

[SYLLABUS]

[G.R. Nos. 112457-58, March 29, 1996]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMEO CARTUANO, JR., ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

Accused-appellant Romeo Cartuano, Jr. was charged by the provincial prosecutor of Camarines Sur with two (2) counts of rape in two separate Informations filed with the Regional Trial Court of Pili, Camarines Sur. Said informations read as follows:

CRIM. CASE NO. P-2104

That on or about the 4th day of May, 1991 in the barangay of San Agustin, Municipality of Pili, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with lewd designs and by means of force, and with abuse of confidence, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Adela Villa, a mentally retarded person, while in her house, against her will and consent, to the damage and prejudice of the offended party.

ACTS CONTRARY TO LAW.^[1]

CRIM. CASE NO. P-2107

That on or about the 20th day of August, 1991 in the barangay of San Agustin, Municipality of Pili, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with lewd designs, by means of force and with abuse of confidence, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Adela Villa, a mentally retarded person, while in her house, against her will and consent, to the damage and prejudice of the offended party.

ACTS CONTRARY TO LAW.^[2]

Complaints leading to the two quoted informations were initiated by Antonio Villa, father of the victim Adela Villa, supposedly after he discovered the alleged rape of his daughter in the morning of August 20, 1991.^[3] Joint trial of the two cases proceeded upon agreement of the parties, with the accused entering a plea of not guilty on arraignment. The prosecution's evidence, based on sworn affidavits of the private complainants and their separate testimonies were summarized by the court below as follows:

x x x That on August 20, 1991, while Adela Villa was washing clothes at the suction well located at the back of their house in Barrio San Agustin, Pili, Camarines Sur, the accused, Romeo Cartuano, Jr. suddenly grabbed the hands of Adela Villa and dragged her inside their house and once inside, the herein accused has forcibly laid down Adela and removed the latter's panty. The accused also removed his clothes and placed himself on top of Adela and had sexual intercourse with her.

The incident happened while Geric Villa, the 5-year old grandson of Antonio Villa and nephew of Adela, was allegedly present inside the room and witnessed what was done to Adela by the accused.

Antonio Villa testified that, after coming home from the Poblacion of Pili, Camarines Sur in the morning of August 20, 1991, he found his grandson Geric crying. That when he investigated why he was crying, Geric revealed to him that he got scared when the accused threatened with a sharp instrument and pulled his auntie, Adela Villa, towards their house. That in his presence, the accused stripped her of her clothes and forcibly caused her to lie down and thereafter went on top of her. That he then saw the accused moved his buttocks up and down.

After learning from Geric what the accused did to his daughter Adela, Antonio Villa and his wife Elena investigated their daughter, whom they claim to be a retardate, and not only did their daughter confirm the report of Geric but she further told them that she had been previously raped by the accused on May 4, 1991 during the feast day of their barrio.

Adela Villa claims that the accused, who is her first cousin and was then living in the ricefield, frequently went to their house. That on May 4, 1991 the accused entered her room and forcibly made her lie down. Then, against her will, the accused removed her panty and likewise his own clothes then raped her by placing himself on top of her and inserted his male organ into her genetalia which caused it to bleed and caused her to feel pain. Thereafter, the accused threatened her that she would be stabbed if ever she would tell anyone about the incident.^[4]

In his defense, accused-appellant presented evidence that he was not at the scene of the crime at the time the alleged incidents of rape were supposed to have occurred. These were capsulized by the trial court thus:

For his exculpation, the accused denied the accusations against him and claims that during the period between January to August, 1991, he was employed by one Herminio Tuyay at La Purisima, Nabua, Camarines Sur as farm helper. And during his employment he stayed and lived at the house of Herminio Tuyay together with the latter's family x x x.

x x x When he met Herminio Tuyay, the latter offered him a job as a farm helper which he accepted. He started in his job sometime in January, 1991 and from then on he stayed at his employer's house and never left his place of work except when ordered by Tuyay to attend to the other properties of the latter. That on August 1, 1991, he was told by his father to visit his uncle Gelacio Hade, who was then sick and so together with

Gelacio's daughter, they proceeded to the Bicol Regional Training Hospital to watch over his uncle who was confined thereat. On August 3, 1991, his uncle died and it was only during that time that he went to Pili to attend the wake of his uncle which lasted up to August 15, 1991. x x x He stayed with his aunt at Pili until August 19, 1991 when he went to La Purisima, Nabua to ask permission from his employer, Tuyay, that he will have to leave the latter since his Aunt Bating will buy a 'pajak' or pedicab for him to operate in Pili, Camarines Sur. However, when he arrived at Nabua, he did not find his employer there who was allegedly in Ombao, Bula, at that time. And so he just waited until Tuyay arrived on August 21, 1991. But his employer did not allow him to leave. He was nevertheless permitted to go to Pili and to inform his aunt about the same. He arrived at the house of his aunt in Pili at around noontime of August 21, 1991 but while he was resting Barangay Captain Latumbo came and invited him to go to the Pili Municipal Building at the Pili Police station.^[5]

On July 28, 1993, the Regional Trial Court rendered its decision finding the accused guilty as charged of rape in both criminal cases, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered:

In Criminal Case No. P-2104

Finding the accused Romeo Cartuano, Jr. y Villa Guilty of the crime of rape under paragraphs 2 and 3 of Article 335 of the Revised Penal Code committed with the attendance of the aggravating circumstance of dwelling which is not offset by any mitigating circumstances and hereby sentences him to suffer the penalty of reclusion perpetua together with its accessory penalties and to indemnify Adela Villa the amount of P30,000.00.

