

## EN BANC

[ G.R. Nos. 128851-56, February 19, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUSSEL MURILLO Y CARLA, RESTITUTO CABLAYAN Y CADIENTE AND MARLON LOGAN Y ILARDE, ACCUSED-APPELLANTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This case is before this Court on automatic review from the Regional Trial Court, Branch 171, Valenzuela, Metro Manila, which found accused-appellants guilty of raping Eulogia G. Jimenez, sentenced them to death and ordered them to pay the victim P50,000.00 in damages plus costs.<sup>[1]</sup>

Six (6) identical informations were filed against accused-appellants for rape, docketed as Criminal Cases Nos. 5129-V-95, 5130-V-95, 5131-V-95, 5148-V-95, 5149-V-95, and 5150-V-95, substantially alleging as follows:

That on or about the 13th day of September 1995 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, conspiring together and mutually helping one another, by means of force and intimidation employed upon the person of EULOGIA GAGALATE-JIMENEZ, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with said EULOGIA GAGALATE-JIMENEZ against her will and without her consent.<sup>[2]</sup>

On November 29, 1995, the three (3) accused-appellants were arraigned and each one pleaded not guilty.

After trial, the lower court rendered judgment, finding all three (3) accused-appellants guilty beyond reasonable doubt of rape in Criminal Cases Nos. 5129-V-95, 5130-V-95 and 5131-V-95, sentencing them to death and ordering them to indemnify the victim the amount of P50,000.00 in each case, with costs; and acquitting them in Criminal Cases Nos. 5148-V-95, 5149-V-95 and 5150-V-95 for failure of the prosecution to establish their guilt beyond reasonable doubt.

The antecedent facts are as follows:

On September 12, 1995, private complainant Eulogia Gagalate-Jimenez was arrested for six (6) counts of violation of Batas Pambansa Bilang 22. She was 28 years old, jobless,<sup>[3]</sup> three months pregnant and recently separated from her live-in partner, who fathered the child she was carrying.<sup>[4]</sup> Unable to post bail, she was temporarily detained at the warrant section office, located at the second floor of the Valenzuela Police Station, from the day of her arrest until September 16, 1995.<sup>[5]</sup>

On the second day of her detention, September 13, 1995, at around 10:30 or 11:00 in the evening, she was left in the said office by SPO1 Oscar Dilag, the police officer guarding her, because somebody allegedly wanted to talk to him.<sup>[6]</sup> After a few minutes, Russel Murillo, a traffic aide of the Valenzuela traffic auxiliary, knocked at the door of the office and entered, accompanied by Major Restituto Cablayan and PO2 Marlon Logan.<sup>[7]</sup>

Inside the room, Murillo asked complainant the reason for her detention and what was the criminal charge against her. All the while, complainant noticed that the accused-appellants smelled bad and their faces appeared unusual.<sup>[8]</sup> The three (3) were in plain clothes. Murillo pulled complainant and hit her buttocks with his hands. The two (2) others looked on while Murillo made her sit on a chair and began to undress her. Then, Logan and Cablayan approached her and asked her to recline on the table. Thereafter, Cablayan poked a gun at her<sup>[9]</sup> and squeezed her breasts.<sup>[10]</sup>

Accused-appellants held complainant's hands and feet. Then, one of them turned off the two (2) fluorescent lamps.<sup>[11]</sup> Complainant felt that Cablayan raped her first after placing the gun on top of her abdomen. She pleaded and cried for them to stop as she was on the family way. However, one of them retorted, "*walang buntis-buntis sa amin.*"<sup>[12]</sup>

One of the accused-appellants made her lie on her left side and raised her left foot. Logan ravished the complainant while she was in that position.<sup>[13]</sup> After Logan finished, Murillo instructed her to change her position by making her raise her buttocks.<sup>[14]</sup>

Complainant claimed that she was raped six (6) times, starting 10:30 or 11:00 p.m. up to 4:00 a.m. or 5:00 a.m.<sup>[15]</sup> Thereafter, the accused-appellants instructed her to dress up.

At around 6:00 a.m., SPO1 Dilag arrived. He noticed her swollen lips and saw her brassiere under the table. Complainant reported to him that she was raped and that she did not know the names of the perpetrators, but she can identify them. She informed SPO1 Dilag that the perpetrators were policemen as she saw their guns, handcuffs, and badges hanging from their pants.<sup>[16]</sup> She told SPO1 Dilag that the accused-appellants threatened to kill her and her relatives if she reveals to anyone what happened.<sup>[17]</sup>

After this conversation, SPO1 Dilag brought her to the ADD Store located in front of the police station so that she can take a bath. Afterwards, they had breakfast with Capt. William Macabenta.

