

THIRD DIVISION

[G.R. No. 99867, September 19, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NARCISO BARERA, ALIAS "NARSING," ACCUSED-APPELLANT.**

DECISION

PANGANIBAN, J.:

Accused of rape, the herein appellant, like many others before him, pinned his hopes on a weak alibi while viciously attacking the moral character of the victim, to no avail.

Narciso Barera alias "Narsing" was charged before the Regional Trial Court of Bataan, Third Judicial Region, Branch 4,^[1] Balanga, Bataan, in an Information^[2] dated February 14, 1990 which reads as follows:

"That on or about November 4, 1989 at Sitio Manila 2, Barangay Batangas 2, Mariveles, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then armed with a kitchen knife, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed to have sexual intercourse with the offended party, Girlie M. Flower, a 14-year old minor girl, against the will and consent of the latter, to her damage and prejudice."

Upon arraignment, appellant, duly assisted by counsel *de officio*, Atty. Joe Frank Zuñiga, entered a plea of Not Guilty to the charge.

The Facts

The trial court summarized the facts and evidence as follows:

"Complainant Girlie [Gerlie^[3]] Flower was at the time material to this case 14 years old, single, and a high school student. She claimed that she knew the accused, the son of Avelina Barera who she fondly called as her grandmother or 'lola' and with whom she has been living and who has taken care of her ever since she was three (3) years of age.

And as regards the incident in question, she declared that on November 4, 1989 (a Saturday), at about 2:00 o'clock in the afternoon, she was inside a big house owned by a Mrs. Patel of which her 'Lola' Avelina Barera is the care-taker or overseer and located at sitio Manila-2, Barangay Batangas 2, Mariveles, Bataan. It was in this house where she (complainant) resided together with her twin sister, Grace Flower, and 'Lola' Avelina Barera. At that date and time, she was all alone in the house, her sister Grace having left earlier to watch a basketball game,

while her 'Lola' was then in the neighboring town of Limay to wash clothes for someone. Thereupon, while she was asleep, having just finished doing her laundry, the accused entered her room and pointed a knife at her breast telling her not to shout or to tell her 'Lola' about it, otherwise he would kill her. The accused forthwith raised her skirt and remove her underwear. She tried to push him but to no avail as he was of strong and heavy built (sic). With her underwear already removed, the accused soon after took off his own shorts after which he forced her to lie down and thereupon went on top of her and started the up and down movements. Momentarily, she felt a hot substance emitting from the accused who thereafter left for the CAFGU (Citizen's Armed Forces Geographical Unit) Camp of which unit he was a member. After he departed, all that she could do was to cry. Three hours later, she went to the house of her Ate Soly, the sister of the accused, where she saw her 'lola'. She did not divulge what the accused did to her as she was afraid that he might carry out his threats to kill her. The following day (November 5), she told her teacher, Cecilia Icasiano [should be 'Icasiano'], about what the accused did to her and who then informed a certain Fely Adriaes, a religion teacher at a Catholic convent and who, in turn told Father George Piron, the Parish priest of a (C)atholic church in Cabcaban, Mariveles, of what had happened to her. Father Piron then went to fetch her from her house and had a talk with her. Subsequently, on November 6, 1989, she underwent physical examination at the Bataan Provincial Hospital in Balanga, Bataan. She also reported the incident to the Mariveles Police Station and gave a written statement (Exh. 'A') before a police investigator wherein she narrated the details of her ravishment.

The other prosecution witness, Dr. Irma Ronquillo, testified that on November 6, 1989, she attended to a rape case involving one Girlie Flower and in her examination of said victim, which was focused on the hymen, she found hymenal ring with old laceration at 10, 11 and 12 o'clock positions and which she reflected in her Medico-legal report (Exh. 'B').

Refuting the prosecution's version, the accused presented his own testimony corroborated by three (3) witnesses. He claimed that he is married to one Dolores dela Cruz, a resident of Naic, Cavite, with whom he has three children. He declared that the complainant, Girlie Flower, since she was three (3) years old, became the adopted child of (his) mother, Avelina Barera, though not through legal process. Girlie has a twin sister, Grace Flower, both of whom lived with his mother and he (accused) treated the twins as his younger sisters.

