

FIRST DIVISION

[G.R. No. 140205, September 03, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOHNNY DELA CONCHA Y DECIPULO ALIAS "JON-JON,"
ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., C.J.:

Accused-appellant Johnny dela Concha (hereafter JOHNNY) seeks a review of the 2 August 1999 Decision^[1] of the Regional Trial Court, Branch 39, Lingayen, Pangasinan, in Criminal Case No. L-5886, finding him guilty of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim Wiffany Jean Urmatan (hereafter WIFFANY) the amount of P75,000 by way of civil indemnity and P25,000 as moral damages, plus the costs of the suit.

Upon a verified complaint^[2] for rape signed by Purificacion C. Urmatan, WIFFANY's mother, an information^[3] for rape was filed against JOHNNY, the accusatory portion of which reads as follows:

That on or about the 23rd day of April 1998, in the afternoon, at Barangay Biec Duyao, Municipality of Binmaley, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have sexual intercourse with Wiffany Jean Urmatan, a minor three (3) years and ten (10) months old, to her damage and prejudice.

Contrary to Article 266-A of the Revised Penal Code.

At his arraignment on 15 September 1998, JOHNNY entered a plea of not guilty.^[4] Trial on the merits ensued thereafter.

The prosecution presented the following witnesses: Purificacion Urmatan, Dr. Mary Gwendolyn Luna, Joel Pioquinto, Ligaya dela Concha, Concepcion dela Concha, and WIFFANY. Their testimonies established the following facts:

At about 3:00 p.m. of 23 April 1998, three-year-old WIFFANY,^[5] then playing with one Dandan, was called by JOHNNY to come over to his house. Once inside the house, he removed her panty; placed her on his lap, facing him with her legs spread; and inserted his penis into her vagina while pulling her towards him. WIFFANY felt pain and pleaded JOHNNY to stop. He ignored her pleas. Having consummated his bestiality, JOHNNY let her go.^[6] WIFFANY then ran to her grandmother Concepcion dela Concha (hereafter Mama Conching) and reported to the latter what JOHNNY had done to her. Seeing blood oozing from WIFFANY's vagina, Mama Conching wiped it with a shirt.^[7]

On the same day, WIFFANY was examined by Dr. Mary Gwendolyn Luna at the Region I Medical Center, Dagupan City. Dr. Luna found deep fresh hymenal laceration at 6:00 o'clock position and fresh abrasion on WIFFANY's labia minora. She also obtained sample stains from WIFFANY's vaginal canal, which yielded positive result for the presence of spermatozoa.^[8] The following day, a verified complaint for rape was filed against JOHNNY.

For his part, JOHNNY testified that he was 16 years old at the time of the alleged incident and he is a first cousin of WIFFANY's mother. He vehemently denied having committed the offense charged. He claimed that upon entering their house at around 3:00 p.m. of 23 April 1998, he saw WIFFANY crying aloud and saying "*baba-baba*," referring to his grandfather's swing made of discarded rubber tire. He then asked her to stop crying. WIFFANY persisted to cry. Afraid that the neighbors might think that he was maltreating her, he again told WIFFANY to stop crying. Still, WIFFANY kept crying. Left with no recourse, JOHNNY told WIFFANY to get out of their house; but she remained inside the house and continued to cry. He then brought her to Mama Conching's house situated a few meters away from their house.^[9]

While JOHNNY was on his way home, he was confronted by his mother whether he knew what happened to WIFFANY. After answering in the negative, he was slapped by his mother. He thereupon returned to Mama Conching's house. There, he got the shock of his life when he was accused by Mama Conching of having raped WIFFANY. Afraid of the accusation, JOHNNY left their place and proceeded to Bolinao, Pangasinan, where he stayed for three months.^[10]

Sherlita dela Concha, mother of JOHNNY, testified that from 2:00 to 3:00 p.m. of 23 April 1998 she was seated by the door of their house watching people who were playing "*tong-its*." Her daughter Julie dela Concha was inside their house, as she was afflicted with chicken pox and had fever. Sherlita corroborated JOHNNY's declaration that he was indeed by the roadside and that JOHNNY had asked oysters from Narsing, Lito and Alfred who were then having a drinking spree.^[11]

