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SECOND DIVISION

[G.R. No. L-47299. February 19, 1986]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GAUDENCIO LOPEZ Y DULAY,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; STANDS IN THE ABSENCE OF ILL-MOTIVE TO FALSELY TESTIFY AGAINST THE ACCUSED.**— We fail to perceive any motive whatsoever why Nenita Curameng, the victim of the outrage, would level a most serious charge against the appellant herein, if no offense at all was committed by the herein accused against her. The accused was a complete stranger to the offended party and he was identified only after a search or an investigation was conducted by the authorities to whom the rape incident was reported immediately after its occurrence.

2. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.**— Regarding the defense of alibi interposed by the herein accused, the Court is disposed to reject the same. It is a fairly settled rule that alibi is unavailing once the accused is positively identified by one without motive to change falsely the accused, especially with a grave offense. (*People vs. Arbois*, 138 SCRA 24; See also *People vs. Estante*, 92 SCRA 122; *People vs. Cabeltes*, 91 SCRA 208).

3. **CRIMINAL LAW;RAPE; NOT A RESPECTER OF PLACE AND TIME.**— The defense concedes that "the culprit was positively identified" (Appellant's Brief, page 4, Rollo, 55), but nevertheless, it is argued that "it is impossible for a man to rape a woman in a place which is a passageway and at noontime". This contention is manifestly untenable. Said crime having taken place on a lonely desolate stretch of a barrio road and at noontime, it will not be difficult to accept that the concurring circumstances of both time and place could afford adequate opportunity for said crime to have been committed. The fact is that rape incident have been committed even in vicinities or places where people congregate such as parks or by the roadside (see *People vs. Aragona*, L-43752, September 19, 1985, 138 SCRA 569).

Supreme Court E-Library

DECISION

ALAMPAY, *J.*:

Subject of this present review is the decision of the then Court of First Instance of Quirino, First Judicial District, Cabarroguis, dated October 13, 1977, rendered in Criminal Case No. 105, finding the accused guilty of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and the accessory penalties provided for by law and to pay the costs.

In the Information filed against the herein accused-appellant it is alleged:

"That on or about 12:00 o'clock high noon of December 11, 1974, in the Barrio of Dumanisi, Municipality of Diffun, Province of Quirino, Philippines and within the jurisdiction of this Honorable Court, the accused GAUDENCIO LOPEZ y DULAY armed with a bolo and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant NENITA CURAMENG, against her will, and in uninhabited place."

As reconstructed by the court below from the evidence adduced by the parties, it appears that,

"x x x on December 11, 1974, the offended party, Nenita Curameng, in the company of her sister Thelma and a cousin Warlita Silverio, at about 12:00 o'clock noon, were on their way on foot to their house located at Dumanisi, Diffun, Quirino. These children aged 14 for Warlita Silverio, 13 for Nenita and Thelma both surnamed Curameng—the latter's age not established in the trial except that she was the youngest of the three, started from their temporary residence at Aurora West, Diffun, Quirino, where they used to stay for the week as students, it being the beginning of their school's Christmas vacation, they started for Dumanisi where their parents live, a distance of seven (7) kilometers, more or less, from the Poblacion. That while they were walking, they saw the accused Gaudencio Lopez who was also walking slowly bound for the opposite direction, when all of a sudden Gaudencio Lopez, the accused, stopped near the three (3) girls, unceremoniously embraced Nenita Curameng, forcibly laid her down, boxing her stomach and her breast and after rendering her helpless, removed her short pants and panty and had carnal knowledge with

Supreme Court E-Library

her against the latter's will and consent. The offended party fought and struggled as best as she could until she was too weak to resist. In the meantime, the two (2) companions of Nenita Curameng, namely: Warlita Silverio and Thelma Curameng, upon seeing the incident, ran away as fast as they could and reported the matter to the Acting Barrio Captain Vicente Oligario of Dumanisi. The incident happened on a lonely stretch of road about a kilometer away from Dumanisi. After reporting this matter to Vicente Oligario, Thelma Curameng went to report the matter also to her parents accompanied by Warlita Silverio. The Acting Barrio Captain, Vicente Oligario, who was about to take his lunch, after hearing the children report the incident to him, and after questioning the girls, started to go out to the place where the girls told him where the incident happened, but in the yard of their house, he already met Nenita Curameng crying and asked her what happened, Nenita Curameng related the sordid incident she suffered as reported by the two (2) girls. So the Acting Barrio Captain instructed Nenita Curameng not to go home in the meantime to their house but to go with him to the town (Diffun) to report the incident. Nenita Curameng, the offended party, did not want to go with the Acting Barrio Captain, for apparently she was still under shock, so the Acting Barrio Captain started out for Diffun alone and met a man whom he knew as Jose Lopez but identified in Court later to be Gaudencio Lopez, the accused. That he asked this Jose Lopez alias Gaudencio Lopez whether he saw anybody on the way and Jose Lopez alias Gaudencio Lopez reportedly told Vicente Oligario that he saw nobody. Oligario was later joined by the parents of Nenita Curameng.

