

## **ELEVENTH DIVISION**

**[ CA G.R. CR HC NO. 00868, August 07, 2006 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MELCHOR BITAMUG Y BERBANO, ACCUSED-APPELLANT,**

### **D E C I S I O N**

**SALAZAR-FERNANDO, J.:**

Before this Court is an appeal from the decision<sup>[1]</sup> dated August 16, 2002 of the Regional Trial Court, Second Judicial Region, Branch 8, Aparri, Cagayan in Criminal Case No. 08-1234 for Rape, entitled, "People of the Philippines vs. Melchor Bitamug y Berbano," the dispositive portion of which reads:

"WHEREFORE, the Court finds accused Melchor Bitamug y Berbano "GUILTY" beyond reasonable doubt of the offense of "RAPE" and is hereby sentence (sic) to suffer the penalty of reclusion perpetua.

SO ORDERED."

On September 11, 2002, the lower court amended the dispositive portion of the said decision to read as follows:

"WHEREFORE, the Court finds accused MELCHOR BITAMUG y BERBANO "GUILTY" beyond reasonable doubt of the offense of "RAPE" and is hereby sentence (sic) to suffer the penalty of reclusion perpetua, to pay the victim Rogelyn Nolasco y Laddaran the amount of P50,000.00 as moral damages and P50,000.00 as civil indemnity.

SO ORDERED."<sup>[2]</sup>

The facts are:

On June 26, 2000, an Information<sup>[3]</sup> for Rape was filed against accused-appellant Melchor Bitamug y Berbano (Bitamug for brevity) with the Regional Trial Court of Aparri, Cagayan, the accusatory portion thereof reads:

"That on or about February 14, 2000, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by the use of force or intimidation, did then and there wilfully and feloniously have carnal knowledge of the herein offended party, Rogelyn Nolasco y Laddaran, all against her will and consent.

CONTRARY TO LAW."

On July 24, 2000, accused-appellant Bitamug pleaded not guilty to the offense charged.

During the pre-trial, the following stipulations were admitted by the defense, to wit:

1. The identity of the accused Melchor Bitamug y Berbano, that whenever his name is mentioned by any witness it refers to the same Melchor Bitamug, the accused in this case;
2. The incident in question happened on 14 February 2000 at Barangay L Adviento, Gattaran, Cagayan;
3. The existence of the Medico Legal Certificate (pages 2 to 6, record)  
[4]

The prosecution presented two witnesses, namely: private complainant Rogelyn Nolasco (Nolasco for brevity) and Dr. Nida Rosales (Dr. Rosales for brevity).

Private complainant Nolasco testified that: she is single, 18 years old, jobless and resident of Barangay Basao, Gattaran, Cagayan; on February 14, 2000 at around 2:00 o'clock in the afternoon, she, being a housemaid, was inside the house of accused-appellant Bitamug located at El Adviento, Gattaran, Cagayan; she was alone lying in her bedroom reading a magazine when accused-appellant Bitamug entered her room and closed the door and windows; she tried to stand but accused-appellant Bitamug held her hand, laid her down and kissed her several times; the latter also inserted his hand in her bra and mashed her breast with one hand; he then forcibly removed her shorts; she tried to struggle and free herself, but he tore her shorts and panty; she tried to push him but she was not able to free herself; accused-appellant Bitamug told her to give in to his desires as a valentine's gift; accused-appellant Bitamug was not her boyfriend nor was he courting her; after removing her shorts, accused-appellant Bitamug removed his shorts and brief; then he forcibly spread her legs using his two legs and raped her by holding and inserting his penis into her vagina and making a push and pull motion; she felt pain which made her cry and shout for help, but no one responded; accused-appellant Bitamug was on top of her for five minutes; she kept on struggling while she was being raped; she bled because it was her first sexual experience; she was able to free herself when accused-appellant Bitamug was done raping her and left; she went home to Barangay Basao, Gattaran, Cagayan and reported the incident to her aunt Armida Agustin, who in turn reported the same to her mother; the latter then told the incident to her grandmother; the following morning, she, together with her mother and grandmother went to her grandfather, Municipal Mayor Ramon Nolasco, in order to ask for help; they were informed that the mayor went to Tuguegarao; they returned to the municipal building on February 16, 2000 and reported the incident to the police authorities; they submitted to the police her shorts and panty; she was also examined by Dr. Nida Rosales and investigated by SPO4 Salvatierra; she executed a sworn statement regarding the incident; she had been the housemaid of accused-appellant Bitamug for only four days.

On cross-examination, she testified that: she was hired as an all-around housemaid by accused-appellant Bitamug's mother named "Siping" with a monthly salary of P700.00; there were five members of the family living in the house of accused-appellant Bitamug; at around 2:00 o'clock in the afternoon of February 14, 2000,

she was lying in the bedroom reading a magazine while the grandchildren of "Siping" were playing outside the house; accused-appellant Bitamug entered her room and immediately closed the door and the two windows; she tried to stand up but she did not reach the door because accused-appellant Bitamug held her hands which caused her to fall on her bed; accused-appellant Bitamug laid her down and held her arms very tightly so that she was not able to free herself; he kissed her more than ten times which lasted for about two minutes; she did not respond to his kisses; her short pants was torn because accused-appellant Bitamug forcibly removed it when she refused to take it off voluntarily; he also removed her panty; it was her first sexual intercourse and she bled a little; she felt pain when he roughly mashed her breasts; they were wrestling when accused-appellant Bitamug was removing his own shorts and briefs; she could not do anything because his legs pinned her legs; she slapped him several times; she no longer wore her shorts and panty after the rape; and she did not take a bath for two days which caused the stain in her panty.

