

## SECOND DIVISION

[ G.R. Nos. 137278-79, February 17, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FRIVALDO BESMONTE Y LORENO AND SONNY APUYAN Y MORIN,  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**QUISUMBING, J.:**

On appeal is the consolidated judgment<sup>[1]</sup> of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52, dated September 7, 1998, in Criminal Cases Nos. 95-3918-19, finding herein appellants Frivaldo Besmonte y Loreno and Sonny Apuyan y Morin guilty of rape and sentencing them to suffer the penalty of *reclusion perpetua*.

The young victim in these cases, Melanie A. Gozmo,<sup>[2]</sup> is related to the appellants. Apuyan is the brother of her mother, while Besmonte is the second husband of Melanie's maternal grandmother. She was staying at the house of the appellant Apuyan, where appellant Besmonte likewise resided, at the time of the rapes complained of.

On June 6, 1995, the Office of the Provincial Prosecutor for Sorsogon filed an information for rape against appellant Besmonte. Docketed as Criminal Case No. 95-3918, the accusatory portion of the charge sheet read as follows:

That on or about the 15<sup>th</sup> day of December, 1994, at about 12:00 o'clock noon at Barangay Hubo, Municipality of Magallanes, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed instrument, with lewd designs and by means of force, violence and/or intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of one Melanie A. Gozmo, a 15 year old minor, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.<sup>[3]</sup>

That same day, another information for the same offense was filed against appellant Apuyan. Docketed as Criminal Case No. 95-3919, it averred:

That on or about the 31<sup>st</sup> day of May 1994 at about 12:00 o'clock midnight and for several occasions and dates thereafter, at barangay Hubo, Municipality of Magallanes, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with lewd designs and by means of force, violence and/or intimidation, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of one Melanie A. Gozmo, a 15 year

old minor, against her will and consent, to the damage and prejudice of the latter.

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

On July 27, 1995, appellant Besmonte was arraigned in Criminal Case No. 95-3918 and with assistance of counsel, pleaded not guilty to the charge.

Appellant Apuyan was, in turn, arraigned on September 25, 1995 and duly assisted by counsel *de officio*, likewise entered a plea of not guilty.

The two cases were then consolidated and jointly tried.

The prosecution presented two witnesses: Agnes Hinanay, a paternal first cousin of the victim, and the private complainant, Melanie A. Gozmo.

Agnes Hinanay testified that on April 17, 1995, she paid the victim a visit at appellant Apuyan's house in Hubo, Magallanes, Sorsogon.<sup>[5]</sup> Agnes noticed that private complainant was pregnant.<sup>[6]</sup> When Agnes asked Melanie about her pregnancy, the latter revealed that she was raped by appellant Apuyan on May 31, 1994 and on several other occasions thereafter.<sup>[7]</sup> Melanie further disclosed to her that on December 15, 1994, appellant Besmonte also raped her.<sup>[8]</sup>

After learning about the rapes, Agnes then took Melanie and her siblings to live with her at Binisitihan Norte, Magallanes, Sorsogon.<sup>[9]</sup>

On April 17, 1995, Agnes reported the rape of Melanie at the Magallanes Police Station where she executed a sworn statement. <sup>[10]</sup>

Agnes likewise brought the victim to a doctor where an examination confirmed that she was pregnant.<sup>[11]</sup> The victim gave birth to a baby boy in 1995.<sup>[12]</sup>

Private complainant testified that after the death of her father in 1992, she was brought by her mother to Hubo, Magallanes, Sorsogon to live in the house of her uncle, appellant Apuyan.<sup>[13]</sup> At about midnight of May 31, 1994, while complainant was sleeping in said house, Apuyan undressed her and placed himself on top of her.<sup>[14]</sup> She was awakened and found herself in the nude. She tried to resist appellant but she was overpowered when he poked a knife at her neck.<sup>[15]</sup> Appellant then thrust his phallus into her vagina<sup>[16]</sup> and "let it in and let it out."<sup>[17]</sup> Melanie felt pain and her private parts bled as a result.<sup>[18]</sup> After, Apuyan had satiated his libidinous desires, he warned her not to tell anybody about the incident, as otherwise, he would kill her and her siblings.<sup>[19]</sup>

