

## THIRD DIVISION

[ G.R. Nos. 134143-47, October 05, 2000 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALFREDO CATUBIG JR., NIÑO P. REPIA, JOHN DOE, PETER DOE AND WILLIAM DOE, ACCUSED,**

**ALFREDO CATUBIG JR., APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

Rape is not a respecter of time or place. The crime may be committed even inside a room in a crowded squatters' colony and even during a wake.

### The Case

Alfredo Catubig Jr. y Quebedo<sup>[1]</sup> appeals the February 19, 1998 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Pasay City, Branch 109, in Criminal Case Nos. 96-8764-68, which convicted him of five counts of rape and sentenced him to five terms of *reclusion perpetua*.

Acting on the sworn Complaint of Cherry Genotiva, Assistant Pasay City Prosecutor Leopoldo C. Lluz filed five similarly worded Informations, all dated April 12, 1996, charging appellant and four other unidentified persons<sup>[3]</sup> with five counts of rape. The accusatory portion of each Information reads as follows:<sup>[4]</sup>

"That on or about the 22nd day of September 1995, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, by means of force and intimidation employed upon the person of Cherry Genotiva y Bulasa, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the said complainant Cherry Genotiva y Bulasa against her will and consent."

After the five cases were consolidated,<sup>[5]</sup> appellant, with the assistance of Counsel *de Oficio* Reynaldo Casas, pleaded not guilty.<sup>[6]</sup> After trial, the lower court rendered its Decision, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the court finds that the prosecution has proven the guilt of the accused Alfredo Catubig, Jr. Y Quevedo for five (5) counts of Rape in Criminal Cases Nos. 96-8764 to 96-8768 and hereby sentences him as follows:

1. In Criminal Case No. 96-8764 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00;

2. In Criminal Case No. 96-8765 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00;
3. In Criminal Case No. 96-8766 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00;
4. In Criminal Case No. 96-8767 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00
5. In Criminal Case No. 96-8768 to Reclusion Perpetua and ordered to indemnify the victim of P50,000.00.

"SO ORDERED."

Hence, this appeal.<sup>[7]</sup>

### **The Facts** **Version of the Prosecution**

The prosecution's version of the facts is summarized by the Office of the Solicitor General in its Brief as follows: <sup>[8]</sup>

"On September 10, 1995, Cherry Genotiva y Bulasa, a fifteen (15) year old high school dropout, left her parent's house after being scolded by the latter. From then on until she was gang raped on September 23, 1995, she stayed with friends in their respective houses.

"During that period, Cherry met an acquaintance named Ricky. At about 6:00 AM on September 22, 1995, Ricky brought along Cherry to F. Victor St. in Pasay where a vigil was then in place for appellant's deceased brother. (Tsn. October 2, 1996, p. 16). F. Victor Street is a thickly populated area (October 10, 1996, p. 5). The two stayed in the wake until 10:00 AM and then they proceeded to see Ricky's friend, Larry, who lived just several houses away. (ibid, p. 7). When evening came, Ricky introduced her to one Niño whose family name she came to know later as Repia. Ricky told her to go with Niño Repia (October 10, 1996, p. 6). When Cherry consented, Niño brought her to the house of appellant Alfredo Catubig, Jr. which is also located at a street alley near F. Victor St., Pasay City. (ibid. p. 8). Along the alley, she saw appellant, along with five (5) other men, engaged in a drinking session. When she became apprehensive, she expressed to Niño her desire to go home but the latter would not let her go. Thereafter, Niño engaged appellant in a muted conversation. Cherry reiterated her desire to go home but the two refused to let her go. At this point, appellant pointed a knife at Cherry's neck. He dragged her inside the house while his companions followed. Cherry shouted for help but appellant hit her and slapped her on both cheeks. Then, appellant ordered Cherry to undress. When she refused, the former pulled her arms and blouse and hit her. As appellant pointed his knife at Cherry and threatened to kill her, he ordered his other co-accused to undress her. While appellant and his co-accused held Cherry by her hands and feet, one of the accused, a stout man went on top of

her. The rest of the accused watched laughing while the stout man raped her. Cherry shouted 'have pity on me' but the same was drowned by laughter. After the stout man another followed and abused her. The third man kissed and touched the delicate parts of her body. Then another man followed and also abused her. At this point, appellant told his friends to hurry and finish up. As a final salvo, appellant, with knife pointed at Cherry, thrust his organ inside Cherry's vagina.

"Thru the help of another person, Cherry was able to escape from appellant's house. She returned home and revealed her ordeal to her mother. On October 12, 1995, Cherry reported the incident to the police and was medically examined by Dr. Maximo Reyes of the NBI Medico-Legal Office. While no physical injuries on the external portion of the victim's body were observed at the time of the examination, the genital examination revealed the presence of contusion located on the vestibular mucosa at the 7:00 o'clock position showing that some form of injurious substance penetrated the same and may have been caused by the entry of a fully [erect] male organ. The doctor likewise found the victim's hymen x x x ostensible and elastic. Finally, he opined that the contusions which he found on the vestibular mucosa at 7:00 o'clock position were compatible with the alleged date of the offense (TSN, Oct. 1, 1996, pp. 2-15; Oct. 2, 1996, pp. 2-24)."

### **Version of the Defense**

Alleging that he paid complainant to have sexual intercourse with her, appellant in his Brief presents the following version of the facts:<sup>[9]</sup>

"JOVY NACE REYES testified that Ms. Cherry Genotiva was introduced to him by Niño and Larrly Bawang sometime in May, 1994. He knew her to be a stand-by at Holiday Plaza, '*pakawala*' or a pick-up girl. He had seen her in the company of Ricky Uy and Rick Ong. (TSN, June 5, 1997, pp. 2-12)

"Accused ALFREDO CATUBIG, JR. testified that he first saw Cherry Genotiva in the company of Niño, Ricky, Larry and his barkadas at the wake of his brother on September 22, 1995 between 6:00 and 7:00 p.m. He was then drinking with his friends in front of his grandmother's house when Niño Repia together with the complainant approached him and asked permission to stay for a while in the house being built at the back of his house as they would have sex. He allowed them to stay there but warned them to do it fast for they might be seen by his brother. At about 10:00 pm. Niño and the complainant went to the wake, the latter asked for a beer. They drank [u]p to 4:00 o'clock in the morning. Complainant intimated to him that she was '*bitin*' with Niño. Not minding such utterance, he attended to his visitor from Tagaytay whom he [brought] to the house of his friend to sleep. Returning to the vigil, he approached the complainant and asked what she meant by '*bitin*'. They continued to drink beer. Then Niño invited them to have shabu. They went at the back of his house and consumed P200 worth of shabu. Niño intimated to him that he could use the complainant, a pick-up girl at Holiday Inn. Thereafter, Niño left, leaving the complainant with him. With the