

SECOND DIVISION

[G.R. Nos. 141280-81, June 16, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY SODSOD Y LOSITO AND DONDON BERNABE Y BERCASIO, ACCUSED-APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] dated September 17, 1999 of the Regional Trial Court of Legazpi City, Branch 3, convicting appellants Ricky Sodsod y Losito and Dondon Bernabe y Bercasio of rape in Criminal Cases Nos. 7333 and 7334, and sentencing them to suffer the penalty of *reclusion perpetua* and to pay the victim P50,000 each as indemnity.

On January 5, 1996, the Office of the City Prosecutor of Legazpi City filed two (2) separate criminal informations against the appellants for forcible abduction with rape, defined and penalized under Article 342 in relation to Article 335 of the Revised Penal Code, committed as follows:

CRIMINAL CASE NO. 7333:

That on or about the 3rd day of January, 1997, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping each other for a common purpose, by means of force, violence, intimidation and threats, did then and there, and with lewd and unchaste designs, wilfully, unlawfully and feloniously take and carry away LILIBETH BOREDOR, while she was standing in front of MIO's Café, Brgy. 58, Buragwis, Legazpi City, waiting for a friend, by forcing her to ride a motorcycle, against her will and said accused having thus deprived LILIBETH BOREDOR of liberty, in the City of Legazpi, particularly along Tahao Road, by means of force, violence, intimidation and threats, did then and there wilfully, unlawfully and feloniously take turns in having carnal knowledge of her against her will.

CONTRARY TO LAW.^[2]

CRIMINAL CASE NO. 7334:

That on or about the 3rd day of January, 1997, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping each other for a common purpose, by means of force, violence, intimidation and threats, did then and there, and with lewd and unchaste designs, wilfully,

unlawfully and feloniously take and carry away LILIBETH BOREDOR, while she was standing in front of MIO's Café, Brgy. 58, Buragwis, Legazpi City, waiting for a friend, by forcing her to ride a motorcycle, against her will and said accused having thus deprived LILIBETH BOREDOR of liberty, in the City of Legazpi, particularly along Tahao Road, by means of force, violence, intimidation and threats, did then and there wilfully, unlawfully and feloniously take turns in having carnal knowledge of her against her will.

CONTRARY TO LAW.^[3]

When arraigned, the appellants pleaded not guilty. Thereafter, trial ensued.

The prosecution presented the private complainant Lilibeth Boridor,^[4] Eduardo Nebria, Orlando Boridor, and Elena Boridor.

LILIBETH BORIDOR is a resident of Buragwis, Legazpi City, single, and 20 years old at the time of the incident. She testified that on January 3, 1997 about six o'clock in the evening, she was beside the road near Mio's Café ^[5] at Buragwis, Legazpi City, waiting for her friend, Shiela Atento. Suddenly, a motorcycle with two men aboard stopped near her. According to Lilibeth, the appellant Dondon Bernabe drove the motorcycle while the appellant Ricky Sodsod rode at the back. After stopping, Ricky alighted and suddenly pulled her to the motorcycle telling her that somebody wanted to meet her. She shouted, but she tripped over the motorcycle and Ricky lifted her onto the motorcycle. Thereafter, the appellants took her to Peñaranda Park in Albay. Appellant Dondon parked the motorcycle near the Bureau of Jail Management and Penology where it was somewhat dark. They proceeded to a nearby store and Dondon instructed Ricky to order six (6) bottles of Red Horse Beer. She refused to drink, but when Ricky told her that something bad might happen to her, she forced herself to drink the beer. She could not tell how many bottles of beer she consumed. After she felt drunk, she asked the appellants to take her home.

She boarded the motorcycle sitting between Dondon, who was driving, and Ricky, who rode at the back. Being drunk, she did not notice where they were headed thinking that they were going to Buragwis. She fell asleep, but was awakened when they negotiated a curve and her right calf touched the exhaust pipe of the motorcycle. It was only then that she realized that they were somewhere in a grassy area along the Tahao Road, Legazpi City. She shouted. At Tahao Road, Ricky alighted and she slid from the motorcycle and vomited because of the beer she drunk.

Lilibeth further testified that the appellants just watched her as she attempted to stand, but Dondon pushed her causing her to roll down to the grassy area. She crawled and shouted for help. When she saw Dondon removing his pants she told him, "Dondon, please help me because I want to go home." Dondon then dragged her, and at the same time, removed her walking shorts and panty. She tried to ward him off but failed as she was then feeling very weak. Thereafter, Dondon laid on top of her, inserted his penis into her vagina and made push and pull movements. She could not tell how many minutes it lasted because she was already very weak.

