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FIRST DIVISION

[G.R. No. 68574. July 7, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOROTEO BAAO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PRINCIPLES IN THE PROSECUTION OF RAPE CASES.**— Weighing the evidence for the contending parties, we incline with the trial court toward the prosecution. The testimony of the complainant herself, as supported by the medical examination report, is in our view, more credible than the posture taken by the accused-appellant. We do not believe, given the naiveté and limited intelligence of the complainant, that she could have fabricated her charges against the accused-appellant, weaving a tale of pure fantasy out of mere imagination. She does not appear to have such inventiveness. Neither do we suspect, again considering what the trial judge described as her "low mentality," that the complainant's testimony was coached and thereafter recited from memory. She would not be capable of such a feat, and let it be added, such deceptiveness. It is true that there were some inconsistencies in her narration of her ordeal but they do not in our view detract from its basic truthfulness.

2. **ID.; ID.; ALIBI; CANNOT BE APPRECIATED IF IT IS CORROBORATED ONLY BY ACCUSED'S RELATIVE WHOSE MOTIVES ARE NOT EXACTLY UNBIASED.**— The defense of alibi, which is an inherently weak defense, is made more so here by the circumstance that it is corroborated only by the accused-appellant's daughter, whose motives are not exactly unbiased. Moreover, the defendant does not show he could not have gone to and returned from Dasmariñas on the days of the alleged rapes while he was actually staying with his daughter in Baclaran. The accused-appellant was admittedly in Dasmariñas from the first to the ninth and (deducting the period of his supposed stay with his daughter in Baclaran) from the twenty-fourth to the thirty-first of December. The complainant could not remember the exact dates in December when she claimed she was raped, saying simply that these took place in that month. It is possible then that the rapes were

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committed on those dates when the accused-appellant was actually not in Baclaran, but in Dasmariñas.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Renato J. Bihasa for accused-appellant.

D E C I S I O N

CRUZ, *J.*:

Two issues immediately present themselves in this appeal from a decision convicting the accused-appellant of two counts of rape committed on a thirteen-year old girl:

1. Would the complainant concoct a tale of multiple rape against her simply to get back at the accused-appellant for scolding her when he allegedly caught her stealing from his store?

2. If so, how about the physical evidence of her defloration and the indications of subsequent coitus during the period when the rapes were allegedly committed?

Rowena Federio, the complainant, is a school-dropout at thirteen, finishing only Grade I, and of limited native intelligence.[1] According to the trial judge, "She typifies the unschooled timid barrio lass - soft-spoken and shy in her ways. She exhibits a low mentality and obvious susceptibility to yield to persuasions, to suggestions; a pronounced inability to argue and to resist."[2] She has an invalid father and a mother who is out of the house every day making a living and occasionally does not sleep with her family.[3]

It is this girl who claims she was raped five times by the accused-appellant, three times in December 1982, and twice

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[1] TSN, Sept. 8, 1983, pp. 3-4; *Rollo*, p. 103.

[2] Decision, p. 11.

[3] TSN, Nov. 9, 1983, pp. 171, 182.

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in February 1983.[4] Shortly after the fifth rape, on March 4, 1983, she decided to tell her mother about the offenses because, as she put it, she could not keep her terrible secret any longer.[5]

According to her, the first three rapes were committed in the bathroom of the accused-appellant's house, the fourth in the backyard, and the fifth in the living room of the same house.[6] The first three rapes were committed in the morning, at about 8 o'clock, on dates in December she cannot recall, the fourth at about 10 o'clock in the evening of February 17, 1983, and the fifth at about noon of February 23, 1983.[7]

All the five rapes were perpetrated in substantially the same way, through the use of force and with threat of death for resisting during the act and for reporting it thereafter.[8] The first rape caused laceration of the complainant's hymen,[9] and there was full penetration and pain in every one of the five rapes.[10]

In the statement she gave to the police, as taken and authenticated by Pat. Isagani Simera, one of the prosecution witnesses,[11] she narrated her experiences in Tagalog in a straightforward manner.[12] But testifying in court, as the trial judge noted, she was hesitant, inaudible at times, and understandably nervous, prompting him to advise her – "Speak louder." "Do not be afraid." "Do not hesitate to tell the truth." "Just testify."[13]

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[4] TSN, Sept. 8, 1983, p. 14.

