

## SECOND DIVISION

[ G.R. No. 193509, April 11, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
IRENEO GANZAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**SERENO, J.:**

Before the Court is an appeal from the 24 March 2010 Decision of the Court of Appeals (CA),<sup>[1]</sup> which affirmed the 5 October 2007 Decision of the Regional Trial Court (RTC),<sup>[2]</sup> Branch 24, Cebu City, which had convicted appellant Ireneo Ganzan (Ganzan) of the crime of rape.

Ganzan was charged in an Information<sup>[3]</sup> dated 30 March 2001, as follows:

That on 26<sup>th</sup> day of February, 2001 at 1:30 in the morning at APOCEMCO, Barangay Tinaan, Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA],<sup>[4]</sup> against her will and consent.

CONTRARY TO LAW.

Upon arraignment, appellant Ganzan entered a plea of "not guilty."<sup>[5]</sup> Trial on the merits ensued, and the RTC found him guilty beyond reasonable doubt of the crime of rape in a Decision dated 5 October 2007, the dispositive portion of which reads:

WHEREFORE, the prosecution having successfully discharged the burden of proving the guilt of the accused beyond reasonable doubt, this Court finds him guilty of rape punished under Article 266-A of the *Revised Penal Code*, as amended, and hereby sentences him to suffer the penalty of *Reclusion Perpetua*. He shall likewise suffer the accessory penalty inherent in the law.

Accused is further ordered to pay the victim a civil indemnity of **PhP50,000.00**, by reason of the crime and **PhP50,000.00**, as moral damages.

SO ORDERED.<sup>[6]</sup>

Dissatisfied with the judgment, Ganzan appealed to the Court of Appeals.<sup>[7]</sup> After a review of the records by the appellate court, the finding of guilt by the trial court was affirmed by the former in a Decision dated 24 March 2010.<sup>[8]</sup>

Ganzan then filed this instant appeal before this Court.<sup>[9]</sup>

### **The Facts**

The main witness for the prosecution was the victim herself. She narrated that, sometime before midnight on 25 February 2011, she was on her way home from a disco with her friend, Eleonor Sarda.<sup>[10]</sup> As they approached a small basketball court, they were accosted by a man with a gun, later identified as appellant Ganzan.<sup>[11]</sup> He was wearing a bonnet, but it did not cover his entire face, as it covered only his head and forehead.<sup>[12]</sup> He pointed a gun at them, identified himself as a member of the New People's Army from Bohol, and asked them the names of their parents and if they had identification cards.<sup>[13]</sup> He told them, "Don't be afraid of me because I'm not a bad guy. You just go there to the dark side."<sup>[14]</sup> Trembling, they obeyed his order.<sup>[15]</sup>

Upon reaching the dark side, Eleonor and AAA were ordered by Ganzan at gunpoint to remove their clothes. They complied until they were only in their undergarments. Ganzan trained a flashlight all over their bodies.<sup>[16]</sup> Thereafter, he sent Eleonor to the disco place to buy banana cue and cigarettes.<sup>[17]</sup>

After Eleonor left, Ganzan aimed his flashlight all over AAA's body while he kept looking around.<sup>[18]</sup> He then dragged her towards the vicinity of the Apo Cement Corporation (APOCEMCO).<sup>[19]</sup> When they reached a grassy area, he commanded her to lie down.<sup>[20]</sup> She refused, but Ganzan threatened her with the gun, forced her to lie down, and removed her panties.<sup>[21]</sup> AAA instantly covered her genitals with her hands.<sup>[22]</sup> After repeatedly ordering her to remove her hands, to no avail, Ganzan struck her hands, and uncovered her genitals. Afterwards, he covered AAA's face with her blouse and held both her hands.<sup>[23]</sup>

When AAA's face was already covered, appellant Ganzan inserted his finger inside her vagina, causing her to cry, "Ma!" Afterwards, he inserted his penis into her vagina, causing her to shout loudly. He then ordered her to keep quiet and poked a knife at her neck.<sup>[24]</sup> Because of her constant resistance, the blouse covering her face came off during the assault.<sup>[25]</sup> Ganzan then inserted his finger into her vagina for about three times, and then inserted his penis again.<sup>[26]</sup> AAA could not do anything, because she was no longer feeling well due to the intense pain.<sup>[27]</sup>

