

SECOND DIVISION

[G.R. No. 129365, December 04, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO MALACURA Y MALIGRO, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision dated May 16, 1997 by the Regional Trial Court of Malabon, Metro Manila, Branch 170, in Criminal Case No. 16762-MN, finding appellant Alberto Malacura y Maligro, a 35-year-old sales supervisor, guilty of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay complainant Mary Rose Alonzo, his 18-year-old drinking companion, the amount of P50,000.00 as moral damages, P25,000.00 as exemplary damages, and the costs of suit.

There being two different versions of the incident, both sides of the story were succinctly summarized by the Office of the Solicitor-General in its brief. The version of the prosecution is as follows:^[1]

...[P]rivate complainant Mary Rose Alonzo testified that on February 11, 1996 at around three o'clock in the afternoon, she was at the house of appellant in Catmon, Malabon (p.3 TSN, May 14, 1996), together with appellant and a certain "Mang Leoding" [Leodegario Merino]. (p. 20, TSN, May 14, 1996). The two (2) invited Mary Rose to join them drink a bottle of gin which they had started drinking (pp. 20-22, TSN, May 14, 1996). Mary Rose accepted the invitation and joined the two (pp. 4-5, TSN, May 21, 1996). While drinking the liquor, the three (3) engaged in conversation and exchanged stories (p. 5, TSN, May 21, 1996).

Sometime thereafter, Mary Rose stood up and went to the toilet (p. 5, TSN, May 21, 1996). When she came out of the comfort room, there was no light in the house (p. 9, TSN, May 21, 1996). Then, she went back to the *sa/a* of the house of appellant (p. 5, TSN, May 21, 1996). She continued drinking the gin. After three (3) rounds of gin, she felt dizzy, her mind went blank, lost consciousness (pp. 6-7, TSN, May 21, 1996) and fell down (p. 8, TSN, May 21, 1996).

Still feeling weak due to the amount of alcohol she had imbibed, Mary Rose felt she was being sexually molested (pp. 6-7, TSN, May 21, 1996). Mary Rose claims that, after forcing her eyes to open, she saw the face of appellant in front of her (p. 16, TSN, May 14, 1996).

When Mary Rose woke up at about five o'clock in the morning of the

following day (p. 16, TSN, May 14, 1996), she was already on the sofa and not at the place where she lost consciousness (p. 10, TSN, May 21, 1996). She also noticed that her shorts and underwear were "no longer in [its] proper place and it was crumpled" (p. 10, TSN, May 21, 1996).

Mary Rose did not tell anybody of her ordeal. She chose to keep the matter to herself because she was afraid. Allegedly, appellant threatened to harm her and her family if she will report the sexual assault (p. 13, TSN, May 21, 1996 and p. 16, TSN, May 14, 1996).

On March 26, 1996, Dr. Armie M. Soreta-Amil, Medico-Legal officer of the National Bureau of Investigation, (p. 12, TSN, May 14, 1996), performed a medico-genital examination on Mary Rose on the basis of a written request of the aunt of Mary Rose (p. 5, TSN, May 14, 1996). Dr. Umil found that Mary Rose has a distensible hymen which was intact. This means that the hymen is elastic and allows penetration by an average-sized adult Filipino male organ without producing any laceration (pp. 6-7, TSN, May 14, 1996).

On May 6, 1996, Mary Rose was admitted at the Jose Reyes Medical Center (p. 11, TSN, May 28, 1996). She was diagnosed as undergoing incomplete, non-septic, non-induced abortion. Consequently, a complete curettage was performed on her (p. 8, TSN, May 28, 1996).