[5] TSN Nov. 9, 1983, p. 173.

[6] Exh. A.

[7] *Ibid.*

[8] *Id.*, p. 4.

[9] TSN, Oct. 5, 1983, p. 72.

[10] *Rollo*, p. 28; TSN, Sept. 8, 1983, pp. 10 & 13.

[11] TSN, Oct. 5, 1983, pp. 31-32.

[12] Exh. A.

[13] Decision p. 11.

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The loss of the complainant's virginity and her several accounts of sexual intercourse were borne out by the testimony of Dr. Maximo Reyes, medico-legal officer of the National Bureau of Investigation,[14] who also made the following report as summarized by the trial court in its decision:

"Genital findings compatible with sexual intercourse with man on or about the alleged date of commission;" "The presence of hymenal laceration completely healed at 7:00 o'clock position corresponding to the face of the watch, conformably with the allegation of the victim that the alleged crime was committed way back or from January up to February prior to the date of the examination which was March 7" (hearing of Oct. 5, 1983, t.s.n., p. 72)"; .. inasmuch as the edge of the said laceration is still sharp and coaptible, meaning, that the alleged time of the commission or infliction of said injury is three (3) months below" (Ibid, p. 73); and that, the victim underwent sexual intercourse for not more than five (5) times - "Considering the fact that the vaginal orifice is moderately tight and the rugosities are moderately prominent."[15]

Lucia Federio, the complainant's mother, testified on how she came to know about the multiple rapes of her daughter.[16] She also said that the accused-appellant's wife had approached her and offered her P2,000.00 in consideration for the withdrawal of her daughter's charges.[17]

Against this evidence of the prosecution, the accused-appellant relied mainly on denial and alibi.

He flatly rejected the complainant's allegations, claiming he had been falsely accused because he had once caught the girl stealing soft drinks from his store and had scolded her. This had led to an altercation between him and Lucia Federio, the mother, who then decided to file the case against him.[18]

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[14] TSN, Oct. 5, 1983, pp. 72-76.

[15] Exh. B; TSN, Oct. 5, 1983, pp. 72-73, p. 88; *Rollo*, p. 106.

[16] TSN, Nov. 9, 1983, p. 172.

[17] TSN, June 4, 1984, p. 258.

[18] TSN, April 17, 1984, pp. 200-203; May 16, 1984, p. 231.

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His other defense was that he was not in Dasmariñas, Cavite, when the alleged rapes were committed but with his daughter at her house at the Manila International Airport in Baclaran.[19] This was corroborated by his daughter, Alicia Baao, who said he was in her house from December 10 to 23, 1983, and practically did not leave the place during that period. The reason for his stay, she said, was some carpentry work he had to do for her.[20]

Additionally, the defense argued that the complaint was filed to extort money from him, in the amount of P15,000.00, later reduced to P8,000.00.[21]

Weighing the evidence for the contending parties, we incline with the trial court toward the prosecution. The testimony of the complainant herself, as supported by the medical examination report, is in our view, more credible than the posture taken by the accused-appellant.

We do not believe, given the naiveté and limited intelligence of the complainant, that she could have fabricated her charges against the accused-appellant, weaving a tale of pure fantasy out of mere imagination. She does not appear to have such inventiveness.

Neither do we suspect, again considering what the trial judge described as her "low mentality," that the complainant's testimony was coached and thereafter recited from memory. She would not be capable of such a feat, and let it be added, such deceptiveness.

It is true that there were some inconsistencies in her narration of her ordeal but they do not in our view detract from its basic truthfulness.

One might also ask why, having been burned the first time, the girl did not thereafter stay away from the accused-appellant

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[19] TSN, April 17, 1984, p. 211.

[20] TSN, May 16, 1984, pp. 246-247.

[21] TSN, April 17, 1984, pp. 216-217.

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but in fact gave him other opportunities to inflict his lust on her. The explanation is that we are dealing here not with a worldy-wise woman but with a simple thirteen-year old girl whose acts were dominated more by fear than by reason, a fear made more harrowing by the fact that it was a lonely fear she dared not share, until later, even with her own mother.

The defense of alibi, which is an inherently weak defense, is made more so here by the circumstance that it is corroborated only by the accused-appellant's daughter,[22] whose motives are not exactly unbiased.

