

SECOND DIVISION

[G.R. No. 125908, September 05, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTOR BALILI Y LIBOT, ACCUSED-APPELLANT.**

DECISION

QUISUMBING, J.:

This is an appeal from the judgment^[1] of the Regional Trial Court of Davao City, Branch 13, in Criminal Case No. 34,082-94, finding appellant Victor Balili guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim Maylin Abajo, P30,000 as indemnity, together with the costs.

On May 24, 1994, the Davao City Prosecutor charged the appellant as follows:

That on or about May 3, 1994, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Maylin Abajo, who is 15 years of age, against her will.

CONTRARY TO LAW.^[2]

Upon arraignment, the appellant entered a plea of not guilty. Thereafter, trial on the merits ensued.

According to the prosecution's evidence, herein appellant Victor Balili, married, 31 years old, was a neighbor for about fourteen (14) years and a frequent visitor of the Abajo family at San Vicente, Buhangin, Davao City.

In the afternoon of May 3, 1994, at about 2:30 P.M., the appellant went to the Abajos' house. He told private complainant, 15-year-old Maylin Abajo, that he was hungry, and so she served him food. After eating, Victor Balili asked Maylin where her mother, a vegetable vendor, was.^[3] Maylin replied she went to the hospital to attend to her sick sister. He then asked Maylin who would accompany her that evening to buy vegetables. At about 7:30 in the evening, while Maylin was standing by the roadside, about five (5) meters away from their house, Balili approached her and asked her again who her companion to buy vegetables would be. She said Olympia Libot, another vegetable vendor. Balili then left. After that, she went home to get a sack. When Olympia arrived, she and Maylin proceeded to Hillside Subdivision where the market was located. Olympia, who was entrusted with the money by Maylin's mother, paid for the vegetables. Maylin went home ahead of Olympia since the latter was a slow walker. She waited for Olympia near a roadside

store where she sought shelter from a heavy downpour. The store, 150 meters away from her house, was closed. There were no people around.^[4]

Suddenly, somebody pulled her from behind, covered her mouth with his right hand and with his left hand around her neck, the man started dragging her. She struggled and was able to break free. She ran towards the direction of her house but her aggressor caught up with her, pulling the back of her dress and covering her mouth. She bit the man's hand and the latter boxed her twice, once on the mouth and once on her breast. Then he dragged her backwards to a banana grove, 25 meters away from the place where earlier the man caught up with her after she struggled to be free from his clutches. She again struggled to free herself but to no avail.

Upon reaching the banana grove, the man held a scythe and aimed it at her neck placing his left hand on her shoulder. With his face covered with a T-shirt, they faced each other. He told her to remove her shorts and panty, but she did not obey. The man again boxed her twice and pushed her. She was thrown to the ground and as she faced the sky, the man removed her shorts and panty. She tried to free herself but he boxed her again on the breast. She felt pain. The man placed himself on top of her, inserted his penis in her private part and as he was not able to penetrate her organ, he inserted his finger in her vagina, then afterwards inserted his penis inside her private part, this time penetrating her. She said she felt great pain as if she were going to die. In the course of ravishing her, he removed his mask and she saw that the man was Victor Balili, her neighbor.^[5]

After satiating his lust, Balili stood up. At that moment, lightning streaked through the heavy rain, illuminating the place. Again, she saw clearly that the person who had abused her was Balili. She told him he was cruel, considering that they were just neighbors but he violated her. She called him "Nong Loloy." He threatened her not to tell anyone because if she did, he would kill her and anyone else who would know about the incident. Balili disappeared into the night, after ordering her to run.^[6]

Drenched and scared, she put on her clothes. She ran towards home. While running, she met Olympia and she told her to run too. She woke up her older sister, Myrna Abajo, who was surprised to see her in such a woeful condition. She was wet, muddy, and crying. She then narrated her ordeal but she did not tell her sister who had raped her because of Victor Balili's threat. Her sister cried.^[7]

The following day, one Pesyong Flores told Jimmy Tangonan, a purok leader of their barangay, that she was raped and Tangonan accompanied her to the Buhangin Police Station to report the crime. She also did not tell Tangonan who raped her since she was scared of Balili's threat.^[8]

At the police station, she was interviewed by a policeman but when asked to name the person who raped her, she only remained silent, also for fear of Balili's threat. Afterwards, Tangonan and Olympia accompanied her to the City Health Office. On the way, Tangonan asked her again who raped her but still she refused to reveal Balili's identity. Dr. Ledesma, Medico Legal Officer, physically examined her.

Thereafter, she and her companions went home.^[9]

In the evening of May 4, 1994, at about 7:00 o'clock, she was brought to the Buhangin Police Station to point out the person who had raped her. At the police

station she saw several suspects, among them Daniel Tolomoro, Vicente Muana, Calixto Muring, and Balili. She was asked to identify her ravisher. Maylin did not point out Balili as the rapist because he was angrily looking at her, which all the more scared her. She later went with Tangonan to his residence and stayed there. Of the four (4) suspects who were rounded up by the police, she did not point to any one, but Daniel Tolomoro was detained by the police. When she learned of this fact, she went to the police to tell them to release Tolomoro because he was not the person who raped her.^[10] At about 4:00 P.M. of May 5, 1994, she went home. At about 7:00 P.M., her older brother, Lito Abajo, 25 years old, arrived. It was then that she told her brother that the person who raped her was "Nong Loloy". She explained she identified him only then because Balili had threatened her not to tell anyone. She and Lito went to Tangonan to inform him that Maylin already identified Balili as the person who raped her. As Tangonan suggested, they went to the police station the following morning.^[11]

Policeman Arcilla, who prepared her affidavit, asked with annoyance why she revealed the name of the rapist only then. She explained her reason. The affidavit was given to her but the contents were not fully explained to her by Arcilla. She was told to go to the Fiscal's Office and was instructed that if the fiscal asked her if she understood the contents of the affidavit, she should answer in the affirmative. At the Fiscal's Office, she did as she was told. Later, she revealed she did not read the affidavit since she understood little English and realized only when the case was already in court that some of the contents of the affidavit were not true, particularly the portion which said that at the time she was raped, she recognized only the voice of Victor Balili. She said she told Arcilla that she saw the face of the man who raped her, and not merely heard his voice. She explained that when her older brother, Lito, arrived in their house she gathered the courage to name appellant as her rapist because she was no longer scared to speak since her brother was already there to protect her.^[12]

For the defense, SPO2 Ricardo Arcilla and appellant Victor Balili took the witness stand.

SPO2 Ricardo Arcilla testified that appellant and two (2) other suspects were invited for questioning by the police the night after the rape occurred. But Maylin failed to point to Balili as the rapist, so he was released from custody. She had then pointed to Daniel Tolomoro, another suspect. However, Maylin said she was not sure of Daniel's identity. Thus, the latter was also released.

In his testimony, appellant denied committing the crime.

After trial, the trial court rendered its decision dated September 28, 1995, disposing as follows:

WHEREFORE, the accused Victor Balili y Libot is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to indemnify his victim, Maylin Abajo, in the sum of P30,000.00 and to pay the costs of suit.

SO ORDERED.^[13]

Hence, the instant appeal. Appellant assails the said decision, assigning the following errors: