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FIRST DIVISION

[G.R. No. 149808. November 27, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BENJAMIN LOPEZ,** *appellant.*

SYNOPSIS

Appellant was convicted of the crime of rape for sexually abusing a fifteen-year old girl. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal, where appellant cited the inconsistency between the victim's claim that she could identify her rapist through his physical appearance, moustache and voice, and her admission that she only learned for the first time the name of accused after the incident and she never spoke to him before.

In affirming the decision of the trial court, the Supreme Court ruled that the most natural reaction of victims of violence is to strive to see the appearance of the perpetrator of the crime and observe the manner in which the crime is being committed. A person may be identified not only by his face or voice but also by his physique. The victim's failure to initially identify her rapist by name is not fatal considering that she subsequently and satisfactorily established his identity by means of his physique and voice.

The issue of whether appellant was identified as the perpetrator of the crime is a question of credibility. Factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial judge was in a better position to determine their credibility.

The Court likewise held that appellant's defense of alibi cannot prosper for his failure to prove the physical impossibility of his being present at the place where the crime was committed.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; IDENTIFICATION OF PERSONS; A PERSON MAY BE IDENTIFIED NOT ONLY BY HIS FACE OR VOICE BUT ALSO BY HIS PHYSIQUE; CASE AT BAR.**— [T]he most natural reaction of victims of violence is to strive to see the appearance of the perpetrator of the crime and observe the manner in which the crime is being committed. A person may be identified not only by his face or voice but also by his physique. Louvella's failure to initially identify her rapist by name is not fatal considering that she subsequently and satisfactorily established his identity by means of his physique and voice.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON BY TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL.**— [F]actual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial judge was in a better position to determine their credibility.

3. **ID.; ID.; ALIBI; REQUIREMENTS; NOT ESTABLISHED IN CASE AT BAR.**— The twin requirements for the defense of alibi to be plausible are: first, they must prove that they were nowhere in the vicinity of the crime at the time of its commission; they must prove that they were somewhere else instead; second, they must prove that it was highly impossible for them to be present at the crime scene at the time of its occurrence. Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water. At the time of the commission of the crime, it is undisputed that appellant was only one hundred to two hundred meters away from the crime scene. He thus failed to prove the physical impossibility of his being present at the place where the crime was committed. Appellant's alibi therefore deserves no consideration at all.

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APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Appellant Benjamin Lopez was charged before the Regional Trial Court of Panabo, Davao, Branch 34, in Criminal Case No. 97-196 with the crime of rape in an Information[1] which reads:

> That on or about August 16, 1997, in the municipality of Carmen, Province of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with long firearm and batangas knife, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Louvella Gillen *y* Manulat, a 15 year old girl, against her will.
>
> CONTRARY TO LAW.

On arraignment, appellant pleaded "not guilty." Trial on the merits ensued.

The prosecution presented as witnesses Louvella Gillen, Jonathan Gaita and Dr. Eleanor Salva while the defense presented Guillermo Garbino, Crestito Ellar, Rolando Deocampo, Bonifacio Geraldo and the accused himself.

The facts:

On August 16, 1997 at 11:00 p.m., complainant Louvella Gillen, Rene Sarita, Jonathan Gaita and a certain "Tata" were walking towards San Francisco, Panabo, Davao after attending a barrio fiesta. They stopped to take a short rest at Mabuhay National High School. Suddenly, a tall, medium-built and barefoot man appeared from nowhere carrying a long firearm. He was sporting a moustache and was wearing a black t-shirt and short pants with a jacket tied around his waist.

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[1] Records, p. 1.

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The man, who turned out to be appellant, pointed the gun at them and told Louvella's companions to leave. He threatened to shoot them if they will not heed his instructions, so Rene, Jonathan and "Tata" were constrained to flee for safety and leave behind Louvella with the intruder.

Appellant pointed the gun at Louvella's back and forced her to walk towards Puyad Farms, a banana plantation nearby. Louvella begged appellant to let her go but to no avail. Upon reaching the banana plantation, appellant forced Louvella to undress. She tried to fight back, but appellant pressed a knife at her back. He then forcibly removed Louvella's undergarments, fondled her breasts, kissed her neck, and succeeded in having sexual intercourse with her.

On August 18, 1997, Louvella went to Dr. Eleanor Salva to undergo a gynecological examination. Dr. Salva found that Louvella suffered recent abrasions on the right upper portion and lower portion of her *labia majora*, about two to three days old. She concluded that Louvella was indeed a victim of rape.

That same day, Louvella executed an Affidavit-Complaint[2] at the Carmen Police Station against appellant for rape.

Appellant denied the charge against him. He averred that from 7:00 p.m. to midnight of August 16, 1997, he was in the vicinity of the basketball court where an amateur singing contest was being held. After midnight, he went home together with Guillermo Garbino and Leonardo Corcuera. On their way home, they met Louvella who informed them that she was raped near the school by a man who was wearing short pants and mask. According to appellant, he even gave Louvella a glass of water and also requested a passerby to accompany her to Dalisay Village where she lives.

Cristito Ellar, whose house was about ten meters away from the place where the singing contest was held, testified that on August 16, 1997 from around 10:30 p.m. to 12:30 a.m., appellant

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[2] Records. p. 6.

