hence, trial on the merits ensued.

The prosecution's version of the facts are based largely on the testimony of private complainant, 15-year-old MA. CHANET AGUSTIN. According to her, on February 25, 1997, at around 7:00 P.M., she was walking home along Yakal St., Mulawin, Maricaban, Pasay City, when she chanced upon appellants Allan Esplana and Oliver Vaidal in front of the store of appellant Mario Castillo.^[5] Oliver invited her to a drinking spree which the latter accepted, since she knew appellants and trusted Allan who was her boyfriend of five months.^[6] They proceeded to a place located near her house alongside a river and began to drink a bottle of Tanduay Gold rum with Pop Cola as chaser. They were joined by appellant Pablito Javier, Jr., whose house was nearby.

After finishing one bottle of which she drank five shots,^[7] according to her, Allan began kissing her on the cheeks and lips. She told Allan to stop but the latter persisted.^[8] While drinking a second bottle, Allan continued kissing her, touched her breasts and other parts of her body. She tried to remove his hands but Allan would not stop.^[9] Subsequently, Allan held her by the right arm and took her to the back of a pigpen, eight to ten meters away. In a standing position, Allan resumed kissing her^[10] and then requested her to lie down on a large cardboard spread on the ground.^[11] She repeatedly told Allan to stop. But as they lay on the cardboard, Allan lowered her denim pants and underwear, and also his own shorts. Thereafter, he inserted his penis into her vagina. She said that she tried to fight and push Allan away for ten minutes,^[12] but she was too weak to slap nor kick Allan, nor shout for help, because she was too drunk and her voice would not come out.^[13] Allan's carnal lust was satisfied in 30 minutes.

She recalled that Mario, Oliver, and Pablito stood by, watching and laughing at a distance of four to five meters while she was being abused by Allan. Then, after Allan finished having intercourse with her, Mario lowered his pants and pulled out his penis. He sucked her breasts for half an hour while lying on top of her. She tried to push Mario away with her hands, but he got off her only when she vomited.^[14]

She remembered she asked Allan for help and the latter went to her, wiped her mouth and raised her underwear and pants. Afterwards, Oliver left, followed by Mario and Pablito. Allan stayed awhile and helped her sit up. Not long after, Allan's mother arrived and ordered Allan to go home. She was left alone under one of the houses. By then, it was already 10:00 o'clock in the evening.^[15]

ANGELINA ADUYUGAN-AGUSTIN, mother of Chanet, testified that her daughter was fifteen (15) years old. Her birth certificate showed she was born on August 24, 1981.^[16] According to her, she became worried when Chanet, her youngest daughter, did not come home on time. She looked for her and inquired where she could be from her classmates and teacher.^[17]

It was Chanet's sister, ELIZABETH AGUSTIN-BONSO,^[18] who found Chanet in a semi-catatonic state. A neighbor told her of her sister's whereabouts. Chanet told her that Allan and Mario raped her. Elizabeth brought her sister home and asked a neighbor to help bring Chanet to the police station.^[19]

The neighbor who told Elizabeth about Chanet's whereabouts was 13-year-old JERWIN CANTERO.^[20] Jerwin testified that he was dumping garbage in the river at 8:30 P.M. on February 25, 1997, when he saw Chanet and appellants drinking by the riverside. When he returned to the place minutes later, he saw Allan already completely naked and lying on top of Chanet, who also did not have any clothes on. Mario was also undressed. According to Jerwin, Mario went on top of Chanet after Allan had finished with her. He said he did not notice Chanet move nor do anything since she appeared unconscious. Jerwin said that he also saw Oliver kiss Chanet on the cheeks and lips. At this moment, he saw her feet moving. Soon after, Allan noticed him and pointed toward his direction. He scampered away and called Elizabeth. They found Chanet crying, dizzy, and drunk under one of the houses.^[21]

SPO3 RODOLFO SOQUIÑA^[22] testified that on the evening of February 25, 1997, Chanet, her sister, and a male companion arrived at the Maricaban police station. Chanet named Mario, Allan, Oliver, and Pablito as her abusers. With the assistance of Benjamin Clariza, the *barangay* captain of the neighboring *barangay*, SPO3 Soquiña found the appellants and invited them for questioning.^[23]

SPO3 MILAGROS CARRASCO and SPO2 Emma Valenzuela, policewomen assigned at the Women's Desk, took the sworn statement of Chanet on the rapes. Chanet recalled what happened to her. SPO3 Carrasco testified that she told Chanet to proceed to the National Bureau of Investigation (NBI) for medical examination.

DR. ANABELLE SOLIMAN of the National Bureau of Investigation (NBI) testified that she found "superficial fresh laceration at 5:00 o'clock position superimposed upon a notch," which indicated that Chanet was a virgin prior to the incident. There were spermatozoa in the vaginal canal,^[24] but no external injuries were found on the victim's body. Semen was also present in the crotch area of Chanet's denim pants.^[25]

PET BYRON BUAN, NBI forensic biologist, testified that he conducted biological examination on the blouse, panty and maong pants of Chanet. He testified that the denim pants gave positive result for the presence of seminal stain, while the panty and blouse were negative.^[26]

After the testimonies of the private complainant and other prosecution witnesses were completed, the defense presented its evidence.

