

SECOND DIVISION

[G.R. No. 144161, March 12, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MAXIMO CRISTOBAL Y NORA ALIAS "TOTOY", ACCUSED-
APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 76, San Mateo, Rizal, finding accused-appellant Maximo Cristobal guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the offended party, Maria Juana del Rosario, in the amount of P50,000.00 as moral damages and to pay the costs.

The information against accused-appellant alleged —

That on or about the 3rd day of June, 1999, in the municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a kitchen knife, and by means of force, coercion and intimidation and lewd design, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Maria Juana Del Rosario y Andres against her will and consent.

Contrary to law.^[2]

Upon arraignment, accused-appellant pleaded not guilty, whereupon he was tried. The prosecution presented evidence showing the following:

Complainant Maria Juana del Rosario is a 30-year old woman, married, with three children, namely, Jasfer, who was 11 years old, Jefferson, who was seven, and Jeffrey, who was five. She testified that on June 2, 1999, she and her three children went to sleep early at 7 o'clock in the evening in their one-room house in San Mateo, Rizal. As they always did, they closed the only window at the back of the house near the sala, where the children were sleeping. A fluorescent lamp was lighted. At or about 11 o'clock in the evening, her husband Ferdinand del Rosario arrived from work. After letting him in, complainant went back to sleep at 11:30 p.m.

At past midnight, according to complainant, she felt the weight of a man on top of her. She could feel that the man was naked. She thought he was her husband, but he ordered her to keep quiet, and when she asked, "*Ano ba?*," (What is it?) he threatened her: "*Hwag kang maingay kung hindi mamasakerin ko kayong lahat.*" (Do not make any noise, or else I will kill all of you.) The intruder was armed with a

knife, which he poked at the left side of her neck. He moved her far from her husband and nearer to Jasfer. The man then removed complainant's shorts and panty with his right hand, while holding with his left hand a knife which he poked at her side. Accused-appellant kissed her on the neck and lips, sucked her nipples, and inserted his finger into her vagina and, afterward, entered her. Complainant was hurt. She cried, but she could not do anything because accused-appellant threatened her with a knife. As accused-appellant was doing the sexual act, complainant happened to move her head and bumped the foot of her eldest son, Jasfer, thus waking him up. When Jasfer stood up, the man ran away, passing through the window of the house.

Maria Juana said she woke up her husband and told him that a man, reeking of liquor, had entered their house and attempted to rape her. Ferdinand went out of their house, and, finding no one outside, took complainant to their neighbors' houses to see if any male living there smelt of liquor.

At 2 o'clock in the morning of June 3, 1999, Maria Juana, accompanied by her sister, Maria Teresa Andres, went to the barangay hall and reported the incident. They were referred to the San Mateo Police Station. PO1 Lope Macauba, Jr. received her complaint. There, complainant identified the assailant as accused-appellant. On the basis of the identification made, the police arrested accused-appellant Maximo Cristobal in his house at 4 o'clock in the morning. Maria Juana was examined by Dr. Wilson S. Tan at Camp Crame in the afternoon.

Maria Juana testified that she knew accused-appellant even before the incident because accused-appellant's wife, Adoracion Cristobal, is the cousin of her mother. Complainant claimed she was a bridesmaid at accused-appellant's wedding. When Maria Juana was still single, accused-appellant allegedly showed interest in her, although she ignored him because she already had a boyfriend. She said she told Cristobal to pay attention to his wife Adoracion. Complainant claimed she was subjected to shame and humiliation.

Upon cross-examination, Maria Juana admitted that she did not make any outcry because she was threatened with harm by accused-appellant. In fact, it was only because her head nudged by accident the foot of her son that the latter was awakened. She also admitted that she did not disclose to her husband the identity of her attacker, but she claimed she was afraid of a possible confrontation and violence if she did so.^[3]

Jasfer del Rosario corroborated his mother's testimony. Jasfer testified that on June 2, 1999, at around 7 o'clock in the evening, he slept beside his brother, Jeffrey. All of them were sleeping in one direction, with their heads turned toward the sofa. In the early morning of June 3, 1999, Jasfer said he was awakened when her mother moved her head and bumped his foot. When he stood up, he saw a naked man on top of his mother. Jasfer was not able to recognize the intruder as he was still drowsy. The man immediately got up and jumped out of the window. It was then that his mother woke up his father. Jasfer said he found a knife on the floor.

Jasfer admitted on cross-examination that, while the man he saw was on top of his mother, the latter was not resisting nor shouting.^[4]

Chief Barangay Tanod Eduardo Nerecina confirmed that on June 3, 1999, at or about 2:15 in the morning, complainant Maria Juana del Rosario reported that an unidentified person entered their house and attempted to rape her. Nerecina said that Maria Juana later changed her allegation and said she had actually been raped. For this reason, according to Nerecina, he advised the victim to report the matter to the police. Nerecina admitted he was not told who the suspect was until June 4, 1999, when complainant identified the assailant as accused-appellant.^[5]

For his part, PO1 Lope M. Macauba, Jr. testified that, in the early morning of June 3, 1999, he received at the San Mateo Police Station a complaint for rape against accused-appellant Maximo Cristobal *alias* Totoy. On such basis, a sworn statement was given by complainant. According to Macauba, when they went with complainant to her house to conduct an investigation, they found the knife allegedly used by the rapist lying on the floor. They also allegedly found traces of hair within the premises.^[6]

The last witness to testify for the prosecution was Dr. Wilson S. Tan. Dr. Tan said he found three linear abrasions in the dorsal aspect of the right hand of the victim, probably caused by the force when the victim was held down tightly by the suspect, and a slight congestion in the posterior fourchette. According to Dr. Tan, the slight congestion in the private parts of the victim may have been caused by the rubbing of a hard blunt object, possibly an erect male organ or penis, in the victim's vagina. However, no lacerations on the genitalia had been found. Also, the examination yielded negative results for the presence of spermatozoa.^[7]

The defense presented as its witnesses accused-appellant Maximo Cristobal, Brigido Cruz, Ofelia Hernandez, and Adoracion Cristobal.