Julie dela Concha, sister of JOHNNY, testified that on 23 April 1998 she was home just watching television with Windy Mae and Windy Rose, as she was afflicted with chicken pox. At around 3:00 p.m., WIFFANY entered their house; she never said the words "*Si Jon-jon, inturok toy otin to ed baok*"; instead, she said "*baba-baba*," which means hammock in English. At the time, JOHNNY was not yet home; he was at the roadside about 100 meters away from their house.^[12]

The trial court gave full faith and credence to the testimony of WIFFANY. While conceding that WIFFANY's narration of how she was sexually abused by JOHNNY was not "detailed," the trial court, nonetheless, concluded that it was candidly related by one of such a tender age. Moreover, it declared that in statutory rape, the crime is not negated by the young victim's failure to give a detailed account of how she was abused. As stated earlier, the trial court convicted him of rape and sentenced him to suffer the penalty of *reclusion perpetua* and to pay WIFFANY the amount of P75,000 by way of civil indemnity; P25,000 as moral damages; and the costs of suit.

In his Appellant's Brief,^[13] JOHNNY asserts that the trial court erred in (1) giving full faith and credence to the "coached" testimony of WIFFANY; (2) convicting him of rape and imposing on him the penalty of *reclusion perpetua*; and (3) ordering him

to pay the victim the amount of P75,000 by way of civil indemnity and P25,000 as moral damages.

In support thereof, JOHNNY questions the credibility of WIFFANY. He states that just before the proceedings in the trial court, WIFFANY was coached by her counsel and family members into falsely testifying against him by luring her with material things.

JOHNNY also asserts that his alibi of being at the roadside at the time of the commission of the crime was fully corroborated by the testimonies of Sherlita and Julie. He likewise points to his non-flight after the incident as an indication of his innocence. If indeed he committed the crime, he would have immediately left the premises. He further claims that the family of WIFFANY had a motive to falsely charge him with rape because of harbored ill-feelings against JOHNNY's family generated by the following: (a) refusal of his parents to join WIFFANY's grandfather, Benito dela Concha, in his political affiliations; (b) conflict concerning their respective inheritances from their predecessors-in-interest; and (c) alleged rumor mongering of Sherlita that the grandfather of WIFFANY was accused of estafa.

In the Appellee's Brief,^[14] the Office of the Solicitor General (OSG) asseverates that appellant's failure to comply with the formal requirements of an appellant's brief is fatal to his appeal. It points to the lack in the Appellant's Brief of (a) table of cases cited; (b) statement of issues; and (3) page references to the record in the Statement of the Case and in the Statement of Facts. It also argues that JOHNNY's alibi and the testimonies of his witnesses corroborating the same cannot prevail over WIFFANY's testimony, which the trial court found to be credible and convincing. Moreover, the medical evidence on record fully supports WIFFANY's testimony. The lame assertion of JOHNNY that WIFFANY was lured by her family and counsel into falsely testifying against him by reason of her family's harbored ill-feelings against JOHNNY's family is totally baseless. Finally, the OSG prays that the decision of the trial court be affirmed *in toto*.

We shall first address the procedural issue raised by the Solicitor General regarding the contents of the Appellant's Brief. Under Section 13, Rule 44 of the 1997 Rules of Civil Procedure, in relation to Section 7 of Rule 124 and Section 1 of Rule 125 of the Revised Rules of Criminal Procedure, the appellant's brief must contain the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

(b) An assignment of errors intended to be urged...;

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, *with page references to the record*;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof related

thereto in sufficient detail to make it clearly intelligible, *with page references to the record*;

(e) A clear and concise *statement of the issues* of fact or law to be submitted to the court for its judgment;

(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report which the citation is found;

(g) Under the heading "Relief," a specification of the order or judgment which the appellant seeks; and

(h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from. (Italics supplied)

These requirements are intended to aid the appellate court in arriving at a just and proper conclusion of the case.^[15]