Appellant OLIVER VAIDAL testified that he and Allan were at the store of Mario playing the guitar, when Chanet passed by at around 2:00 P.M.. She stayed for around 30 minutes, confiding to Allan that her family was being ejected from the house they were renting, and it meant that she would no longer be able to see him.^[27] Chanet then offered Allan money to buy some liquor. Allan refused and told her that he did not want to drink with a girl. Hence, according to Oliver, she gave the money to Oliver and he accompanied her to a nearby store. They returned with a

bottle of Tanduay Gold and Pop Cola.^[28]

According to Oliver, Allan initially suggested that they drink in the house of one Noel Bersola in Bayanihan. However, Noel was still at work and so they ended up at the riverside on the suggestion of Chanet.^[29]

At 6:00 P.M., according to Oliver, Mario Castillo joined them. Pablito Javier, Jr., who lived nearby, arrived later. After finishing one bottle, they pitched in some amount to buy another bottle of rum because Chanet wanted to drink some more. Before they were through with the second bottle, Allan stated in his testimony, Pablito went home.^[30]

Mario Castillo and Oliver Vaidal claimed that after they finished the second bottle, they left Allan and Chanet to themselves.^[31] Pablito and Oliver both denied Chanet's allegation that they watched Allan and Mario have sexual intercourse with her. Mario likewise denied ever touching Chanet.

On the witness stand, ALLAN ESPLANA admitted that he had sex with Chanet. He said that when Chanet became tipsy, she became talkative and started embracing him. According to Allan, she suggested they elope, but he told her that this was not possible because he still wanted to help his parents. She got angry.

When the others left, Chanet began touching Allan. He became aroused and had sex with her. After consummating their mutual lust, Allan volunteered to take her home. However, Chanet refused and insisted to stay. While convincing her to go, his mother arrived and ordered him to go home.

Allan added that at the time of the incident, he was madly in love with Chanet. He claims that Chanet became angry with him because he refused to run away with her. He added that he still had some affection for Chanet.^[32]

In a decision dated October 3, 1997, the trial court rendered judgment convicting appellants. Its dispositive portion reads:

In view of all the foregoing, the Court finds that all four (4) accused Allan Esplana y Boncodin, Mario Castillo y Felicilda, Allan Vaidal y Almogen, and Pablito Javier Jr. y Castro guilty beyond reasonable doubt for the crimes of Rape as defined and penalized under Art. 335 of the Revised Penal Code as amended and hereby sentences each of them to RECLUSION PERPETUA and there being evidence that the victim was gang raped by all the accused for each of them to pay civil indemnity in the amount of P150,000.00.

SO ORDERED.^[33]

Hence, this appeal. Appellants now contend that THE TRIAL COURT:

I

ERRED IN DECIDING THAT THERE WAS RAPE COMMITTED. THE ACTS AS NARRATED BY THE COMPLAINANT HERSELF MA. CHANET AGUSTIN DO

NOT CONSTITUTE THE CRIME OF RAPE AS DEFINED AND PENALIZED BY LAW.^[34]

II

FAILED TO APPRECIATE THE EVIDENCE FOR THE PROSECUTION PARTICULARLY THE INCONSISTENCIES, CONTRADICTIONS AND EVEN LIES COMMITTED BY THE OFFENDED PARTY MA. CHANET AGUSTIN.^[35]

The principal issue in this case is whether or not rape, as defined by Article 335^[36] of the Revised Penal Code, had been committed by appellants beyond reasonable doubt.

Appellants contend that they must be acquitted because Chanet consented to the sexual act with Allan Esplana. Neither force nor coercion was present, according to them. They claim that private complainant offered no real struggle against or resistance to the sexual encounter with Allan. She did not shout for help, and her allegation that she dissuaded her boyfriend was not resistance considering that if she really resisted she could have gotten help since the place was a thickly-populated squatters' area.

As to the alleged rape by appellant Mario Castillo, appellants submit that Mario's sucking and fondling Chanet's breasts did not constitute rape. There was no penile penetration, according to them.

Appellants also contend that the trial court's observation that Chanet was drunk and weak at the time of the incident is not supported by the evidence. Chanet categorically admitted that she was in full control of her senses and was even able to give a detailed account of her alleged ordeal. Further, there were inconsistencies in Chanet's testimony. Thus, they vehemently deny Chanet's accusations of rape.

For the appellee, the Office of the Solicitor General (OSG) maintains that appellants' conviction should be sustained. The OSG contends that Chanet's weak resistance and failure to shout was because she was drunk. According to the OSG, penile penetration by Mario Castillo is clear from the victim's narration. The OSG asserts that the inconsistencies pointed out by appellants are inconsequential and do not detract from Chanet's credibility as a witness. It concludes that the appeal lacks merit and should be denied.

As held in *People vs. Docdoc*,^[37] the testimony of the offended party in a rape case should not be received with precipitate credulity for the charge can be easily concocted. In any prosecution for rape the testimony of the complaining witness if credible would be sufficient to convict the accused.^[38] Hence, the greatest degree of care and caution must be exercised before full faith and credit is given to complainant's testimony. Basic is the rule that the testimonial evidence should come not only from the mouth of a credible witness but it should also be credible, reasonable, and in accord with human experience.^[39]

In the present case, we find certain improbabilities and contradictory statements in complainant's testimony that prevent us from giving full credence to her complaint that she was gang raped.