When Ganzan was finished, he ordered AAA to get up and put on her clothes.<sup>[28]</sup> After she got dressed, he pointed the gun at her and said, "Don't ever reveal these things because I will kill you and your family."<sup>[29]</sup> He then told her, "You can go home now but don't tell anybody about this. Don't turn around to face me."<sup>[30]</sup> Defiantly, AAA turned around to take a good look at her rapist. Ganzan then

remarked, "I told you not to turn your back," while still pointing the gun at her.<sup>[31]</sup>

AAA kept on walking until she reached home.<sup>[32]</sup> She slept on the sofa and did not inform anyone in her family about what happened, because she was afraid.<sup>[33]</sup>

Marie Cris Canicon and Reynante Cabigas narrated in their Joint Affidavit<sup>[34]</sup> that, shortly after the incident, at around 1:45 a.m., they saw appellant Ganzan coming from the area where the rape incident happened, still fixing his short pants. He was walking hurriedly while repeatedly looking from side to side. When appellant saw Marie Cris and Reynante, he asked them what they were doing in the area. He asked to see their identification cards, and when they replied that they did not have any, he asked them where they lived. He kept on pointing his flashlight at Marie Cris, until Reynante covered her eyes and told Ganzan not to do that. Marie Cris then stared at appellant for almost one minute, causing him to get angry. Afterwards, he left and told them not to go to the place he pointed to.<sup>[35]</sup>

Meanwhile, instead of following appellant's order to buy banana cue and cigarettes, Eleonor reported the incident to her cousin and to the *barangay tanods*. They went to the scene of the crime, but found nobody there.<sup>[36]</sup>

AAA woke up to the sound of her elder brother and cousin knocking very hard and kicking at their door. Apparently having heard about the incident, her brother asked her what happened.<sup>[37]</sup> She told him that somebody forcibly raped her. Her brother asked her if she knew her assailant, and she replied that she would recognize the person if she would see him again.<sup>[38]</sup> Her brother and cousin then went out looking for the man who raped her.<sup>[39]</sup>

In the morning, AAA went to the Don Vicente Sotto Memorial Hospital of Cebu City for a medical examination.<sup>[40]</sup> The examining physician, Dr. Carlos Ray B. Sanchez, concluded that, consistent with a finding of possible sexual abuse, there were fresh lacerations in her hymen. He also confirmed the presence of sperm.<sup>[41]</sup>

The following day, during a police lineup, both AAA and Eleonor Sarda identified Ganzan as the man who had waylaid them and later raped AAA.<sup>[42]</sup>

Appellant Ganzan interposed the defense of denial and alibi. He stated that he did not have a firearm,<sup>[43]</sup> and that he was a mountaineer at APOCEMCO.<sup>[44]</sup> On 25 February 2001, he was on duty from 7:00 a.m. up to 3:00 p.m.<sup>[45]</sup> At about 11:00 p.m., he rested and slept at the bunkhouse<sup>[46]</sup> together with Rolando Pelandas.<sup>[47]</sup> APOCEMCO Security Guard Michael Quirol confirmed that Ganzan proceeded to the bunkhouse a little past 10:00 p.m.<sup>[48]</sup> while Rolando Pelandas stated that he saw appellant sleeping in one of the rooms of the bunkhouse at about the same time.<sup>[49]</sup> From the time Ganzan arrived at the APOCEMCO compound that night, he alleged that he never left the premises until he woke up the following morning.<sup>[50]</sup>

On 27 February 2001, Ganzan was surprised to find out that he was a suspect in a rape incident and was being invited to go to the police station.<sup>[51]</sup> At the police

station, he was then identified by AAA as the one responsible for the rape.<sup>[52]</sup>

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

We rule that the prosecution has fulfilled its burden of establishing appellant's guilt beyond reasonable doubt.