The version of the defense, however, is as follows:^[2]

Appellant Alberto Malacura testified that in the morning of February 11, 1996, he was at his house in Catmon, Malabon (pp. 3-7, TSN, December 16, 1996). With him were Anastacio Malacura, Zaldy Siatco [should be RIZAL DESIATCO], Mary Rose Alonzo, Rosy (the mother of Mary Rose) and his wife and three kids (pp. 7-8, TSN, December 16, 1996). Appellant was having a drink with Anastacio, Mary Rose, Rosy, and Zaldy (p. 8, TSN, December 16, 1996). At about 2:00 o'clock in the afternoon of the same day, Mang Luding (Leodegario Merino) joined them in their drinking spree (p. 9, TSN, December 16, 1996). They ran out of liquor at around 4:00 o'clock in the afternoon. Mary Rose and Mang Luding [(sic) MANG LEODING] volunteered to buy gin. However, Zaldy, told them not to buy more liquor as he and appellant had work the following day and he wanted to rest. Mary Rose, her mother Rosy, Mang Luding and Zaldy left appellant's house after which, appellant, his wife and three (3) kids fixed their house. Thereafter, appellant's wife prepared their dinner (pp. 10-11, TSN, December 16, 1996).

On March 30, 1996 at around 10:00 o'clock in the morning, appellant was arrested while at the barangay hall of Gulayan, Catmon, Malabon (p. 14, TSN, December 16, 1996).

On April 1, 1996, the complainant filed her complaint^[3] charging appellant with the crime of rape, allegedly committed as follows:

That on or about the 11th day of February, 1996 in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by giving a glass of gin laced with drugs causing the victim to lose partial consciousness and while partially unconscious accused did, then and there, willfully, unlawfully and feloniously have sexual intercourse with MARY ROSE ALONZO Y SAN JUAN against her will and without her consent.

CONTRARY TO LAW.

Assisted by counsel *de parte*, appellant on arraignment entered a plea of not guilty.
[4] Thereafter, trial on the merits ensued.

For the prosecution, the following witnesses testified: (1) complainant Mary Rose Alonzo; (2) Armando Alonzo, father of complainant, who testified that he is separated from the mother of the victim, and that he lives in Sampaloc, Manila, while complainant and her mother live in Malabon. He also stated that he was not familiar with the friends of his daughter;^[5] (3) Dr. Armie M. Soreta Umil, medico-legal officer of the National Bureau of Investigation (NBI), who conducted the physical examination on complainant on March 26, 1996. Dr. Umil found that complainant's hymen is distensible, which means it is elastic and can allow full penetration of a normal size male organ without any genital injury. Hence, Dr. Umil opined that she could not tell whether or not complainant had prior sexual intercourse;^[6] and (4) Dr. Maria Isabelita L. Maligaya, medical resident at the Jose Reyes Medical Center, who examined complainant on May 6, 1996. Dr. Maligaya testified that complainant was diagnosed to have non-septic, non-induced abortion, and that she performed a completion curettage ("raspa") on complainant.^[7]

For the defense, the following witnesses testified: (1) appellant, (2) Rizal Desiatco, a drinking companion; and (3) Rowena Malacura, appellant's 12 year-old daughter.

Appellant flatly denied raping complainant. He claimed that on February 11, 1996, at around 9:00 A.M., he had a drinking session with his brother Anastacio Malacura and Rizal Desiatco. At around 9:30 A.M., complainant (allegedly a *tomboy*) and her mother joined them. At about 2:00 P.M., Leodegario Merino joined the group. Sometime thereafter, appellant's brother left. At around 4:00 P.M., the group ran out of liquor. Complainant and Merino offered to buy some more, but appellant and Desiatco declined because they had to work the next day. The group dispersed and left the house. Appellant, his wife, and their children started cleaning up. After having dinner, they slept at around 7:00 P.M. Appellant woke up at about 4:00 A.M. the next day and went to work. On March 30, 1996, he was arrested while inside the barangay hall located at Gulayan, Catmon, Malabon, Metro Manila.^[8]

Rizal Desiatco corroborated the testimony of appellant. He testified that complainant was the *tanggara* (server) during the drinking session, and that he rejected complainant's offer to buy gin because he had to work the next day. He left appellant's house at 4:00 P.M..^[9]

