

## FIRST DIVISION

[ G.R. No. 137255, November 15, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL MAMALAYAN AND REYNALDO GARCIA, ACCUSED-APPELLANTS.**

### D E C I S I O N

**PARDO, J.:**

The case is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court, Laguna, at Calamba, Branch 34, convicting Noel Mamalayan and Reynaldo Garcia of robbery with rape, and sentencing each of them to *reclusion perpetua* and to indemnify Bonifacio Legaspi in the sum of Thirty Five Thousand Six Hundred Eighty Pesos (P35,680.00) as actual damages and to pay Marina Legaspi the sum of One Hundred Thousand Pesos (P100,000.00) as moral damages.

On October 2, 1992, Assistant Provincial Prosecutor of Laguna Loreto M. Masa filed with the Regional Trial Court, Laguna, at Calamba an information charging Medel Mamalayan, Noel Mamalayan alias "Bong" and Reynaldo Garcia with robbery with rape, committed as follows:

"That on or about May 31, 1988, at Barangay Lawa, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named with intent of gain and with the use of force upon things, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously enter the house of BONIFACIO LEGASPI by then and there detaching the glass window where they gain entrance, and once inside, take, steal and carry away with them the following items, to wit:

"1. One Armalite M16 Rifle with SN RP 005417 P8,000.00;

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"2. Seven (7) banana type magazines of armalite M16 and 210 live ammos of the same caliber 3,780.00

3. One (1) Wall Clock (Seiko) 300.00

4. One (1) Colored TV set 14" (Sony) 12,000.00

5. One (1) Seiko Wrist Watch 600.00

6. One (1) Gold ring 2,000.00

7. One (1) pair of earring 3,000.00

8. One (1) Stereo Cassette	1,000.00 -----
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9. Cash Money 5,000.00 having a total value of P35,680.00	

that on the same place and occasion accused armed with fan knife, by means of violence and intimidation, conspiring, confederating and mutually helping one another take turn in having carnal knowledge with Marina Legaspi against her will and consent.

"CONTRARY TO LAW."<sup>[2]</sup>

On December 16, 1992, the trial court arraigned accused Medel Mamalayan. He pleaded not guilty.<sup>[3]</sup>

Accused Noel Mamalayan and Reynaldo Garcia remained at large. Trial on the merits proceeded against accused Medel Mamalayan alone.

After due trial, on June 21, 1993, the trial court rendered a decision convicting accused Medel Mamalayan of robbery with rape, the dispositive portion of which reads:

"WHEREFORE, this Court finds accused GUILTY of the crime penalized and defined under Article 294 sub para 1 of the Revised Penal Code thus rendering judgment CONVICTING the accused of the crime charged.

"He is hereby sentenced to suffer an imprisonment of RECLUSION PERPETUA and to indemnify Bonifacio Legaspi the amount of P35,680.00 and to pay moral damages in the amount of P100,000.00.

"SO ORDERED."<sup>[4]</sup>

On June 28, 1993, accused Medel Mamalayan filed a notice of appeal.<sup>[5]</sup>

On October 16, 1997, the Supreme Court promulgated its decision affirming the appealed decision.<sup>[6]</sup>

On February 9, 1994, CIS agents arrested accused Reynaldo Garcia in Barangay Buro, Calamba, Laguna. Sometime in 1994, accused Noel Mamalayan surrendered to the police authorities in Alaminos, Laguna, and was taken into custody.

On March 9, 1994, the trial court arraigned accused Noel Mamalayan and Reynaldo Garcia. They pleaded not guilty.<sup>[7]</sup> Trial proceeded against both accused.

Bonifacio and Marina Legaspi lived in Barangay Lawa, Calamba, Laguna with Edwin Legaspi, Bonifacio's son from his first marriage.

In the early morning of May 31, 1988, Marina and Edwin Legaspi were sleeping in the bedroom of their house. Bonifacio Legaspi was not at home at that time. He was on duty at Camp Aguinaldo, Quezon City, as a member of the Special Operation Group, Civil Relation Service, Armed Forces of the Philippines. At around 3:15 in the morning, Marina and Edwin woke up to the sound of dogs barking. Marina sat up on

the bed and listened.

Suddenly, three men entered the house. Edwin recognized the men as the three accused, Medel Mamalayan, Noel Mamalayan and Reynaldo Garcia, who also lived in Barangay Lawa. Accused Reynaldo Garcia poked a fan knife at Edwin. Accused Noel Mamalayan poked a knife at Marina. Accused Noel Mamalayan tied Marina's hands and feet with plastic straw while accused Medel Mamalayan stuffed a t-shirt inside her mouth. Accused Reynaldo Garcia guarded Edwin.

While accused Reynaldo guarded Marina and Edwin, accused Noel and Medel Mamalayan searched the house for valuables. They took the television set, cassette, and jewelry, and placed all the articles in a rice sack. Then, they forcibly opened the locker where Bonifacio Legaspi kept his firearm. They took an armalite rifle, several banana-type magazines of an armalite rifle, and 210 live ammos.

