

## THIRD DIVISION

[ G.R. No. 131860, January 16, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARLON MORALDE, APPELLANT.**

### D E C I S I O N

**CORONA, J.:**

Before us is an appeal from the Decision<sup>[1]</sup> dated September 3, 1997 of the Regional Trial Court of Maasin, Southern Leyte, Branch 25, in Criminal Case No. 1726, convicting herein appellant, Marlon Moralde, of the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code.

The antecedent facts follow:

On October 7, 1993, at around 10:30 p.m., complainant AAA, an unwed mother, was sleeping in her house located at [REDACTED] when she was awakened by the voice of appellant, Marlon Moralde, who was calling her name. The appellant who was completely naked stood in front of her. She recognized appellant because of the illumination coming from the lamp inside her house. She asked appellant what he was doing but the latter told her not to make any noise. Thereafter, appellant pinned down her hands, gagged her mouth with a face towel, pulled her dress upward, removed her panty before finally inserting his penis into her vagina. Appellant threatened to kill her if she made any noise. He even told her "It is better to have sex with (her) before he will (sic) die."<sup>[2]</sup>

After consummating his lust, appellant remained on top of the complainant to rest. While in that position, appellant tightly held complainant's hands while her mouth remained gagged with a face towel. Appellant attempted to rape her for a second time but failed to penetrate her. Later on, complainant heard the appellant calling somebody by the name of "Sarge," saying it was the latter's turn. Appellant stayed in the room, holding complainant's hands above her head and his other hand covering the latter's mouth, while "Sarge" inserted his finger into her vagina. "Sarge" then told appellant to stay with the complainant for a while and volunteered to go outside and serve as look out. Again, appellant went on top of complainant and ravished her. Before leaving, appellant warned AAA not to tell anybody about what happened, otherwise he would kill her.

The following day, AAA went to her uncle, [REDACTED], and told the latter of her ordeal the night before. Losing no time, [REDACTED] accompanied his niece to their barangay captain and then proceeded to the Police Station of Libagon, Southern Leyte to report the rape incident. That same day, AAA underwent a physical examination conducted by Dr. Godofredo Espina, Municipal Health Officer of Libagon, Sorsogon, Southern Leyte. His findings were: (1) linear abrasion 2.5 cm. in length, nasal bridge; (2) speculum examination revealed the presence of whitish to

yellowish milky discharges along the vaginal canal.

On January 6, 1994, an information<sup>[3]</sup> was filed with the Regional Trial Court of Maasin, Southern Leyte, based on the sworn complaint of AAA against Moralde, charging the latter with the crime of rape, committed as follows:

That on the 7<sup>th</sup> day of October 1993, at about 10:30 o'clock in the evening, more or less, in Barangay [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lustful intent and lewd designs, did then and there willfully, unlawfully and feloniously, by means of force, threats and intimidation, had carnal knowledge or sexual intercourse with the offended party, AAA, without the latter's consent and against her will, to the damage and prejudice of the said offended party and of social order.

Contrary to law.

Duly arraigned on April 7, 1994, appellant pleaded "not guilty" to the charge.<sup>[4]</sup>

During the trial, the prosecution presented as witness the complainant herself. It also presented her uncle [REDACTED], who testified that he knew the appellant for some time as the latter used to go to his house. Two weeks before the rape incident, appellant Moralde came to his house and told him that he (appellant) had good intentions for his niece but the complainant was indifferent. [REDACTED] told appellant that there was no reason for his niece to be interested in him as he was a married man. Appellant, however, was undeterred and vowed that one day AAA would be his.

Dr. Procioso Edillo, Jr., the new Municipal Health Officer of Libagon, Sorsogon, Southern Leyte testified on the contents of the medico-legal examination report of Dr. Godofredo Espina.

For his part, appellant interposed the defense of denial and alibi. He claimed that, on October 7, 1993 he was in the Consolacion PNP Detachment between 2:00 and 5:00 p.m., gathering young coconut leaves to be used as wrapper for the cooked rice which they were bringing with them during the police operation called "Operation Paglilimpyo" that evening. Their mission was to clear the area of Barangay Mahayahay and Maac of rebels who were earlier sighted there. Appellant claimed that he served as a guide for the three police teams involved in the operation from the Consolacion, Libagon and Nahulid police stations, respectively headed by policemen Antonino Domawal, Dulles and Danilo Albero.<sup>[5]</sup>

At around 8:00 p.m., the appellant, together with Bani, Oving and Sr. Insp. Rufino Garcia, the Chief of Police of Libagon and the Officer-in-Charge of the 353rd Mobile Force Company based in Sogod, Southern Leyte, went to Libagon Police Station then proceeded to Nahulid Police Station to deliver food to their companions. Sr. Insp. Garcia was the over-all leader of "Operation Paglilimpyo."

At around 9:00 in the evening, appellant and Sr. Insp. Garcia proceeded to Barangay Mahayahay where the three teams from Libagon, Nahulid and Consolacion converged before proceeding to Sitio Banab-on which is 12 kms. from Barangay

Mahayahay. They arrived in Sitio Banab-on in the early morning of October 8, 1993. From Sitio Banab-on, the teams proceeded to Sitio Maglimatok of Barangay Maac, then to Sitio Suwa after which they went down to Sitio Maanghit of Barangay Nahaong, arriving thereat at around 5:30 p.m. before finally going back to the Consolacion PNP Detachment.