He denied having raped the complainant, claiming that on November 4, 1989, he, being a CAFGU member, was then on duty at their camp in Lamao, Limay, Bataan. Their headquarters is about three to four kilometers away from the house where Girlie was allegedly ravished and either place can be negotiated or reached in about five (5) minutes through motorized transportation. He did not leave their camp where he stayed from Monday through Saturday. He does not know of any reason why Girlie charged him with the crime of rape.

The accused after his examination in chief, was later recalled to the stand to give additional testimony as to the motive for his implication which, over the vigorous objection of the public prosecutor, was granted by the court for a more perfect attainment of justice. He declared that in the year 1989, there was an incident whereby (he) saw Grace Flower, the complainant's twin sister, at about night time boarding a passenger jitney together with a drunk woman and a man and all three proceeded to Lamao, Limay. Grace did not come home for a week. He tried to look for her but to no avail. When Grace finally returned home, he spanked her for her misdeeds and she promised to behave. Later, he again saw Grace at the pier in Lamao, Limay talking with an American nigger and he again scolded her for such misbehavior. Thereafter, on October 17, 1989, between 5:00 and 6:00 o'clock in the evening, he saw Grace and Girlie boarding a cargo vessel, a conduct that was unbecoming of them and for which misbehavior he berated and spanked them in the presence of his mother. He saw the two sisters again the following day, October 18, at the same time, i.e., between 5:00 and 6:00 o'clock in the evening in Lamao, Limay.

The second defense witness, Crispin Borja, declared that as a CAFGU member, he acts as a team leader who prepared the attendance sheet of the members one of whom was the accused. He is very sure that the accused reported for duty at their camp on November 4, 1989 starting at 6:00 o'clock in the morning and did not leave the same the whole day as they were then on red alert, and this was reflected on the attendance sheet (Exh. '1'). He belied the complainant's version of having been raped by the accused on November 4, 1989, averring that it could not have been possible inasmuch as the accused was in their camp at the time of the alleged commission of the offense.

The third witness, Solita Abelgas, a sister of the accused, declared that on February 17, 1990, in the morning, while she was at home at Manila-2, Mariveles, tending to her small store, complainant Girlie Flower arrived and wrote a letter (Exh. '1') [should be Exh. '2'] addressed to her (witness') mother, Avelina Barera, and which letter was left to her (witness). She explained that her mother wanted very much to see and talk to Girlie but both were unable to meet each other so that what Girlie did was to just write a letter to her 'Lola' and left. She later gave the letter to her mother upon seeing each other. She learned that in said letter Girlie was asking for an apology [should be 'pardon'] in charging the accused which she (Girlie) says was not really of her liking.

The last defense witness Leonora Bustamante, a niece of the accused, averred that she knows Girlie Flower who was the adopted daughter of her auntie Avelina Barera, the mother of accused. She claimed that after her school classes, she sometimes sells banana cues at the port (pier) in Lamao, Limay where several vessels are moored. On such occasions, she used to see Girlie going with two niggers inside a merchant ship. There were several occasions when she (witness) was invited by Girlie and the niggers to have lunch with them at the snackhouse in Lamao and also, to join them on board the vessels.

In the rebuttal, complainant Girlie Flower belied the testimonies of defense witness Leonora Bustamante and the accused himself that she and her sister Grace Flower used to board with two niggers the merchant vessels berthed at the pier in Lamao, Limay, and for which misconduct, as claimed by said accused, he scolded and spanked the twin sisters who might have resented the same.

In the sur-rebuttal, Leonora Bustamante was recalled to the stand and insisted on the truth of her testimony in chief of having seen Girlie with two niggers on board the merchant vessel."

On February 15, 1991, the trial court rendered its Decision, the decretal portion of which reads as follows:

"WHEREFORE, premises considered, the Court finds the accused Narciso Barera y Bustamante, alias 'Narsing' guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code and without the attendance of any modifying circumstances, hereby sentences him to suffer the penalty of reclusion perpetua, with the accessory penalties provided for by law, to indemnify the offended party Girlie Flower in the sum of P20,000.00 as moral damages without subsidiary imprisonment in case of insolvency, and to pay the costs."

On March 18, 1991, the accused through counsel filed a Notice of Appeal^[4] manifesting his intention to have recourse to the Court of Appeals. Acting upon said notice, the trial court forthwith gave due course to the appeal and forwarded the record of the case to said appellate court.^[5] In turn, the Chief of the Judicial Records Division of the Court of Appeals, "upon instruction of the Presiding Justice," transmitted to this Court the records "erroneously forwarded" to the Court of Appeals "considering that the penalty imposed upon the accused-appellant is reclusion perpetua."^[6]

Clearly, accused should have taken appeal to this Court directly. In *People vs. Pagsanjan*,^[7] this Court, through Mr. Chief Justice Narvasa, held:

"As this Court has already stressed in other cases, the constitutional proscription on the imposition of the death penalty, has eliminated the automatic review by the Supreme Court, there(to)fore existing, of 'cases where the death penalty is imposed.' Hence, as the law now stands, in criminal cases, an appeal may be taken to the Supreme Court from the Regional Trial Court in only one of two ways: (a) the filing of a notice of appeal - in those cases where the latter imposes the sentence of *reclusion perpetua*, regardless of the questions to be raised on appeal, whether purely legal, or legal and factual; or (b) filing of a petition for review on certiorari under Rule 45 (Sec. 3[d], Rule 122, Rules of Court) - where the penalty imposed is not *reclusion perpetua*, but the appeal would involve only questions of law. It was therefore necessary for the accused x x x to file a notice of appeal within fifteen (15) days from promulgation of judgment of conviction to initiate an appeal. Since no such notice of appeal was filed, no appeal was ever perfected x x x."

The blunder by accused's counsel in taking appeal to the Court of Appeals ordinarily would be binding upon his client and would require an outright dismissal of this appeal, but in this instance, this Court decided not to dismiss the same but instead give it due course, all in the interest of substantial justice.

Errors Assigned

In seeking exculpation, appellant claims that the trial court erred in: (a) convicting him on the basis of the uncorroborated, improbable, contradictory and inconsistent testimony of the complainant; (b) not giving weight to his defense of alibi, and (c) finding him guilty beyond reasonable doubt of the crime of rape.

The accused's assignment of errors boils down to simply questioning (i) the credibility of complainant as main witness for the prosecution, and (ii) the trial court's assessment of his defense of alibi.

This Court's Ruling

First Issue: Inconsistencies Are Minor, And Do Not Affect Complainant's Credibility.

Appellant contends that complainant's testimony is replete with inconsistencies and contradictions regarding the following matters: what the accused did with her skirt; the first time she felt a hot substance coming out of appellant's sex organ (i.e., whether it was during the second or the fourth sexual assault); complainant's residence at the time of the incident, (it allegedly not being clear whether complainant, her twin sister and their Lola Belen used the Patel house as their dwelling or merely as a resting place at noontime); whether or not the offended party was sleeping at the time of the incident (i.e., complainant could not have seen appellant enter the room if, as she claimed, she was asleep); the time appellant removed his shorts; and where appellant placed his knife after the rape.

Said alleged inconsistencies, however, refer to minor details only, and do not touch upon the very matter in contention - whether or not complainant was sexually abused against her will by appellant. Notably, appellant failed to controvert complainant's testimony that the November 4, 1989 incident was the *fourth* sexual assault upon her by the appellant. Neither did he attempt to refute the prosecution's attribution to him of the three previous sexual attacks on the offended party. All he tried to downgrade and erode, by means of the aforementioned "inconsistencies," was complainant's testimony regarding the fourth and last rape incident.

This Court has time and again said that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime, do not impair their credibility.^[8] The inconsistencies being trivial and minor, they cannot blunt the impact of complainant's testimony especially because at the time she testified, complainant was a mere 15-year-old lass who was unaccustomed to public trial.^[9] In fact, she was expected to fall into minor lapses in her testimony considering that she was recounting details of an experience so harrowing, humiliating and painful to recall.^[10] Terrified and agitated, yet helpless and at the mercy of her assailant, the