

## THIRD DIVISION

[ G.R. No. 98431, January 15, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSUE DELA TORRE, ACCUSED-APPELLANT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Appeal from the Decision<sup>[1]</sup> dated January 28, 1991 of the Regional Trial Court (Branch 79), Morong, Rizal, in Criminal Case No. 0656, finding Josue B. Dela Torre guilty of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*, and to pay the costs.

The Information<sup>[2]</sup> against accused Josue Dela Torre reads:

"That on or about the 5<sup>th</sup> day of November, 1989 in the Municipality of Teresa, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of violence and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the complainant MARITA CORDOVA against her will.

"Contrary to law with the aggravating circumstance of the crime having been committed in the house of said offended party who did not give any provocation for the offense."

Upon being arraigned, the accused pleaded "not guilty."<sup>[3]</sup> Thereafter, trial ensued. In support of its case, the prosecution presented three witnesses: Marita Cordova, the victim; Melanie Cordova, the victim's 10 year-old daughter; and Anthony Inocencio, a barriomate of the victim.

The records show that sometime in September, 1989, Marita Cordova, 35 years old and married to Paulino Cordova, was employed as a cook at the La Fiesta Farm owned by Mr. Arturo Alindada, located in Pantay, a barrio in the Municipality of Teresa, Rizal.<sup>[4]</sup> Her husband and accused Josue dela Torre were also workers of the same farm.

Anthony Inocencio<sup>[5]</sup> testified that around 7:00 to 8:00 P.M. of November 5, 1989, Paulino Cordova went to see him at his farm, also located in Barrio Pantay, Teresa, Rizal, near the La Fiesta Farm. Paulino asked for his assistance because the accused, then armed with a knife and bolo, was causing trouble and commotion at the La Fiesta Farm of Mr. Alindada. Anthony responded to Paulino's call for help. Upon arriving at the La Fiesta Farm, he learned that the accused forcibly took the shoes and money of Mr. Alindada's workers. Marita and her children asked Anthony whether they could stay in his farm. He obliged and they all proceeded there. Upon reaching the farm, Marita told Anthony that she was raped by the accused that

night. Thereupon, he immediately fetched policemen from Teresa, Rizal and accompanied them to the La Fiesta Farm where the accused was accosted.<sup>[6]</sup>

As to how the rape was committed, Marita, the principal witness for the prosecution, recounted her harrowing experience at the hands of the accused. She testified that around 8:00 o'clock in the evening of November 5, 1989, she was cooking at the kitchen of the La Fiesta Farm. She was with her five (5) children then, namely: Merly, 13 years old; Melanie, 10; Lyndon, 7; Fullimer, 4; and Johnny Boy, 1.<sup>[7]</sup> Suddenly, the accused, holding a knife and a bolo, appeared in the kitchen<sup>[8]</sup> and dragged her outside and brought her towards a house under construction about 200 meters away.<sup>[9]</sup> Marita's children tried to follow but they desisted when the accused threatened (*tinakot*) them.<sup>[10]</sup> So they just stayed at the kitchen.<sup>[11]</sup> While going to the said house, Marita and the accused met Joel Villasis and Johnny Dizon, also workers in the farm. They saw the accused poking a knife and a bolo at her.<sup>[12]</sup> Marita asked for their help but they did nothing because they were afraid of the accused.<sup>[13]</sup>

Once inside the house, the accused pushed Marita to the floor, stoop down in front of her, poked the knife at her throat and pinned her arms at her back.<sup>[14]</sup> He then raised her dress above her breast.<sup>[15]</sup> Thereupon, he pulled down his pants, took off her panty and placed himself on top of her.<sup>[16]</sup> Still holding the knife, he pointed it at Marita's throat and placed the bolo on the ground.<sup>[17]</sup> Afterwards, he spread her legs, kissed her lips down to her neck and sucked her breast.<sup>[18]</sup> He then inserted his penis into her vagina and made push and pull movements for about eight (8) minutes<sup>[19]</sup> and continued kissing her on the lips.<sup>[20]</sup> While he was raping her, she was unable to resist because the knife was pointed at her throat and her arms pinned at her back.<sup>[21]</sup> Thereafter, he stood and threatened her not to tell anybody about the incident as he would slash her neck.<sup>[22]</sup>

That very night Marita found courage to inform Anthony Inocencio, and later her employer, Mr. Alindada, and her husband of the sexual assault against her by the accused.<sup>[23]</sup>

Melanie Cordova corroborated the testimony of her mother. She and her siblings were in the kitchen of the La Fiesta Farm that night when the accused dragged their mother towards the house under construction (*sa bahay na ginagawa*). At a distance of two to three meters, she saw the accused pointing a knife at her mother's throat and a bolo at her back. They tried to follow them but the accused got angry. Thus, they remained at the kitchen where they all cried because of fear.<sup>[24]</sup>

The following day, November 6, 1989, Dr. Emmanuel Aranas, a Medico-Legal Officer at Camp Crame, Quezon City, conducted a physical examination on Marita. Dr. Aranas' Medico-Legal Report<sup>[25]</sup> discloses the following findings:

#### **"GENERAL AND EXTRAGENITAL**

Fairly developed, fairly nourished and coherent female subject. Breast

are pendulous with dark brown areola and nipples from which no secretion can be pressed out. Abdomen is flat and lax with striae of pregnancy. The following injuries are noted at the upper and lower extremities:

- (1) Abrasion, proximal phalange of the right index finger, measuring 0.3 x 0.2 cm.;
- (2) Abrasion, distal phalange of the right index finger, measuring 0.5 x 0.1 cm.;
- (3) Abrasion, middle 3rd of the right leg, measuring 7 x 4 cm., along its anterior midline.