Thereafter, accused Reynaldo Garcia pulled Edwin away from Marina and dragged him to the corner of the living room. Edwin, only eleven years old at the time, did not put up a fight.

Marina remained in the bedroom with accused Noel and Medel Mamalayan. Accused Noel Mamalayan pointed an armalite rifle at Marina. Accused Medel Mamalayan pulled Marina's duster off her by tearing the duster's hem from the neckline to the ankle. Accused Medel Mamalayan ripped her panties off her. Then, accused Medel held her shoulders and pushed her to the bed. He forced her to lie on the bed, her hands still tied behind her back and the gag still in her mouth. He removed his shorts, untied the plastic straw binding her feet and went on top of her. He kissed her body and breast. She struggled to free herself beneath his body. He parted her legs and inserted his penis into her vagina. She kept on struggling against him and he ejaculated not inside her organ but on the blanket.

Afterwards, accused Medel took the armalite rifle from Noel and poked it at Marina. Accused Noel went on top of her and inserted his penis inside her sex organ. She likewise struggled against him. He managed to ejaculate but the fluid dripped on her stomach and legs.

Then, accused Reynaldo Garcia had sexual intercourse with Marina. Marina by this time was very tired and could not put up a struggle anymore. However, accused Reynaldo Garcia failed to ejaculate inside her because the other two accused were pressuring him to finish quickly.

Thereafter, the accused left the house, carrying their loot in a sack and a blanket. Before leaving, the three accused threatened Edwin and Marina not to tell anybody about the incident, otherwise they would kill them.

Subsequently, at around 4:00 in the early morning, Sofronio Estemo, a former janitor at Camp Aguinaldo, arrived from Bicol, carrying crabs for Bonifacio Legaspi. Edwin told him to go to his father and tell him something happened. So, Sofronio left.

Bonifacio Legaspi, husband of Marina Legaspi, testified<sup>[8]</sup> that he was on duty<sup>[9]</sup> in Camp Aguinaldo, Quezon City on May 31, 1988, when he was informed that his house had been robbed. He went home and found his wife in shock. He looked

around and saw that his things were scattered all over the place. He immediately looked for his firearm. The locker where he kept his firearm was destroyed and the contents taken away except for a rifle magazine he found outside his house. The door and windows of his house were destroyed and five pieces of jalousies were removed. He then noticed that several valuables were missing: a cassette, wall clock, television set, jewelry, and a wristwatch.

He asked his wife what happened. His wife, still in shock, managed to tell him that robbers entered the house and took away their personal belongings.

Thereafter, Bonifacio notified Barangay Captain Alejandro Garcia of the incident at around 11:00 in the morning. Then, Bonifacio went to the police station to report the incident.

On June 1, 1988, Bonifacio accompanied his wife to the hospital for a medical examination.

Dr. Solita Plastina, Municipal Health Officer, Calamba, Laguna conducted a physical examination of Marina Legaspi and found no bruises or physical injuries on her body. She also failed to find any erosion inside the vaginal wall of the patient.<sup>[10]</sup> The spermatozoa examination turned out to be negative.<sup>[11]</sup>

On June 2, 1988, Marina testified that she burned in the stove at the back of her house her duster, panty, the plastic straw used to tie her hands and feet, and the t-shirt used to gag her mouth, blanket, beddings and bed cover.<sup>[12]</sup>

In their defense, appellants interposed an *alibi* and denial.

Accused Noel Mamalayan claimed that on May 30, 1988, he went to the house of his aunt's brother-in-law, Pascual Malacaman, at Barangay Paciano Rizal, Calamba, Laguna in preparation for the barangay fiesta to be held the following day. He helped prepare food to be served at the fiesta from afternoon until 10:00 in the evening. He then went to the fair and returned home at 11:00 in the evening. He was tired and drunk when he returned to his house in Barangay Lawa, having consumed eight bottles of gin. He went to his house with Jessie Manaig. Thereafter, he slept. He woke up the next day at around 7:00 in the morning.<sup>[13]</sup>

He claimed that Bonifacio Legaspi filed the case against him because his mother refused to pay P20,000.00 and give an armalite rifle to Bonifacio.<sup>[14]</sup> Noel Mamalayan only learned of the case a week after the criminal complaint was filed when, at around 9:00 in the evening, four members of the 224<sup>th</sup> Company, Philippine Constabulary went to his house. His mother answered the door and the Constabulary officials requested that her son go with them. His mother told them that he was not at home at the time.<sup>[15]</sup> His mother told him to go into hiding, since there was a shoot to kill order for him. His mother had heard about the news of the robbery incident in the house of Bonifacio Legaspi, but commented that it was far from their house, so she did not mind it. His mother did not hear anything about rape accompanying the robbery.<sup>[16]</sup>

From 1988 up to 1994, he stayed at his grandfather's house in Alaminos and worked