

## EN BANC

[ G.R. No. 134766, January 16, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELPEDIO TORRES Y CAÑETE, APPELLANT.**

### DECISION

**CALLEJO, SR., J.:**

This is an automatic review of the Decision<sup>[1]</sup> of the Regional Trial Court of Kalibo, Branch 2, convicting appellant Elpedio Torres y Cañete of rape and sentencing him to suffer the death penalty.

#### **The Case for the Prosecution**

Lerma V. Briones, at 27 years old, wanted to work overseas. She left her residence in Kalibo, Aklan, and arrived in Iloilo City on November 10, 1997, to attend a week-long seminar sponsored by the Philippine Overseas Employment Administration for overseas contract workers. After the seminar on November 17, 1997, she proceeded to the terminal of the L-300 van that would transport her back to Kalibo. It was about 5:00 p.m. The appellant, who was the driver of the van, and his dispatcher demanded that each of the three passengers pay P150.00 instead of the regular fare of P100.00. The passengers agreed and boarded the van. One of the passengers was seated beside the appellant. The second passenger sat behind the driver, while Lerma seated herself in the next row. The passenger seated beside the appellant alighted at Mambusao, Capiz at 8:00 p.m. The other passenger transferred to the seat beside the appellant, while Lerma transferred to the seat behind the driver. When the other passenger alighted at Altavas at 9:30 p.m., the appellant told Lerma to transfer in front, to the seat beside him. Lerma agreed and seated herself beside the appellant. However, Lerma noticed that the van traveled much slower than when they were still in Iloilo on their way to Altavas.

At about 11:00 p.m., as the van was nearing a bridge in Feliciano, Balete, Aklan, it suddenly stopped. The appellant touched the part of the engine under Lerma's seat and told her that the engine had overheated. He also told Lerma that they had to sleep in the van for a while, and wait until after the engine had cooled. Lerma protested, saying that her mother was waiting for her, but the appellant switched off the light of the van.

Suddenly, the appellant pulled out a knife with his right hand and forced Lerma to lean against the seat. He then pointed the knife at her breast, and removed her pants and panties. The appellant himself removed his pants and briefs. He warned her not to resist, otherwise, she would be killed. Petrified, Lerma could do nothing when the appellant ordered her to spread her legs. He inserted his penis into her vagina and made push and pull movements. Lerma felt pain in her vagina. The appellant later pulled out his penis and put his underwear and pants back on. He

ordered Lerma to put on her clothes.

The appellant then started the engine and drove on to Kalibo. Instead of driving the van to its terminal, the appellant drove it towards Lerma's house. By then, it was about midnight. Lerma called out for her mother, and the appellant hurriedly drove off. Lerma then told her mother Leny de Juan, that the appellant had raped her. They proceeded to the police station and reported the incident to SPO1 Salvador Flores who took Lerma's sworn statement.<sup>[2]</sup> SPO1 Flores accompanied them to the terminal, but the appellant was nowhere to be found.

At 9:00 a.m., the following day, Lerma, her mother Leny, her sister Linda, and the latter's husband, Jaime Francisco, proceeded to the Ceres Transportation Terminal at Osmeña Avenue, in an attempt to locate the appellant. When they found the latter, they contacted the police station. Policemen arrived and were told that the appellant was in an L-300 van parked nearby. When the policemen proceeded to the van, they saw the appellant and arrested him.

Dr. Mary Grace B. Villaruel subjected Lerma to an examination and prepared a Medico-Legal Report containing the following findings:

PPE: Parous Introitus

- = (+) Myrtiform caruncles
- = (+) Old hymenal tears at 3 o'clock, 5 o'clock, & 7 o'clock position
- = Vagina admits two fingers with ease.
- No signs of physical injuries.
- Direct Smear – No spermatozoa seen on smear.<sup>[3]</sup>

The appellant was charged with rape in an Information, the accusatory portion of which reads:

That on or about 11:00 o'clock in the evening of 17<sup>th</sup> November, 1997, at Barangay Feliciano, Municipality of Balete, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there by means of force, violence and intimidation, employing thereby the use of a knife, willfully, unlawfully and feloniously succeeded to have carnal knowledge of a woman named LERMA V. BRIONES, without the consent of and against the latter's will, to the damage and prejudice of said LERMA V. BRIONES.

CONTRARY TO LAW.<sup>[4]</sup>

The appellant was arraigned, assisted by counsel, on March 3, 1998, and entered a plea of not guilty.

### **The Case for the Appellant**

The appellant denied having raped Lerma. He admitted that he was the driver of the L-300 van and that Lerma was one of his passengers. He testified that in the afternoon of November 17, 1997, before he left Iloilo City with Lerma and two other female passengers on board, he checked the van's engine and found it in good condition. When a passenger alighted in Altavas, it was Lerma who volunteered to

sit beside him in the front seat for the rest of the journey to Kalibo. When the van reached *Sitio* Lumbucan, he noticed that something was wrong with the engine. The engine finally conked out when the van reached Feliciano, at about 9:00 p.m.

The appellant then touched that part of the engine under Lerma's seat and alighted from the van to open the hood of the vehicle. Lerma followed suit and held up a flashlight while the appellant examined the engine. He discovered that the wires, from the battery to the engine, had been disconnected. He reconnected them and the engine started. The van left Feliciano at 9:30 p.m. and reached Kalibo at about 10:00 p.m. The appellant drove the van directly to Lerma's house instead of the terminal because it was the shortest route and he was already feeling sleepy. When Lerma alighted from the van, the appellant retrieved her luggage and handed it over to her. Before the appellant could re-start the van, Lerma stopped him, saying that she forgot a plastic bag containing x-ray negatives inside. The appellant gave the bag to her and left.

After due trial, the court rendered judgment convicting the appellant of rape and sentenced him to suffer the death penalty, taking into account the use of a knife by the appellant in committing the crime of rape. The decretal portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding herein accused ELPEDIO TORRES y CAÑETE GUILTY beyond reasonable doubt of the heinous crime of RAPE, as defined and penalized under Art. 335 (1), as amended by R.A. No. 7659, in relation to Art. 63, par. 2 (1), Revised Penal Code, which provides:

"In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:"

'1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied;'

and also in relation to Art. 14 (6), Revised Penal Code which provides:

"6. That the crime be committed in the nighttime, or in an uninhabited place, x x x whenever such circumstances may facilitate the commission of the offense;"

and is hereby sentenced to suffer the single individual penalty of DEATH, considering that he committed the crime of rape with the aggravating circumstances of nighttime and in an uninhabited place, without any mitigating circumstance; to pay the offended party the amount of P50,000.00 for the single count of sexual assault, (People vs. Tan, Jr., 264 SCRA 425); and to pay the costs.

SO ORDERED.<sup>[5]</sup>

On appeal, the appellant assigned the following errors to the trial court, viz:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT DESPITE THE FAILURE

OF THE PROSECUTION TO PROVE HIS GUILT.

ASSUMING THAT THE ACCUSED-APPELLANT IS GUILTY AS CHARGED, THE TRIAL COURT STILL ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UNDER THE CIRCUMSTANCES.<sup>[6]</sup>

On the first assigned error, the appellant contends that (1) Lerma failed to sufficiently resist the sexual assault to preserve her virtue; (2) it was impossible for the appellant to have raped the victim with his right hand while he held a knife; (3) with the fragility of the evidence of the prosecution, the trial court should have given credence to his alibi.

The contentions of the appellant are barren of merit.

Lerma's failure to offer tenacious and sufficient resistance does not imply her submission to the appellant's bestial demands. It is not required that she resists the appellant's sexual advances. All that is necessary is that force and intimidation were employed by the appellant against her, which enabled him to commit the crime. Neither is it necessary for the victim to sustain physical injuries.<sup>[7]</sup> She need not kick, bite, hit or scratch the appellant with her fingernails to prove that she had been defensive. It is sufficient that she yielded because of a real application of bodily harm.<sup>[8]</sup>

Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. It is enough that it produces fear—an uncontrollable fright that if the victim does not yield to the bestial demands of the accused, something would happen to her and/or her family at the moment or even thereafter, as when she is threatened with death if she should report the incident.<sup>[9]</sup> Force and intimidation or violence required in rape cases is relative and need not be overpowering or irresistible when the accused sexually assaulted the victim.<sup>[10]</sup> In this case, the appellant brought the victim to a secluded place.

The issue raised by the appellant pertains to the credibility of Lerma as a witness and the probative weight of her testimony. The trial court gave credence and probative weight to Lerma's account of the events. Case law has it that the findings of facts of the trial court, its calibration of the evidence of the parties, and its conclusions anchored on its findings are accorded by the appellate court high respect if not conclusive effect, unless the trial court ignored or overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will alter the outcome of the case.<sup>[11]</sup> After a meticulous review of the records, we find no basis to deviate from the trial court's findings and its assessment of Lerma's testimony and the probative weight thereof.

The evidence on record shows that when the appellant started to abuse Lerma, he pointed a knife at her breast and warned her that he would kill her if she resisted. She was so petrified that she could no longer offer any resistance. The appellant, thus, succeeded in raping Lerma:

FISCAL BRIONES:  
(continuing)

Q Madam Witness, why do you know that he did not touch anything when according to you the light of the van was already put off?

A I was looking and observing him.

Q You mean to tell this Honorable Court that in spite of the darkness of the night you can still see him?

A Yes, sir, because I was observing him.

COURT: (To Witness)

Q How far were you seated at that time when he put off the light?

A He was still seated at the driver's seat.

Q He did not move?

A No, Your Honor.

Q; How many minutes after he stopped the engine that he moved?

A Around one (1) minute.

COURT:

Continue Fiscal.

FISCAL BRIONES:

(continuing)

Q And after the driver who is now the accused commented that the engine cannot function because it was overheated, what follows next?

A He told me that if it is possible we will spend the night there, the car will no longer move.

Q What was your answer?

A I told him that my mother was waiting for me.

Q After stating that what happened next?

A He came near me.

Q And when he was near you, what happened?

A He kissed me by the lips.

Q While he was kissing you in your lips, did you notice where his hands were?

A He tried to place my hands crossed over my breast and tried to push me against the seat.

COURT: (To Witness)

Q Your seat?

A Yes, Your Honor.

FISCAL BRIONES:

(continuing)

Q It was dark?

A Yes, sir.