

EN BANC

[G.R. No. 126114, May 11, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY SABREDO Y GARBO, ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

For automatic review is the judgment of the Regional Trial Court of Masbate, Masbate, Branch 44, dated May 13, 1996, in Criminal Case No. 7454, imposing the penalty of death on accused-appellant, Jimmy Sabredo y Garbo, for the complex crime of abduction with rape of complainant Judeliza Sabredo.

The facts of this case on record are as follows:

Appellant is the uncle of complainant. He is the younger brother of her father. In 1993, Jimmy arrived from Masbate to reside with Judeliza's family in Cagtagong, Caguyong, Borbon, Cebu, where he stayed with them for more than a year.

On June 27, 1994, Judeliza went to the well near their house, to take a bath. There, Jimmy grabbed and forcibly dragged her at knife's point, to the highway where he made her board a truck for Bogo, Cebu. Impelled by fear, she complied, since Jimmy continuously poked a knife under cover of his jacket at her. From Bogo, he took her by passenger motorboat to Placer, Masbate. Thence he brought her to Estampar, Cataingan, Masbate, where they stayed at the house of Conchita Tipnit. Conchita was Jimmy's sister and Judeliza's aunt, though aunt and niece did not know each other. In Estampar, Judeliza tried to escape but was caught by Jimmy, who severely mauled her until she lost consciousness.

Suspecting that Conchita would report the matter to the police, Jimmy took Judeliza by jeepney to Cagba, Tugbo, Masbate. They stayed with Roberto Sabredo, his nephew and Judeliza's first cousin. The two cousins, however, had not met before and Jimmy was able to pass her off as his wife. They stayed in Cagba from June 29 to July 5, 1994, with Jimmy closely guarding Judeliza.

On July 4, 1994, at around midnight, Jimmy, armed with a blade, sexually assaulted Judeliza. He covered her mouth to prevent her from shouting. After satisfying his lust, Jimmy inserted three fingers into her vaginal orifice and cruelly pinched it. Judeliza screamed and cried for help. Their host, Roberto, was awakened but could not do anything to assist her. Later, Jimmy struck Judeliza with a piece of wood, rendering her unconscious. Much later, he brought her to the house of his sister, Nilda Polloso, also at Cagba.

Nilda noticed the victim's weak and wan condition and offered her medicine. Catching Jimmy in the act of boiling water, she asked what it was for and was told

that it would be poured over Judeliza to finish her off. Nilda, however, stopped him. On July 8, 1994, Judeliza recovered sufficiently from her injuries. Nilda brought her to the police where Judeliza reported her ordeal. That same day, while Jimmy was sleeping, Nilda managed to take away from him the blade, made of stainless steel, which he had used in the rape of Judeliza. After the initial police investigation, Judeliza was brought to Masbate Provincial Hospital, where she was confined for four days. The medico-legal officer, Dr. Artemio Capellan, examined her.

On August 11, 1994, the Provincial Prosecutor of Masbate filed an information for forcible abduction with rape, which alleged:

"That on or about June 27, 1994, and days thereafter from sitio Caglagang, barangay Caguyong, Burbon, Cebu the said accused with force and intimidation and against the consent of complainant Judeliza E. Sabredo abduct the latter to sitio Cagba, barangay Tugbo, Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this court and on (sic) the house of one auntie Nilda, accused with a bolo did then and there, willfully, unlawfully and feloniously have sexual intercourse of (sic) said Judeliza E. Sabredo on the night of July 4, 1994, against her will and consent.

"Contrary to law."^[1]

At the arraignment, Jimmy, assisted by counsel, pleaded not guilty. Trial on the merits then ensued.

Jimmy admitted having sexual relations with Judeliza, but insisted that it was consensual. He claimed that they were lovers and had been engaging in sexual intimacies for three months before running away. He explained that they had gone to Masbate after Judeliza had revealed to him that she was not really her father's daughter. They then lived together as husband and wife. He admitted having boxed and kicked her but claimed that he got mad at her after she confided that she really was his niece, contrary to what she earlier told him. He likewise admitted having pinched the victim's vagina, but only to punish her for deceiving him about their kinship. He claimed the instant case was filed against him because of the maltreatment she received. Appellant likewise admitted that he was facing another rape case before Branch 45 of the same court, which a certain Juanita Turing had filed against him in 1992. He, however, denied having fled to Cebu to escape prosecution for said case.

The trial court found appellant's version of the incident preposterous and his defense untenable. Choosing to believe the prosecution, the trial judge convicted appellant, and sentenced him thus:

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the complex crime of forcible abduction with rape under Article 48 in relation to Article[s] 335 and 342 of the Revised Penal Code and is meted the extreme penalty of death.

"The accused is likewise ordered to pay Judeliza Sabredo the amount of FIFTY THOUSAND PESOS (P50,000.00) by way of moral damages.

"SO ORDERED."

Before us, on automatic review of the case, appellant assigns the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN ITS EVALUATION OF THE HONESTY OF PRIVATE COMPLAINANT, IN EFFECT GIVING FULL WEIGHT AND CREDENCE TO THE EVIDENCE OF THE PROSECUTION THAN THAT OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

In sum, the issues for resolution now concern the credibility of the testimony of the offended party; the correctness of appellant's conviction for forcible abduction with rape, and the propriety of the imposition of the death penalty on him.

Appellant submits that Judeliza was neither a reliable nor credible witness since both the information and her affidavit^[2] showed that the rape took place in Nilda's residence, while on direct examination, Judeliza testified that she was raped at Roberto's house. He claims these inconsistencies cast doubt on Judeliza's credibility.

However, we have previously held that some discrepancies between the affidavit and the testimony of the witness in open court do not necessarily impair credibility of the testimony, for affidavits are generally taken ex parte and are often incomplete or even inaccurate for lack of searching inquiries by the investigating officer.^[3] Note that here both the affidavit and the testimony of complainant in open court are consistent as to the fact that Jimmy raped her while he threatened her with a deadly weapon on July 4, 1994. Her sworn affidavit and her testimony in open court establish the basic elements of rape. These are: the commission of sexual intercourse, by the accused against complainant, with the use of force and intimidation, without her consent and against her will. Suffice it to stress that the trial court found that the accused abducted his niece by force, mauled and maltreated her repeatedly, instilling fear in her, dragged her to different places and any house he pleased, and ravished her on the night of July 4, 1994. Whether the house belonged to Nilda or Roberto, both of whom they had stayed with, is not here crucial, for the houses are both in Cagba, Tugbo, Masbate.

Here, the trial court's assessment of the credibility of complainant's testimony is entitled to great weight, absent any showing that some facts were overlooked which, if considered, would affect the outcome of the case.^[4] We find no reason to overturn the trial court's detailed evaluation of the evidence for both the prosecution and the defense. Complainant Judeliza's testimony was given in a straightforward, clear, and convincing manner, which remained consistent even under cross-examination. The trial court found her testimony believable and convincing, while appellant's version of events incredible and outrageous. Moreover, as testified by the medico-legal officer, he found that her body bore evidences of physical and sexual assault. Appellant's bare denial could not prevail over said positive evidence.