

THIRD DIVISION

[G.R. No. 123099, February 11, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRISANTO OLIVER, ACCUSED-APPELLANT.**

DECISION

PANGANIBAN, J.:

In denying this appeal, the Court reiterates the following doctrines: (1) the trial court's assessment of the credibility of witnesses and their testimonies is entitled to great respect; (2) the presence of spermatozoa in the sex organ of the victim is not necessary to prove rape; and (3) alibi is a weak defense and cannot overcome the positive identification of the appellant as the perpetrator of the crime.

The Case

Crisanto Oliver appeals before this Court the August 8, 1995 Decision^[1] of the Regional Trial Court of Ligao, Albay,^[2] which convicted him of rape and sentenced him to *reclusion perpetua*.

On January 10, 1995, Erlinda G. Olivario filed before the Fifth Municipal Circuit Trial Court (MCTC) of Ligao-Oas^[3] a Complaint charging appellant with rape.^[4] After conducting a preliminary investigation, the MCTC issued a Resolution dated February 28, 1995, finding "sufficient evidence which engenders a well founded belief that the crime of [r]ape xxx has been committed and the accused is probably guilty thereof, hence, he must stand for trial."^[5]

Pursuant thereto, Assistant Provincial Prosecutor Benigno L. Tolosa filed before the Regional Trial Court of Ligao, Albay (Branch II) an Information charging appellant as follows:

"That on or about January 8, 1995, about 8:00 o'clock in the evening at Brgy. Tandarura, Municipality of Ligao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of violence and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the complainant Erlinda Olivario, against her will and consent, to the damage and prejudice of said Erlinda Olivario."^[6]

With the assistance of Counsel Ingersoll Ramirez, appellant pleaded not guilty during his arraignment on May 23, 1995.^[7] After due trial, the court *a quo* rendered on August 8, 1995 its assailed Decision which disposed as follows:

"WHEREFORE, this Court finds CRISANTO OLIVER guilty beyond reasonable doubt of the crime of RAPE, and hereby sentences said

accused to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties provided by law and to pay the victim the sum of THIRTY THOUSAND PESOS (P30,000.00) by way of moral damages."^[8]

Hence, this appeal filed directly with this Court.^[9]

The Facts

Version of the Prosecution

The Office of the Solicitor General^[10] submits the following version of the facts:

"At about 8:00 o'clock in the evening of January 8, 1995, Erlinda Olivario answered the call of nature at the back of their house in Tandarura, Ligao, Albay.

"After relieving herself, Erlinda headed for the kitchen to wash. Her jogging pants and panty were still rolled down to her knees.

"On her way to the kitchen, Erlinda recognized appellant who suddenly came from behind, embraced and dragged her to a grassy portion, some ten (10) meters away from the house.

"At the grassy portion, Erlinda was pushed down by appellant who immediately pulled off her jogging pants and panty. Appellant used the jogging pants to wrap the victim's head, thereby covering her face.

"Appellant forcibly made Erlinda lie down, after which, he mounted her and had sexual intercourse with her.

"Afterwards, appellant taunted Erlinda to choose between life and death. The latter opted for life because she ha[d] a family to consider. Thereafter, appellant fled.

"With appellant gone, Erlinda ran to the house of her mother-in-law. She was still half-naked with only her checker[e]d blouse on. She told her mother-in-law that she was raped by appellant.

"Erlinda's mother-in-law sent for [her] son who was then on tanod duty in the pavilion where there was a dance. Thus, together with the other tanods, the victim's husband arrived, and from there, proceeded to the place of the incident to investigate.

"The next day, the Barangay Captain called for appellant. During the confrontation, the latter denied the accusation. The case was then referred to the police authorities for further investigation.

"On January 10, 1995, Erlinda was examined at the Pio Duran Memorial District Hospital by Dr. Cornelio Villanueva. The physical examination yielded the following results:

`On physical examination, patient was noted to have abrasion, 1 cm.,

nasal ridge, R; abrasion, 1 [c]m., zygomatic area, L; and abrasion, 2 cm., anterior aspect L, auricular area. On IE, vagina introitus admits two fingers. No lacerations noted. Vaginal smear done."^[11]

Version of the Defense

In his Brief,^[12] appellant sets up the defense of alibi and alleges the following:

