

SECOND DIVISION

[G.R. No. 133475, March 26, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO MONTEJO, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from the decision,^[1] dated October 3, 1997, of the Regional Trial Court, Branch 24, Cagayan de Oro City, finding accused-appellant Ernesto Montejo guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the complainant Juvelyn Labalan y Boiles^[2] in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency but with full credit for the preventive imprisonment he had already served.

The record shows that on November 29, 1989, a criminal complaint for simple seduction, allegedly committed on August 10, 1989, September 20, 1989, October 25, 1989, October 27, 1989, and November 2, 1989 was filed before the 8th Municipal Circuit Trial Court of Initao-Libertad, Misamis Oriental by Juvelyn B. Labalan against accused-appellant. On January 2, 1990, Judge Maximo B. Ratunil of said court ordered a re-investigation as "the crime charged against the accused does not correspond to the evidence adduced before him." Thus, on January 12, 1990, an amended complaint for rape allegedly committed on August 10, 1989 was filed. On January 29, 1990, the amended complaint was again amended to allege that the rape was committed on November 16, 1989. After the preliminary investigation, Judge Ratunil issued a warrant of arrest on February 1, 1990, but accused-appellant could not be found. He was finally arrested only on February 6, 1995.^[3]

On July 11, 1990, an information^[4] for rape against accused-appellant was filed, alleging —

That on or about 1:00 o'clock in the afternoon on August 10, 1989 [in] Sitio Panimugsalan, Gimaylan, Libertad, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did and then and there willfully, unlawfully, and feloniously, and by means of force, violence, and intimidation pinned down one Juvelyn B. Labalan, 12 years old, succeeded in having carnal knowledge with her against her will and consent.

CONTRARY TO and in VIOLATION of Article 335 of the Revised Penal Code.

When arraigned, accused-appellant pleaded not guilty to the charge, whereupon trial commenced.

The prosecution presented six witnesses, namely, complainant Juvelyn B. Labalan, Dr. Rosana Tuazon, Maria Labalan, Delfin Hinisan, Myrna de los Reyes, and Dr. Eric Borromeo. Three other witnesses, namely, Delfin Bongay, Sofronio Labalan, and Rosalio Dayadaya, were presented on rebuttal.

Complainant Juvelyn B. Labalan testified that at around 1:00 p.m. on August 10, 1989, she was selling fish in Sitio Panimugsalan, Gimaylan, Libertad, Misamis Oriental. When she passed by the house of accused-appellant Ernesto Montejo, the latter called her. Thinking that he would buy fish, Juvelyn went to accused-appellant's house. As there were then no other people in the house, accused-appellant seized and embraced her ("*gilayog ko niya*"). He tied her hands with a nylon rope and covered her mouth with a handkerchief. He then took her to a grassy area at the back of the house, where he first undressed and then kissed her from shoulder down to her abdominal area before finally forcing himself on her. She claimed that the accused-appellant's push and pull movements ("*gi-kiyo-kiyoan ko*") were painful. Juvelyn claimed that she was threatened with death if she reported the incident. When she reached home, therefore, she did not tell her parents what had happened. Instead, she made it appear that all the fish had been sold but that she had not yet been paid for it by accused-appellant.

Dr. Rosana Tuazon of Libertad Rural Health Unit examined Juvelyn on November 17, 1989 after which she issued a medical certificate (Exh. A).^[5] She testified that Juvelyn's hymen was no longer intact and instead had healed lacerations.^[6]

Maria Labalan is the stepmother of Juvelyn. She testified that she and Juvelyn's father were married in 1982. On November 17, 1989, Juvelyn told her that she had been raped the previous day. She said that Juvelyn confided to her that accused-appellant had been raping her since August 10, 1989, and that because of this, Juvelyn, then in Grade II, had stopped schooling. Maria Labalan took Juvelyn to the Libertad Health Center for a physical examination and, later, to the Libertad Municipal Hall to file a criminal complaint against accused-appellant.^[7]

Delfin Hinisan, a policeman assigned to the Provincial Command in San Martin, Villanueva, testified that accused-appellant was arrested in the morning of February 6, 1995.^[8]

Myrna de los Reyes, a guidance psychologist in the Northern Mindanao Regional Training Hospital, testified that on April 18, 1995, she conducted a psychological examination on Juvelyn, which showed that the complainant had intellectual capacity below the normal level, although she was not a mental retardate.^[9]

Dr. Eric Borromeo, a medical specialist in the Northern Mindanao Medical Center, stated in his report (Exh. G)^[10] that after conducting several psychological tests, he found that Juvelyn was suffering from anxiety and nervousness and that she was having difficulty in sleeping which she never experienced prior to the rape incident.