Melanie also claimed that on the night of December 15, 1994, while she was sleeping at Apuyan's house, her grandmother's husband, Besmonte, placed himself on top of her and inserted his penis inside her vagina.<sup>[20]</sup> She was not able to resist as Besmonte threatened to kill her and her siblings, if she would report the matter.<sup>[21]</sup> Although it was dark, she was able to recognize Besmonte by his voice and underarm odor.<sup>[22]</sup>

Despite the threats, Melanie reported the incidents to her mother and her grandmother. The mother did nothing while the grandmother struck her with a piece of bamboo and told her not to make any fuss lest the matter reach the barrio folks of Hubo, Magallanes.<sup>[23]</sup> Melanie then revealed her plight to her cousin, prosecution witness Agnes Hinanay, and her aunt, Elsa Mirandilla.<sup>[24]</sup> The two took her and her siblings away from the house of appellant Apuyan, reported the matter to the police, and had her examined by a doctor who advised her that she was pregnant. She delivered a boy on August 25, 1995.<sup>[25]</sup> At the time she was raped, Melanie was only 15 years old.<sup>[26]</sup>

Appellants raised the defenses of denial and alibi.

In his defense, appellant Apuyan testified that on May 31, 1994, he was in the barangay proper of Hubo, Magallanes having a drinking spree with his friends Rowan Perdigon, Ryan de los Santos, and Noel de los Santos.<sup>[27]</sup> They started drinking gin from four o'clock in the afternoon to ten o'clock in the evening.<sup>[28]</sup> They consumed a dozen bottles of gin. He then staggered home and upon reaching his house, he fell into a drunken sleep.<sup>[29]</sup> He only woke up the following morning. At that time, there were 13 persons inside his house, which had two rooms.<sup>[30]</sup> He slept alone while the rest slept side by side.<sup>[31]</sup> He denied raping Melanie. He likewise denied executing a counter-affidavit which stated that he was ready to marry Melanie as she was carrying his child.<sup>[32]</sup>

For his part, appellant Besmonte declared that he could not have raped Melanie on December 15, 1994 since on that date he was in Sorsogon, Sorsogon buying bamboo to be used in the mussel farm (*tahungan*) of a certain Zaldy.<sup>[33]</sup> He worked at said mussel farm from May 30, 1994 to January 1, 1995.<sup>[34]</sup> It was only on the latter date that he found time to return to Hubo, Magallanes and he stayed there only for three days. Afterwards, he returned to Sorsogon, Sorsogon. Besmonte could not think of any reason why the victim should charge him with rape.<sup>[35]</sup> He said he treated her like his own child and even sent her to school.<sup>[36]</sup> He was also unaware of any bad blood between him and Agnes Hinanay.<sup>[37]</sup>

To corroborate appellant Besmonte's alibi his wife, Rosalina Apuyan, testified that from May 1994 to December 1994, he was in Sorsogon, Sorsogon.<sup>[38]</sup> It was only on January 1995 that he visited them.<sup>[39]</sup> According to Rosalina, her granddaughter, Melanie, could not have been raped given the circumstance that she slept side by side with several persons. There were 12 persons who called Apuyan's house their home. Melanie slept close to the room of the Besmontes, according to Rosalina. She could see Melanie from their room, if any of the appellants approached her at night,<sup>[40]</sup> said the witness.

On September 7, 1998, the trial court promulgated its consolidated decision, thus:

WHEREFORE, premises considered, the Court finds accused Frivaldo Besmonte y Lorenzo in Criminal Case No. 95-3918 and Sonny Apuyan y Morin in Criminal Case No. 95-3919 guilty beyond reasonable doubt of

the crime of Rape under Art. 335 [of the Revised Penal Code] and hereby sentences each of them [to] the penalty of RECLUSION PERPETUA and to pay the sum of P50,000.00 each as civil indemnity and P10,000.00 as moral damages to the complainant without subsidiary imprisonment in case of insolvency and to pay the cost.

In the service of their sentence, they shall be credited with the full period of their confinement pursuant to law.