Accused-appellant testified that he was a dump truck driver. On June 2, 1999, he worked from 6 o'clock in the morning to 3:30 in the afternoon, after which he went home. At home, he had some gin as was his custom in the afternoon. After dinner, he and his family watched television until 11 o'clock in the evening. After the children had gone to sleep, he and his wife, Dory, had sex. They slept at about 12 midnight.

At around 1:30 in the morning of June 3, 1999, he said he and his wife were awakened by noise outside their house. When they went out to find out what it was about, they saw it was Ferdinand, the husband of Maria Juana, complaining that a trespasser had broken into their house and that the intruder smelt of liquor. Ferdinand wanted his wife to smell each male for liquor in his breath. Accused-appellant claimed that when it was his turn to be checked for alcohol, Maria Juana just stepped forward, head bowed, but never smelled his breath. Accused-appellant said he demanded to know from Ferdinand why every time there was an untoward incident, Ferdinand's family always complained to him. Instead of answering, accused-appellant said, Ferdinand simply left.

Subsequently, Maria Juana, her aunt Punyang, and Barangay Tanod Eduardo Nerecina went back to the place of the incident to check the same. Accused-appellant said he was curious and so went with the group. Accused-appellant claimed he heard Eddie remark that the place was in proper order and that anyone who had broken into the house would have left footprints outside because there was

a canal nearby and the area was muddy.

At 4:05 in the morning, accused-appellant said he was again awakened by a knock on their door. When his wife Dory opened the door, he saw a policeman who introduced himself as PO1 Macauba. PO1 Macauba asked for Totoy. After identifying himself, accused-appellant said he and his wife, Adoracion, were taken to the police station for questioning and, later, he was put in jail for alleged trespass to dwelling.

Accused-appellant denied allegations that he raped Maria Juana, claiming he was sleeping at that time in their house. Accused-appellant claimed that, in the fiscal's office, he saw Maria Juana and her son Jasfer being interviewed. Jasfer was allegedly asked by the fiscal if he (Jasfer) saw accused-appellant jump out of their window on the night in question, but the boy shook his head.

Accused-appellant claimed that although he was told that he would be taken to Camp Crame for examination to determine if some pubic hair recovered from complainant's house belonged to him, this was not actually done. He denied that he ever courted Maria Juana and that he made the latter a bridesmaid at his wedding. He said that during the time that he was courting his wife Adoracion, he met Maria Juana, but never knew her intimately.^[8]

Brigido Cruz, Ofelia Hernandez, and Adoracion Cristobal gave testimonies to corroborate the testimony of accused-appellant.

On February 7, 2000, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Maximo Cristobal y Nora guilty beyond reasonable doubt of the crime of Rape (Violation of Art. 266-A, par. 1 in relation to Art. 266-B, par. 2 of RA 8353) and sentencing him to suffer the penalty of Reclusion Perpetua and to indemnify the private complainant Maria Juana del Rosario in the amount of P50,000.00 as moral damages and to pay the costs.^[9]

Hence this appeal. Accused-appellant contends that —

I. THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN CONVICTING ACCUSED-APPELLANT ON THE BASIS OF THE INCREDIBLE AND INCONSISTENT STATEMENTS OF THE PROSECUTION WITNESSES.

II. THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE HAS BEEN PROVEN BEYOND REASONABLE DOUBT.^[10]

The contentions are devoid of merit.

By the very nature of the crime of rape, conviction or acquittal depends entirely on the credibility of the complainant's testimony because of the fact that only the participants can testify regarding its occurrence.^[11] In this case, Maria Juana del

Rosario described how, with force and intimidation, accused-appellant succeeded in having carnal knowledge of her. She said:

Q: You said you were awakened from your sleep that early morning of June 3, 1999 past 12:00 o'clock when you felt somebody on top of you, do you confirm that?

A: Yes, sir.

Q: When you felt that somebody was on top of you, what did you do?

A: I elbowed him, sir.

Q: And then, what happened next?

A: He told me not to make noise, sir.

Q: When he told you not to make noise, what did you do?

A: I told him, "ano ba" and then he told me, "Hwag kang maingay kung hindi mamasakerin ko kayong lahat," sir.

Q: What else transpired, Madam witness?

A: I felt that a sharp instrument was poked on my neck, sir.

Q: Was it on the left or right side of your neck?

A: Left side, sir.

Q: What else transpired?

A: He transferred me to another place, sir.

Q: Where?

A: Near my son, sir.

Q: Whom are you referring to?

A: Near Jasper, sir.

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Q: When this person pointed to you a sharp instrument on your neck and told you, "Hwag kang maingay kung hindi mamasakerin ko kayo," what did you do?

A: I did not do anything because I was frightened, sir.

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Q: Now, did you come to know who was that person who threatened you with that sharp instrument on your neck?

A: Yes, sir.