On September 14, 1995, complainant insisted that she be brought to the hospital because she was running a fever and was bleeding. Dr. Hernandez, of the Hernandez Maternity and Lying-In Clinic, attended to her.<sup>[18]</sup> When asked by Dr. Hernandez if she had recent sexual contact, complainant answered in the negative, as she was still afraid of accused-appellants' threats.<sup>[19]</sup> Complainant was confined until September 19, 1995.

Upon her release from the hospital, complainant chose to be kept at the Valenzuela jail rather than at the warrant section office of the Valenzuela Police Station. Finally, she was able to post her bail bond and was released on September 20, 1995. She was only able to recount her ordeal to her friend the following day.<sup>[20]</sup>

On September 22, 1995, complainant reported the rape incident to the National Bureau of Investigation, which ordered several police line-ups where complainant positively identified accused-appellants.

In his defense, accused-appellant Logan testified that he was assigned to a mobile patrol unit along with SPO1 Jeric Goyenchea and SPO2 Rodolfo Reyes.<sup>[21]</sup> On September 13, 1995, at around 8:32 p.m., they started patrolling the streets of Valenzuela.<sup>[22]</sup> At around 9:12 p.m., they received a radio message advising them to return to the headquarters.<sup>[23]</sup> They stayed at the Valenzuela police station for about two (2) minutes only, after which they went back to the streets to continue their rounds. At around 10:51 p.m., the headquarters radioed again instructing them to return to base.<sup>[24]</sup> They briefly stayed at the headquarters. Again, at around 11:14 p.m., their base radioed and requested them to proceed to Ram Boys Restaurant along Maisan Road, to respond to a complaint regarding trouble between one of the waitresses and her boyfriend.<sup>[25]</sup> The matter was settled immediately, so they did not have to bring the parties to the police station.<sup>[26]</sup>

Logan further testified that they went to Shakey's Marulas that night after receiving a report of a commotion there. At exactly 12:35 a.m., they called the headquarters to inform the base that they were bringing a certain Venancio Bernardo and another Romy Ponce for treatment at the Caloocan General Hospital. Said persons were involved in the brawl at Shakey's.<sup>[27]</sup> Thereafter, they brought them to the Valenzuela Police Station.<sup>[28]</sup> He stressed that they only stayed at the ground floor of the police station. Having concluded their business, the members of the mobile patrol unit continued their patrol without incident until 7:00 a.m. of September 14, 1995.<sup>[29]</sup>

On cross-examination, Logan stated that he did not meet the complainant on September 13, 1995.<sup>[30]</sup> His only encounter with her was when she singled him out from a police line-up. He claimed that perhaps complainant mistook him for the actual rapist. Complainant might have seen her that day as he changed his clothes near his locker which was located in front of the office of the warrant section. He admitted that on that day while changing his clothes, he saw a woman inside the warrant section office along with several persons. However, he was not certain whether it was complainant.<sup>[31]</sup>

The defense presented the testimonies of SPO1 Jeric Goyenechea and SPO2 Rodolfo Reyes, the other members of his mobile patrol unit, to corroborate Logan's story.

Accused-appellant Murillo testified that he was a traffic aide of the Valenzuela traffic auxiliary from July 28, 1993 to June 30, 1995.<sup>[32]</sup> Since his appointment was not renewed, his grandmother advised him to go to their province at Bonliw, Torejos Marinduque. There, he stayed at the residence of Leticia Velarde, his aunt, and worked as conductor of his uncle's public utility jeepney.<sup>[33]</sup> He stayed in

Marinduque until September 30, 1995. The first time he met complainant was on October 6, 1995, when he was arrested by the NBI.<sup>[34]</sup>

To bolster his defense of alibi, the defense presented Leticia Velarde, who substantially corroborated Murillo's testimony.