"The incident was reported to the Chief of Police of Diffun, Quirino and the two (2) patrolmen, namely: Afan and Cadiente, were assigned by the Chief of Police to assist the Acting Barrio Captain in investigating the case. x x x"

"x x x The Chief of Police instructed Nenita Curameng to go to the hospital for medical examination. This was on December 12, 1974. Nenita Curameng was examined by Dr. Era L. Patac, a resident physician of the Northeastern Nueva Vizcaya Emergency Hospital located at Diffun, Quirino, where she found Nenita Curameng to have had contusion with hematoma at her right breast, whole left breast; abrasion on her right elbow, contusion in her labia majora bilateral, and hymenal lacerations positioned as in a clock: 1:00, 2:00, 5:00, 9:00 and 11:00 o'clock of the latter's vagina, which in the opinion of this Doctor could have been inflicted by a recent forcible sexual intercourse.

Supreme Court E-Library

"Finally, on December 17, 1974, after the Curamengs were convinced that the culprit may be from the barrio of Campamento, started for this barrio in the company of Patrolmen Rambac and Aliga of the Diffun Police Force. The latter two (2) policemen were given a mission order of their Chief to proceed to this barrio. The members of the group that went to Campamento were: Florencio Curameng, his wife, his daughter Nenita, his other daughter Thelma, patrolmen Rambac and Aliga.

"Starting from Dumanisi at about 8:00 o'clock in the morning of December 17, on foot the party arrived at Campamento at about 3:00 o'clock P.M. of the same day. They repaired to a relative's house and there Patrolman Rambac asked that Gaudencio Lopez be summoned. There were many persons then in the yard of the house where they were. Somebody went to call for Gaudencio Lopez. When he was approaching the house, patrolman Rambac asked Nenita to peep through a hole and asked her if that was the man who raped her. Nenita readily identified the man. After the identification, Patrolman Rambac told Lopez that the Chief of Police, who is in Diffun, wanted to talk to him, Lopez asked permission to change his clothes and was allowed by Patrolman Rambac. It being late in the afternoon already, they decided to spend the night in Campamento. Lopez spent the night in their house while the party of Curameng and the policemen spent it at the house of Curameng's relative. The following day, they all went to Diffun, including Gaudencio Lopez. In the office of the Chief of Police, the accused Gaudencio Lopez was again identified by the victim Nenita Curameng as the person who raped her. Warlita Silverio, likewise, identified the accused." (Decision, pp. 2-7; Records, pp. 7-12).

The appellant claims that on the date and time when the subject incident took place, he went to the market to buy some necessities and went home with one Virgilio Galapon and his wife who at the time allegedly rode in their "patoque" (a carabao-drawn sledge) on which appellant loaded his goods. In rejecting the said version, the court below reasoned out that the defense of alibi as against that of positive identification is a very weak defense especially when there is no showing that the witnesses would have reason to tell a falsehood or that there ever was any proof at all that the witness identifying the accused has a propensity for falsehood. (Decision, *Rollo*, p. 65).

Supreme Court E-Library

In this appeal, the accused prays for the reversal and setting aside of the subject decision contending that the testimonies of the prosecution witnesses do not deserve to be given credence. He contends that the claim of the complainant, Nenita Curameng, that she was raped in the highway is unworthy of belief because it is "impossible for a man to rape a woman in a place which is a passageway and at a noontime". (Appellant's Brief, p. 4, *Rollo* 55). It is also argued that it would be highly improbable that he would force himself upon Nenita Curameng because the latter had companions who could have sought the help of others.

As to the cause of the hymenal laceration of the offended party, appellant claims that the testimony of examining physician, Dr. Patac, is vague or doubtful because what the latter only stated was that the cause was "the insertion of a hard object which might be a penis." The accused maintains that this statement is not a categorical and conclusive finding as to the actual cause of the hymenal laceration.