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On the other hand, the defense presented the following witnesses: accused-appellant Ernesto Montejo, Teodosia Dayadaya, Virginia Lomongo, and Romeo Bagares.

Accused-appellant testified that five other criminal complaints for rape against him had been dismissed for failure of Juvelyn to appear during the preliminary investigation of the case.^[12] He denied having raped Juvelyn B. Labalan. He stated that, in 1989, he received a call from his brother so he went to Manila to look for work and stayed there for five years. He averred that when he left for Manila, there was no complaint against him. When his wife visited him in Manila, she did not inform him of any criminal complaint against him. He went back to Initao on December 25, 1994. He admitted knowing Juvelyn as they were neighbors. Juvelyn used to go to his house with Joseph Bagares to play in his backyard. He claimed that he had a quarrel with the mother of Juvelyn because he stoned the latter's pig which had destroyed his corn plants.^[13]

Teodosia Dayadaya, aunt of Juvelyn and sister of the latter's mother, testified that she and her husband, Rosalio Dayadaya, had stayed in Panimugsalan, Libertad from 1985 to 1989 on the land owned by Mayor Nazario Akut, municipal mayor of Libertad. She stated that her house is about 50 meters away from accused-appellant's house. She said that on August 10, 1989, she saw Juvelyn playing with Joseph Bagares at 7:00 a.m. under a mango tree near the house of accused-appellant. She also saw accused-appellant alone at about 4:00 p.m. in his house, but Juvelyn was not around anymore at that time. She said Juvelyn used to play under the mango tree and only stopped doing so on November 29, 1989 when her mother no longer allowed her to do so. Teodosia Dayadaya declared that the charge against accused-appellant was false because on August 10, 1989, she did not hear any cry or shout from Juvelyn.^[14]

Virginia Lomongo, another resident of Panimugsalan, Libertad, whose house is about 80 meters away from accused-appellant's residence, corroborated the testimony of Teodosia Dayadaya. She testified that on August 10, 1989 and prior thereto, she used to see Juvelyn outside the house of accused-appellant climbing the mango tree or playing with Joseph Bagares. She said that Juvelyn stopped playing there in December 1989.^[15]

Romeo Bagares, a friend of accused-appellant, also corroborated the testimonies of Teodosia Dayadaya and Virginia Lomongo. He testified that Juvelyn is the friend of his son Joseph, then ten years old. He said that before August 10, 1989, Juvelyn and Joseph used to go to the house of accused-appellant. Juvelyn stopped going there in December 1989 when Joseph left for Don Carlos.^[16] On cross-examination, Romeo Bagares admitted that he belongs to the group of Mayor Nazario Akut who was a member of the Lakas-NUCD political party.^[17]

The prosecution presented witnesses in rebuttal. Delfin Bongay testified that he had known Teodosia and Rosalio Dayadaya since 1969 as they were his neighbors. Their houses were just 50 meters apart from each other. Sometime in the first week of October, 1995, the Dayadayas went to his house convincing him to look for two witnesses who could testify in favor of accused-appellant. As he told them that he knew nothing about the case, they left. For the next two days, they came back to see him and reiterated their request, but in both instances, he turned them down. He was informed by them that Mayor Nazario Akut had sent them to see him.^[18]

Sofronio Labalan, brother of complainant Juvelyn B. Labalan, testified that at about 8:00 a.m. of March 4, 1995, Mayor Akut, brother-in-law of accused-appellant, came with a man from the CIS asking that the case be settled.^[19] On the other hand, Rosalio Dayadaya testified that, on December 28, 1989, he executed an affidavit (Exh. J)^[20] before Judge Maximo Ratunil during the preliminary hearing of the case stating that on November 17, 1989, as he and his wife Teodosia went down their house, they saw Juvelyn crying and that Juvelyn told them that she was raped by accused-appellant; that he and his wife Teodosia were residents of Sitio Kalindanawan, Initao, Misamis Oriental since 1989; and that his wife Teodosia was also informed about the rape incident on November 17, 1989.

