

## THIRD DIVISION

[ G.R. Nos. 122966-67, March 25, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR S. ALOJADO, ACCUSED APPELLANT.**

### D E C I S I O N

**PANGANIBAN, J.:**

In rejecting this appeal, this Court reiterates two time-tested doctrines: (1) the finding, of the trial court on the credibility of the witnesses and their testimonies, will not be disturbed on appeal, absent any arbitrariness or oversight of any, fact or circumstance which, if considered, would affect the judgment; and (2) positive identification prevails over alibi.

#### The Case

Edgar S. Alojado appeals the December 13, 1995 Decision<sup>[1]</sup> of the Regional Trial Court of Angeles City Branch 58, in Criminal Case Nos. 94-10-705 and 94-10-706, convicting him of two counts of rape and sentencing him to two terms of *reclusion perpetua*.

In two separate but identically worded Complaints<sup>[2]</sup> dated October 18, 1994, Ma. Julette G. Peñaranda and Gerra Q. Rustia, both assisted by their respective mothers Lolita G. Peñaranda and Gemma Q. Rustia, charged appellant with statutory rape. On November 11, 1994, both Complaints were amended to include the allegation that the accused used a deadly weapon in committing the offense. The accusatory portion of each of the two Amended Complaints reads as follows:

"That on or about the 11<sup>th</sup> day of October, 1994, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of the tender age and innocence of the complainant, who is below 12 years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant against her will and consent.

"That in the commission of this offense[, ] accused used a deadly weapon against herein victim.

"CONTRARY TO LAW:"<sup>[3]</sup> (Underscoring found in the original.)

Upon certification by Third Assistant City Prosecutor Vicente U. Pornillos that a preliminary investigation had been conducted, the Complaints were subsequently treated as Informations.

Upon his arraignment on December 22, 1994, appellant, assisted by Counsel *de*

Parte Juanito O. Velasco, pleaded not guilty.<sup>[4]</sup> The two cases were jointly tried. Thereafter, the court *a quo* rendered the assailed "*Hatol*," the dispositive portion of which reads:

"Sapagkat napatunayan nang walang pasubali na nagkasala si Edgar S. Alojado ng panggagahasa ng dalawang (2) beses, una[,] kay Julette Peñaranda (Crim. Case No. 94-10-705), at pangalawa kay Gerra Rustia (Crim. Case No. 94-10-706), ang nasabing si EDGAR S. ALOJADO ay hinatulan ng hukumang ito na mabilanggo ng 'RECLUSION PERPETUA' sa bawat isang kaso. Gayundin, siya ay hinahatulang magbayad ng tig-[I]ilimampung [I]ibung [p]iso (P50,000.00) bawat isa, sa mga biktimg sina Julette Peñaranda at Gerra Rustia."<sup>[5]</sup>

Hence, this appeal direct to this Court.<sup>[6]</sup> On April 24, 1996, appellant filed a Motion for New Trial, alleging newly discovered evidence. After the Office of the Solicitor General filed its Comment, this Court denied the motion in its December 3, 1997 Resolution.<sup>[7]</sup>

### **The Facts**

#### **Evidence of the Prosecution**

In the Appellee's Brief,<sup>[8]</sup> the Office of the Solicitor General<sup>[9]</sup> presents the prosecution's version of the facts:

"On October 11, 1994, Julette Peñaranda and Gerra Rustia went to Amsic Elementary School where they were Grade III pupils. During the recess at around 10:00 a.m., both girls went to the house of Julette to get a dress which Julette intended to show to her teacher. (pp. 11-12, TSN, January 25, 1995). On their way back to school, appellant talked to them, showed them a picture of a woman and asked them if they knew the woman in the picture. Julette told appellant that she did not know the woman. Appellant told them to help him look for the woman (pp. 13-14, TSN, January 25, 1995). The two girls accompanied appellant who was then riding a green bicycle. The three of them rode towards Amsic. In view of an obstruction on the road, appellant told the girls to go down and walk as they made a turn towards Plaridel. Thereafter, the two girls rode the bicycle again. This time it was Julette who stayed at the back while Gerra was placed at the front of the bicycle.

"Upon reaching a grassy area in Plaridel, appellant brandished a knife, 6 to 7 inches long (TSN, pp. 15-17, January 25, 1995). Appellant said 'Papatayin ko yung babae kasi marami na siyang kasalanan sa akin.' After hearing this, Julette told appellant she wanted to go home because she was already scared. But appellant told them to wait.

"Appellant tied their hands at their back and tied the left foot of Julette to one foot of Gerra with Gerra's belt. Appellant also tied their mouths with Gerra's socks. Appellant made Julette and Gerra suck his sex organ. (pp. 5-1 1, TSN, February 22, 1995; pp. 11-12, TSN, March 4, 1995).

"Appellant removed the clothes of Julette and raped her by inserting his

penis into her sex organ. (pp. 18-22, TSN, January 25, 199<sup>[5]</sup>). Appellant knelt down as he raped Julette. Julette saw blood coming from her sex organ.

"Appellant turned to Gerra and spat at her sex organ. He inserted his ' penis into the genitalia of Gerra, who was made to lie down. After appellant raped Gerra, he told the two victims to stay as he would just rest. (pp. 25-30, TSN, January 25, 1995).

"When appellant left, Julette removed the handle of the bag used to tie her hands and their feet. They stood up and walked toward the house of Mrs. Stickle, whom they asked for help. When Mrs. Stickle saw them at the gate of her house, Julette was wearing her shorts while Gerra was wearing nothing. Mrs. Stickle and the neighbors brought them to the Angeles City General Hospital.