Likewise, accused-appellant Cablayan presented his version of the story. He reported for duty on September 13-14, 1995 at 6:00 p.m., wearing his complete uniform.<sup>[35]</sup> On September 13, 1995, Cablayan was the designated night supervisor.<sup>[36]</sup> He participated in the police line-up on October 18, 1995 where he was pinpointed by complainant as one of her rapists.<sup>[37]</sup> He had not met nor known complainant prior to October 18, 1995.<sup>[38]</sup> During the line-up, complainant was assisted by the district officer of the police district command. Complainant was brought in front of him and was held and stopped.<sup>[39]</sup> Then, she pointed at him and fainted. Cablayan testified that he was unaware of any ulterior motive for complainant's accusation against him.<sup>[40]</sup>

On the witness stand, Cablayan further recounted that he had no knowledge of complainant's previous detention at the Valenzuela police station.<sup>[41]</sup> He admitted that he knew accused-appellant Murillo as he was a member of the Valenzuela traffic auxiliary. He learned of the rape case against Murillo from a television news report.<sup>[42]</sup>

Mr. Dante Salonga, a member of the Valenzuela police station, testified that he did not see accused-appellant Cablayan go to the second floor of the police station on September 13, 1995. SPO2 Arthur Quiñones likewise testified that he did not see accused-appellant Cablayan go to the second floor.

Also called to the witness stand was Dr. Florante Hernandez, complainant's attending physician during her confinement at the Hernandez Lying-In and Maternity Hospital. Dr. Hernandez testified that sometime on September 16, 1995, at around 7:30 to 8:00 p.m., Eulogia Jimenez went to the clinic escorted by SPO1 Oscar Dilag complaining of hypogastric pain. He made a detailed history examination, review of system and proceeded with a very gentle pelvic examination.

Complainant was confined in the hospital for 2 days. There were instances when they were alone. However, she never mentioned any unusual incident that transpired one week before her confinement.

He had the impression that complainant was suffering from a threatened abortion because the pelvic examination showed that the cervix was closed, there was no bleeding and yet the patient was complaining of hypogastric pain. Complainant had slight difficulty in breathing so she had to be hooked to an oxygen and was given an anti-pyretic.

The trial court gave credence to complainant's version of the story. In its decision, it observed that:<sup>[43]</sup>

There appears to have no question that complainant Eulogia G. Jimenez was temporarily detained in the office of the warrant section of the

Valenzuela Police Station in the evening on September 13, 1995 after her arrest on account of the criminal case for Violation of B.P. 22. That the Office of the Warrant Section is located on the second floor of the Valenzuela Police Station. There is also no issue that accused Restituto Cablayan was a Major and the Deputy Station Commander of Valenzuela Police Station while PO3 Marlon Logan is a member of the Valenzuela Police Station detailed at the mobile patrol on September 13, 1995. Accused Russel Murillo was formerly a traffic aide in the Valenzuela Police Station.

The essence of the offense of rape was the loss of the complainant's treasured asset, virtue, by means of carnal knowledge effected and carried out through the use of force, threats and intimidation. The sexual act must be committed with the use of force, threat or intimidation. The force is such that it destroys any resistance that may be put up and the intimidation is such that breaks down the victim's moral resistance that makes her submit to the evil motive of her abusers.

To ascertain the sufficiency of the evidence for the prosecution, the testimony of the complainant is always the pivotal point. It should be closely and seriously examined to ascertain with moral certainty that the accused committed the offense.

The Court is called upon to decide which of the colliding versions of the incident has inspired its belief and gained acceptance. With and under the variant stories, the issue of credibility assumed primary importance. The conviction and acquittal of the accused depends almost entirely upon the credibility of the victim's testimony, for the crime of rape is committed in secrecy and almost always without an eye witness. Courts should, therefore, examine with great care the victim's story to determine its veracity in the light of human nature and experience. (*People vs. Ilagan, L-36560, May 28, 1975*). Complainant's testimony must be clear, positive and convincing or supported by other undisputed facts and strong circumstantial evidence. (*People vs. Poblador, L-44129, April 29, 1977*). This is because the charge of rape is easy to make and difficult to defend. (*People vs. Barba, L-30980, March 28, 1974*).

A close assessment of the foregoing two versions which were pieced together from the testimonies of the principal complaining witnesses and the defense, unservedly point to the prosecution story as the version endowed with truth and credibility.

Complainant's testimony is clear, convincing, natural and credible. She pinpointed to accused Restituto Cablayan, Marlon Logan and Russel Murillo as her abusers. She described the manner how she was sexually molested by each of the accused. There is no reason not to believe her story. There is no convincing facts and/or circumstances from which it could be reasonably inferred that the complainant falsely testified or she was actuated by improper motive. The absence of clear and convincing evidence of the existence of improper motive sustain the conclusion that no improper motive exist and the testimony of the victim should be given full faith and credit. It is presumed that the complainant would not have