

SECOND DIVISION

[G.R. No. 130651, November 22, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANTE DESAMPARADO Y DIOLA, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from the decision,^[1] dated July 17, 1998, of the Regional Trial Court, Branch 47, Bacolod City, finding accused-appellant Dante Desamparado y Diola guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the complainant Joan Patatag P50,000.00 as civil indemnity and P25,000.00 as exemplary damages.

The complaint against accused-appellant alleged:
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That on or about the 24th day of February, 1997, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, being then armed with a knife, by means of force, violence and intimidation, did, then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein complainant JOAN PATATAG y SUSAN, 13 years of age, against the latter's will.^[2]

Accused-appellant having pleaded not guilty when arraigned,^[3] trial proceeded.

The prosecution presented evidence showing the following:

At around 7 o'clock in the evening of February 24, 1997, in Purok Mahimulaton, Barangay Banago, Bacolod City, while complainant Joan Patatag, then 13 years old, was at the seashore, she was seized by accused-appellant and taken behind a hut. At knifepoint she was forced to lie down on the sand and then to have sexual intercourse with accused-appellant. Complainant was warned not to make any outcry nor tell anyone about what happened to her, otherwise she and her family would be killed. Complainant suffered tremendous pain which made her cry. She begged accused-appellant to stop, but he did not heed her until after some time. After he was through, accused-appellant stood up and left complainant. Complainant noticed that one of his fingers was bleeding.^[4]

Worried that she was not yet home, complainant's aunt, Nilfa Bejemino Amante, the latter's daughter, Elvie "Nene" Amante, and their friend, Nida "Diday" Alulon, looked for her at the seashore. But when complainant saw them, she tried to run away. They found complainant crying and trembling. Complainant was also bleeding. She told them what had happened to her. She was taken to the hospital and afterwards

to the police station.^[5] On February 25, 1997, complainant was examined by Dr. Joy Ann C. Jocson of the Bacolod City Health Office, whose findings, as set forth in her report (Exh. D), are as follows:

1. Inner thigh and perineal area with grains of sand
2. Blood noted to be oozing from the vaginal introitus
3. Right labia minora inflamed and swollen with abrasions
4. Abrasions also noted near the clitoris and posterior fourchette
5. Left labia minora with abrasions noted
6. New lacerations with slight bleeding noted around the hymenal ring on the following positions: 3 o'clock, 6 o'clock, 9 o'clock and 11 o'clock^[6]

Dr. Jocson testified that she found indications that the hymenal lacerations had been inflicted within 24 hours prior to the examination of complainant. She also testified that the lacerations were caused by the penetration of a hard object like the erect penis of a man.^[7]

In the afternoon of February 25, 1997, the police inspected the scene of the rape. There they recovered the piece of cloth used by accused-appellant to wipe off the blood from his wounded finger (Exh. B).^[8]

On February 26, 1997, complainant, with Nilfa's assistance, filed a sworn complaint (Exh. C) against accused-appellant.

Accused-appellant took the witness stand, basically interposing alibi for his defense. He claimed that in the evening of February 24, 1997, he dropped by the house of his cousin who gave him a dish of greenshells; that he met prosecution witness Nilfa Amante and the latter's daughter "Nene" on his way home at around 7:15 p.m.; that when he reached his house, he took his supper and went to sleep after five minutes; and that at around 10:00 p.m., he was awakened by the police who, even without a warrant, forced him to go with them. Accused-appellant said he was surprised that he was accused of raping complainant Joan Patatag because he did not know her personally.^[9]

Defense witnesses Imelda Eufemio, Raul Elostresimo, and Lolita Tandog corroborated accused-appellant's testimony.

