

## FIRST DIVISION

[ G.R. No. 146020, May 29, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NORMAN PALARCA Y MERCADO ALIAS "BONG", ACCUSED-  
APPELLANT.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Malolos, Bulacan, Branch 12, in Criminal Case No. 605-M-99, convicting accused-appellant of the crime of rape; sentencing him to suffer the penalty of *reclusion perpetua*; and ordering him to pay the victim the amount of P50,000.00 as moral damages, plus the costs of suit.

The facts of the case as alleged by the prosecution are as follows: At the time of the incident, private complainant Concepcion C. Javier, was a 70 year old widow who personally tended her 24-hour *sari-sari* store located at 101 Rosal Street, Alido Heights Subdivision, Bulacan. She was suffering from recurrent insomnia, thus, she regularly took sleeping pills to ward off her sleeping problem.<sup>[2]</sup>

Twenty-eight year old accused-appellant, single, was then working as a keyboardist and sequencer of an establishment that produces "minus one" music. He was a resident of the same subdivision and a frequent buyer at private complainant's store during the wee hours of the morning.<sup>[3]</sup>

On May 19, 1998, at 5:00 in the early morning, private complainant was tending her *sari-sari* store and waiting for her two children to leave the house for Manila. At that time, accused-appellant was still in front of the store finishing the two bottles of beer he bought from private complainant. After her children left, private complainant went to the kitchen and took her regular dose of sleeping pill.<sup>[4]</sup>

Suddenly, accused-appellant entered through the kitchen door. He swiftly darted towards private complainant; shoved her on the forehead and pushed her against the kitchen counter. When she attempted to run, he grabbed her arm and punched her twice on the abdomen, causing her to fall to the ground. Though private complainant was reeling from the physical assault as well as from the effects of the sleeping pill, she felt accused-appellant raise her duster and remove her underwear. She saw him unzip his pants and pull down his briefs. Then, accused-appellant forced her legs open and raped her. She felt pain and bled, but she could do nothing as she was feeling very weak. Moments later, accused-appellant put on his pants and pointed the blood on the floor to private complainant.<sup>[5]</sup>

After accused-appellant left, private complainant struggled to get up and wiped the

blood on the floor. Then, she proceeded to the bedroom where one of her daughters, Teresa, was sleeping. Teresa woke up and saw the bloodied underwear of her mother. Private complainant told her that she was raped by accused-appellant but failed to give the details as she dozed off to sleep.<sup>[6]</sup>

The following day, May 20, 1998, private complainant submitted herself for physical examination at the PNP Regional Crime Laboratory in Malolos, Bulacan. Said examination yielded the following results:

x x x

x x x

x x x

PHYSICAL INJURIES: With contusion at the right upper arm.  
Contusion at the abdomen.

GENITAL:

PUBIC HAIR: moderate; white  
LABIA MAJORA: gaping  
LABIA MINORA: light brown  
HYMEN: Transformed to caruncular.

EXTERNAL VAGINAL ORIFICE:

VAGINAL CANAL: With abrasions, multiple of the vaginal wall.

CERVIX: none

PERI-URETHRAL AND VAGINAL SMEARS:

REMARKS: With abrasions, multiple of vaginal wall.<sup>[7]</sup>

Accused-appellant, on the other hand, denied the accusation against him. He maintained that on the night of May 18, 1998, he and several others attended a "despedida" party in the house of his friend, Jonjon. At 2:00 in the early morning of May 19, 1998, they decided to go home on board a tricycle. Accused-appellant dropped by the *sari-sari* store of private complainant and bought two bottles of beer. As he was finishing his drink at 3:00 a.m., two daughters of private complainant left for Manila. Not long after that, he went home.<sup>[8]</sup>

Defense witness Paul Danlin Conejero testified that he was one of the companions of accused-appellant in the house of a certain Jonjon on the night of May 18, 1998. At 2:00 in the early morning of May 19, 1998, they boarded a tricycle and went home. Accused-appellant, who was first to get off the tricycle, alighted near the *sari-sari* store of private complainant. Conejero admitted that he was no longer aware of the whereabouts of accused-appellant after they parted.<sup>[9]</sup>

On November 10, 2000, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, finding herein accused Norman Palarca y Mercado @ "Bong" guilty as principal beyond reasonable doubt of the crime of rape as charged in the information, without any circumstance, aggravating or mitigating, found attendant to its commission, he is hereby sentenced to

suffer the penalty of reclusion perpetua as imposed by law, to indemnify private offended party Concepcion C. Javier in the amount of P50,000.00 for moral damages subject to the corresponding filing fee as a first lien, and to pay the costs of the proceedings.

SO ORDERED.<sup>[10]</sup>

Hence, the instant appeal, on the following assignment of errors:

I.