## **CONCLUSION**

Subject is in non-virgin state physically.

Barring unforeseen complications, it is estimated that the above injuries will resolve in 5 to 6 days.

## **REMARKS**

Vaginal and peri-urethral smears are negative for gram-negative diplococci but positive for spermatozoa."

Upon the other hand, the evidence for the defense is based solely on the testimony of accused Josue Dela Torre. He never denied having sexual contact with Marita that night of November 5, 1989. He claimed, however, that she was his mistress and that the carnal incident between them was consensual. Their relationship started on June 15, 1987 in Bacolod City, Negros Occidental when he and Paulino (Marita's husband) had a drinking spree in the house of a certain Cordova. At around 7:30 in the evening, Paulino got drunk and fell asleep. Thereupon, he courted Marita, who then told him that she would be willing to be his mistress if he would give her permanent support. At 3:00 in the morning of the following day, they engaged in sexual activity.<sup>[26]</sup> Since then, their sexual affair became frequent until September, 1989 when Marita was recruited to work at La Fiesta Farm in Teresa, Rizal owned by Mr. Arturo Alindada. It was only in October, 1989 when he again met her at the La Fiesta Farm upon his employment there.<sup>[27]</sup>

Accused further narrated that at about 1:00 in the afternoon of November 5, 1989, he and Marita talked at the kitchen of La Fiesta Farm. They agreed to meet about 8:00 in the evening in the nearby house under construction. He arrived first at the place and, shortly thereafter, she followed. There, they had sexual intercourse on the ground using "sawali" as mat.<sup>[28]</sup>

On January 28, 1991, the trial court rendered a Decision,<sup>[29]</sup> the dispositive portion of which reads:

"WHEREFORE, this Court finds the accused JOSUE DELA TORRE GUILTY of the crime of RAPE under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *reclusion perpetua* and to pay the costs.

"SO ORDERED."

In the instant appeal, appellant ascribes to the trial court this lone assignment of error:

"THE REGIONAL TRIAL COURT IN MORONG, RIZAL (BRANCH 79) ERRED IN FINDING ACCUSED-APPELLANT JOSUE DELA TORRE GUILTY OF THE CRIME OF RAPE BEYOND REASONABLE DOUBT." [30]

Appellant's defense is that what transpired between him and Marita Cordova on November 5, 1989 was consensual, she being his mistress at the time.

After a thorough and careful review of the evidence adduced by the parties, this Court finds the appeal bereft of merit.

The incident immediately prior to the rape was described by the trial court in its appealed decision as a "reign of terror ... that pervaded in the La Fiesta Farm" in Barrio Pantay caused by the appellant who was running wild wielding a knife and bolo.<sup>[31]</sup> This created an atmosphere of great fear among those who witnessed the incident. The records do not disclose why the appellant acted that way. Understandably, every one seemed helpless. The assistance of the police authorities at that very moment could not readily be secured apparently because the police station is far, being located in the Municipality of Teresa. The incident happened so fast that it enabled the appellant to perpetrate the unfortunate crime against Marita.

In a candid, straightforward and categorical manner, Marita disclosed the horrifying ordeal she endured from appellant's bestiality, completely belying the existence of consent on her part, thus:

"x x x

Q On or about 8:00 o'clock in the evening of November 5, 1989, Mrs. witness, do you remember having met or seen the accused Josue dela Torre?

A Yes, sir.

Q Could you please tell the Honorable Court what incident that happened, Mrs. Witness?

A It happened at the kitchen. He pushed me to the house under construction (owned) by our boss (*amo*).

**Q Who was this person who pushed you, Mrs. Witness?**

**A Josue dela Torre, sir.**

Q And after Josue dela Torre pushed you, what happened next?

**A He pointed a knife at my throat and a bolo pointed (*nakatutok*) at my back.**

x x x

Q Now, Mrs. Witness, what happened next after the accused pointed a knife at your throat and a bolo at your back?

A He pushed me inside the house on the ground.

Q What happened next after he pushed you on the ground.

**A With the knife on my throat and my two (2) hands at the back with the bolo, he undressed me.**

Q What kind of dress are you wearing, Mrs. Witness, at that time?

A I was wearing a dress (*bestida*).

Q When you said that the accused undressed you, what exactly do you mean?

**A He lifted my dress up to a little bit above my breast.**

Q Mrs. Witness, other than your *bestida*, what was you wearing at that time?

A I had only a panty.

Q What about bra?

A None, sir.

Q What happened to your panty if any at the time the accused lifted your dress?

**A He took off my panty.**

Q Did the accused succeed removing your panty at the time, Mrs. Witness?

**A Yes, sir.**

Q Now, Mrs. Witness, after the accused raised your dress above your dress and after successfully removing your panty, what happened next?

**A He sucked my breast, he inserted his penis inside my private part (*puke*).**

Q Now, Mrs. Witness, could you please tell us what position you assumed in time the accused inserted his penis in your private part?

**A I was lying on the ground with my back face up.**

Q And what about the accused?

**A He was on top of me.**