Accused-appellant further submits that the testimony of Warlita Silverio, a prosecution witness, should be discredited in the light of her declarations that she ran away and left the offended party who is her cousin, despite her awareness of the lustful intentions of the accused. Appellant claims that such a reaction and conduct of Warlita Silverio would be unnatural and, therefore, the testimony given by her at the trial should not be believed.

Fully considering these points raised by the accused, upon which he claims the determination of his guilt or innocence depends, We find no cogent reason to disturb or disagree with the findings and conclusions of the trial court.

Firstly, We fail to perceive any motive whatsoever why Nenita Curameng, the victim of the outrage, would level a most serious charge against the appellant herein, if no offense at all was committed by the herein accused against her. The accused was a complete stranger to the offended party and he was identified only after a search or an investigation was conducted by the

Supreme Court E-Library

authorities to whom the rape incident was reported immediately after its occurrence.

The offended party was subjected to a medical examination by Dra. Era L. Patac, a resident physician of the Northeastern Nueva Vizcaya Emergency Hospital at Diffun, Quirino. Dr. Patac found that Nenita Curameng had "contusion with hematoma at her right breast, whole left breast, abrasion on her right elbow; contusion in her labia majora bilateral; and hymenal lacerations positioned as in a clock: 1:00, 2:00, 5:00, 9:00 and 11:00 o'clock of (her vagina x x x)." Exh. A, Decision, *Rollo*, pp. 10-11). These findings confirm the assault complained of in detail by the offended party. As stated in the case of *People vs. Reyes,* L-62387, June 19, 1985, 137 SCRA 99, "It is unthinkable for an unmarried teenage girl to file a complaint for rape if it were not true. Young girl at that age being still possessed of the traditional modesty would not file a charge of that sort if in truth she was not raped thereby merely exposing herself to shame, embarrassment, and humiliation."

The defense concedes that "the culprit was positively identified" (Appellant's Brief, page 4, *Rollo*, 65), but nevertheless, it is argued that "it is impossible for a man to rape a woman in a place which is a passageway and at noontime". This contention is manifestly untenable. Said crime having taken place on a lonely desolate stretch of a barrio road and at noontime, it will not be difficult to accept that the concurring circumstances of both time and place could afford adequate opportunity for said crime to have been committed. The fact is that rape incident have been committed even in vicinities or places where people congregate such as parks or by the roadside (see *People vs. Aragona,* L-43752, September 19, 1985, 138 SCRA 569).

The fact that the offended party had companions who could have sought the assistance of others will not render the commission of the stated offense an impossibility or would such a circumstance be a significant factor as to sway the judgment of the Court in appellant's favor. The records show that the complainant and her companions were almost of the same tender age. Warlita Silverio was 14 years old and Thelma Curameng's age was less than 13. Physically, neither one of

Supreme Court E-Library

them, singly or collectively, could have been of any great help to the victim or be a sufficient deterrent to the accused. In fact, the sudden physical assault on the person of the complainant apparently terrorized these children who understandably could not take any immediate supportive action to repel the accused. Frightened, they ran away when they saw the accused box Nenita Curameng. (Tsn., January 6, 1976, p. 4). To run away from the scene of the assault, would even be the most instinctive reaction that can be expected from these children.

The absence of any categorical statement from Dr. Era L. Patac as to the cause of the hymenal laceration does not at all impair the prosecution's case. When Dr. Patac took the witness stand, she testified not as an eyewitness but as the medical officer who examined the offended party immediately after the alleged incident. Her medical opinion as to what could have caused the hymenal laceration is logical and acceptable.

Regarding the defense of alibi interposed by the herein accused, the Court is disposed to reject the same. It is a fairly settled rule that alibi is unavailing once the accused is positively identified by one without motive to change falsely the accused, especially with a grave offense. (*People vs. Arbois,* 138 SCRA 24; See also *People vs. Estante,* 92 SCRA 122; *People vs. Cabeltes,* 91 SCRA 208).

We find no merit in the errors assigned by the appellant. Aside from this, there is sufficient credible evidence to sustain the judgment of conviction rendered by the trial court.

WHEREFORE, the judgment appealed from is hereby AFFIRMED with the modification that the accused-appellant herein is also ordered to indemnify the offended party in the sum of P20,000.00.

SO ORDERED.

Concepcion Jr. (Chairman), Abad Santos, Escolin, and *Cuevas, JJ.,* concur.