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was near the vicinity of the basketball court and that he never saw him leave. He admitted, however, that there is a banana plantation nearby which can be reached in five minutes from the basketball court.

Another defense witness, Rolando Deocampo, testified that on the night of the incident, he saw appellant at the multi-purpose hall discharging his duties as a Civilian Volunteer Organization member. He left the multi-purpose hall at around 12:30 a.m. and, while on his way home, he met Louvella who was visibly distraught. He asked her what the matter was but the latter ignored him and proceeded towards the multi-purpose hall.

Guillermo Garbino also testified that on the night of the incident he saw appellant near the vicinity of the multi-purpose hall and he even asked him to get rattan chairs from the house of ex-*barangay* captain Leonardo Corcuera. After the amateur singing contest, he went home with other persons, including appellant. On their way home, they met Louvella, who told them that she was raped by someone she could not identify because he was wearing a black bonnet.

Bonifacio Geraldo testified that he was the one who took down Louvella's statement in the blotter wherein she stated that she failed to identify the person who raped her because he was wearing a bonnet and that it was nighttime.

On June 6, 2001, the trial court rendered a decision,[3] the dispositive portion of which reads:

> WHEREFORE, the Court finds Benjamin Lopez with having raped Louvella Gillen and sentences him to suffer the penalty of *reclusion perpetua*, to pay Louvella Gillen indemnity *ex delicto* of ₱50,000.00 and moral damages of ₱50,000.00 and to suffer accessories provided by law.
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> SO ORDERED.

Hence, this appeal, raising the following assignment of errors:

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[3] Penned by Judge Gregorio A. Palabrica.

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1. The lower court erred in holding that the victim Louvella Gillen positively and repeatedly identified Benjamin Lopez as her rapist; and

2. The lower court erred in holding that the presumption of innocence in favor of the accused has been overcome.

More specifically, appellant cites the inconsistency between Louvella's claim that she could identify her rapist through his physical appearance, moustache and voice, and her admission that she only learned for the first time the name of Benjamin Lopez after the incident and she never spoke to him before.

We are not convinced.

We simply cannot discount the possibility that Louvella could recognize appellant by his voice considering that appellant and Louvella's mother worked in the same banana plantation. At one time or another, Louvella must have heard appellant speak and therefore recognized his voice. Besides, the most natural reaction of victims of violence is to strive to see the appearance of the perpetrator of the crime and observe the manner in which the crime is being committed.[4] A person may be identified not only by his face or voice but also by his physique.[5] Louvella's failure to initially identify her rapist by name is not fatal considering that she subsequently and satisfactorily established his identity by means of his physique and voice.

In any case, the issue of whether appellant was identified as the perpetrator of the crime is a question of credibility. It is well-entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of

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[4] *People v. Alipayo*, G.R. No. 122979, 2 February 2000, 324 SCRA 447, 459.

[5] *People v. Rosario*, G.R. No. 144828, 6 August 2003.

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the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial judge was in a better position to determine their credibility.[6]

By way of defense, appellant could only interpose alibi. The twin requirements for the defense of alibi to be plausible are: first, they must prove that they were nowhere in the vicinity of the crime at the time of its commission; they must prove that they were somewhere else instead; second, they must prove that it was highly impossible for them to be present at the crime scene at the time of its occurrence.[7] Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water.[8] At the time of the commission of the crime, it is undisputed that appellant was only one hundred to two hundred meters away from the crime scene. He thus failed to prove the physical impossibility of his being present at the place where the crime was committed. Appellant's alibi therefore deserves no consideration at all.

Article 335 of the Revised Penal Code as amended by Republic Act No. 7659, which was the law in effect at the time of the commission of the crime, provided:

> *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force and intimidation;
>
> x x x x x x x x x
>
> The crime of rape shall be punished by *reclusion perpetua*.

The trial court correctly imposed the penalty of *reclusion perpetua* on appellant. It likewise properly awarded the amount of ₱50,000.00 as civil indemnity which is mandatory upon a finding of rape[9] as well as the award of ₱50,000.00 as moral

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[6] *People v. Clidoro*, G.R. No. 143004, 9 April 2003.

[7] *People v. Alipayo, supra.*

[8] *People v. Parocha*, G.R. No. 138866, 6 March 2002.

[9] *People v. Palarca*, G.R. No. 146020, 29 May 2002.

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damages which needs no proof since it is presumed that the rape victim suffered moral injuries.[10]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Panabo City, Branch 34, in Criminal Case No. 97-196, finding appellant Benjamin Lopez guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, is *AFFIRMED in toto.*

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Carpio and *Azcuna, JJ.*, concur.

FIRST DIVISION

[G.R. No. 151858. November 27, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSELITO PASCUA *y* TEOPE,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing a twenty two-year old mental retardate. He was sentenced to suffer the penalty of *reclusion perpetua.* Hence, this appeal.

In affirming the conviction of appellant, the Supreme Court ruled that in reviewing rape cases, it has always been guided by three well-entrenched principles: (a) that an accusation of rape can be made with facility; it is difficult to prove but more

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[10] *People v. Palarca, supra.*