

THIRD DIVISION

[G.R. No. 137164, June 19, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERT NUBLA, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

Accused-appellant Albert Nubla interposed an appeal to this Court from the decision of the Regional Trial Court, Branch 86, of Quezon City, finding him guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

Albert Nubla was charged with the crime of rape in an information that read:

"The undersigned accuses ALBERT NUBLA of the crime of Rape, committed as follows:

"That on or about the 26th day of March, 1996, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously induced complainant to drink a glass of ice tea laced with drugs causing her to loss consciousness, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent."^[1]

On 27 September 1996, the accused was arraigned; he pleaded not guilty to the charge.

The factual antecedents depicted by the prosecution were sourced mainly from the testimony of private complainant, Romelita Martinez, a 19-year old student of Industrial Engineering at Polytechnic University of the Philippines.

Sometime in March 1996, Romelita had come to get acquainted with the accused when requested by Teresita Bon, a family friend, to negotiate the purchase of a Toyota Corolla car from Carlinks Phils., Inc. The accused called up Romelita and suggested that the two meet personally. Romelita, accompanied by her friend Pinky de Luna, met the accused at Wendy's Nagtahan. After a few days, the accused again called up Romelita and asked if they could meet so that he could give her the car brochure and price list. Romelita agreed, and they met at about 8:30 in the evening of 26 March 1996, at Wendy's Nagtahan. During the meeting, he asked Romelita if they could discuss their business over dinner in a bar owned by his "*compare*." Romelita accepted the invitation when the accused gave assurance that, like him, the bar customers were all "professionals." The two boarded a taxicab and proceeded to a bar in Dapitan street. Inside the bar, Romelita ordered a glass of iced

tea while the accused ordered a pitcher of beer. Romelita noticed that the accused was rather uneasy, excusing himself every now and then. Shortly after their ordered drinks were served, Romelita sipped about a third of the glass of iced tea. After about ten minutes, she felt dizzy and suffered a headache. Romelita excused herself and went to the comfort room where she stayed for about fifteen minutes. Still feeling dizzy, Romelita pleaded with the accused to bring her home. Minutes passed, and Romelita again begged the accused to bring her home. The latter told her to consume the iced tea and to relax before he brought her home. After she consumed the glass of iced tea, Romelita felt weaker and just about ready to pass out. The accused finished his drink and finally agreed to take her home. When Romelita stood up, she was so weak that she had to be assisted by the accused. Taking a taxicab, the accused instructed the driver to take them to Sta. Mesa. Alighting from the taxicab, Romelita felt climbing some stairs, and she assumed that the accused had brought her to the house of her friend Pinky. When the accused opened the door, she saw a bed. Feeling very weak, Romelita fell on the bed and lost consciousness. When the accused woke her up at about 5:30 in the morning, she was surprised to see herself naked beside the accused. He was also naked. Romelita promptly tried to dress up, feeling pain on her buttocks and her private part. She had plenty of kissmarks on her breast and on her lap. The accused called a taxicab. She alighted at Wendy's Nagtahan, from where she proceeded home. She was met by her mother who asked her where she had been. Not knowing what to say, Romelita locked herself inside her room for a long time. She then went to her friend Pinky and told her what had happened. Pinky, in turn, narrated the incident to Romelita's mother. Romelita's parents promptly brought her to the National Bureau of Investigation (NBI) for medical examination. When she called up the accused and asked him why "he hit her below the belt," he told her that it would have been stupid had he brought her to an apartelle without touching her. She asked him to explain the incident to her parents but he said he was busy and then banged the telephone on her.

Dr. Armie M. Soreta-Umil of the NBI-Medico Legal Division, submitted her medical findings, thus:

"GENERAL PHYSICAL EXAMINATION:

Height: 156. cms.

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, developed, hemispherical, doughy, Areolae, brown, 3.9 cms. in diameter. Nipples, brown, 0.9 cm. in diameter.

"EXTRAGENITAL PHYSICAL INJURIES:

Contusions, brownish: infraclavicular area, right side, 1.5 x 1.0 cm; intermammary area, 1.0 x 1.0 cm.

"GENITAL EXAMINATION:

Pubic hair, fully grown, abundant. Labia majora and minora, coaptated. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, tall, thick with old healed complete laceration at 9:00 o'clock position corresponding to the face of a watch, edges rounded, non-coaptable. Hymenal orifice admits a

tube with moderate resistance. Vaginal walls tight. Rugosities, prominent.

"CONCLUSIONS:

1.) The above described extragenital physical injuries were noted on the body of the subject at the time of examination.

2.) Old healed hymenal laceration present."^[2]

The defense, in its case, presented accused Albert Nubla, Manuel Cultura, General Manager of Carlinks Phils., Inc., and Ferdinand Garcia, the NBI Agent who took the sworn statement of private complainant. The trial court made a summation of the defense version:

"x x x accused Nubla stated that complainant called him by phone at his office at about 7:00 to 7:30 o'clock in the evening on March 26, 1996. Aines told him she had some problems to discuss and asked him to meet her at Wendy's Nagtahan. He hesitated and told her he had some work to do, but she insisted on meeting him to talk about her personal problems. Coming from his office, he went directly to Wendy's Nagtahan arriving there at about 8:15 o'clock in the evening. Finding that Aines was not around, he decided to go home and proceeded to the road to call a taxi. When he was about to flag a taxi, Aines arrived without any companion. He was then in his barong tagalog with glasses, beeper, phone and organizer. Aines was carrying a cellular phone and a beeper. She suggested that they go to a place where they could talk, Wendy's being at that time crowded. He suggested a place owned partly by a childhood friend. She agreed. They then proceeded to the 'Naked Ears' bar at Dapitan St., a block away from his residence. The bar was cozy, there were tables designed to accommodate 2 to 3 persons, there was a bar tender, a DJ's booth, lights centered on each table and spotlights. The bar was half-filled to capacity. The time was 9:00 o'clock when they entered the bar. They called the waiter. He ordered a pitcher of beer while Aines ordered a glass of iced tea. He asked her about her problems, but she did not discuss them. She just kept on smiling and telling him that she liked the place. She asked him if he goes there often and he told her not too often, but only when he feels unwinding and needed time to relax. She was so light hearted, jolly and kept on admiring the place.

