

SECOND DIVISION

[G.R. No. 121508, December 04, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL
CABEL Y IWAG, ACCUSED-APPELLANT.
D E C I S I O N**

REGALADO, J.:

Accused-appellant Joel Cabel y Iwag seeks the reversal of the judgment rendered by the Regional Trial Court, Branch 27, Tagudin, Ilocos Sur in Criminal Case No. 454-T convicting him of the crime of rape.

An information ^[1] filed on July 27, 1993, based on the sworn written complaint ^[2] filed on July 26, 1993 by Alma C. Dumacyon * assisted by her father, Fortunato Dumacyon, alleged that on or about August 27, 1989 in Quirino, Ilocos Sur, appellant had carnal knowledge of complainant by means of force and intimidation against her will and consent.

When arraigned with the assistance of his counsel de oficio, appellant entered a plea of not guilty. Pre-trial in the case was waived and trial on the merits was conducted in due course. Thereafter, a decision was rendered on November 13, 1995 by the trial court ^[3] convicting appellant of the crime charged, the decretal portion of which states:

"THUS WE FIND ACCUSED JOEL CABEL guilty of the crime of rape and hereby sentenc(e) him to suffer the penalty of reclusion perpetua.

Accused is to pay his victim Alma C. Dumacyon the following:

1. Fifty thousand pesos (P50,000.00) for the rape;
2. Thirty thousand pesos (P30,000.00) for her expenses in coming to court for the trial of her case;
3. Forty thousand pesos (P40,000.00) for going thru the ordeal of trial as a result of the crime committed against her."^[4]

Hence, this appeal, with appellant contending that the court a quo gravely erred (1) in giving credence to the testimonies of the prosecution witness in spite of their gross inconsistency and improbability; and (2) in convicting the appellant when his guilt was not proven beyond reasonable doubt.^[5]

The prosecution had presented complainant Alma Dumacyon, her father, Fortunato

Dumacyon, and Dr. George Calugay who conducted the physical examination of complainant and confirmed that she had at least three points of healed hymenal laceration at the time of examination. [6]

We find that the facts established by the evidence for the People are adequately summarized by the Solicitor General in the brief filed therefor, and the substance and documentation therein duly correspond with the text and page references to the record. Accordingly, we adopt and quote the same hereunder:

"At around 3:00 o'clock in the afternoon of August 27, 1989, a Sunday, complainant Alma Dumacyon, a fifteen-year old girl, was on her way to her aunt's house located in Barangay Tumbaga, Quirino, Ilocos Sur. She was a student at Tirad View Academy in Barangay Tumbaga which was an hour's walk away from her home in Sitio Dagman, Poblacion, also in Quirino, Ilocos Sur. Alma left for Barangay Tumbaga that Sunday in order to attend classes the following morning. (pp. 3-5, tsn, A. Dumacyon, February 24, 1994).

While passing through Nabukaan, Sitio Dagman, Alma was accosted by appellant Joel Cabel who suddenly emerged from a thicket by the left side of the road. Alma was frightened by the appellant's abrupt appearance, Alma shouted for help. Appellant immediately pulled Alma towards the thicket from where he emerged and onward till he reached a spot about twenty meters away from the road. Alma continued shouting for help, 'Arayatendak Apo' (pp. 5-8, tsn, A. Dumacyon, February 24, 1994).

Appellant beat Alma mercilessly. He hit her several times at the back and then pulled out a knife which he brandished at Alma. Appellant grabbed Alma's neck with his right hand and forcibly pushed her down. Alma's buttocks hit the ground. (pp. 8-10, tsn, A. Dumacyon, February 24, 1994).

Thereafter, appellant pocketed his knife and then pulled down Alma's 'garterized' skirt and panty. As he was doing this, Alma kicked him on the waist but this did not deter appellant. Appellant took off his pants and forced sexual intercourse with Alma. Alma felt intense pain and lost consciousness. When she woke up, she saw appellant leaving, headed towards the road where he had accosted her. (pp. 11-14, tsn, A. Dumacyon, February 24, 1994).

