

FIRST DIVISION

[G.R. No. 141136, January 28, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NELSON PARCIA, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

This is an appeal from the decision of the Regional Trial Court, Branch VI, Prosperidad, Agusan del Sur, finding accused-appellant Nelson Parcia guilty of the crime of rape against Lorna Alferez and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim the amount of fifty thousand pesos (P50,000.00) as civil indemnity.^[1]

The information against accused-appellant reads as follows:

That on or about the 5th day of August, 1996 at about 2:00 o'clock early dawn at the house of Geronimo Alferez at Barangay Ladgadan, San Francisco, Agusan del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent of lewd design, did then and there, wilfully, unlawfully and feloniously with force and intimidation, succeed in having sexual intercourse with Lorna Alferez, a girl who was then twelve (12) years and nine (9) month (sic) old, and a woman of good reputation, against her will and consent to the damage and prejudice of the said victim which damage consists of actual, compensatory and moral damages.

CONTRARY TO LAW. Article 335 of the Revised Penal Code.^[2]

When arraigned, accused-appellant entered a plea of not guilty, whereupon trial on the merits ensued, during which the prosecution presented four (4) witnesses, including the victim, while the defense presented two (2) witnesses, including the accused-appellant. Their testimonies are summarized in the following portion of the decision of the trial court.

xxx [S]ometime on August 5, 1996 at 2:00 o'clock early dawn Nelson Parcia (Nelson for brevity) Boy Prito and Marcial Omboc arrived at the house of Geronimo Alferez (Geronimo for brevity) at Ladgadan, San Francisco, Agusan del Sur. The house is 4 X 2 ½ meters in size. The sala which is also the sleeping room is one-half size of the house or with an area of 2 X 2 ½ meters.

Complainant Lorna C. Alferez (Lorna for brevity) was at that time sleeping in the sala together with her brothers Ricky, Nilo and Ruben Alferez. Ricky was less than a meter away from Lorna whereas Ruben and Nilo were four meters away.

Geronimo who was sleeping (in the kitchen) together with his children was awoken when Nelson and companions arrived bringing liquor. The group wanted to eat a (sic) chicken and while it was being butchered and prepared for cooking Nelson went inside the room where the children of Geronimo were sleeping. Accused then touched the hair, breast and lap of Lorna. The latter resisted by moving her body but accused covered her mouth with his right hand while the left hand was used to lower his maong long pants and her panty.

Accused then mounted (on top of) Lorna (and) succeeded in inserting his penis to her vagina. Accused made (the) push and pull movements after which he ejaculated. Lorna felt pain on her vagina. She did not however do anything because she was afraid of the accused who had a gun that time. Accused threatened her and told her not to tell anybody. Ricky Alferez the elder brother of Lorna saw the sexual assault but he did nothing because of fear of the accused who was holding a firearm. The(ir) father Geronimo was at that time in the kitchen drinking together with his companions. Geronimo observed sounds of struggle and noise on the floor but he just did not mind it.

Lorna recognized the accused as her attacker because of the light from the kitchen that illumined the room. Besides she is very familiar with the accused. In fact the sexual attack on August 5, 1996 was the fourth made by the accused upon her. After the accused succeeded in his bestial desire on Lorna he went down to the kitchen and rejoined the group. They continued on drinking and eating the chicken.

After the drinking session the group including Nelson slept in the kitchen of the house of Geronimo. They left the place at 5:00 o'clock in the morning of August 5, 1996. At breakfast the family of Geronimo ate together and it was at this time when Ricky told his father of the rape incident. Geronimo confronted his daughter Lorna about the incident. The latter finally admitted the sexual intercourse with Nelson at dawn of August 5, 1996. Lorna further told her father that she was raped by the accused several times and for a long time already. She likewise told him that he had threatened to kill her.

Geronimo brought Lorna to the Barangay Captain of Ladgadan, San Francisco, Agusan del Sur where accused was an official of said Barangay. They proceeded to the Office of the Chief of Police and the complainant was investigated and her sworn statement taken on August 6, 1996. Afterwards she filed the criminal complaint on August 6, 1996. He also executed a sworn statement together with his son Ricky C. Alferez both dated August 6, 1996.

Lorna Alferez was born on December 2, 1983 as shown in the Certificate of Birth. She was examined by Dr. Zenaida Petalcorin, M.D. on August 5, 1996 at 3:55 o'clock in the afternoon. The Medico-Legal Report issued by said physician marked as Exhibits F, F-1 to F-4; Exhs. 6, 6-A to 6-C is quoted as follows:

- "(a) Hyperemia of vulva
- "(b) Hymenal Laceration at 5:00, 3:00, 6:00 and 9:00 o'clock positions;
- "(c) Vaginal smear = no sperm cells seen.

Upon the other hand the version of the defense portrays a scenario that sometime on August 4, 1996 Nelson Parcia, Marcial Omboc and Mario Prito were in Barangay Ladgadan, San Francisco, Agusan del Sur making copra. The proceeds of the sale of the copra was intended as fare of the accused in going to Albay. The purpose of the accused in going to Albay was to ask aid from his relatives to finance his candidacy as Barangay Captain in the 1997 election.

At 2:00 o'clock early dawn of August 5, 1996 after drying copra, Nelson, Junior Prito, Marcial Omboc, Mario Prito and the latter's small son Junjun went to the house of Geronimo. Upon reaching the house Nelson ordered Geronimo to butcher a chicken. While Marcial Omboc was preparing the chicken Nelson slept at the door of the house of Geronimo near the stairs.

After the chicken was cooked the group drunk Ginebra and ate the chicken. They were also discussing about politics. In fact Nelson at that time was convincing Geronimo to support his candidacy as Barangay Captain. Geronimo refused because he was already committed to support his uncle Crispin Vicente. After eating and drinking the group slept in the house of Geronimo and left the place at 4:00 o'clock dawn.^[3]

On June 25, 1999, the trial court rendered judgment as follows:

WHEREFORE, the Court finds accused NELSON PARCIA, GUILTY, beyond reasonable doubt as principal of the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code as amended and hereby imposes upon the accused Nelson Parcia to suffer the penalty of RECLUSION PERPETUA together with all the accessory penalties provided for by law; to pay the victim Lorna C. Alferez civil indemnity in the amount of FIFTY THOUSAND (P50,000.00) PESOS and to pay the costs.

In the service of his sentence accused shall be credited with the full period of his preventive imprisonment pursuant to Article 29 of the Revised Penal Code as amended by R.A. 6127.

SO ORDERED.^[4]

Accused-appellant now seeks the reversal of his conviction on the following grounds:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT WAS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE DEFENSE
INTERPOSED BY ACCUSED-APPELLANT.^[5]

In an appeal from a judgment of conviction in rape cases, the issue boils down, almost invariably, to the credibility and story of the victim and eyewitnesses and the Court is oftentimes constrained to rely on the observations of the trial court who had the unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling, and at times unfriendly, examination. It has since become imperative that the evaluation of testimonial evidence by the trial court be accorded great respect by this Court for it can be expected that said determination is based on reasonable discretion as to which testimony is acceptable and which witness is worthy of belief.^[6]

Like in previous cases, the Court in this instance, has laboriously and meticulously gone over the testimony of the victim and found that the crime charged was indeed committed against her. Lorna Alferez's testimony on the rape perpetrated against her is clear, categorical and straightforward and reveals in no uncertain terms that she was impelled by no other motive than to bring her defiler to justice. Thus:

Q: Now, I will be asking you questions. Will you please tell us where were you on August 5, 1996 at about 2:00 o'clock in the early dawn?

A: Inside our room, sir.

Q: What were you doing at that time?

A: I was sleeping, sir.

Q: While you were sleeping, can you tell us if there was an unusual incident that occurred?

A: Yes sir, there was.

Q: And will you please tell us what was that unusual incident that occurred during that incident?

A: Suddenly Nelson entered our room and he was touching me, sir.

Q: And what happened after that?

A: When he touched me I moved and when he noticed that he immediately cover (sic) my mouth.

Q: What happened after he covered your mouth?

A: He removed his pants and he also removed my panty.

Q: And what happened after he removed his pants and he removed your panty?

A: He mounted at me and he inserted his penis to my vagina.

Q: What did you feel after he inserted his penis to your