"As the hours went by he suggested to Aines that she call her parents, brothers or sisters. She said 'it was alright, don't think about it'. She told him, however, that she knew some guys in the bar as friends of his brother and she did not want them to see her in the bar. At about 10:30 o'clock he told her it was getting late and he needed to take a rest. He told her it was time to go out of the bar and he would get a taxi for her. She replied 'hindi mo ba ako pipigilan?'. Her mood then suddenly changed. She became irritated because he insisted on going home. She told him 'I just wanted to be with you'. They then flagged down a taxi. He instructed the driver to bring them to Pandacan. When he told her he

would take her home, she insisted she did not want to go home. Then she began to shout. Upon reaching Gov. Forbes, he instructed the driver to bring them to a decent place where they could rest. The taxi brought them to an apartelle along E. Rodriguez St. While in the taxi, they were seated at the back seat. Aines was fully conscious. She knew what was happening. She did not want to go home. They arrived at the apartelle at about 11:00 o'clock P.M. Aines alighted first and proceeded directly to the apartelle. He was left behind to pay the taxi fare. They met a security guard who asked them if they were going to check in. When they said, yes, the guard opened a logbook and he signed a page thereof. They proceeded to a lobby where they were met by a lady who was the cashier of the place. He told her they would stay for only a few hours. He paid P250.00. A roomboy with toiletries and towels led them to their room located in the 2nd and 3rd floor. They used the stairs. The roomboy opened the lights, and put on the air- conditioner and asked them if they needed anything else. He told him the room was good enough and asked him to leave. He then asked Aines if she wanted anything to eat. She said she was still full. He lied on the bed and told Aines she may watch the TV if she wanted to. He asked her to call her parents or anybody to inform them of her whereabouts. She said her phone was running low of battery. He suggested she could use his phone. She declined saying it was `okey'. He then took off his shoes and put his things on the table. Aines was then seating at the edge of the bed. He finally fell asleep and was in that state for about one hour. He was awakened when he noticed the complainant caressing him and kissing him on the neck. He was at first shocked, but later on being only human, he was carried away. After a while they both undressed. She then approached him and started kissing him again and went on top of him. She started trying to insert his private organ into her private organ. She was pumping her body and leaning her breast towards his face. He was carried away and responded. Afterwards, they took their showers and went to sleep after some conversation. She told him she wished she had a boyfriend like him. He told her she is no longer a virgin. She admitted he was the second or third person to have sex with her. The first man in her life was her boyfriend Angel, Aines told him. A picture of Angel was shown to him. He told her what happened should really not have happened. Aines said there was no problem as they both like it. She assured him that her auntie was really interested in buying a car.

"They woke up at past five o'clock in the morning. He told Aines he needed to go home and change clothes and report back for work. They left the apartelle and flagged down a taxi. He alighted first near his residence. He gave Aines P200.00 for the taxi fare."^[3]

Assessing the evidence, the trial court sustained the case for the prosecution that the accused did rape Romelita Martinez as against the defense's version that the sexual intercourse complained of was consensual. The trial court, in its decision of 26 November 1998, concluded:

"WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused Albert G. Nubla guilty beyond reasonable doubt of the crime of rape committed against Romelita T. Martinez and he is hereby sentenced to suffer the penalty of reclusion perpetua and to pay civil indemnity to the private complainant in the amount of P50,000.00, moral damages in the amount of P50,000.00, and exemplary damages in the amount of P25,000.00, plus cost."^[4]

The convicted accused appealed the verdict. The defense counsel submitted an elaborate assignment of errors basically bewailing the sufficiency of the evidence given by the prosecution; thus:

"First Assignment of Error:

"The Honorable Trial Court seriously erred in concluding that '(t)he Court is convinced with moral certainty that accused took advantage of the complainant when she was not in control of her mental faculties' or when she was 'unconscious' or 'semi-conscious' (Page 12, second paragraph, and page 13, third paragraph, Decision dated November 26, 1998), despite the clear lack of MEDICAL and MATERIAL EVIDENCE to prove such allegation when the same could easily have been secured immediately after the alleged incident.

"Second Assignment of Error:

"The Honorable Trial Court seriously erred in finding and concluding that '(t)he accused found it necessary to use some form of violence'. (Page 12, second par., appealed Decision)

"Third Assignment of Error:

"The Honorable Trial Court seriously erred in convicting the accused despite the testimony of private complainant not being impeccable and true throughout.

"Fourth Assignment of Error:

"The Honorable Trial Court seriously erred in convicting the accused on the ground that the version of the prosecution is more credible than that of the defense.

"Fifth Assignment of Error:

"The Honorable Trial Court seriously erred in convicting the accused and adjudging him to pay the damages stated in the appealed Decision."^[5]

The Court affirms the conviction.

By its very nature, the crime of rape is done in seclusion where, normally, it is only