

EN BANC

[G.R. No. 130508, April 05, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMANDO REGALA Y ABRIOL, ACCUSED-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

Armando Regala appeals from the judgment in Criminal Case No. 7929 rendered by the Regional Trial Court of Masbate, Masbate, Branch 46, 5th Judicial Region, convicting him of the crime of Robbery with Rape.

The information against accused-appellant on November 27, 1995, filed by 2nd Assistant Provincial Prosecutor Jesus C. Castillo, reads as follows:

"That on or about September 11, 1995, in the evening thereof, at Barangay Bangon, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused confederating together and helping one another, with intent to gain, violence and intimidation upon persons, did then and there wilfully, unlawfully and feloniously enter the kitchen of the house of Consuelo Arevalo and when inside, hogtied said Consuelo Arevalo and granddaughter Nerissa Regala (sic), take, steal, rob and carry away cash amount of P3,000.00 and two (2) gold rings worth P6,000.00, to the damage and prejudice of owner Consuelo Arevalo in the total amount of P9,000.00, Philippine Currency; and in pursuance of the commission of the crime of robbery against the will and consent of the granddaughter Nerissa Regala (sic) wilfully, unlawfully and feloniously accused Armando Regala y Abriol has for two times sexually abused and/or intercoursed with her, while hogtied on the bed and in the kitchen.

CONTRARY TO LAW.^[1]

Accused-appellant was apprehended by the police four days after the incident. He was identified at a police line-up by Nerissa and her grandmother.

The prosecution presented three witnesses: Dra. Conchita Ulanday, Municipal Health Officer of Aroroy, Masbate, who personally examined the rape victim; Nerissa Tagala, the rape victim, 17 years old, a third year high school student; and her grandmother, Consuelo Arevalo, who was her companion when the robbery with rape transpired at Consuelo's house.

The prosecution's version is stated in Appellee's Brief as follows:

"On September 11, 1995, at about 9:00 o'clock in the evening at Barangay Bangon, Aroroy, Masbate, then 16-year old victim Nerissa

Tagala and her grandmother (Consuelo Arevalo) were sleeping, when appellant Armando Regala and his two other companions entered the former's house. (pp. 6-7, TSN, August 26, 1996).

Appellant and his companions entered the house through the kitchen by removing the pieces of wood under the stove. Appellant went to the room of Nerissa and her grandmother and poked an 8-inch gun on them, one after the other. (p. 8, TSN, August 26, 1996)

Nerissa and her grandmother were hogtied by appellant and his companions. Thereafter, Nerissa was raped by appellant Armando Regala in bed while her grandmother was on the floor. After the rape, appellant and his two companions counted the money which they took from the "aparador." (pp. 9-10, TSN, August 26, 1996)

Appellant and his companions then ran away with P3,000 in cash, 2 pieces of ring valued at P6,000 and two wrist watches worth P5,000. (pp. 11-13, TSN, August 26, 1996)

The following day, September 12, 1995, Nerissa went to the Rural Health Clinic of Aroroy, Masbate for medical examination. In the Medical Report presented by Municipal Health Officer Dr. Conchita S. Ulanday, it was shown that Nerissa sustained laceration of the hymen at 4:00 o'clock and 7:00 o'clock positions (fresh wounds), indicating a possible sexual assault upon the victim. (p. 16, TSN, August 26, 1996)^[2]

The defense presented accused-appellant who testified that on September 11, 1995, he was staying in the house of Antonio Ramilo at barangay Syndicate, Aroroy, Masbate. Ramilo was the manager in the gold panning business where accused-appellant was employed. Antonio Ramilo testified and corroborated his defense and stated that accused-appellant was in his house, which is about 5 kilometers away from Barangay Bangon.

The trial court held that the defense of alibi cannot overcome the positive identification of the accused. The dispositive portion of the judgment reads:

"WHEREFORE, in view of all the foregoing, the Court finds accused Armando Regala y Abriol guilty beyond reasonable doubt of the crime of Robbery with Rape, as penalized under Par. 2 of Art. 294 of the Revised Penal Code and hereby sentences him to suffer imprisonment of reclusion perpetua; to indemnify the victim Consuelo Arevalo the sum of P9,000.00, the cash and value of the looted articles; to indemnify the victim Nerissa Tagala the sum of P50,000.00 as moral damages, and the further sum of P25,000.00 as exemplary damages. No subsidiary imprisonment in case of insolvency, and to pay the costs."^[3]

Armando has appealed to this Court pleading that:

- (1) THE TRIAL COURT GRAVELY ERRED IN FINDING THAT SUFFICIENT EVIDENCE EXIST TO ESTABLISH CLEARLY THE IDENTITY OF THE ACCUSED-APPELLANT AS PERPETRATOR OF THE CRIME CHARGED.

(2) THE TRIAL COURT GRAVELY ERRED IN FINDING
ACCUSED-APPELLANT GUILTY BEYOND REASONABLE
DOUBT OF THE CRIME CHARGED.^[4]

which alleged errors were discussed jointly.

In essence, accused-appellant questions the sufficiency of the prosecution's evidence in identifying him as one of the perpetrators of the crime charged. He claims that the complaining witness could not have positively identified him as there was no electricity nor any light in the place of the incident which took place at 9:00 o'clock in the evening. Consuelo Arevalo was able to identify accused-appellant only after he was pinpointed by Nerissa, and made contradictory statements in court when she stated that accused-appellant removed his mask after she was hogtied, and later stated that accused-appellant removed his mask before she was hogtied. The medico-legal officer, Dr. Ulanday, herself testified that the complaining witness either voluntarily submitted to a sexual act or was forced into one.

The appellee insists that appellant's lame defense of alibi cannot stand against the positive identification made by the victim, and avers that the victim, a 16 year old barrio lass at the time the rape was committed, was motivated by a sincere desire to seek and obtain justice. The Solicitor General also recommends an additional award of compensatory damages of P50,000.00 in favor of Nerissa Tagala.

We affirm the judgment of conviction.

There was sufficient evidence to establish the identity of accused-appellant as the perpetrator of the crime.

Nerissa positively recounted the incident on the witness stand. She was sleeping with her grandmother in the latter's house when the accused-appellant Regala, together with the unidentified companions entered the house. Regala pointed a gun, about 8 inches long, at her grandmother, and then at her, and hogtied both of them. Regala took off her panty and her shorts, and removed his own "porontong" pants, and made sexual intercourse ("itot") with her while she was hogtied in bed. Her grandmother was at the floor. She saw the aparador of her grandmother being opened. She could not shout because the gun was pointed at her, and she was afraid. Two companions of the accused-appellant entered the room as she was being raped. Two rings valued at about P6,000.00 and 2 wrist watches (one "Seiko" and the other "Citizen") and money was taken by the accused-appellant and his companions. After raping her in bed, Nerissa saw accused-appellant counting the money taken from the aparador. Thereafter, she was brought to the kitchen, still hogtied, and raped again.^[5] On cross-examination, Nerissa stated that although there was no electricity, and the light in the house was already off, she was able to see the face of Regala because at the time Regala was counting the money, one of his companions was holding the flashlight "beamed to the money" and there was "some reflection" on the face of Regala.^[6] She remembered the face of Regala because of an earring on his left ear^[7] which he was wearing when presented at the police line-up.^[8]

Consuelo Arevalo testified and corroborated the testimony of her granddaughter.