SO ORDERED.<sup>[41]</sup>

Before us, appellants now appeal their conviction, imputing to the trial court the following errors:

I

THE TRIAL COURT ERRED IN RELYING HEAVILY ON THE INCREDIBLE TESTIMONY OF PRIVATE COMPLAINANT MELANIE GOZMO.

II

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANTS ON THE GROUND THAT HIS (sic) GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT FRIVALDO BESMONTE DESPITE THE FACT THAT HE WAS NOT SUFFICIENTLY IDENTIFIED.<sup>[42]</sup>

In sum, we find the issues to be: (1) the credibility of complaining witness; (2) the sufficiency of the prosecution's evidence; and (3) the identification of appellant Besmonte as one of the rapists.

Appellants submit that the first and second issues are interrelated, hence jointly discussed.

On the *first and second issues*, appellants assail Melanie's testimony as unworthy of belief and hence, a flimsy ground for their conviction. In describing private complainant's testimony as "incredible," they ask us to note the fact that both times when she was allegedly raped, complainant was lying beside and very close to her siblings. Yet neither her brother nor her sister was awakened. Appellants assert that this is very much contrary to common knowledge and human experience. Appellants argue that it is difficult to believe that appellants raped her at times when almost all members of the family were present in the house.

For the appellee, the Office of the Solicitor General (OSG) points out jurisprudence has recognized that rape can take place in circumstances of crowding similar to that of the instant cases. Appellants cannot exonerate themselves by claiming that the crimes charged could not possibly take place since there were several other persons present inside the house. Precedents abound undermining appellants' contention.

The presence of people nearby is no guarantee that rape will not be committed, for lust is no respecter of time and place.<sup>[43]</sup> Rape has been committed in places where people congregate, like parks or school premises and even in a house where there are other occupants.<sup>[44]</sup> There is no rule or norm that a woman can only be raped in seclusion.<sup>[45]</sup> It has been committed in a room adjacent to where other members of the family stay or in a room, which the victim shared with others.<sup>[46]</sup> We have more than once observed that rape could take place in the same room where other members of the family were sleeping.<sup>[47]</sup> In the instant cases, both rapes complained of were committed in the middle of the night. It is of judicial notice that it is at this time when children are in deep slumber and could not be easily awakened.<sup>[48]</sup> The fact that Melanie's siblings were not awakened at the times she was ravished is not improbable. Hence, appellants' thesis that it was impossible for them to have committed the rape in the presence of private complainant's siblings who were sleeping next to her deserves scant consideration.

Appellants ask us to discredit private complainant's testimony because she was inconsistent in her account. They point out that when she testified as to how Apuyan raped her at knifepoint, she initially claimed that he poked a knife at her neck using her right hand, while his left hand was cupped over her mouth. When grilled further, she changed her statement and said that he propped himself up on the mat with his right hand. Moreover, they say complainant had a poor memory and could hardly remember her birthday. Hence, they conclude that the trial court should have taken great caution in giving credence to her testimony.

The OSG counters that the alleged inconsistency is minor or trivial. It pertains only to peripheral matters. Hence, it cannot impair private complainant's credibility as a witness.

In ruling upon Melanie's credibility, the trial court found her testimony to be "forthright, clear, and free from serious contradictions."<sup>[49]</sup> The trial court's assessment of complainant's credibility, considering that it had the advantage of observing her demeanor as she testified, is not easily discarded. The trial court judge is in the best position to determine the truthfulness of the complainant's testimony. Unless it is shown that the trial court overlooked, misunderstood, or misapplied some fact or circumstance of weight or substance that would otherwise affect the result of the case, its findings will not be disturbed on appeal.<sup>[50]</sup> We find no compelling reason now to depart from said rule. We have carefully read the victim's testimony and find that the discrepancy harped upon by appellants focused more on her account of events immediately preceding the rape by Apuyan. They did not zero in on her narration of the crime itself. Complainant's testimony may not be flawless, but its substance, veracity, and weight were unaffected by the triviality of the alleged inconsistency.

What is material here is Melanie's testimony on how she was sexually abused. She positively identified appellants in open court as her ravishers without any hesitation. Indeed, where the accusing words come from a girl of tender years and they are directed against her own relatives, they are difficult to disbelieve. We further note that Melanie broke out in tears while testifying.<sup>[51]</sup> The crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such