

EN BANC

[G.R. No. 130610, October 16, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSELITO BALTAZAR, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

In three separate informations, accused-appellant Joselito Baltazar was charged with three (3) counts of rape allegedly committed on December 26, 1995, December 29, 1995 and January 8, 1996, against Digi Ann F. Niño, which were docketed as Criminal Cases Nos. L-5486, L-5487 and L-5488, respectively.

The informations were similarly worded, except for the dates of the commission of the crimes, as follows:

That on or about ... in the afternoon, at New Street East, municipality of Lingayen, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the complainant Digi Ann F. Niño against her will and consent and to her damage and prejudice.

CONTRARY to Article 335, Revised Penal Code.^[1]

The said cases were raffled to different branches of the Regional Trial Court but were consolidated to Branch 69 for trial.

On October 28, 1996, the accused-appellant, duly assisted by counsel, entered a plea of not guilty to the crimes charged.^[2] Thereafter, trial ensued.

On July 15, 1997, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding the accused Joselito Baltazar guilty beyond reasonable doubt of the crime of Rape in all these three (3) cases. Pursuant to Article 335 of the Revised Penal Code, as amended by Sec. 11 of R.A. 7659, the accused is hereby sentenced to suffer the penalty of Death in each case, and to indemnify the private complainant Digi Ann Niño, the sum of P150,000.00 as moral damages, and to pay the costs.

May God have mercy on his soul.

SO ORDERED.^[3]

Hence, the present recourse.

The prosecution's evidence is as follows:

On December 23, 1995, Digi Ann Niño went to the house of the accused-appellant at No. 39 New Street East to visit her mother Teresita Fernandez Niño who was then working as a house helper of the accused-appellant.^[4] The accused-appellant is Digi Ann's uncle, the former being the husband of the younger sister of her mother.^[5]

In the afternoon of December 26, 1995, Digi Ann was watching television on the second floor of the house of the accused-appellant. At around four o'clock to five o'clock in the afternoon, she fell asleep inside the room of the accused-appellant but she was awakened when the latter lowered her short pants and panty. Accused-appellant poked a knife at her and taped her mouth with masking tape.^[6] Accused-appellant then removed his pants and underwear and thereafter, inserted his penis into her vagina.^[7] After satisfying his lust, accused-appellant told the victim in Tagalog "*Pag nagsumbong ka papatayin kita.*"^[8] Digi Ann then went to the bathroom to bathe herself.^[9]

On December 29, 1995, Digi Ann was instructed by her mother to get something for her at the second floor of the house of the accused-appellant. Accused-appellant followed her as she was about to leave the room, held her and laid her on his bed. He poked a knife at her, sliced a piece of masking tape and placed it on her mouth.^[10] He removed her short pants and panty and thereafter, removed his own pants and inserted his penis into her vagina.^[11] After violating her, accused-appellant again threatened her by saying "*Huwag mong kalilimutan ang sinabi ko sa iyo.*"^[12]

On January 8, 1996, around four o'clock to five o'clock in the afternoon, the victim was watching television with the accused-appellant's two (2) children at the second floor of their house.^[13] Accused-appellant instructed his children to go downstairs and told them that he had to say something to Digi Ann. But when Digi Ann asked accused-appellant what he was going to tell her, he did not say anything. Instead, when she was about to leave the room, accused-appellant held her and laid her on his bed. He lowered her short pants and panty up to the knees and then removed his own pants and inserted his penis into her vagina. Afterwards, he again threatened her with death if she will report the crimes he committed.^[14]

After each rape, Digi Ann saw spots of blood on her underwear.^[15]

For the defense, accused-appellant testified that he was a tricycle driver and that he operated his tricycle from Monday to Friday, at six o'clock in the morning up to twelve noon when he goes home for lunch and then, at one o'clock in the afternoon up to seven o'clock in the evening.^[16] On Saturdays and Sundays, he spends time with his family. He is legally married to Marietta Fernandez Baltazar, the victim's aunt.^[17] He denied having raped Digi Ann on December 26, 1995, December 29, 1995 and January 8, 1996.^[18] He, likewise, denied having kept a knife in his person or in his bedroom. He also denied having masking tape in his possession.^[19]

In his brief, accused-appellant claims that the court *a quo* erred when it found that:

1.) Digi Ann was raped on December 26, 1995, December 29, 1995 and January 8, 1996.

2.) The accused-appellant raped Digi Ann.

3.) A paternity test should have been undertaken by, and at the expense of, the accused-appellant.

4.) The evidence of the prosecution proved beyond reasonable doubt the guilt of the accused.^[20]

The pivotal issue in this case is whether the trial court found the testimony of the victim credible. After a careful review of the records, we find no cause to hold otherwise.

In the first assigned error, accused-appellant takes stock of the fact that Digi Ann's panty and short pants were pulled down only up to her knees when she was allegedly raped on December 26 and 29, 1995 and January 8, 1996. Accused-appellant contends that there was physical impossibility of carnal knowledge, much less of rape, because of the fact that the victim's short pants and panty were not completely removed from her. He submits that even a mere touch of the *labia majora* by the penis is physically impossible with the panty and the short pants of a reluctant or struggling victim pulled down only to her knees.

The submissions are without merit.