"The accused-appellant xxx knows Erlinda Olivario, being also from Barangay Tandarura, Ligao, Albay, his house being approximately around 300 meters away from the house of Erlinda. That xxx [at] 8:00 o'clock to 9:00 o'clock in the evening of January 8, 1995, he was at home, entertaining guests as it was the eve of Barangay Fiesta, and at around 9:30 in the evening he was at the Pavilion with several companions watching the dance, and [that he] returned home [a]t 11:00 o'clock in the evening; Tirso Pagayonan, also testified that at around 4:00 o'clock in the afternoon of January 8, 1995 he went to Barangay Tandarura, particularly [to] the house of the accused Crisanto Oliver, and stayed in the latter's house because the day following [he would] will act as sponsor in the baptism of the son of the accused; at around 9:00 o'clock in the evening of January 8, 1995, the accused and some others went to and witnessed the dance in the Barangay Pavilion, and at 11:00 o'clock in the evening they returned to the house of Crisanto Oliver, and stayed the whole night at the house of Crisanto Oliver, helped in preparing the foods and at 2:00 o'clock the next day, he went home to [T]upas; Bernardo Ros, also testified that on January 8, 1995 at around 4:00 o'clock in the afternoon he was at the house of Crisanto Oliver, help[ed] prepare the food, and at 9:00 o'clock of said date he together with the accused and others went to the pavilion and watch[ed] the dance and stayed there up to the 11:00 o'clock in the evening and returned to the house of Crisanto Oliver and started preparing the food and left the following morning."^[13]

The Trial Court's Ruling

On the basis of the victim's candid and straightforward testimony which was corroborated by the physical evidence, the trial court convicted appellant of the crime charged. It also ruled that rape was committed when the male genitalia touched, however slightly, that of the woman; hence, the presence of spermatozoa was not an element of the crime. Lastly, the court disbelieved appellant's alibi.

Assignment of Errors

The defense argues that the trial court erred in the following manner:

"I. In not believing the testimony of the accused-appellant as corroborated by the witnesses;

"II. In relying on the testimony of the witnesses for the prosecution instead of weighing the evidences adduced during the trial in favor of appellant;

"III. In convicting appellant who at the time of the alleged incident was at home entertaining guests[.]"^[14]

Simply put, the issues submitted for resolution are (1) whether the victim-witness is credible, and (2) whether the defense of alibi is worthy of belief.

This Court's Ruling

The appeal is without merit.

First Issue:

Credibility of the Victim

The defense submits five reasons to prove that the testimony of the victim is improbable and incredible. *First*, Erlinda sustained bruises that could not have been caused by the jogging pants allegedly wrapped around her face. *Second*, the victim could not have possibly identified her sexual assailant, as she was attacked from behind. *Third*, there is no evidence of violence or intimidation. *Fourth*, there is no proof of resistance from the victim. *Lastly*, the medical report conducted on the victim indicated the absence of sperms.

We cannot sustain the above contentions.

The trial court's assessment of a witness' credibility will not be disturbed on appeal, in the absence of palpable error or grave abuse of discretion on the part of the trial judge.^[15] In the present case, the defense has given us no sufficient reason to reverse or alter this finding. Indeed, the clear, consistent and straightforward manner in which Erlinda Olivario narrated her ordeal confirms the trial court's assessment of her reliability.^[16] She testified thus:

"Q While there at that time and place, do you recall of any unusual incident that happened?

A Yes, sir.

Q What was that about?

A This Crisanto Oliver raped me.

Q How did he do it?

A While my shorts and panty [were] down my knees, and on my way to the kitchen to wash because I ha[d] come from answering the call of nature, I was suddenly embraced.

Q [Y]ou were suddenly embraced by whom?

A I was suddenly embraced by Crisanto.

Q What happened next when he embraced you?

A After embracing me, he pulled or dragged me towards the grassy portion [at] a distance of ten (10) meters, and upon reaching that point, he pushed me down.

Q While [he was] dragging you to that particular place about 10 meters from your house, what was your position?

A I was dragged backward.

Q How about your panty and your pants, in what particular [part] of your body was it when you were dragged?

A A little up the knee.

X X X X X X X X X

Q Were you wearing shorts or long pants?

A Jogging pants.

X X X X X X X X X

PROSECUTOR VEGA:

Q Now, you said that you were pushed down by the accused, what happened next when you were pushed down?

A He removed my jogging pants and wrapped it around my head and my eyes were covered.

Q Then afterwards what did he do?

A After that he [lay] on top of me.

Q Then what else happened after he [lay] on top of you?

A After he was through, he asked me which I would choose, life or death. I answered him that I [would] choose life because I have a family.

Q What happened after he was through, what did he do to you?

A He put his organ inside.

Q Inside where?

A In my organ also.

Q When you told him that you still want[ed] to live, what else happened?

A I felt he was already leaving or fleeing.

Q Then when he fled, what did you do?

A When he ran away, I stood up. I touched my private part and smelled it, but I did not smell anything coming from a man.

Q By the way, how many minutes or seconds did this accused, Crisanto Oliver, do this thing to you?

A About two (2) minutes.

Q And he was not able to ejaculate?

A He was not able to ejaculate.

COURT:

Q What were you trying to find when you felt for your private organ?

A I wanted to know whether there was something left.