Indeed, the Appellant's Brief filed in this case does not contain a table of cases or authorities cited. It must be pointed out that this requirement is not just a trivial technicality. It is designed to provide ready and easy reference so that the reviewing court does not have to go over the Brief page after page to locate a particular citation.^[16]

Moreover, while there is an assignment of errors in the Appellant's Brief, no statement of issues can be found therein. A statement of issues is not to be confused with the assignment of errors; they are not one and the same, for otherwise the Rules would not require a statement for each. An assignment of errors sets forth the specific errors claimed to have been committed by the lower court in order to enable the appellate court and the opposing party to see on what points the appellant intends to ask for a reversal of judgment.^[17] On the other hand, a statement of issues puts forth the question of fact or law to be resolved by the reviewing court.^[18]

Furthermore, the Statement of the Case and the Statement of Facts lack page references to the record. It has been held that a statement of fact unaccompanied by a page reference to the record may be presumed to be without support in the record and may be stricken or disregarded altogether.^[19]

Be that as it may, these procedural lapses are not fatal. The case of De Liano cited by the OSG is not on all fours with the present case. In that case, the non-compliance with the procedural requirements justified the dismissal of the appeal by the Court of Appeals. The appellant's brief therein lacked a subject index and a table of cases; moreover, the Statement of the Case, Statement of Facts and Arguments had no page references to the record. Under Section 1(f), Rule 50 of the 1997 Rules of Civil Procedure, in relation to Section 18 of Rule 124 of the Revised Rules of Criminal Procedure, one of the grounds for the dismissal of appeals filed with the Court of Appeals is absence of page references in the following: subject index, table of cases and authorities cited, Statement of Facts, Statement of the Case, and

Arguments, as required under Section 13, paragraphs (a), (c), (d), and (f) of Rule 44 of the 1997 Rules of Civil Procedure.

Such procedural infraction is not, however, among the grounds for dismissal of appeals filed with this Court as provided for under Section 5 of Rule 56 of the 1997 Rules of Civil Procedure, in relation to Section 18 of Rule 124 and Section 1 of Rule 125 of the Revised Rules of Criminal Procedure. Hence, the procedural infirmities of the Appellant's Brief filed in this case do not warrant a dismissal of herein appeal.

We are not unmindful of the ruling in *People v. Fabula*^[20] wherein the deficiencies of the appellant's brief filed in an appeal before this Court were held to be fatal. In that case, the appellant, in his Appellant's Brief, directly proceeded to discuss his arguments. His Brief contained no subject index, statement of facts, statement of the case, assigned errors, statement of the issues, and prayer. Indeed, such omissions are fatal, since they refer to the substantive contents of an appellant's brief. This is not so in the present case.

Nonetheless, it is well-worth to remind lawyers once again that the right to appeal is but a statutory right, and the party who seeks to avail of it must faithfully comply with the rules.^[21] These rules are designed to facilitate an orderly disposition of cases before the appellate courts; they provide for a system under which suitors may be heard in the correct form and manner at the prescribed time in an orderly confrontation before a magistrate.^[22]

The present appeal must, however, fail – not in form but rather in the merits.

Settled is the principle that the finding of the trial court on the credibility of witnesses are entitled great weight on appeal unless cogent reasons are presented necessitating a reexamination, if not a disturbance of the same. The reason therefor is that the trial court is in a better and unique position of hearing first-hand the witnesses and observing their deportment, conduct and attitude.^[23]

A careful scrutiny of the records reveals no cogent reason requiring a disturbance of the trial court's findings. We agree with the trial court in giving full credit and merit to WIFFANY's testimony that she was raped. It is doctrinally settled that the lone testimony of a rape victim is, by itself, sufficient to convict if credible.^[24] This is so because from the nature of the crime the best evidence that can be offered to establish the guilt of the accused is the complainant's testimony. In the instant case, WIFFANY has established unequivocally in the answers she gave under direct examination how she was ravished by JOHNNY; thus:

Q What were you doing with Dandan at Duyao on April 23, 1998 at about 3:00 o'clock in the afternoon?

A I was playing.

Atty. Tolete:

Q While you were playing with Dandan, do you remember that you saw Jun-jun dela Concha?

A Yes, sir.

Q What did Jun-jun do?