

SECOND DIVISION

[G.R. No. 122740, March 30, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WINSTON DE GUZMAN, ACCUSED-APPELLANT.**

D E C I S I O N

REGALADO, J.:

Accused-appellant Winston de Guzman was charged before the Regional Trial Court of Mati, Branch 5, Davao Oriental^[1] with the crime of rape in an information docketed as Criminal Case No. 2584, and which alleged:

That on or about June 9, 1994, in the Municipality of Governor Generoso, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one JOVELYN A. GERAM, a (sic) against her will.^[2]

Appellant pleaded not guilty when arraigned on the aforequoted indictment on September 5, 1994,^[3] and the case then went to trial.

The evidence for the prosecution reveals that 14-year old complainant, Jovelyn A. Geram,^[4] was alone in their residence at *Barangay* Monserrat, Governor Generoso, Davao Oriental when the crime was committed in the afternoon of June 9, 1994 by appellant who had managed to gain entry into the house.

Complainant was sleeping at around two o'clock that afternoon when she was awakened by the weight of something on top of her. Upon opening her eyes, she saw herein appellant naked and sitting on her thighs. Complainant instinctively tried to shout for help but appellant covered her mouth and nose with his hand and warned her not to resist or she would be killed. A struggle between the two ensued thereafter. The strength of appellant and the strain of complainant's efforts at resistance took its toll on the latter, causing her to feel weak and faint.

On recovering her senses, complainant discovered that she was already undressed and she saw blood on her vagina. She also noticed some white fluid on her abdomen and thighs. Complainant felt pain on her genitals and other parts of her body. Appellant was no longer around, and the hapless complainant was left crying over the tragedy which had befallen her.

In the evening of the same day, a neighbor, Florami Bayno, arrived in the house of the Gerams to watch television. Complainant went with Florami when the latter went home. They proceeded to the house of Mauricia and Hugo Bayno, close friends of the Gerams and Florami's parent's-in-law. In front of the couple, complainant recounted her ordeal at the hands of appellant.

In the morning of June 10, 1994, complainant went to the house of another neighbor, Genesis Delgado, and confided her misfortune to the latter. Later, she went to the house of the Baynos and waited for her parents who were in *Barangay* Tambo attending to their fishing enterprise. Complainant's mother, Evelyn Geram,^[5] arrived shortly thereafter. Mother and daughter could only cry as the latter related the incident to the former.

Complainant and her mother subsequently went to the *barangay* captain of Monserrat who advised them to report the matter to the police authorities of Sigaboy, Governor Generoso. After complainant had narrated the incident to the police, she and her mother proceeded to the municipal hospital for the physical examination of the former.

Dr. Divina Lopez,^[6] a resident physician of the Municipal District Hospital of Governor Generoso, issued a medical certificate detailing the result of her examination of complainant, as follows:

FINDINGS:

- 1) Positive (+) BLOOD CLOTS BOTH ON LABIA MINORA
- 2) POSITIVE (+) RUPTURED HYMEN
- 3) REDNESS AROUND THE VULVAR AREA^[7]

Prosecution witness Genesis Delgado^[8] declared that he saw appellant going inside the house of complainant on June 9, 1994 at around two o'clock in the afternoon. Apparently, appellant entered through the kitchen door at the rear portion of the house. Two hours later, appellant went out of the house through the same kitchen door. Delgado noticed all of these while he was watching television inside their house located just beside the Gerams' residence.

Later, at the rebuttal stage, Enecita^[9] dela Cruz Torion,^[10] a teacher in Monserrat Elementary School, also testified that she saw appellant, together with two companions, sitting at the front porch of the house of the Gerams at about one o'clock in the afternoon of June 9, 1994. Enecita was then on her way from the school which was located in front of the house of the Gerams.

The defense of appellant is denial and alibi. Aside from the intrinsic weakness of this shopworn excuse, we are not persuaded to grant any credence thereto since the facts relied on to make out appellant's story obviously appear too pat as to have clearly been contrived. The only persons presented to corroborate appellant's story are his own parents, despite the availability of other persons whose lack of relationship to him would not have engendered suspicion of connivance.

Appellant,^[11] who is also a resident of Monserrat, asserted before the trial court that he was in Davao City at the time of the commission of the felony. He allegedly went there on June 6, 1994 with his mother to attend to his sister-in-law who was confined in the Davao Medical Center due to an incomplete abortion.^[12] After sister-in-law was discharged from the hospital in the afternoon of June 8, they went to the house of Christy, his sister who was residing at Sasa, Davao City. He stayed in the house and cleaned it the whole day of June 9. At 4:30 in the morning of June 10, he and his mother left Davao City for Monserrat, arriving at their house between 8:30 and 9:00 A.M.

Aside from merely repeating the position of appellant, his father, Raul De Guzman,^[13] tried to convince the trial court that he saw complainant in the afternoon of June 9, 1994. According to this witness, Jovelyn went to their store on that date to borrow a VHS cassette tape featuring “Robo Vampire.” Appellant’s mother, Violeta De Guzman,^[14] also sought to support his story by claiming that it was her decision to bring appellant along to Davao City so that he could help minister to her daughter-in-law.

After considering the evidence of both the prosecution and the defense, the lower court gave credence to the testimony of Jovelyn and disregarded the defense of denial *cum* alibi presented by appellant.

The trial court considered the immediate revelation made by Jovelyn of the crime committed against her, and her steadfast efforts to bring her violator to justice, as indicative of the veracity of her charge. It rejected the defense put up by appellant in light of the positive identification made by Jovelyn and the categorical declarations of the other prosecution witnesses placing him within the vicinity of the *locus criminis* at the time of the commission of the crime.

Accordingly, appellant was sentenced to suffer the penalty of *reclusion perpetua*, to indemnify Jovelyn in the amount of ₱40,000.00, and to pay the costs.^[15]

Appellant now pleads for the reversal of the judgment of the trial court, contending that said court erred in giving credence to the testimony of Jovelyn and in finding him guilty on the basis thereof.^[16]

Appellant adverts to the fact that complainant stated in her complaint^[17] and in her testimony^[18] given during the preliminary investigation that he committed the crime of rape through the application of odorous chemicals over her nose and mouth which caused her to sleep. This fact was not repeated by complainant in the trial court but she merely claimed the crime was consummated by appellant through force and intimidation. Such inconsistency, according to appellant, destroys Jovelyn’s credibility, thus warranting a reversal of the lower court’s judgment of conviction.

The records disclose that at the trial, counsel for appellant tried to utilize the testimony of complainant given in the preliminary investigation before Judge Rodolfo A. Castro to impeach her through statements therein supposedly different from what she gave in court.^[19] Alluding to her answer to Judge Castro’s questions numbered 28 and 29,^[20] appellant’s counsel asked complainant if she first reported the rape to one Dioneson Bayno. Complainant duly corrected that statement and clarified that it was Mauricia and Hugo Bayno whom she first told about the incident.^[21]

However, complainant was never confronted during the proceedings in the trial court with her answers allegedly given in the same testimony at the preliminary investigation regarding appellant’s resort to sleep-inducing chemicals. In fact, no sub-markings for such particular answers as exhibits were made in the records of her testimony in the preliminary investigation, much less offered by the counsel of appellant for that purpose during the trial of the case.

It is universally accepted that a witness cannot be impeached by evidence of contradictory or prior inconsistent statements until the proper foundation or predicate has been duly laid by the party against whom said witness was called.^[22] The