

THIRD DIVISION

[G.R. No. 128882, October 02, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOEL AYUDA,
APPELLANT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

Appeal from the Decision dated August 5, 1996 of the Regional Trial Court, Branch 7, Bayugan, Agusan del Sur, in Criminal Case No. 634 convicting Joel Ayuda of rape and sentencing him to *reclusion perpetua*.

The Information charges Joel Ayuda as follows:

"That on or about the 4th day of May, 1993 at about 2:00 o'clock early dawn, more or less in the premises and vicinity particularly at Barangay Maygatasan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with 3516 caliber pointed at the face of the victim, and by force, threats and intimidation with lewd design, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with one AAA^[1], a woman nineteen (19) years of age, of good reputation, against her will and consent, to the damage and prejudice of the said victim consisting of moral, actual and compensatory damages.

"CONTRARY TO LAW, Article 335 of the Revised Penal Code."

Upon arraignment, appellant Joel Ayuda, assisted by counsel, pleaded not guilty to the crime charged.

The evidence for the prosecution shows that in the evening of May 3, 1993, private complainant AAA, a 19-year old lass, attended a benefit dance held at the drier of Lorenzo Campilan situated at Purok 1, Maygatasan, Agusan del Sur. At around 2:00 o'clock in the early dawn, AAA and her sister, [REDACTED], while on their way home, met appellant Joel Ayuda. At that instance, [REDACTED] walked ahead, accompanied by Clodualdo "Joy" Estores, while AAA and appellant were left behind. Then appellant ordered AAA to stop at a waiting shed. There he pointed his 3516 caliber revolver at her right cheek and dragged her to a grassy spot about 30 to 40 meters away. Appellant commanded her to undress and lie down, as he removed his pants and placed himself on top of her. He inserted his penis inside her vagina, making a push and pull movement. She felt pain. She could not shout because he continually poked his gun at her. Afterwards, he threatened to kill her, her parents and relatives should she reveal the incident to anyone. But on her way home, she met Clodualdo and revealed to him her excruciating experience. They later parted ways when they met her mother, sister and cousin. Upon reaching their house, AAA

immediately threw away at the trash bin her blood-stained sanitary napkin. Later that same day (May 4, 1993), she reported the incident to the Bayugan Police Station. After the investigation, she executed an affidavit dated May 5, 1993.

AAA was examined by Dr. Romeo Cedeño at the Bayugan Community Hospital, Bayugan, Agusan del Sur. He issued a medical certificate dated May 4, 1993 stating that the victim sustained linear skin abrasion on her right forearm, slight swelling of her vulva, lacerated wound about 1 cm. on her right labia minora, and hymenal laceration and bruising.^[2]

Appellant vehemently denied the rape charge, contending that AAA has been his sweetheart since 1988 or 1989, and that what transpired between them that early dawn of May 4, 1993 was a sexual tryst.

On August 5, 1996, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, viewed from the above perceptions, this Court finds accused Joel Ayuda guilty beyond reasonable doubt of the crime of Rape pursuant to Article 335 of the Revised Penal Code. He is accordingly sentenced:

- 1) to a penalty of *Reclusion Perpetua*;
- 2) to indemnify AAA the amount of P30,000.00; and
- 3) to pay the costs.

"SO ORDERED."

Appellant, in his brief, submits the following assignments of error:

"I. THE LOWER COURT ERRED IN FINDING THAT RAPE WAS COMMITTED.

"II. THE LOWER COURT ERRED IN FINDING THE TESTIMONY OF AAA TO BE FORTHRIGHT, POSITIVE AND EMPHATICALLY UNSULLIED BY INCONSISTENCIES, CONTRADICTIONS OR MENDACITIES.

"III. THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF AAA THAT SHE WAS THREATENED WITH A GUN BY ACCUSED AND THEN RAPED.

"IV. THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED DUE TO REASONABLE DOUBT."

The basic issue for our resolution is whether the prosecution has established appellant's guilt beyond reasonable doubt.

The law applicable to the case at bar is Article 335 of the Revised Penal Code which provides:

"Art. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

"The crime of rape shall be punished by *reclusion perpetua*.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x." (Underscoring ours)

The elements of rape under the above provision are: (1) **the offender had carnal knowledge of the victim**; and (2) **such act was accomplished - through the use of force or intimidation**; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

An extract from AAA's testimony, quoted hereunder, indubitably shows that appellant had carnal knowledge of her through force and intimidation, thus:

x x x

"PROSECUTOR PAG-ONG ON DIRECT EXAMINATION:

x x x

Q On May 4, 1993, at about 2:00 o'clock in the early dawn,
can you still remember where were you?

A I was going home with my younger sister, sir.

Q Who is that younger sister of yours?

A [REDACTED], sir.

Q Where did you come from by the way at that time?

A From the dancing hall, sir.

Q You mean you attended the benefit dance on May 3,
1993?

A Yes, sir.

Q Up to the early dawn of May 4, 1993?

A We were already going home in the early dawn, sir.

x x x

Q While you were on your way home from the dancing hall together with your younger sister, what happened if there was any?

A I was accompanied by Joel Ayuda, sir.

x x x

Q x x x. Are you referring to Joel Ayuda, the accused in this case?

A Yes, sir.

Q If Joel Ayuda is in the courtroom now, will you kindly point at him?

A That person, sir.

(Witness pointing to a man wearing violet T-shirt who answered the name of Joel Ayuda when he was asked as to what is his name [sic])

Q When the accused approached and accompanied you, where did you go?

A He told me to stop at the waiting shed and at the waiting shed he pointed to me his gun, sir.

Q At what portion of your body was the gun pointed?

A Here, sir, at my right cheek.

x x x

Q Now, after accused Joel Ayuda pointed his gun to you, what happened next?

A He dragged me to the grassy place, sir.

x x x

Q What happened when you were brought to the grassy place?

A He told me to undress, sir.

Q Who removed your dress.

A He, sir.

x x x

Q What was your dress during that time?

A Polo, sir.

Q Were you wearing trousers?

A A polo and a trouser, sir.

Q Which was removed by the accused, your polo or your trouser?

A He first removed my trouser, sir.

Q After he removed your trouser, what did the accused do to you?

A He removed my panty, sir.

Q What happened to your panty which was removed by the accused Joel Ayuda?

A It was torn, sir.

Q There are two panties here that were attached to the records of the case. Will you please explain to this Honorable Court why there are two panties?

x x x

A Because my menstruation just ended, sir.

x x x

Q After your long pants and two panties were removed by the accused Joel Ayuda, what did he do to you?

A He made me lie down and placed himself on top of me, sir.

Q Before he placed himself on top of you, what did the accused Joel Ayuda do to his pants?

x x x

A He removed his pants.

x x x

Q While he was on top of you, what was he doing?

A He made a push and pull movement, sir.

x x x

Q Aside from the push and pull movement that he made, what did he do to you?

A He pointed his gun to me, sir.

Q Aside from that, what did the accused Joel Ayuda do with his penis?

x x x

COURT:

The best way to be done here is to let the witness explain the meaning of '*sakyod-sakyod*.'

Q What do you mean by the '*sakyod-sakyod*,' Miss Seno?

A *Iya kong gikayat.*

ATTY. GOC-ONG:

May I request, Your Honor, that all the answers of the witness which are in the Visayan dialect be interpreted.