The crime of rape is defined in the Revised Penal Code as amended by the Anti-Rape Law of 1997,<sup>[53]</sup> as follows:

*Art. 266-A. Rape, When and How Committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
  - a. Through force, threat or intimidation; x x x.

Pursuant to this provision, the essential elements that the prosecution must prove are, first, that a man succeeded in having carnal knowledge of a woman; and, second, that the act was accomplished through force, threat or intimidation.

In this case, AAA positively testified to the presence of both elements. In her testimony, she recounted in detail her harrowing experience at the hands of Ganzan – how she and her friend, while on their way home from a disco, were intercepted by the appellant;<sup>[54]</sup> how they were made to undress at gunpoint;<sup>[55]</sup> how her friend was sent away so that the appellant would be left alone with her to fulfill his lewd designs;<sup>[56]</sup> and how he actually succeeded in having carnal knowledge of her against her will while poking a knife against her neck.<sup>[57]</sup>

These accusations were further buttressed by the findings of Dr. Carlos Ray Sanchez, who concluded that there was a possibility of sexual abuse after he found fresh lacerations in her hymen and confirmed the presence of sperm in her vagina.<sup>[58]</sup>

For his part, appellant Ganzan vehemently denied the allegations of the prosecution and interposed alibi as a defense.

We have ruled that alibi is a weak defense and is viewed with disfavor by the courts, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. In order for alibi to prosper, appellant must prove that, first, he was somewhere else during the commission of the crime, and, second, that it was impossible for him to be anywhere within the vicinity of the crime scene.<sup>[59]</sup> The defense fell short of meeting this burden.

Appellant Ganzan alleged that he was sleeping in the APOCEMCO bunkhouse when the crime of rape occurred.<sup>[60]</sup> Michael Quirol confirmed that appellant had indeed proceeded to that place a little past 10:00 p.m.,<sup>[61]</sup> while Rolando Pelandas stated that he saw Ganzan sleeping in one of the rooms of the bunkhouse at about the

same time.<sup>[62]</sup> However, the rape incident occurred at about 1:30 a.m. of the following day, at which time Ganzan's presence was unaccounted for, aside from his bare and self-serving assertion.

Moreover, even if Ganzan was in the APOCEMCO compound at or near the time when the crime was committed, it was not impossible for him to be near the crime scene when the rape occurred. He himself testified that the crime scene could be reached from the bunkhouse by walking.<sup>[63]</sup>

We quote with favor the ruling of the trial court in disposing of appellant's defense of alibi:

x x x. During the ocular inspection, the distance from the place of the incident and the bunkhouse was proven to be easily accessible (five minutes by horse riding, passing through the quarry within the Compound of the APOCEMCO and about 300 meters passing the footpath through the barbed wire fence in shortcut to the highway). Thus, while it could be true that accused Ireneo Ganzan was sleeping at the bunk house of the Apocemco between 11:00 in the evening of February 25, 2001 until the morning of the next day, it could not be ruled out that he could have been at the place of the incident sometime in between or at about midnight or 1:30 dawn, when people are in deep slumber, to commit the bestial act against the victim herein.<sup>[64]</sup> x x x.

Furthermore, we have ruled that alibi cannot prevail over positive identification that is categorical, consistent and without any showing of ill motive on the part of the witness.<sup>[65]</sup>

In this case, AAA positively identified appellant Ganzan in open court as the perpetrator of the rape committed against her:

Q: Now, when you saw that person pointed by you, that was the face of the person who raped you?

A: Yes, sir.

Q: That was the face of the person who inserted his penis to your vagina?

A: Yes.

x x x

x x

x

x x x

Q: Now, if that person is here in the chamber, can you point him out?

A: Yes, that one.

Court Interpreter: Witness points to the person seated inside the chamber who when asked answered his name to be Ireneo Ganzan.<sup>[66]</sup>

We have ruled that owing to the nature of the offense, rape is usually a crime bereft of witnesses, and, in many cases, the only evidence is the testimony of the offended