Dr. Nida Rosales testified that: she has been the Municipal Health Officer of Gattaran, Cagayan since October 1994; on February 19, 2000 she examined private complainant Rogelyn Nolasco, the victim, who was accompanied by her mother; they brought a piece of paper from the Chief of Police of Gattaran, Cagayan requesting that the victim undergo a medico-legal examination; she conducted a vaginal examination on her and found that she had two lacerations; one was an incomplete healed laceration which means that the hymen was ruptured; it takes 24 hours for the hymen to heal; and the victim said that she was raped on February 14, 2000.

On cross-examination, she testified that: the abdomen of the victim was flat, soft negative, organoragaly negative, tenderness negative and lesion noted; the victim also felt pain which was probably caused by accused-appellant Bitamug's pinning her down; she saw the victim on February 19, 2000, four days after the incident; the victim was negative of hematoma; since she claimed that she was a virgin before the rape, the normal procedure is to first conduct a rectal exam; the victim admitted of one finger with ease and without pain; if the victim states that there was blood after the intercourse, the same came from the laceration and it usually heals within 24 hours; pain would not necessarily be felt by the victim when undergoing the internal examination; she was not able to find any other sign of force on the body of the victim; it is possible that the pinning of accused-appellant Bitamug's legs on the thighs of the victim would produce hematoma which would heal in 3 to 5 days, but she did not find any on the victim; she could not possibly say that it was the first sexual intercourse of the victim; it is most probable that before she inserted her finger in the vagina of the victim, there was a foreign object previously inserted or there was a previous sexual intercourse; and she used only one finger because if two fingers would be inserted, the victim would feel pain.

On redirect-examination, she testified that it is possible that the signs of violence and force on the victim already disappeared when she conducted the examination five days after the alleged rape.

The defense presented four witnesses, namely: Patrick John Visto (Visto for brevity), accused-appellant Bitamug, Erlinda Udani (Udani for brevity) and Wilma Salvatierra (Salvatierra for brevity).

Patrick John Visto testified that: he was then 11 years old and a Grade VI pupil at the Casicallan Elementary School; he went to school only in the morning of February 14, 2000, because they had no classes in the afternoon on that day; he went home at around 11:30 a.m.; after taking his lunch, he went directly to the house of his uncle, accused-appellant Bitamug; he went there because he played hide and seek and bingo with his cousins "Jeff", "Jen" and "Jake"; when they were playing hide and seek inside his uncle's house, the latter was sleeping near the door; he knows private complainant Nolasco because she worked there as a househelper; the latter was watching "MTV"; after that, private complainant Nolasco entered her room while his uncle was sleeping; after playing hide and seek, he and his cousins played bingo near the place where his uncle was sleeping; private complainant Nolasco continued watching television inside her room; they invited private complainant Nolasco to join them but she refused; they played bingo up to 2:00 p.m., then he and his cousins went outside the house to have a conversation; at this time, his uncle was already awake; he knew that his uncle was already awake because he asked him where he went; his uncle took a bath; he knew this because he saw his uncle's hair was wet and he was covered with a towel; private complainant Nolasco was inside the bedroom when his uncle was taking a bath; private complainant Nolasco was wearing a plain blue shorts and a violet shirt; after taking a bath, his uncle changed his clothes and left; after an hour, private complainant Nolasco also left wearing a long pants and violet shirt; the latter was smiling at that time and said that she was going home.

On cross-examination, he testified that: he did not attend classes in the afternoon of February 14, 2000 because there was a Valentines Day party; they went outside the house at around 2:00 p.m. and left the premises at around 4:30 p.m.; they were in front of the house when he was conversing with his cousin while private complainant Nolasco's room was about ten (10) meters from the bathroom; he was not sure if his uncle committed the crime or not; he asked private complainant Nolasco why she did not return to his uncle's house after that day but the latter did not reply; he already knew that private respondent Nolasco would not return because she was carrying her belongings when she left that day; his uncle left the house at around 3:45 p.m., then private complainant Nolasco likewise left.

Accused-appellant Bitamug testified that: he was at the Agag store from 9:00 to 11:00 a.m., then he went home in order to cook food; when the children arrived, they had lunch; later, he placed a mat on the floor and laid down to watch "MTV"; at that time, the children were playing hide and seek and bingo; he did not know how long he watched the television because he fell asleep and woke up at around 3:00 p.m.; private complainant Nolasco was no longer there when he woke up and he did not know where she went; at that time the children were still near the door having a conversation; he took a bath then changed his clothes, left the house and went to his relatives; and private complainant Nolasco stayed with them for only five (5) days.

On cross-examination, he testified that: private complainant Nolasco stayed with them for only five (5) days and he was so surprised because there was no reason for her to file a case against him; private complainant Nolasco was hired by his mother to take care of his niece; when he woke up at around 3:30 p.m. he did not see private complainant Nolasco but he did not ask the children where she was.

Erlinda Udani testified that: accused-appellant Bitamug is her nephew; the mother