Upon arrival at the Consolacion PNP Detachment, an officer informed appellant that Sr. Insp. Garcia had sent a radio message, ordering him to proceed to Libagon Police Station to answer the charge of rape filed against him. The following morning, appellant was interrogated at the Libagon Police Station. Appellant claimed that some of his companions tried to intervene for him since he was allegedly with them during the combat operation. None of them, however, executed any affidavit to support appellant's claims.

On cross-examination, appellant declared that he came to know the complainant when he and a friend had a drinking spree sometime in October 1993 in complainant's store which also served as her house. He found complainant attractive. They bore no ill-feelings against each other.

PO1 Arthur Arcilla,<sup>[6]</sup> SPOI Antonino Dumaoal,<sup>[7]</sup> SPO3 Jacinto Felicio<sup>[8]</sup> and Sr. Insp. Rufino Garcia<sup>[9]</sup> were presented by the defense to corroborate appellant's testimony that he was with the group and served as their guide during "Operation Paglilimpyo" from 9:00 p.m. of October 7, 1993 (the time of the alleged rape incident) up to around 5:30 p.m. the following day. It was thus impossible for the appellant to commit the offense charged.

On September 3, 1997, the trial court rendered its decision, convicting appellant Marlon Moralde of rape, the dispositive portion of which reads:

WHEREFORE, judgment is rendered finding the accused MARLON MORALDE GUILTY beyond reasonable doubt of the crime charged and SENTENCES him to the penalty of RECLUSION PERPETUA and its accessories as provided for by law, and to pay the costs.

In addition, the accused is ordered to pay victim AAA civil indemnity in the amount of P30,000.00.

So ordered.

Hence, this appeal, raising the lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN RELYING SOLELY ON THE VERSION OF THE COMPLAINING VICTIM AND DISREGARDING COMPLETELY THE TESTIMONIES OF THE ACCUSED-APPELLANT AND HIS WITNESSES THAT IT WAS IMPOSSIBLE FOR MARLON MORALDE TO HAVE COMMITTED THE OFFENSE CHARGED BECAUSE HE WAS THEN ACTING AS TEAM GUIDE OF THE PNP IMPLEMENTING "OPLAN PAGLILIMPYO" ON THE DATE AND TIME OF THE SUPPOSED RAPE INCIDENT.

The pivotal issue in this case focuses on the credibility of the victim. In this regard, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. The judge *a quo* was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they

testified and observed their deportment and manner of testifying. The evaluation of the testimony of the witnesses by the trial court is accorded the highest respect on appeal because the court below had the opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court plainly overlooked certain facts of substance or value that, if considered, might affect the result of the case.<sup>[10]</sup>

There is nothing in the records of this case that persuades us to take a different stand. After reviewing the victim-complainant's testimony, we find her to be a trustworthy witness. The explicit and unequivocal narration made by the victim was exhaustive. She also stuck to her story and was uncompromising on events and details on cross-examination. The pertinent testimony of complainant is hereunder reproduced:

PROSECUTION YU:

Q Miss witness, where were you on October 7, 1993 at around 10:30 in the evening?

A In my house.

Q While you were in your house in the evening of October 7, 1993 what unusual incident occurred?

A Marlon Moralde called my name and when I awakened he was already in front of me that [sic] was naked and I asked him what was he doing there.

Q And what did Marlon answer when you asked him?

A He said, "Don't make any noise we are ASAP," and immediately he held my two hands (witness demonstrating by raising her two hands above her head) then he pulled my duster upward and covering my face.

Q Then, what did Marlon do to you?

A "kiyodkiyodran."

Q What do you mean by "kiyodkiyodran?"

A He used me.

Q What did he do with his penis to you?

A He let it inserted [sic] into my vagina.

Q When he inserted into your vagina what did Marlon tell you, if any?

A He said: "Don't make any noise because I will kill you if you make any noise. It is better to have sex with you before I will (sic) die".

Q What did you feel when he was having sexual intercourse with you?

A I could not feel any. I did not enjoy it because it is against my will.

Q How many times did this Marlon Moralde have sex with

- you?
- A Three (3) times.
- Q Was there any companion of Marlon Moralde at the time when he was in your house?
- A There was because he said "Sarge" you're the next.
- Q When this Marlon Moralde said "Sarge" it's your turn do you know who was this person whom Marlon Moralde called?
- A I do not know.
- Q And what did this man do to you when called by Marlon?
- A He inserted his finger into my vagina.
- Q What else did he do aside from fingering your vagina?
- A The man said: "You just take charge of it because I will go downstairs and watch outside".
- Q How about Marlon Moralde what did he do when that man said you just take charge of it because I will go downstairs and watch outside?
- A The third time he had a carnal knowledge with me.
- Q After that what did Marlon Moralde do to you?
- A He said "Do not tell anybody because I will kill you".<sup>[11]</sup>

On cross-examination, complainant had this to say:

ATTY. CABUCAN:

- Q At the time you saw him already naked he went nearer to you, right?
- A He rushed at me and placed my face towel to my mouth.
- Q Now, prior to that very moment when he rushed at you, please tell us what was your position then at that time, were you still lying down or sitting?
- A I was about to stand up then he immediately rushed at me and covering my mouth with my face towel then he pulled upward my "daster".
- Q At that moment you saw him naked you have already a chance to shout and ask for help from your neighbor?
- A I was not able to shout because he immediately covered my mouth with my face towel.
- xxx xxx xxx
- Q And you did not exert effort to extricate yourself from the hold of Marlon?
- A I did not because he held my two hands above my head and then pulled by "daster" upward and covering my mouth with my face towel.