Imelda Eufemio, a relative of accused-appellant, testified that the latter indeed dropped by her house at around 7:00 in the evening of February 24, 1997, asking for food. She gave him greenshells which she placed in a plastic cup. Imelda said that accused-appellant's house is "far from the seashore."^[10]

Raul Elostresimo testified that at around 7:00 in the evening of February 24, 1997, he was watching television at the house of "Diday" Alulon when accused-appellant stopped briefly and watched television. Then he saw accused-appellant go to the adjacent house of "Neneng." At past 7:15 p.m., he saw accused-appellant on his way home with some food given to him. According to Raul, "Diday" Alulon's house is 50 meters away from the seashore, and that there were stores still open at around 7:00 p.m. He said that the people in Purok Mahimulaton usually retire at past

10:00 p.m.^[11]

Lolita Tandog, who lived in the house adjacent to accused-appellant's, testified that in the evening of February 24, 1997, she was at accused-appellant's house watching television, together with accused-appellant's sisters, his wife, several children, and "Tia" Nely, a neighbor. She saw accused-appellant leave the house at around 7:00 p.m. and return 25 minutes later carrying a cup of greenshells. She saw him proceed to the kitchen where he transferred the contents of the cup in a bowl and then eat his supper.^[12]

For their part, defense witnesses Lolita Tumbale and Jirisa "Bing" Labane testified that a certain "Obet" was originally tagged as the rapist of complainant. Specifically, Jirisa "Bing" Labane testified that in the evening of February 24, 1997, when she went out of her house, she was approached by "Diday" who asked her help in looking for complainant. They found complainant Joan Patatag at the seashore. According to Jirisa, when "Diday" asked complainant what had happened to her, complainant told them she had been raped by "Obet."^[13]

On July 17, 1997, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, finding accused Dante Desamparado y Diola GUILTY beyond reasonable doubt of the crime of Rape under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, judgment is hereby rendered condemning him to suffer RECLUSION PERPETUA, as well as the accessory penalty provided by law. He is likewise ordered to indemnify the offended party Joan Patatag P50,000.00 for the crime committed on her and, also to pay her P25,000.00 as exemplary damages. Costs against accused.

Accused Dante Desamparado being in custody in connection with this case, the period of his preventive imprisonment shall be fully credited in his favor and to be deducted from the service of his sentence, notwithstanding the penalty of reclusion perpetua (People vs. Corpus, 231 SCRA 480), provided he has agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.^[14]

Hence this appeal.

Accused-appellant contends that the following statements of complainant Joan Patatag are improbabilities: (1) the rape was committed near a hut which had occupants who could have seen the crime if it really happened there; (2) after the rape, when accused-appellant had left her, private respondent did not immediately report the matter to or even asked help from the occupants of the hut or go to the house of her aunt, Nilfa Amante, who was living nearby but instead went back to the seashore; and (3) complainant fled when she saw her aunt and the latter's friend "Diday."

Accused-appellant also points out that in the beginning, complainant mentioned a certain "Obet" as her assailant, and that it was only at her aunt's suggestion that she pointed to him (accused-appellant) as the culprit.

He argues that the trial court should not have considered the piece of cloth (Exh. B) allegedly used by him to wipe the blood from his finger which had been injured as no tests were presented establishing the blood was human and that it matched his blood type.

The issue here turns on the credibility of complainant. In order to justify the conviction of the accused, the testimony must be credible, natural, convincing, and consistent with human nature.^[15] In rape cases, courts are guided by the following considerations:

- (1) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove the same;
- (2) In view of the intrinsic 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
- (3) 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.^[16]

Applying these guidelines, complainant's testimony fails to prove beyond reasonable doubt that accused-appellant is guilty.

First. Complainant admitted she did not name accused-appellant as the assailant but that she pointed to a certain "Obet" as the culprit. Complainant's testimony is as follows:

[ATTY. LINDY DIOLA, defense counsel.]

Q And when you were caught by them[referring to complainant's aunt Nilfa Amante] after trying to escape from them, is it not that when you were asked who committed the crime of rape against you as you alleged, you told them it was Obet, is it not?

A Yes, and my Nanay^[17] [Nilfa Amante] told me that he is not Obet - he is Dante.

Q You changed the identification, the name, when it was suggested to you by your Nanay that it was Dante?

PATATAG: