

FIRST DIVISION

[G.R. No. 134539, November 15, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, vs.
PRUDENCIO BALMORIA, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

This is an appeal from the decision of the Regional Trial Court^[1] convicting Prudencio Balmoria of rape and sentencing him to suffer the penalty of reclusion perpetua.

The information states:

"That sometime in the month of March 1992, in the municipality of Matalom, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court[,] the above-named accused by means of force and intimidation, willfully, unlawfully and feloniously did lie, and succeeded in having carnal knowledge with Merlin P. Torillas[,] a minor[,] then of (sic) 8 years old[,] in the house of Geronimo Gopo."

The victim, Merlin P. Torillas, testified that the accused was a close friend of her father. When Geronimo Gopo died, Merlin was asked to attend the wake at the house of a certain Lola Honor^[2] in San Salvador, Matalom, Leyte. She helped in menial chores at the wake. When night came, Lola Honor told her to sleep at the house of the deceased located some 30 meters away from where the wake was held. She was accompanied by her twin, Helen, and two others.^[3] They slept in the sala illuminated by a lamp inside the house and the lights from the vigil.^[4] Other guests slept in different rooms of the house.

While Merlin was asleep, the accused entered the house. He approached Merlin, fondled her breasts and private part and kissed her. He removed her underwear and straddled her. By then, the accused was already naked from his waist down. He made pumping motions and penetrated Merlin after some thirty minutes. Merlin groaned and felt pain. She did not shout for the accused threatened to kill her.^[5]

The accused fled after abusing Merlin because he heard Margarito "Titong" Gopo, husband of Lola Honor, calling him.

Merlin wrapped herself with a blanket.^[6] Early in the morning, Merlin walked to their home some 100 meters away. She traversed the distance easily. There was no one home when she arrived. She did not return to the wake. The following day, she ran away and met her twin sister but she did not reveal her rape.

On cross-examination, Merlin testified that she was born on February 22, 1980. Her birth certificate, however, was not presented. She admitted that she could not remember the year when she was raped nor when Geronimo Gopo died. She could only recall that she celebrated her birthday prior to the death of Geronimo.^[7]

Dr. Radegunda L. Uy, Municipal Health Officer of Matalom, Leyte, examined Merlin on February 20, 1995. Her examination revealed that Merlin has a swollen clitoris and labia majora. Her hymen bore a 1/3 cm. long healed laceration at 5 o'clock position.^[8] Dr. Uy opined that the swelling of the labia majora and the clitoris could have been caused by the force of contact by a hard object.^[9]

The accused denied the charge against him.

He testified that he has been happily married to Artemia since 1965. He alleged that he did not know when Geronimo died nor if there was a vigil for that purpose. He said he only knew Merlin when she filed the case at bar. He claimed that the case was instigated by Merlin's father who stole his fighting cock. He reported the theft to their barangay captain. The barangay captain, however, failed to resolve the case but instead sided with Merlin's father.^[10]

On cross-examination, the accused said that he resides at Sitio Kawradio, Barangay Hituog, Matalom, Leyte. From there, it takes about four (4) hours to reach San Salvador, Matalom, Leyte, where the wake of Geronimo was held. He added that he and the father of Merlin were friends before the latter stole his fighting cock.^[11]

Felix Gopo, brother of the deceased Geronimo, testified for the accused. He declared that he stayed at the house of Geronimo until the day of the burial. He said he did not see either the accused or Merlin in the said house during the wake and the burial of the deceased.

The accused also presented Manuel Gozon, a barangay kagawad of Brgy. Lipunan, Matalon, Leyte.^[12] He testified that he conducted an investigation of the alleged rape. He questioned Leonora Gopo about the incident. However, he did not disclose the result of his investigation.^[13]

The trial court^[14] convicted the accused in its decision of April 20, 1998. It relied heavily on the testimony of Merlin and held that the prosecution established that the rape was committed by means of force and intimidation.^[15] However, it ruled that the prosecution did not prove the age of Merlin when the crime was perpetrated. The dispositive portion of the decision states:

"WHEREFORE, premises considered, the Court finds the accused PRUDENCIO BALMORIA guilty beyond reasonable doubt of the crime of rape under Article 335 (1) of the Revised Penal Code, as amended, and hereby sentences said accused to suffer the penalty of reclusion perpetua. In addition, the accused shall indemnify the victim MERLIN P. TORILLAS by way of moral damages in the amount of Fifty Thousand Pesos (P50,000.00)."^[16]