

THIRD DIVISION

[G.R. No. 128364, February 04, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NESTOR JIMENEZ, ACCUSED-APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

A love affair does not justify rape, for the beloved cannot be sexually violated against her will. On the other hand, it is pointless to question on appeal the admissibility of documentary exhibits that were not used by the trial court as bases for convicting the accused.

The Case

Nestor Jimenez seeks the reversal of the November 27, 1996 Decision^[1] of the Regional Trial Court of Puerto Princesa City, Branch 51, which convicted him of rape and sentenced him to life imprisonment.

The Criminal Complaint dated May 26, 1993, signed by Complainant May Linga and certified by City Prosecutor Alberto R. Trinidad charged appellant with rape allegedly committed as follows:

"That on or about the 16th day of April, 1993, at Barangay Tiniguiban, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one MAY LINGA, against her will and without her consent."^[2]

During his arraignment on August 3, 1993, the accused, with the assistance of Counsel *de Parte Perfecto* de los Reyes, pleaded not guilty. Trial on the merits ensued. On November 27, 1996, the trial court rendered its assailed Decision, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing considerations, JUDGMENT is hereby rendered finding the herein accused, NESTOR JIMENEZ[,], guilty beyond reasonable doubt of the crime of [r]ape as principal[,], defined and penalized under Article 335 of the Revised Penal Code and sentences him to [the] penalty of [l]ife [i]mprisonment and to indemnify the offended party, May Linga[,], the sum of FIFTY THOUSAND (P50,000.00) PESOS and to pay the costs."^[3]

Hence, this appeal filed directly with this Court.^[4]

The Facts

Evidence for the Prosecution

In the Appellee's Brief,^[5] the Office of the Solicitor General^[6] presents the following narration of the facts:

"On April 16, 1993, complainant May Linga was at her boarding house in Brgy. Tiniguiban, Puerto Princesa City (TSN, Sept. 8, 1994, p.3). During that period, her sister Socorro, the latter's husband who is the appellant herein, their two (2) children and their housemaid (Fely Gonzales) were staying with her. Socorro's family lived in Quezon, Palawan but they were in Tiniguiban because Socorro was looking for a job while appellant [was] hiding from the relatives of the victim in a murder case [in] which he was charged xxx and [was] facing trial (Ibid., at p.5).

"That day, Socorro was in Quezon while her other sister Gina who lived with May in the boarding house, went to Iloilo City (TSN, Sept. 15, 1994, p. 3). Appellant, the two (2) children, the maid and a visitor went to the beach but May declined to go with them as she ha[d] to teach at PVS (TSN, Sept. 8, 1994, p. 6). At about 9:30 o'clock in the morning, she was inside the bathroom when she noticed that someone was inside the house closing the door and windows. She called out the names of her companions in the house but nobody answered. Thinking that a thief had entered the house, she hurriedly went out [of] the bathroom clad in just a polo shirt, skirt and panty. She saw her Kuya Nestor who immediately embraced her and covered her mouth. He pulled her in a lying position, but she struggled, shouting at every possible opportunity (Ibid., at pp. 7-8). Because of appellant's greater strength, he was able to drag May inside the bedroom where she was pushed to the floor. Appellant forcibly undressed May and [he] also removed his shorts (Ibid., at p. 9). Despite May's struggles and pleas for appellant to stop, appellant succeeded in placing himself on top of May and tried to put his penis inside her vagina. May continued with her struggles until appellant boxed her left thigh which weakened her, thus enabling appellant to consummate the bestial act (Ibid., at pp. 11-12).

"Afterwards, appellant threatened to kill May and himself as allegedly, his life was already worthless because of the murder charges he was facing. As May was still naked, he repeated his sexual assault, which lasted for about ten (10) minutes. Appellant repeated his threats to kill May and himself afterwards (Ibid., at pp. 13-14).

"There was a knock on the door so May was able to run to the bathroom. Thereafter, she went to a neighbor who noticed her bruises on the face. She just cried but kept silent about what really happened to her for fear of appellant (Ibid., at pp. 14-15).

"It was only when Gina arrived from Iloilo and a brother came home from Manila that May was emboldened to complain about her plight and submitted herself to medical examination on May 24, 1993 (TSN, Sept. 15, 1994, pp. 6-7).

"Dr. Jesselito De Lara of the Provincial Hospital in Puerto Princesa City, conducted the examination on May. He found that there was penetration of her private part. Thus, he testified that there was `gaping labia majora and minora[;] in the external examination there [was] an evidence of external physical injury[;] there [was a] whitish discharge[, a] gaping hymen with non coapted boarder [sic] and there [was] healed laceration at 3: o'clock and 6: o'clock positions[;] and when I inserted my finger it admit[ted] one finger with ease and without resistance.' (TSN, Dec. 6, 1994, pp. 24-25; Exh. `C', Medico Legal Certificate).

"May's testimony was substantially corroborated by Fely Gonzales, the housemaid of the accused. Gonzales testified that appellant, who boarded the tricycle with them going to the beach, alighted from the tricycle before it reached the beach claiming that he [would] pass by a friend and get food (TSN, Dec. 6, 1994, p. 6). Appellant, however, did not follow them to the beach so she had to go back to the boarding house as the children were already hungry (Ibid., at pp. 7-8). She saw May `with hematoma on her face and scratch wounds on the right arm and eyes, and fresh from crying.' When she asked May what happened, May just cried (Ibid., at p. 9). Later on, however, May told her that she was raped by appellant (Ibid., at p. 14)."

Evidence for the Defense

In his Brief,^[7] appellant admitted to having had sexual intercourse with complainant, but claimed that the latter consented to the sexual act and that the two of them were in fact lovers.