After Dondon satisfied his lust, Ricky also went on top of her and had sex with her. She was not able to make any movement because she was then feeling very weak and drunk. After the appellants had dressed up, Dondon helped her put on her shorts and panty. He then assisted her in going up the road. At the road, Ricky helped in placing her on the motorcycle. They proceeded to the direction of Bitano where she became unconscious. She regained her consciousness when she heard someone call her name. According to Lilibeth, it was only then that she realized that they were already back at Mio's Café — the very place where she was abducted — and that was already 10:30 p.m. She recognized her father's voice who was calling her name. The following day, she had herself examined by a doctor at the Albay Provincial Hospital.^[6]

EDUARDO N. NEBRIA, a *barangay tanod* and a resident of Buragwis, Legazpi City, testified that on January 3, 1997 at 10:30 p.m., he and a certain Aldrin Peñaflor were on duty as *barangay tanods*. While pacifying a person who was creating trouble, a man by the name of Orlando Boridor came in. Orlando was asking for their assistance regarding his daughter, Lilibeth, who was allegedly taken by two unknown men. They were about to search for Lilibeth when the latter together with a man later identified as appellant Dondon Bernabe arrived drunk. Eduardo further testified that Lilibeth alighted from the motorcycle and sat on the stairs. He noticed that she was "*lupaypay*" or very weak. Afterwards, they brought Lilibeth and Dondon to the barangay captain, but the latter was not available so they proceeded to the police headquarters instead and turned in the duo.^[7]

ORLANDO BORIDOR, the father of the complainant, testified that on January 3, 1997 at 9:30 p.m., he learned from his wife that their daughter, Lilibeth, was taken by two unidentified men. He immediately reported the incident to *Barangay Tanod* Eduardo Nebria. In the course of his search, he saw a motorcycle with three (3) persons on it. He could not recognize the three because he was blinded by the bright light from the motorcycle as it approached his way. The motorcycle then slowed down at a distance of three meters from him. He heard the sound of a body being dumped off a vehicle so he shouted at the three, but there was no reply. Because he was already suspicious he called out "Bebe", Lilibeth's nickname. He heard a girl moaning from the direction of the appellants. It turned out that the sound came from Lilibeth who was sprawled on the ground, practically unconscious, and very weak. Instinctively, he grabbed Ricky Sodsod by the collar and ordered him to pick up Lilibeth. Ricky carried Lilibeth back to the motorcycle. Then he ordered the appellants to bring Lilibeth to Centro, Buragwis, where there were many people. Unfortunately, Ricky was able to flee. Dondon Bernabe, however, drove Lilibeth towards Puro where she slumped down on some steps, her head bowed down, and unable to move. Orlando testified that he and the *barangay tanods* had to force Dondon to alight from the motorcycle. That same night, he and the *tanods* took Dondon and Lilibeth to the police station for investigation, but the police were not able to ask Lilibeth questions because she was drunk and was moaning. Orlando also declared that he gave a statement and lodged a complaint against the appellants.^[8]

ELENA BORIDOR, the mother of the complainant, testified that on the evening of January 3, 1997, she was at their house when she received information that Lilibeth was taken by two unidentified men. Together with one of her children, she

immediately went to look for Lilibeth but did not find her. At 8:30 p.m. that same night, she returned home and found her husband. She informed him of what happened to their daughter. According to Elena, she did not know the person who informed her of the incident. She only testified that it was a boy about 11 or 12 years old who immediately left after telling her what happened to her daughter.^[9]

For their defense, counsel for appellants presented Shiela Atento, Tito Esquivel, Erwin Sodsod, Oliver Lana, Felicidad Antones, Napoleon Cardel, and the appellants Ricky Sodsod and Dondon Bernabe as witnesses.

SHIELA ATENTO testified that she is a close friend of the complainant, Lilibeth Boridor, having been classmates in grade school and since then being close to each other. According to Sheila, in the early morning of January 1, 1997, she met Lilibeth who asked her to go to the Guadalupe Shrine. At the Shrine, a tricycle arrived boarded by one of the appellants, Dondon Bernabe, together with Erwin Sodsod, one "Bong" and one "Tots." Lilibeth went inside the tricycle and invited her to join them "joy riding." She acceded to the request and joined them inside the tricycle. The group proceeded to the Tahao road where Lilibeth alighted together with Erwin Sodsod while Shiela remained inside the tricycle. They stayed there for a while and left the place around 4:00 a.m.

According to Shiela, she and Lilibeth met again on January 3, 1997, around 7:00 p.m. near the Iglesia ng Watawat ng Lahi. Appellant Ricky Sodsod arrived together with some of his friends. They proceeded to a place near the house of a certain Adornado where they saw appellant Dondon Bernabe on a motorcycle. Lilibeth and Ricky Sodsod also boarded the motorcycle, but she did not go with them because Lilibeth did not ask her to go. The trio told Shiela that they will go "joy riding". After the three left, Shiela went home. Upon reaching Buragwis, she met Lilibeth's sister, Michelle. They waited for Lilibeth at the bridge of Binanuahan because Michelle told her that their mother was already looking for Lilibeth. Later, Lilibeth's mother arrived and the three of them tarried at the bridge for an hour and then went home.^[10]

The following day, or on January 4, 1997, she learned—but could not believe—that Lilibeth was allegedly raped by the appellants Ricky and Dondon the night before. Later on the same day, Mrs. Elena Boridor asked Shiela to accompany her to the police station. There, she was able to talk to Lilibeth who confessed that she did not want to file a case against anybody and that it was upon the prodding of her father that she filed a case.^[11] Shiela further testified that at various times towards the end of May 1997, Lilibeth asked her not to testify as witness for the appellants. Lilibeth even offered her P1,000 to leave Legazpi and go to Manila. She declined Lilibeth's offer, telling her that the truth cannot be paid with money.^[12]

TITO ESQUIVEL, single and a resident of Binanuahan, Legazpi City, testified that on December 24, 1996 he came to know Lilibeth Boridor through his friend, Randy Vicente. Randy was then courting Lilibeth's sister, Michelle. Tito narrated that he met Lilibeth on January 1, 1997 about 2:00 a.m., while he was walking home, because Lilibeth followed him and asked him to summon appellant Dondon Bernabe. He got to talk with Dondon who was then with his friends, Ompong Mira and Erwin Sodsod. On Ompong's tricycle all four of them proceeded to Mio's Café. At Mio's Café, they found Shiela Atento and Lilibeth. Afterwards, they went for a joyride at the airport, and then proceeded to Tahao road. At Tahao road, Lilibeth

alighted from the tricycle and sat beside him at the baggage rack of the tricycle. Lilibeth then placed her hand on his shoulder. When Tito saw Dondon come near them, he went inside the tricycle. According to Tito, from where he was seated, he saw through the small glass pad of the tricycle that Lilibeth was kissing Dondon on his cheek and the latter responded by kissing Lilibeth on her chest. Then, Erwin Sodsod came and approached Dondon and Lilibeth. Erwin embraced Lilibeth then kissed her breasts in the presence of Dondon. Erwin and Lilibeth walked to a distance of about 30 meters away from the tricycle. A few minutes later, the two returned. Tito further declared that while all this was happening Shiela Atento remained inside the tricycle. Finally, Tito testified that they all returned home around four o'clock in the morning of January 1, 1997.^[13]

ERWIN SODSOD, 20 years old and a resident of Binanuahan, Legazpi City, testified he met Lilibeth for the first time on December 31, 1996 around 11:00 p.m. He was introduced to Lilibeth by Randy Vicente and Tito Esquivel at the bridge of Binanuahan. Lilibeth was then with Shiela Atento and another woman whose name he could no longer remember. According to Erwin, in the early morning of January 1, 1997 at 2:00 a.m., he received information from Tito that Lilibeth wanted to see him. He went with Tito and other friends, namely the appellant Dondon Bernabe, Obias and Mira to Buragwis in front of Mio's Café where they met Lilibeth and Shiela. The group then went to the airport. Lilibeth later suggested they go to the Tahao road, so they did. Together with Lilibeth and Dondon, he alighted from the tricycle at Tahao road and the three talked. At that moment, he asked Lilibeth which of them she likes better. Lilibeth responded that if all of them agree, he (Erwin) will be her boyfriend on Mondays, Dondon on Tuesdays, Ompong (Rodolfo Mira) on Wednesdays and Randy (Obias) for Thursdays. Lilibeth then invited him for a walk to about 15 steps away from the tricycle. Erwin also testified that while he was seated beside the road, Lilibeth sat on his lap and they kissed several times. Then, he lifted her dress, kissed her breasts, and unzipped her pants. When he placed his hands on Lilibeth's private part, he found her sanitary napkin with blood so he told Lilibeth that he could not have intercourse with her. Lilibeth then unzipped his pants and masturbated his private part until he ejaculated. After Lilibeth wiped his private part clean, they both closed their zippers, stood up, and made their way back to the tricycle. They saw Shiela and Tito still inside the tricycle. Lilibeth and Dondon sat on the baggage rack of the tricycle and had a talk. Erwin testified that from inside the tricycle, he saw through the glass pad that Dondon was mashing Lilibeth's breasts. Shortly afterwards, Lilibeth and Dondon took a walk and returned after 30 minutes. At 4:00 a.m. of January 1, 1997, the group went home. Finally, Erwin declared that after that incident, he had no opportunity to meet and be with Lilibeth.^[14]

OLIVER LANA testified he first met Lilibeth on December 25, 1996 when his friend, Randy Vicente, went to visit Lilibeth's sister, Michelle. He said that on January 3, 1997, at 6:00 p.m., he and his friends Rey Orosco and Marlon Alcera went to Lilibeth's house. There they saw the appellant Ricky Sodsod, Ada Boridor, and a certain Vanessa. Shortly after their arrival, Lilibeth invited them for a stroll along Binanuahan. According to Oliver, Lilibeth told him that they were going to wait for "Padon," nickname of the appellant Dondon Bernabe, whom they later met at Mio's Café. Afterwards, Lilibeth asked Shiela to come with her and the appellants for a joyride. Oliver further testified that it is not true that the appellants abducted Lilibeth, but rather, that Lilibeth voluntarily boarded the motorcycle.^[15]