In Criminal Case No. P - 2107

Finding the accused Romeo Cartuano, Jr. y Villa Guilty of the crime of rape under paragraphs 2 and 3 of Article 335 of the Revised Penal Code committed with the attendance of the aggravating circumstance of dwelling which is not offset by any mitigating circumstance and hereby sentences him to suffer the penalty of reclusion perpetua together with its accessory penalties and to indemnify Adela Villa the amount of P30,000.00.

The accused is further sentenced to support Thomas Virgilio Villa, his incestuous child, and to pay the costs of suit in both cases.

The accused is credited in full for the period of his preventive imprisonment if he agreed voluntarily in writing to abide by the disciplinary rules imposed upon convicted prisoners, otherwise with four-fifths thereof.

Hence, the instant appeal, in which accused-appellant interposes the following assignments of errors:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE ITS FINDINGS THAT THE TESTIMONIES OF ANTONIO VILLA IS PURE HEARSAY AND THAT OF THE VICTIM ADELA VILLA UNCONVINCING.

II

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANT IS THE FATHER OF THE SON OF THE VICTIM DESPITE ITS EARLIER CONCLUSION THAT THE TESTIMONY OF ADELA VILLA IS NOT CONVINCING.

III

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ALIBI PUT UP BY THE ACCUSED-APPELLANT.

IV

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE ITS GUILT BEYOND REASONABLE DOUBT.

In its assailed decision, the court below ruled that a substantial part of the evidence presented by the prosecution, specifically, the affidavits executed by appellant and his father and the testimony of Antonio Villa, either violated the appellant's constitutional right to counsel during custodial investigation or constituted incompetent evidence. The court stated:

The affidavit signed by the accused (Exhibit D) prepared by Police Officer Beatriz Jordan contains admissions by the accused of the incidents imputed to him under Police Blotter Entry No. 6297 dated August 21, 1991. But the accused was made to sign it while in detention effected at the instance of Barangay Captain Latumbo of San Isidro, Pili and of Chief Inspector Rosero of the Pili Police Station. That in fact the accused was only released from detention after he and his father signed their respective affidavits (TSN, p. 34, Antonio Villa, Dec. 23, 1992). That when the accused was investigated by Police Officer Jordan and made to sign the affidavit, the accused was never assisted by counsel (TSN. p. 31, Dec. 23, 1992) and this fact was even admitted by prosecution witness Antonio Villa himself. And it is never shown by the prosecution that the accused waived in writing his right to remain silent and that he was assisted by counsel in making such waiver. It is, therefore, clearly obvious that the taking of the affidavit of the accused while in police custody by Police Officer Jordan violated the rights of the accused

guaranteed to him under the Constitution on Custodial investigation among which are his rights to be informed of his right to remain silent and to have competent and independent counsel. And that if the accused wanted to waive said rights, the same must be in writing and in the presence of Counsel (Sec. 12 (1) Art. III, Constitution). Hence, said admissions made by the accused as contained in his affidavit are inadmissible against him. (Sec. 12(3), Constitution; and *Peo. vs. Jimenez*, 204 SCRA 727).

The affidavit signed by the father of the accused (Exh. C), also prepared by Policewoman Jordan, is likewise not admissible and binding upon the accused because

it is covered by Sec. 28 of Rule 130 of the Rules of Court which enunciates the rule of "*res inter alias acta alteri nocere non debet*." Said rule *declares* that the rights of a party cannot be prejudiced by an act, declaration, or omission of another.

The Court can not accept the testimony of Antonio Villa, that in the morning of August 20, 1991 he was able to learn from his grandson Geric Villa, a 5-year old boy, about the rape, including the details of its commission, that the accused committed against Adela Villa on that day, for the reason that said testimony is purely hearsay. Besides said testimony is not easy to accept in view of the fact that Geric Villa, the informant of Antonio Villa, as observed by the Court could hardly communicate. In fact the public prosecutor who had opportunity to confer with and interview Geric Villa admitted in open court that it was very difficult to present him as a witness. And that must be the reason why Geric Villa was not presented to testify in this case.

However, the court gave full credence to the "positive testimony" of Adela Villa, ruling that the accused "had sexual intercourse" with the former, the "circumstances notwithstanding," referring to the bulk of the oral testimony and documentary evidence which it had thrown out.^[6]

A thorough review of the record compels us to find for the appellant.

It is a well-settled principle in this jurisdiction that in crimes against chastity, the testimony of the offended party should not be received with precipitate credulity.^[7] The exacting standard of proof beyond reasonable doubt acquires more relevance in rape, because such charges are fairly easy to make but difficult to establish, and harder still to defend by the accused party, who may be innocent.^[8]

We agree with the court below that the principal evidence for the defense merely consisted of claims, corroborated by some of his witnesses, that he was not in the scene of the crime at the time the incidents were said to have occurred. In our jurisprudence, alibi has consistently been held to be a weak defense. However, a judgment of conviction must stand on foundations more steadfast than on a shaky defense. And as equally fundamental as the premise that an alibi is an inherently weak defense is the axiom that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw its strength from the weakness of