Appellant's daughter, Rowena, testified that on February 11, 1996, she saw

complainant, complainant's mother, Merino, and Desiatco having a drinking session at their house. She said complainant and the mother had lunch at their house, but Merino had lunch at his own house and came back later. At around 4:00 P.M., the drinking session broke up. She closed their doors at around 6:00 P.M. After that, she never saw complainant return to their house. She went to sleep at 7:00 P.M. beside her father, mother and siblings. On February 12, 1996, she woke up at around 4:00 A.M. to prepare for school, but she did not see complainant at their house. She left for school at 5:30 A.M.^[10]

On June 3, 1997, the trial court rendered judgment^[11] finding appellant guilty as charged, disposing thus -

WHEREFORE, in view of the foregoing, the Court finds accused Alberto Malacura y Maligro guilty beyond reasonable doubt of the crime of Rape and sentences him to suffer the penalty of reclusion perpetua which is twenty (20) years and one (1) day to forty (40) years and to pay Mary Rose Alonzo the amount of P50,000.00 as moral damages, P25,000.00 as exemplary damages and cost of the suit.

SO ORDERED.

Appellant now contends that the trial court gravely erred in -^[12]

... CONVICTING THE ACCUSED BY GIVING FULL CREDENCE TO THE TESTIMONY GIVEN BY THE PRIVATE COMPLAINANT MARY ROSE ALONZO DESPITE ITS GLARING INCONSISTENCIES, RECONTATIONS, UNCERTAINTIES, SURMISES, SUSPICIONS, GUESSES AND CONTRADICTIONS.

... NOT DISMISSING THE CASE AS THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

In support of the first assignment of error, appellant points out material inconsistencies between complainant's sworn statement and her testimony on direct examination during the bail hearings, and her subsequent inconsistencies in the course of cross-examination. Complainant wavered in her testimony as to what happened after she drank the gin offered by appellant: did she fall on the sofa or on the floor? Did she join the group again for another three rounds of drinking? According to the defense, complainant was unclear whether she was conscious or not when the alleged offense took place. Further, complainant allegedly vacillated on whether appellant threatened her to keep quiet about the incident, or merely looked at her when she regained consciousness.

In support of the second assignment of error, appellant insists that the medical findings show that complainant's hymen was intact, and she sustained no genital or extra-genital injuries. Therefore, appellant argues, the medical findings raise doubt as to the element of carnal knowledge. Further, the absence of an outcry from complainant and her delay in reporting the incident detract from the truthfulness of

her charge.

We note, at the outset, that a medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element in rape.^[13] When the victim has been rendered unconscious, obviously, she cannot raise an outcry while she is being raped. Delay in reporting a rape incident, when properly explained, does not affect the credibility of the victim.^[14] Lastly, the Court has taken judicial notice that the crime of rape can be committed in any place for lust is no respecter of time or place.^[15]

For the State, the Office of the Solicitor-General recommends in its brief the acquittal of appellant, primarily on the ground that the prosecution failed to positively identify appellant as the perpetrator of the rape. Hence, in our view, the crucial issue in this case is whether the prosecution has presented sufficient evidence to prove beyond reasonable doubt that the offense of rape was committed by the appellant.

In the review of rape cases, we consider as guiding principles the following: (1) to accuse a man of rape is easy, but it is difficult for the accused to disprove it, though he may be innocent; (2) since only two persons are usually involved in the crime of rape, the testimony of complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.^[16] While it may be true that in a rape case the lone testimony of the victim could suffice to sustain a conviction, such testimony must meet the test of credibility, which means that the testimony should not only come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, that is to say, candid, straightforward, and in accord with human experience.^[17]

On direct examination, complainant testified that when she came out of the bathroom, appellant had handed her a glass of gin. After drinking it, she felt dizzy and fell down on the sofa. Even in her weakened state, she managed to see the face of appellant who was on top of her, and she felt him having sexual intercourse with her, viz:^[18]

PROSECUTOR NEPTALI ALIPOSA TO COMPLAINANT

Q: What happened to you next when you felt dizzy?

A: I felt very weak and I can no longer think what was placed in the glass which I drank.

Q: What happened next when you felt dizzy?

A: I fell down to the floor of the house, sir. (witness demonstrating a leaning position)

Q: What did the accused do to you when you lie down on the floor?

A: I fell on the sofa, sir.