While it may be true that there might be some difficulty to penetrate a woman's sex organ if her short pants and panty were lowered only up to her knees, penetration, however, is not impossible if the pants and panty are loose and do not actually obstruct the penetration of the penis into her sex organ. In *People v. Hortelano*,^[21] the victim's underwear was lowered to her knees but the accused succeeded in raping her. The same is true in *People v. Aquino*,^[22] where the victim testified before the trial court that the accused was able to lower down her panty up to her knees and succeeded in having sexual intercourse with her.

Accused-appellant also claims that assuming he had carnal knowledge of the victim on January 8, 1996, the prosecution failed to present any evidence to show that force or intimidation attended the commission of the crime. Hence, he maintains that no rape was committed on said date.

The contention is devoid of merit.

It is true that Digi Ann did not testify that accused-appellant used force on her on January 8, 1996. However, it should be borne in mind that she was previously raped by the accused-appellant on December 26 and 29, 1995 and on both occasions, accused-appellant succeeded in intimidating the victim and in instilling fear in her fragile and young mind. Moreover, accused-appellant threatened her with death if she will report the rape to her family or to the authorities. With these threats still fresh in her mind, the victim could have been easily cowed to submission when the accused-appellant raped her for the third time on said date.

In *People v. Melivo*,^[23] cited in *People v. de Leon*,^[24] this Court held that:

xxx. A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.

x x x

xxx. [T]he rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time. In many instances, he succeeds and the crime is forever kept on a lid. In a few cases, the victim suddenly finds the will to summon unknown sources of courage to cry out for help and bring her depraved malefactor to justice.

Given this pattern, we have repeatedly ruled that the failure of the victim to immediately report the rape is not indicative of fabrication. 'Young girls usually conceal for some time the fact of their having been raped.' x x x.

In all of these and other cases of incestuous rape, the perpetrator takes full advantage of his blood relationship, ascendancy, and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence. Unfortunately for some perpetrators of incestuous rape, their victims manage to break out from the cycle of fear and terror. In *People v. Molero*, we emphasized that "an intimidated person cowed into submitting to a series of repulsive acts may acquire some courage as she grows older and finally state that enough is enough, the depraved malefactor must be punished."^[25]

Verily, intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. It is addressed to the mind of the victim and is, therefore, subjective.^[26]

Accused-appellant also tries to discredit the declaration of the victim that she saw blood spots on her panty after each rape was committed. He claims (a) that as testified by Dr. Alexis Mary Chuson the last menstrual period of Digi Ann was in the last week of December 1995, and (b) that by reason of said menstrual period, her panty would not have a mere spot of blood on December 26 or December 29, 1995 but would have been saturated or soaked with menstrual blood.^[27]

We are not convinced by the argument.

Even though the victim was having her menstruation on the date that she was raped, it does not mean that the flow of blood was constant all the time. It is widely

known that during a period of menstrual flow, there are times when the flow is heavy so as to saturate a girl's underwear with blood and there are also times when the flow is minimal that only mere spots of blood can be seen on the underwear. What is certain is that the presence of blood in her panty is consistent with the medical findings of hymenal lacerations and the victim's menstrual period. Thus, we quote with approval the findings of the trial court on this matter:

The defense seems to overlook the biological fact that during the menstrual period of a woman there are times when the menstrual flow is heavy and there are also times when the flow is minimal or only a little blood comes out. This could have been the reason why there was only a spot or stain of blood in the panty of the complainant when she was raped by the accused on December 26 and 29, 1995. There is no evidence of the size of the blood spot or stain, but apparently, her menstrual flow was not heavy on those dates. But the inescapable fact remains that there was blood in her panty which is consistent with the medical findings of hymenal lacerations and complainant's menstrual period. (Exh. "A").^[28]

As to the rape which was allegedly committed on January 8, 1996, accused-appellant contends that there could not have been any spot of blood because the victim was no longer menstruating at that time.

We disagree.

In the first place, the victim did not testify that she was menstruating on January 8, 1996. It was only the accused-appellant who asserted that if there were blood spots on the underwear of the victim, the same may have been due to menstruation. We agree with the trial court that the blood spots on the underwear of the victim may have been due to menstruation or to vaginal lacerations as a result of the rape.^[29] It is not the presence or absence of blood on the victim's underwear that determines the fact of rape anyway.

Accused-appellant also denies having a knife or masking tape inside his bedroom.^[30] He also claims that Digi Ann was merely fantasizing when she said that she saw something "white and sticky" coming out of the erected penis of the accused-appellant.^[31] He further argues that if she was sexually abused on December 26 and 29, 1995, when she was menstruating, that "white and sticky" substance would have been mixed with the menstrual blood and would have been blood red or pinkish in color instead of a separate spot of blood on one side of her panty and a separate spot of the "white and sticky" substance on the other side of her panty.^[32]

To our mind, these allegations are merely peripheral and trivial in nature.^[33] They cannot prevail over the positive identification made by the victim and her categorical declaration that she was raped on three occasions by herein accused-appellant. Besides, during cross-examination, accused-appellant admitted that there was a knife in the kitchen of his house.^[34] Thus, even if he did not keep a knife in his bedroom, there was nothing to prevent him from taking a knife from the kitchen and using it to threaten the victim. The presence, absence or mixture of menstrual blood and semen, as the case maybe, does not have any bearing on the resolution of this case.