"Dr. Hernand Tulud of the Angeles City Hospital attended to the victims. He found blood clot on the genital area of Gerra, which was still bleeding. (p. 13, TSN, April 5, 1995). Dr. Tulud found 'laceration [at the] right vaginal wall, left lateral vaginal wall and periumbilical contusions.' (p. 15, *ibid.*).

" Dr. Tulud also examined the vagina of Julette and found 'multiple laceration[s] of the vagina; [and] positive laceration of the posterior wall with penetration to the cul de sac.' (p. 24, *ibid.*). After being given intravenous fluids, she was transferred to Jose B. Lingad Hospital because she was complaining of abdominal pains.

"Dr. Efren Natino, the obstetrician and volunteer consultant of Jose Lingad Hospital, examined Julette. He noted [a] laceration in her genitalia, which was profusely bleeding. Dr. Natino opined that the laceration could have been caused by an erect penis. (p. 9, TSN, April 12, 1995).

"Appellant was later brought to the hospital where he was identified by Julette as the person who raped them (pp. 5-11, TSN, February 22, 1995)."

### **Evidence for the Defense**

In his Brief,<sup>[10]</sup> appellant assails the insufficiency of the prosecution's evidence and alleges alibi, claiming that at 11:00 a.m. on October 11, 1994, when the crimes were committed, he left his house and went to the Day Care Center in Marisol Village to fetch his youngest son, Carl. The defense also presented Geraldine Gamboa, who testified that she was near the vicinity of the *locus criminis* and that she saw a man, who was not the appellant, emerge from some bushes with bloody arms and legs.

### **Ruling of the Trial Court**

The trial court gave full faith and credence to the testimonies of the two victims, which were corroborated by the medical findings. It also stressed that, considering

the tender age of the two minors, it was highly unlikely, for them to have fabricated the rape. The court rejected the defense of alibi which appellant resorted to, since (1) his house was near the scene of the crime; and (2) he failed to present any witness to corroborate his claim that, at the time the crimes were committed, he was at the day center to fetch his son.

### **Assignment of Errors**

In the Appellant's Brief,<sup>[11]</sup> appellant interposes the following errors allegedly committed by the lower court:

"1. In holding that the victims, Peñaranda and Rustia were raped and not merely sexually abused[;]

2. In holding that the testimonies of Peñaranda and Rustia and the medical findings sustain the conclusion that they were raped;

3. In holding that because of the tender age or minority of the two (2) victims[,] they were incapable of weaving lies by claiming they were raped if they were not really raped;

4. In holding that a bladed weapon was used in the commission of the alleged rape;

5. In holding that the accused was the one who committed the crime of rape;

6. In disregarding appellant's evidence that he was at his residence and not at xxx Plaridel II, Brgy. Amsic, Angeles City, on October 11, 1994; [and]

7. In intentionally disregarding defense witness Gamboa's testimony that on October 11, 1994[,] she saw a man in the bushes not far from the scene of the crime wiping blood on his hands and feet and was warned to keep silent and threatened with death if she disclose[d] what she saw."

<sup>[12]</sup>

In the main, appellant questions the sufficiency and the credibility of the prosecution's evidence. In resolving this appeal, the Court will also determine the weight of his alibi and of Defense Witness Gamboa's testimony.

### **The Court's Ruling**

The appeal is devoid of merit.

#### **First Issue:**

#### **Sufficiency of Prosecution Evidence**

Appellant contends that Julette Peñaranda and Gerra Rustia were not raped, but merely sexually abused. In support of his claim, he assails the testimony, of Julette that she was is raped while lying on her back and appellant was in a kneeling position. He submits that "human experience will demonstrate that a man [i]n a

kneeling position cannot possibly insert his penis [into] a girl, or even a woman, who [is i]n a supine position, lying on her back, unless he [lifts] the buttocks of the girl or woman or place[s] himself on top of the girl or woman."<sup>[13]</sup> He also cites the testimonies of the two physicians that a hard object other than the male organ could have penetrated the victims private parts.

The contentions of appellant are incorrect. Julette vividly narrated that he inserted his penis into her private part and, subsequently, into Gerra's, viz.:

"Q: In what manner did that man who brought you to the grassy area rape or abuse you?

A: Ipinasok po ang ari niya.

X X X

Q: And you said that it was inserted. To what part of your body was it inserted?

A: Sa ari ko po.

X X X

Q: When he was able to insert his penis to your private part, what did you feel, if you felt anything?

A: Opo.

Q: What did you feel?

A: Masakit po.

X X X

Q: You said that after you were raped, Gerra Rustia was next to be raped. How was Gerra Rustia raped?

A: Pinasok po yun[g] ari ng lalake sa ari ni Gerra Rustia.<sup>[14]</sup>

Gerra Rustia herself testified that the two of them were raped, as clearly indicated below:

"Q: Sabi mo noong huling nagbista, sinabi mo na iyong lalakeng umalis ay rapist. Bakit mo nasabi na ang umalis na lalaki ay rapist?

X X X

A: Kasi po ginahasa kami.

Q: Sabi mo 'kami. 'Sinong kasama mo?

A: Julette, po.

X X X

Q: Paano ka at ni Julette ginahasa ng lalaki?

A: Pinasok ang titi niya.

Q: Saan niya ipinasok?