The trial court initially opined that Rosalio's testimony should be dispensed with, but nonetheless allowed him to testify so as to rebut the testimony of his wife Teodosia who had testified for the defense. When his affidavit, dated December 28, 1989 (Exh. J) was presented to him, however, Rosalio admitted executing the same but denied affixing his signature thereon, claiming that he could not even read.

The case was then submitted for decision. However, accused-appellant moved for a re-opening of the case which the trial court granted. Accused-appellant presented Cagayan de Oro City Assistant Provincial Prosecutor II Ma. Anita Esguerra-Lucagbo, who testified that on May 13, 1996, Juvelyn appeared before her in the company of Mayor Nazario Akut, who is the brother-in-law of accused-appellant. Juvelyn had an affidavit (Exh. 1),^[21] dated May 13, 1996, written in the Visayan dialect. Juvelyn told her that the affidavit had been prepared in Initao and that she had voluntarily executed the same. Prosecutor Lucagbo therefore administered to Juvelyn. While talking to her, Juvelyn requested Mayor Akut to leave the office and he did so. Juvelyn told the prosecutor that the affidavit had been voluntarily executed by her.

On October 3, 1997, the trial court rendered its decision finding accused-appellant guilty of rape. It gave credence to Juvelyn's testimony in open court and rejected her affidavit, dated May 13, 1996, recanting her testimony. The dispositive portion of its decision reads:

WHEREFORE, premises considered, the court hereby finds accused ERNESTO MONTEJO guilty beyond reasonable doubt as principal of the offense of rape defined and penalized by Art. 335 of the Revised Penal Code. Consequently, he is hereby sentenced to a penalty of Reclusion Perpetua.

Additionally, he should indemnify the private offended party the sum of P50,000.00 which is jurisprudential without, however, subsidiary imprisonment in case of insolvency. Accused is credited fully of the preventive imprisonment he has undergone.

SO ORDERED.^[22]

Hence this appeal.

First. Accused-appellant avers that the trial court erred in not giving weight to the affidavit of retraction of complainant Juvelyn Labalan.

The contention has no merit. Records show that after the case was submitted for

decision, accused-appellant filed on May 15, 1996 a "motion to re-open case for the defense on ground of new evidence."^[23] A hearing was set, and the defense presented Asst. Prosecutor Lucagbo who testified that on May 13, 1996, Juvelyn appeared before her with an affidavit (Exh. 1)^[24] recanting her earlier testimony. She claimed that she administered the oath to Juvelyn after the latter said she voluntarily executed the affidavit. Although Juvelyn was accompanied by Mayor Nazareno Akut to her office, Prosecutor Lucagbo said the mayor stepped out of her office when she talked to Juvelyn regarding her affidavit.^[25]

In her affidavit (Exh. 1), originally executed in Visayan dialect, and later translated in English (Exh. 2-B),^[26] Juvelyn, then already of 19 years of age, stated:

Republic of the Philippines)
City of Cagayan de Oro)S.S.

A F F I D A V I T

That I, Juvelyn Labalan y Boiles, 19 years old, single, and a resident of Kalindanawan, Initao, Misamis Oriental, having been duly sworn to in accordance with law, depose and say:

1. That I am the complainant for RAPE against ERNESTO MONTEJO, now pending before RTC, Branch 24, Cagayan de Oro City;
2. That it is not true that I was raped by Ernesto Montejo last August 10, 1989, that indeed nothing happened between us because Ernesto Montejo treated me as a daughter;
3. That because on August 10, 1989, I was then 12 years old and of immature mind, I was forced by my stepmother, Maria Labalan, and my brother, Sofronio Labalan, to fabricate charges against Ernesto Montejo to the effect that he raped me because Maria Labalan and Sofronio Labalan wanted to milk money from Mayor Nazario Akut because Ernesto Montejo is a brother [of] the mayor's wife;
4. That because of my tender mind and of my fear of my stepmother and brother, I was forced to execute an affidavit on November 27, 1989 before the police and Hon. Maximo Ratunil, although all the contents of said Affidavit are not true, I was forced to tell a lie before the Honorable Court when I was forced by my stepmother and brother to testify against Ernesto Montejo;
5. That everything in said Affidavit and everything I testified to before the Honorable Court against Ernesto Montejo are not true and merely fabricated by my stepmother and brother that they taught me to tell in my affidavit and to tell before the court;
6. That the truth is that nothing really happened with me and Ernesto Montejo ever since and he did not even court me, but the intention of my stepmother and my brother to force me to fabricate charges