Moreover, the defendant does not show he could not have gone to and returned from Dasmariñas on the days of the alleged rapes while he was actually staying with his daughter in Baclaran.

The accused-appellant was admittedly in Dasmariñas from the first to the ninth and (deducting the period of his supposed stay with his daughter in Baclaran) from the twenty-fourth to the thirty-first of December. The complainant could not remember the exact dates in December when she claimed she was raped, saying simply that these took place in that month.[23] It is possible then that the rapes were committed on those dates when the accused-appellant was actually not in Baclaran, but in Dasmariñas.

We also find it hard to believe that the complainant's mother would have sought to extort P15,000.00 from the accused-appellant to settle the case, knowing that he would not be able to raise the amount from his small sari-sari store business. Even if the demand had been reduced to P8,000.00, as claimed, Lucia Federio would also not have expected that such demand could be met by this small storekeeper.

As the Court sees it, her own testimony that she had been offered P2,000.00 to withdraw the charges is more realistic and credible.[24]

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[22] TSN, May 16, 1984, pp. 246-247.

[23] Exh. A.

[24] TSN., June 4, 1984, p. 258.

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Invoking *falsus in uno, falsus in omnibus*, the defense contends that, having rejected the complainant's charge of the second, third and fifth rapes, the trial judge should also have found that she was lying on the first and fourth rapes. Hence, it should have absolved the accused-appellant of all the five rapes.[25] Conversely, however, it can also be argued that, having been found truthful on the first and fourth rapes, the complainant should also be believed on the other three alleged rapes, of which the accused-appellant should likewise have been convicted.

In effect, therefore, the choice suggested is between a total acquittal or a total conviction of the accused-appellant of all the five alleged rapes, depending upon the total credibility or the total incredibility of the complainant.

We are inclined to give full credence to the complainant's testimony and so to support her charges of rape on all five counts as narrated by her. To repeat, she appears to be an artless and inexperienced girl devoid of malice or evil motive and incapable of improvising the sordid story she recounted to the trial court in all its ugly detail.

However, realizing that we go only by the insensate record, we shall defer to the factual findings of the trial judge, who had the opportunity to observe the witnesses and assess their demeanor, to mark every nuance of tone or pause of hesitation or flush of face, and to determine, by the totality of his impressions and the plausibility of their testimony, if the evidence justified acquittal or conviction.

Accordingly, we affirm the conviction of the accused-appellant for the first and fourth rapes and his exoneration of the three other alleged rapes, as held by the trial court. In arriving at this decision, we merely declare with the trial court, that as to the second, third and fifth rapes, the prosecution has failed to establish that degree of proof beyond reasonable doubt necessary to hold the defendant guilty.

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[25] *Rollo*, pp. 89-90.

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We sustain the penalty imposed, *viz.*, *reclusion perpetua* for each of the two rapes, plus P50,000.00 moral damages. If we could, we would have added to these penalties that "special place in hell for child molesters," to use the words of Mr. Justice Vicente Abad Santos, "for they are men who are dirty, despicable, deviant and the dregs of society."[26]

One last observation and we are done with this nauseating case.

It is bad enough that a man imposes his lust on a woman mature in years and emotion and perhaps already knowledgeable in the ways of the flesh, for carnal greed is to be deplored and denounced in every case. It is worse, however, if, as in this case, the victim is a girl barely in her teens, whose first experiences with sex had to be brutalized with the ugliness of an illicit force and the menace of an evil threat imposed upon her by a man whose age alone, which was more than thrice hers, should have deterred him from unleashing on her the animal in him.

Pity the helpless and innocent victim, the bewildered and violated child, the spotless holocaust forever besmeared! Her emerging into womanhood can never be for her a tender and cherished memory of fulfillment and discovery, as it has been and as it will be for others before a similar threshold but in a more pleasurable ambience. Her own sordid initiation is an experience she is doomed to recall with distaste, recoiling at every remembered detail of how her chastity was ruptured and her honor debased.

WHEREFORE, the judgment of the lower court is hereby affirmed in full, with costs against the accused-appellant.

SO ORDERED.

Abad Santos (Chairman), Yap, Narvasa, and *Melencio-Herrera, JJ.*, concur.

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[26] *People v. Malate*, 116 SCRA 487.