

THIRD DIVISION

[G.R. No. 116221, July 11, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO GABRIS Y GAMBON, ACCUSED-APPELLANT.**

DECISION

PANGANIBAN, J.:

In denying having raped a 9-year old girl whom he claims to have treated as his own daughter, the accused stakes his plea of innocence on his alleged impotency, thereby lending a ludicrous overtone to the otherwise tragic and painful drama of the public trial. But notwithstanding such attempts at comedy, his absurd defense is rejected by this Court.

The Criminal Complaint against the appellant reads:

"That on or about the 2nd day of December, 1992, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ALEX (ALEJANDRO) GABRIS Y Gambon, with violence against person, did then and there, willfully, unlawfully and criminally, have carnal knowledge of the undersigned complainant, ANALYN CALOSOR, against her will and consent, to the damage and prejudice of the latter.

Contrary to Article 335, par. 1 of the Revised Penal Code."

The above Complaint was treated as the Information after it was approved by the City Prosecutor. When arraigned, appellant entered a plea of "not guilty." After trial on the merits, the Regional Trial Court, First Judicial Region, Branch 44,^[1] Dagupan City, rendered judgment^[2] convicting the herein accused-appellant of the crime of rape.

Facts of the Case

Prosecution's Version

Analyn Calosor, a 9-year old pupil, lived with her aunt Marilyn Calosor in Bonuan, Catacdang, Dagupan City, as her parents were already dead. Early in the morning of December 2, 1992, her aunt went to the hospital to look after Analyn's sick sister Kimberly, leaving Analyn alone in the house. At about 7:00 that morning, while Analyn was drinking her coffee prior to getting dressed, her "Kuya Alex" (appellant) arrived. Appellant was known to her, since he had formerly been living in with her aunt for several years. Analyn went inside her room and was about to change her clothes when appellant suddenly entered. He kissed her neck, leaving a kiss-mark on it. Then, appellant lay on Analyn's pillow and told her to lie down, too, but she

refused. Appellant pulled her and then undressed her and removed her panty. With Analyn lying on top of the pillow, appellant kissed her vagina. He then opened his zipper and while holding her at knifepoint, forcibly placed his penis inside her vagina. Analyn felt something wet like water flow into her vagina. It was painful. And thereafter, she could not urinate. During the episode, appellant brandished the knife at her and warned her not to report the incident to anyone.^[3]

The aunt arrived soon after and when she saw appellant inside her house, she asked him what he was doing there. Appellant replied that he was just drinking coffee. Marilyn left again for the hospital shortly thereafter.^[4]

Analyn also testified that it was not the first time she was abused by appellant; that he had done it to her several times, once during her birthday in 1992, and again on November 27, 1992; and that she did not like what he had been doing but she was forced by appellant.^[5]

Analyn complained of painful urination. She was examined by Dr. Alexis Mary A. Chuson of the Gov. Teofilo Sison Memorial Hospital in Dagupan City, who made the following findings:

"No signs of external injury.

Neck: with hematoma 1.5 x 1.5 cms. supraclavicular area, right.

Genitalia: Hymen intact, reddish discoloration and edematous vestibular area.

IE: not done, vagina does not admit one finger and with pain on attempt.

Vaginal smear for presence of spermatozoa = negative."^[6]

Version of the Defense

Appellant's defense consists of plain denial. He claims he did not rape the victim, contending that not only does he consider the victim as his own daughter, but that it was physically impossible for him to rape her as he has been impotent since January 1992. He even accompanied the girl to the hospital for medico-legal examination. Upon the other hand, the girl's aunt, Marilyn, had motive to force the girl to accuse him of rape.^[7] Since he lost his capacity for erection, the woman, who was his mistress from 1983 till early 1992, and with whom he had lived as common-law husband and wife, kept quarreling with him because he could no longer scratch her itch". She also persisted in trying to extract support from him, although he couldn't give her any money.^[8] Appellant claims that he even submitted himself three times between February and March 1992 for medical examination and treatment of his condition by the late Dr. Vivencio Torres, who found "a malfunctioning of the vein" in the appellant's penis. However, appellant lost his documentary proof that he had been treated by said doctor for the aforementioned condition.^[9] Whatever he tried doing now, he couldn't regain penile erection.^[10] That fateful day he happened to be in the house of Marilyn and Analyn because he was working with Marilyn's brother-in-law in repairing refrigerators.^[11]

On February 24, 1994, the trial court rendered the now-assailed Decision finding appellant guilty as charged. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds the accused Alejandro Gabris y Gambon guilty beyond reasonable doubt of the crime of consummated rape under Article 335, paragraph 1 of the Revised Penal Code, and pursuant to law, hereby sentences the accused to suffer the penalty of Reclusion Perpetua and to pay the costs.