IT IS ERROR ON THE PART OF THE LOWER COURT TO HAVE CONVICTED ACCUSED-APPELLANT ON A MERE POSSIBILITY OR SUSPICION OF GUILT. MORAL CERTAINTY IS GLARINGLY AND CLEARLY ABSENT IN ESTABLISHING BEYOND REASONABLE DOUBT THE GUILT OF ACCUSED-APPELLANT.

II.

IT IS ERROR FOR THE LOWER COURT TO HAVE GIVEN CREDENCE AND VALUE TO THE SWORN STATEMENT OF PLAINTIFF-APPELLEE (EXHIBIT "A"), DESPITE ITS INHERENT IMPROBABILITY AND HER CREDIBILITY, IMPAIRED.

III.

THE LOWER COURT ERRED TO HAVE ACCORDED WEIGHT AND VALUE TO BIOLOGY REPORTS B-98-658 AND B-98-736 (EXHIBIT "B" AND "C") RESPECTIVELY, FINDING THE PRESENCE OF HUMAN BLOOD AND SEMINAL STAINS ON THE DUSTER AND UNDERWEAR DESPITE THE INHERENT IMPROBABILITY OF THEIR FINDINGS AND FAILURE OF PLAINTIFF-APPELLEE TO IDENTIFY THE OWNERSHIP OF SAID BLOOD AND SEMINAL STAINS. THE INTEGRITY OF THESE PIECES OF EVIDENCE HAVE BEEN SERIOUSLY IMPAIRED.

IV.

THE LOWER COURT ERRED TO HAVE GIVEN WEIGHT AND VALUE TO EXHIBIT "D", THE MEDICO LEGAL REPORT, FINDING INJURIES ON THE PERSON OF PLAINTIFF-APPELLEE DESPITE THE FAILURE OF THIS MEDICAL REPORT TO REFLECT COMPLETE MEDICAL FINDINGS OF THE ALLEGED INJURIES.<sup>[11]</sup>

The present review hinges on the following issues: (1) whether or not accused-appellant may be validly convicted under the information charging him with rape; and (2) if so, whether the evidence for the prosecution established the guilt of accused-appellant beyond reasonable doubt.

The information charging accused-appellant with rape, recites:

The undersigned Asst. Provincial Prosecutor, on complaint of Concepcion C. Javier, accuses Norman Palarca y Mercado alias "Bong" of the crime of rape, penalized under the provisions of Article 266-B in relation to Art. 266-A, par. 2 of the Revised Penal Code, as amended, committed as follows:

That on or about the 19th of May, 1998, in the municipality of Malolos,

province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge with said Concepcion C. Javier, 70 years of age, against her will and consent.

Contrary to Law.

While the accusatory portion of the information failed to specifically allege that the rape was committed through force or intimidation, the prosecution was able to establish by evidence that accused-appellant was guilty of rape as defined under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended. The statement in the preamble of the information that accused-appellant was being charged with rape "penalized under the provisions of Article 266-B in relation to Art. 266-A, par. 2 of the Revised Penal Code" made no difference. It is not the preamble or caption of the information, but the actual recital of the facts alleged in the body of the information, that determines the validity and real nature of the criminal charge.<sup>[12]</sup>

In any event, accused-appellant failed to interpose any objection to the presentation by the prosecution of evidence which tended to prove that he committed the rape by force and intimidation. While generally an accused cannot be convicted of an offense that is not clearly charged in the complaint or information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of evidence may be waived by the accused-appellant. In *People v. Lopez*,<sup>[13]</sup> we held that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein. Thus

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[F]ailure to object was thus a waiver of the constitutional right to be informed of the nature and cause of the accusation. It is competent for a person to waive a right guaranteed by the Constitution, and to consent to action which would be invalid if taken against his will. (1 ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 31-32 [1983 ed.]). This Court has, on more than one occasion, recognized waivers of constitutional rights, e.g., the right against unreasonable searches and seizures (*People v. Malasugui*, 63 Phil. 221 [1936]; *Viuda de Gracia v. Locsin*, 65 Phil. 689 [1938]); the right to counsel and to remain silent (*People v. Royo*, 114 SCRA 304 [1982]); the right to be heard (*Abriol v. Homeres*, 84 Phil. 525 [1949]; *People v. Dichoso*, 96 SCRA 957 [1980]); and the right to bail (*People v. Donato*, 198 SCRA 130 [1991]).

On the second issue, accused-appellant questions the trial court's assessment of private complainant's testimony. Accused-appellant makes much of the finding of the investigating judge during the bail hearing that the evidence against accused-appellant was not strong. It must be stressed, however, that the assessment of the evidence presented during a bail hearing is intended only for the purpose of granting or denying an application for the provisional release of the accused. Not being a final assessment, and merely for the purpose of determining the necessity of confinement to avoid escape, courts tend to be fair and liberal in their appreciation of evidence. Thus in *People v. Baldoz, et al.*,<sup>[14]</sup> the Court made the following pronouncements: