

FIRST DIVISION

[G.R. No. 149395, April 28, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. AVELINO RELOX,
APPELLANT.**

D E C I S I O N

AZCUNA, J.:

This is an appeal from the Decision^[1] of Regional Trial Court of Romblon^[2] finding appellant Avelino Relox (Avelino) guilty of the crime of rape committed against his own daughter Adela B. Relox (Adela). The trial court sentenced him to suffer the penalty of *reclusion perpetua* and to pay P50,000 as civil indemnity, P50,000 as moral damages, without subsidiary imprisonment in case of insolvency, plus costs of the suit.

The prosecution's first witness was the complainant.^[3] At the time of the alleged rape Adela was 33 years old, while her father was 60 years old. Adela testified that in the evening of June 8, 2000, she was in her parents' house with her two children, Andrean and Jonadel. Also present in the house were appellant and three of Adela's younger siblings. As the house only had one room with no beds, everyone slept side by side on the floor. Adela's mother, Natividad, did not sleep with them that night because Avelino ejected her from the house earlier that same evening after an argument.

Adela said that she was awakened when she felt somebody touching her body. When she opened her eyes she saw Avelino sitting beside her, holding and touching her thighs and breast. Adela complained by saying "No *tatay*. Why me?" but Avelino answered "Your nanay is not around so it will be the two of us." Then Avelino pinned both of Adela's hands over her head with his left hand and used his right hand to pull down Adela's shorts and panty. After that Avelino stood up to remove his shorts. He then pinned Adela's thighs with his feet, laid down on top of her and inserted his penis into her vagina.

Adela told Avelino "*Tatay*, stop it. Have pity on me," but the latter paid no attention and continued having sexual intercourse with Adela for about half an hour until Avelino was able to satisfy himself.

The following morning, Adela met her mother at the Municipal Hall and submitted herself to a medical examination. She later executed an Affidavit-Complaint for rape against her father, Avelino.

The prosecution's second witness was Natividad Relox, mother of the complainant and wife of Avelino.^[4] She merely testified that Avelino is sexually active, despite his age, and that they used to have sex twice a week. She also said that on the night of the alleged rape, Avelino ejected her from the house because they had a

fight.

The last witness for the prosecution was Dr. Victoriano F. Benedicto, who conducted the medical examination on Adela.^[5] He testified that, in the course of his examination, he noted two areas in the complainant's vagina that were "raw surfaces." These meant that the mucous membranes have been slightly skinned out and were a little bit red, which translates to possible sexual intercourse. However, there were negative findings for spermatozoa. As a result, the doctor could not definitely state that Adela had recent sexual intercourse.

The defense presented Avelino as its only witness.^[6] In his testimony, Avelino claimed that he could not recall any of the events relating to the alleged rape and had nothing further to state. He was very uncooperative and did not even want to answer the questions of his own counsel and the trial court. He kept reasoning that those things are all in the past, which he had already forgotten.

After trial, appellant was found guilty under the aforestated decision. Hence, the present appeal.

The Court has three guiding principles in reviewing rape cases: 1) an accusation for rape can be made with facility, as it is difficult to prove but more difficult for the accused, though innocent, to disprove; 2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; 3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence of the defense.^[7]

As in most rape cases, appellant's conviction was chiefly due to the testimony of the complainant and the result of this appeal will naturally depend on the credibility of such testimony. The consistency on material points, or lack of it, can sustain or negate a conviction. Correspondingly, the scrutiny of the account of the complainant becomes even more stringent where a conviction could forfeit the life or the life-long liberty of an accused.^[8]

The relevant text of Adela's testimony,^[9] including her cross-examination, is reproduced below, as follows:

Q - On June 8, 2000, who were in your parents' house?

A - Only us. My two (2) children and my three (3) younger siblings.

Q - How about your father?

A - He was there.

Q - How about your mother?

A - Not there.

Q - Where was your mother then?

A - In Cajimos.

Q - What municipality?

A - Bgy. Cajimos.

Q - Is Cajimos located in San Agustin?

A - Not there, only here.

Q - What is the municipality here?

A - Municipality of Romblon.

Q - What time did you sleep that night?

A - About 9:00 o'clock, sir.

COURT:

Q - What date?

PROS. BENEDICTO:

June 8, 2000.

PROS. BENEDICTO continuing:

Q - What time did your father sleep if you know?

A - I don't know if he was already asleep.

Q - Do you know what time your children and your siblings sle[pt] that night?

A - They slept early.

Q - How many rooms were there in the house of your parents [sic]?

A - We slept together.

Q - You did not answer my question.

A - We do not have rooms, sir.

Q - Do you have beds?

A - None, sir.

Q - Where does you father usually sle[ep], which part of your house?

A - Near the door, sir.

- Q - How about your mother?
- A - Also somewhere [in] that place, sir.
- Q - How about your children, which part of the house?
- A - Somewhere in the inside part.
- Q - Around how far from the place where you father usually sleep[s]?
- A - Near. Because we just sleep side by side.
- Q - Can you estimate the distance from where you are sitting now? The distance from where you were sleeping to where your father usually sleep[s]?
- A - Only from here to there (witness pointing to a distance of 70 centimeters [sic]).
- Q - From you or from your children?
- A - From me, sir.
- Q - If you know, is your father still sexually active?
- A - Yes, sir.
- Q - Tell us why you came to this conclusion?
- A - Because he is still strong.
- Q - How about your mother, is she still sexually active?
- A - I don't know.
- Q - So you said you slept in the evening of June 8, 2000, what happened after you slept?

ATTY. GERONIMO:

Translate the first testimony of the witness, Your Honor.

- A - That is it. He raped me ...

ATTY. GERONIMO:

No. *Eyot* [can] be considered as sexual intercourse but not rape. There was no showing that the man used force in sexually ...

COURT:

What is the translation?

INTERPRETER:

He raped me. The word, Your Honor, is that *ineyot niya ako* [sic] that is not *nag-eyot kami* which was different because both parties have consent but in this time ...

ATTY. GERONIMO:

But still there was no showing that there was force employed.

COURT:

He sexually penetrated me.

ATTY. GERONIMO:

Yes, Your Honor.

He sexually penetrated me. And I asked him, "Tatay, why me?" and he answered, "Anyway, your mother is not here so we will just do it."

PROS. BENEDICTO continuing:

Q - What were you wearing that night when you slept?

A - Wearing short and duster.

Q - Was there a bra?

A - I have a bra.

Q - The fourth paragraph of Exh. A said you felt somebody touched all over your body, which parts of your body were you touched?

A - On my thighs up to here (witness pointing to her left breast).

Q - What else?

A - Breast.

Q - What else?

A - None.

Q - You stated further that when you opened your eyes, you saw your father Avelino Relox already sitting beside you still holding and touching the different parts of your body, what were the different parts of your body [that] your father was holding when you were already awakened and while he was sitting beside you?