Alma proceeded to her aunt's house in Barangay Tumbaga. She stayed there for the next three days because she had to take her school examination. (pp. 14-15, tsn, A. Dumacyon, February 24, 1994).

Thereafter, Alma left for her parents' home in Sitio Dagman. Upon her arrival, her father noticed at once that she looked 'sickly'. Curious, he asked for an explanation. Alma told her father that she was raped by appellant Joel Cabel. (pp. 16-17, tsn, A. Dumacyon, May 12, 1994, p. 4, tsn, F. Dumacyon, May 13, 1994).

After learning that his daughter had been raped, Alma's father, Fortunato Dumacyon, 'lost...(his) composure.' (p. 4, F. Dumacyon, May 13, 1994). Thus, he did not immediately report the crime to the police authorities. (pp. 4 and 7, supra).

On October 2, 1989, or thirty-six days later from the time of the rape, Alma, who was accompanied by her father, went to the Philippine National Police in Quirino, Ilocos Sur, where she reported the crime and executed a sworn statement. (pp. 17-18, tsn, A. Dumacyon, February 24, 1994, p. 23, tsn, A. Dumacyon, May 12, 1994).

On October 5, 1989, Alma had herself examined by Dr. George P. Calugay at the Besang Pass District Hospital. Upon internal examination, Dr. Calugay found that Alma's hymen bore several healed lacerations. Her 'labia minora' likewise bore healed lacerations. According to Dr. Calugay, Alma's hymenal lacerations could have been caused by the insertion of a hard object or by vigorous physical activities like 'bicycle riding and rape cases because the patient has not voluntarily given her will, there is not enough lubrication.' (pp. 3-14, tsn, Calugay, February 23, 1994)."[7]

As expected, herein appellant denied having raped the complainant on August 27, 1989. He claimed that between 2:00 o'clock to 5:00 o'clock in the afternoon of the aforesaid date, he was at the farm in Dagman, Quirino, Ilocos Sur, cleaning the rice paddies with his two companions, namely, Jaime Mangget and Melchor Gumintong. [8] Although he did not deny having carnal knowledge of the complainant, he contended that said acts were free and voluntary on their part as they were lovers. [9] He claimed that they already had sexual intercourse for about five times, the first three before the case was filed and the last two after the case was filed. [10]

We reject appellant's all-too-familiar subterfuge. His claim that he and the complainant were lovers is self-serving. This argument based on the much abused "sweetheart theory" in rape cases, so blandly invoked in the instant case, rashly derides the intelligence of the Court and sorely tests its patience. This is not even a case of consenting adults for the victim was only fifteen years old at the time she was raped by appellant who, in fact, is a married man and a fugitive from justice. Moreover, there was no evidence whatsoever of any romantic relationship between them. Appellant did not even bother to present any evidence to support his pretensions although in his direct testimony, he mentioned that some of his friends knew about his supposed relationship with the victim. [11]

Even assuming *arguendo* that they were lovers, rape can still be committed if he had carnal knowledge with the complainant against her will. [12] The fact, however, is that during her testimony in the trial court, complainant vehemently denied that she and appellant had ever been lovers. [13] While she had seen him in the neighborhood when she was still a child, the first time she personally met and talked with him was only on that day of his criminal assault against her. [14]

As observed by the court below:

"Thus, accused is a fugitive from justice and being one, this Court feels that he is knowledgeable and, therefore, his allegations as to the fact that Alma Dumacyon is his girlfriend are only attempts to go around the law and have him acquitted.

We have here a young girl who had no knowledge of the ways of life pitted against an accused who knows the ins and outs of the law.

This Court feels that she is not to blame for what happened to her because if it is true that she is a girlfriend of accused, she should have gone on going to school, it being the only means by which she would be able to see her boyfriend, but the fact that she stopped studying because she was already afraid shows that no such relationship existed between her and the accused."^[15]

Additionally, appellant failed to prove that he was at some other place at the time of the perpetration of the crime. At any rate, it was not physically impossible for him to have been at the scene of the crime when the same was committed, considering that Nabukaan is a part of Sitio Dagman, one and one-half kilometers away from the farm, and could be reached on foot in five minutes. ^[16] Although appellant claims that he had two companions at that time, they were not presented in court to corroborate his defense of alibi. The decisional rule is that the defense of alibi cannot prevail over the positive identification of the accused by the prosecution witness. ^[17]

Appellant argues that the weight of the evidence presented by the prosecution is grossly inadequate to overcome the presumption of innocence granted to him by law. He contends that the testimony of complainant relied upon by the trial court in convicting him was "so replete with gross inconsistencies and improbabilities rendering it unworthy of credit and strongly engendering the belief that the rape story was nothing but a figment of her imagination."^[18]

Arguing in support of his absolutory thesis, he contends:

(1) While complainant described in detail in her testimony-in-chief how appellant raped her, even describing how her skirt and panty were removed and which hand he used, she testified on cross-examination that she did not see the accused do any of the things she previously stated for the reason that she was unconscious. ^[19]

(2) Another serious inconsistency in the testimony of Alma is her account of how she reported the alleged rape to her relatives. ^[20] In her direct testimony, she testified that as soon as she arrived at her aunt's house after the alleged rape incident, she immediately told her aunt about what happened to her. ^[21] After staying for three days in her aunt's house, she went home to Dagman and immediately told her father about the rape. ^[22] On cross-examination, however, she testified that she did not

tell anyone about her being raped.^[23]

(3) Another proof that Alma was prevaricating in her testimony is the wrong description of the color of two clothes she wore at the time of the alleged rape. ^[24]

(4) One indication of improbability in the testimony of Alma is that her actuations and behavior after the alleged rape incident are not consistent with those normally expected from victims of sexual assaults. ^[25]

After a careful evaluation of the evidence for both the prosecution and the defense, the Court is convinced that the prosecution has successfully overcome the presumption of innocence in favor of appellant. There is overriding merit in these counter-arguments of the People:

“Contrary to appellant’s claim, the trial court did not base its decision on the fact that appellant had previously been convicted by the Regional Trial court of Batangas on September 28, 1984 for violation of the Dangerous Drugs Act to 12 years in prison nor on the information that he had escaped from Yapang Sub-prison of the Sablayan Prison and Penal Farm in Occidental Mindoro on July 14, 1985 and was at-large during the time of the commission of rape. (vide p. 10, Decision.)

The trial court based its decision on the victim Alma Dumacyon’s testimony which it found credible and trustworthy. The trial court held:

This court is inclined to feel that Joel Cabel was only manufacturing his allegations because Alma Dumacyon happens to be a person of only 15 years old (sic) and she would not have come to court to state what she has stated if the same were not true. She was a very young girl at the time and her manner of speaking would prove that what she was stating was what happened to her. (p. 9, Decision; underscoring supplied).

The trial court also found that the physical evidence supported Alma’s claim that she had been raped by appellant. According to the trial court:

The prosecution proved that indeed the complainant had a lacerated hymen. She was then only 15 years old and most probably as testified to by her, she had sexual intercourse. (p. 8, Decision; underscoring supplied).

x x x. In the instant case, the trial court found that Alma Dumacyon’s testimony and the findings of Dr. George P. Calugay, who conducted a physical examination of fifteen-year old Alma, indubitably lead to the conclusion that appellant indeed raped Alma.” ^[26]

Over time and through consistency, it has become a doctrinal rule for this Court to accord great respect to the factual conclusions drawn by the trial court, particularly on the matter of credibility of witnesses, since the trial judge had the opportunity to