The accused is ordered to indemnify the offended party in the amount of Fifty Thousand Pesos (P50,000.00).

SO ORDERED."

Hence, this appeal.

Assignment of Errors

In his brief, appellant assigned the following errors:

"I. The trial court gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of rape by believing the incredible story of the prosecution.

II. The trial court erred in allowing with partiality the marking of the certification of excerpt from the police blotter purporting an uncounselled admission of the accused that he kissed the victim on the neck leaving a mark thereat as evidence for the prosecution and admitting the same under the disguise of establishing the fact that the incident was entered in the police blotter."^[12]

In the main, appellant assails the credibility of the victim's testimony and questions the weight and sufficiency of the prosecution's evidence. He calls attention to alleged inconsistencies in the testimony of the victim, and the supposed contradictions *vis-a-vis* the victim's sworn statement and that of her aunt, which he claims bolstered his position that the charge against him was just trumped up as a revenge by Analyn's aunt who was his former mistress and who wanted to extract financial support from him. Thus, he claims that Analyn's sworn statement conflicted with her testimony in supposedly significant details such as when her aunt was supposed to have first seen the appellant that fateful morning.

Additionally, appellant contends that the judge was biased against him when he allowed the marking as exhibit of the certification containing the excerpt of an entry in the police blotter, which tended to show that appellant admitted having placed the kissmark on the victim's neck, despite objection that it was made without assistance of counsel.

This Court's Ruling

We are not persuaded by appellant's arguments. Instead, it is clear to us that the evidence on record sufficiently supports the judgment of conviction and thus, we affirm said judgment.

In appeals of rape cases, certain well-established principles and precepts are controlling, *viz.*: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b)

due to the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[13] In this case, as in many others before it, the credibility of the offended party's testimony is determinative of the outcome.^[14] But the sole testimony of the offended party, if credible, is sufficient to declare a conviction.^[15]

Generally speaking, the trial court's evaluation as to the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies.^[16] Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.^[17] In the instant case, we scoured the records and found no justification for making a finding different from that of the trial court on the matter of credibility and weight of evidence.

The trial court declared that the complainant, barely ten years old at the time of the trial, would not have subjected herself to the ordeal of a public humiliation and specifically, would not have admitted in front of 19 complete strangers inside the courtroom including the presiding judge, to such a shameful, painful and degrading experience as having been ravished, unless it were the truth. The court *a quo* declared her testimony to be credible and entitled to belief "because there was no motive to testify against the accused" since "the only desire of the complainant is to vindicate her honor."^[18] It has been consistently held that where there is no evidence and no indication that the witness for the prosecution was actuated by improper motive to testify falsely against an accused, the presumption is that the witness was not so actuated and the testimony thus given is entitled to full faith and credit.^[19] Our review of her testimony supports the court *a quo*'s conclusions, as we found the complainant's testimony to have been given in a straight-forward and simple manner without a shadow of rancor or bitterness. Thus we consider her testimony to be deserving of total credibility.

The so-called inconsistencies or contradictions in the victim's testimony *vis-a-vis* her sworn statement and that of her aunt do not adversely affect her credibility. She was only 9 years old at the time of the incident. The traumatic and degrading misfortune that befell her, followed by the unfamiliar, confusing and frightening experiences of police investigation, medical examination, and courtroom grilling in full view of the public, surely placed her under a lot of pressure, and given her tender age, she was undoubtedly much troubled and confused. Moreover, this Court has held:

"As regards the inconsistencies in the affidavits and the testimony in court by the prosecution witnesses, this Court has held that affidavits are usually deficient. Being taken *ex parte*, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances