

SECOND DIVISION

[G.R. No. 130601, December 04, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL
DIOPITA Y GUZMAN, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

RAFAEL DIOPITA y GUZMAN appeals from the Decision of the Regional Trial Court of Davao City finding him guilty of Robbery with Rape, imposing upon him the penalty of *reclusion perpetua* and ordering him to pay the victim, Dominga Pikit-pikit, P8,500.00 for actual damages and P50,000.00 for moral damages.^[1]

Culled principally from the testimonies of Dominga Pikit-pikit and PO3 Steve dela Cruz, the inculpatory facts follow: At about 9:00 o'clock in the evening of 16 April 1995 complaining witness Dominga Pikit-pikit, 24 years old, was walking towards Emiville Subdivision, Diversion Road, Sasa, Davao City, on her way home from work. Suddenly, a man appeared from behind, looped his arm around her neck and warned her not to shout or else she would die.^[2] The man then dragged her through the banana plantation towards the cornfields where the plants were a meter high and far apart.^[3] When Dominga shouted for help, the man pushed her to the ground and punched her on the stomach saying, "*Leche ka*, why are you shouting? What do you want me to do, make you unconscious?"^[4]

Dominga Pikit-pikit got a good look at the man, who turned out to be accused-appellant Rafael Diopita y Guzman, as he sat on her thighs and proceeded to divest her of her belongings - ladies watch, bracelet, ring with russian diamonds, wedding ring and P1,000.00 cash. With the full moon shining on his face, the victim clearly saw Diopita place the items on the right pocket of his shorts.^[5]

Thereafter, accused-appellant Diopita announced his desire to have carnal knowledge of Dominga. Forthwith, he pulled up her t-shirt and unfastened her brassiere. He also loosened her belt, unzipped her pants and struggled to pull it down, nearly ripping her zipper. Annoyed at the tightness of her pants, Diopita hit her and ordered her to help him pull them down.^[6] Dominga, fearing for her life and thinking of Diopita's punches, obeyed. She pulled her pants to her hips. Then accused-appellant forcibly pulled them down further and got irritated in fact when he was told that she was wearing a girdle and panty. In frustration, he punched her repeatedly and kept on muttering, "Why is this very tight? What kind of panty is this?" Finally, he succeeded in pulling the girdle and panty down.^[7]

Accused-appellant Diopita then took off his shorts. He kissed the victim, lasciviously caressed her breasts, bit her nipples, and fornicated with her. As he was sexually assaulting her, Dominga made desperate struggles and frantic calls for

help but her efforts proved futile until he finally satiated his lust. He then warned Dominga not to tell anyone and that should he hear that she told anybody about the incident he would shoot her to death. Then he dressed up and left, walking casually to the opposite direction of the subdivision before disappearing in the darkness.^[8]

Exhausted, Dominga slowly stood up, put on her clothes and walked away in the direction of her house. Finding it locked, she asked help from her neighbors who called the police. Thereafter, Dominga was brought to Precinct No. 4 of Sasa, Davao City, where SPO1 Stephen Batacan entered her complaint in the police blotter. Later, she was examined by Dr. Floranne Lam-Vergara at the Davao Medical Center who found her "positive for spermatoocytes."^[9]

PO3 Steve dela Cruz, who was on duty at the Intelligence and Investigation Section, made a follow-up on the case. He went to the victim's house and interviewed her between the hours of 1:00 o'clock and 3:00 o'clock in the morning of the following day, 17 April 1995. Dominga gave a description of the suspect and his possible whereabouts.^[10] Acting on that information, PO3 dela Cruz went to the scene of the crime to investigate and there he recovered a colored white/yellow, size ten (10) slipper. Since the victim earlier disclosed that the suspect headed north after committing the crime, he proceeded to that direction where he came upon four (4) houses about fifteen (15) to fifty (50) meters away from the scene of the crime. A back-up team was called and they rounded up all the residents therein. Afterwards, four (4) men who fitted the description of the suspect were invited to the police station for questioning. They were Placido Laput, William Silvano, Vicente Silvano and accused-appellant Rafael Diopita y Guzman.^[11]

At about 6:00 o'clock in the morning of 17 April 1995, the police invited Dominga to identify the suspect at the police station. Thereat, Dominga saw the four (4) men in a police line-up and readily pointed at accused-appellant.^[12] The police then had him try on the recovered slipper; it easily fitted him.^[13] Thus, Diopita was detained while the others were released.

The defense denied the charge and invoked alibi. Accused-appellant claimed that between 8:30 to 12:00 o'clock in the evening of 16 April 1995 he was with his wife Flora, son Ryan and fellow Jehovah's Witnesses Roger Custorio and Ruben Suarez at the house of Eulalio Nisnisan for an informal Bible session upon the invitation of Juan Nisnisan.^[14] Accused-appellant also claimed that during those hours, he never left the place. Flora, Roger, Ruben, Eulalio and Juan corroborated his alibi and testified on his good moral character as a ministerial servant of their faith.

On 18 June 1997, the trial court formally rejected his defense of alibi and convicted him of the crime charged; consequently, accused-appellant is now before us on appeal. The trial court ruled -

Alibi is a weak defense because it can easily be fabricated that it is so easy for witnesses to get confused as to dates and time. The precision with which the witnesses for the defense, who are his co-members in the Jehovah's Witnesses, quoted the respective hours when the participants in the Bible sharing session supposedly arrived is, at best, self-serving

and deserves scant consideration because of the facility with which it may be concocted and fabricated.

On the other hand, private complainant Dominga Pikit-Pikit positively identified Rafael Diopita as the person who robbed and raped her on April 16, 1995. She testified in a clear, straightforward and convincing manner and no ill-motive on her part had been shown to have prompted her to testify falsely. The failure of the defense to attribute any ill-motive on the part of Pikit-Pikit to pin responsibility on Diopita adds more credence to complainant's testimony.

In a long line of cases, it has been held that the defense of alibi cannot prevail over the positive identification of the accused by the victim. Pikit-Pikit testified that she was able to see the face of her attacker because the moon was shining brightly that evening. This Court takes judicial notice of the fact that in the month of April 1995 the full moon came out on April 15, 1995, a day before the date of the crime.

We affirm his conviction; the guilt of accused-appellant has been established by the evidence beyond reasonable doubt.

First. Complaining witness Dominga Pikit-pikit positively and categorically identified accused-appellant as her assailant, first during the police line-up where she singled him out from among the four (4) suspects and, later during the trial where she pointed at accused-appellant as the one who robbed and sexually molested her -

Q: Where did you go?

A: To the Police Station, there were four persons who lined up for identification.

Q: And then?

A: First, when I arrived, I peeped behind the place where there were four persons lining up. After that I went to the place where they were receiving visitors and I saw the four persons who were there already and lined up.

Q: And then?

A: After that the police told me to identify the person who molested me, and I pointed to that person there (witness pointing to the accused whom she previously identified).

[15]

From the circumstances of this case, it cannot be denied that complaining witness Dominga Pikit-pikit had a good look at the face and physical features of accused-appellant during the commission of the crime. While the robbery was in progress, the moonlight sufficiently illumined his face and clothes, thus making it possible for private complainant to identify him.^[16] During the rape, private complainant was as close to accused-appellant as was physically possible, for a man and a woman cannot be more physically close to each other than during a sexual act.^[17] Victims of criminal violence naturally strive to know the identity of their assailants and observe the manner the crime was perpetrated, creating a lasting impression which

may not be erased easily in their memory.^[18] There is therefore no reason to doubt the accuracy of private complainant's visual perception of accused-appellant as the criminal. Nor is there any reason to doubt her honesty of intention for there is no showing that she implicated accused-appellant due to an evil or corrupt motive.

We do not subscribe to accused-appellant's contentions that the complaining witness hesitated to point at him during the police line-up, and that she was just forced by the police to choose him from among the four (4) suspects. The identification was made with such certainty by the complaining witness that even accused-appellant had to comment on it -

Atty. Galicia: What made you say she was hesitant to point at you? x x x
x

Rafael Diopita: Because during that time, sir, when we confronted each other in the police station, she was looking at me when there were four of us there. So, I asked why x x x x^[19]

The foregoing testimony belied the allegation of hesitancy on the part of Dominga Pikit-pikit to pinpoint accused-appellant during the line-up. His very own words project his guilt as well. Only the guilty experiences neurotic fear in the face of imminent discovery of his malefaction. His paranoia colors his interpretation of the events during the line-up. Consider accused-appellant's assertion that Dominga Pikit-pikit was forced by the police to point at him, and Prosecutor Esparagoza's objection thereto -

Sur-rebuttal of Atty. Galicia: Mr. Diopita, according to private complainant Dominga Pikit-pikit during her rebuttal testimony that she was not forced by the police to point at you when you were in the police station. What can you say to that?

Rafael Diopita: That woman hesitated to point at me but the police said you point at him.

Q: What made you say she was hesitant to point at you?

Prosecutor Esparagoza: The witness said "ITUDLO! ITUDLO!" (YOU POINT! YOU POINT!). He did not say he was the one pointed to, your Honor.^[20]

Gleaned from the aforequoted testimony was the absence of suggestiveness in the identification process. There were four (4) men in the line-up and the police did not specifically suggest to Dominga to point particularly at accused-appellant. Not even the shodding of the slipper recovered from the scene of the crime could provide any suggestiveness to the line-up as it came after accused-appellant was already identified by Dominga Pikit-pikit.

Second. In light of this positive and direct evidence of accused-appellant's