"Defense witness, Socorro Jimenez (wife of the accused) testified in substance that she [was] 33 years old, married, [a] teacher[,] and a resident of Quezon, Palawan. She is the wife of accused Nestor Jimenez. She knows May Linga because she is her sister. [I]n April[,] 1993, she and her husband, Nestor Jimenez[,] were in the boarding house of her sister May Linga because they were staying with her at that time. While her husband was taking a bath that morning of April 16, 1993[,] he asked her to hand him a towel. She was not able to hand him a towel because, her sister was the one who handed a towel to her husband. Everytime her husband [would leave], she (May Linga) asked for `pasalubong.' On April 15, 1993[,] in the morning, her husband Nestor Jimenez, their children, their maid[,] and friends of her sister went to the White Beach. She herself was still in Quezon, Palawan[.] [H]owever, when she arrived from Quezon, nobody was in the house. She was just informed by her sister May Linga that they [were] in the White Beach and that was already 11:00 o'clock in the morning of that day of April 15, 1993. It was on April 16, 1993 when she came back to Puerto Princesa City. She[, together] with her husband and children stayed with May Linga at the latter's boarding house at Tiniguiban, Puerto Princesa up to May 19, 1993 only as they went home to Quezon, Palawan[,] thereafter. She claims that her husband[,] Nestor Jimenez[,] was in the business of buy and sell of palay and corn at that time.

"Presented next was defense witness Ruel Demegillo who testified that he [was] 35 years old, married, [a] civil engineer[,] and residing at Poblacion, Quezon, Palawan. Purposely presented to establish the relationship of [A]ccused Nestor Jimenez and [C]omplainant May Linga as lovers, he testified that he came to know Nestor Jimenez because they had a joint venture in palay and corn both in Narra, Palawan[,] and Puerto Princesa City. He came also to know May Linga because he used to be with Nestor Jimenez and they used to drop [by] at the house of May Linga at Tiniguiban, Puerto Princesa City. Accused Nestor Jimenez and his family permanently reside at Quezon, Palawan. During those occasions when he and Nestor Jimenez dropped [by] at the house of complainant May Linga, he observed some closeness between Nestor and May in that May used to meet them at the gate and eat together with Nestor[;] and May sometimes, 'nagsusubu-an' at 'naglalambingan.' Aside from that, he saw one time May holding the arms of Nestor Jimenez.

"Testifying next for the defense was Visidro Songcay[a]on, 35 years old, married, a police officer and resident of Bagong Sikat, Narra, Palawan. He declared that he was formerly assigned as a police officer of Quezon, Palawan in June, 1988 and it was during that assignment that he came to know of Nestor Jimenez. He also came to know May Linga when she was crowned as Queen in 1990 during the celebration of the 'Flores de Mayo'. He recall[ed] that it was during the last canvassing when he was assigned as security that he had to be roving around the area. It was then that he allegedly saw Nestor Jimenez at the back of the stage with May Linga having been focused [on] b[y] his flashlight[,] with May Linga's arms at the back of Nestor Jimenez. Nestor Jimenez dropped an amount of P40,000.00 as votes for May Linga which eventually made May Linga win the said Beauty Contest.

"As the last witness for the defense, accused Nestor Jimenez testified as follows: that he [was] 33 years old, married, a businessman and a resident of Poblacion, Quezon, Palawan. He is the same Nestor Jimenez the accused in this case. His wife is Maria Socorro Jimenez the sister of May Linga the private complainant in this case. While [he] was yet courting his wife, he used xxx as his bridge or go between May Linga the private complainant in this case. In the course of his courtship, he noticed that May Linga like[d] him. He did not mind her though, because his interest was [in] Socorro Linga th[e] sister of May Linga. After his marriage to Socorro Linga, May Linga lived with them for sometime because they were the ones who sent her to school up to third year high school. While he noticed May Linga to be sweet to him, he did not tell this to his wife because she might get jealous. In 1990, May Linga stayed in Puerto Princesa City while he and his wife stayed in Quezon, Palawan. However, during the year 1990, a beauty contest was held in Quezon, Palawan in connection with the celebration of the feast of 'Flores de Mayo'. Since May Linga became one of the candidates she asked him to help her win in said beauty contest so he told her he [would] try to borrow money from his friend Emertan and, indeed, he was able to borrow from Emertan P110,000.00."

Ruling of the Trial Court

The trial court held that May Linga was raped by Nestor Jimenez in the morning of April 16, 1993, when she was alone in her boarding house. May Linga's testimony was strongly corroborated by that of Fely Gonzales, maid of the accused, who testified that Nestor Jimenez did not go with them to the White Beach on April 16, 1993. When they arrived home, she noticed the hematoma on May's face and the scratches on her arms. On the verge of crying, May Linga later revealed the sexual assault perpetrated by the accused on that fateful day.

The trial court rejected the "sweetheart defense" put up by the accused. While the latter admitted having had sexual intercourse with complainant, he failed to present substantial proof that she had given her consent. In fact, he found it necessary to punch her. Moreover, the testimonies of the defense witnesses seeking to prove the supposed love affair were not credible. On the other hand, the lower court found May to be simple, decent and educated - a young lady who would not willingly expose herself to extreme embarrassment and public ridicule by reporting her defilement if it were not true. The court was sufficiently convinced of her credibility and the truthfulness of her testimony.

Assignment of Errors

In assailing the trial court's Decision, appellant alleges the following errors:

"I. The lower court erred in giving weight and credence to the exhibits of the prosecution namely Exhibits A, B, C and D with their respective submarking notwithstanding the fact that they were not formally offered in evidence

II. The lower court erred in not holding that herein appellant and complaining witness were lovers

III. The lower court erred in not holding that the sexual act between herein appellant that took place in the early morning of April 15, 1993 (not in the morning of April 16, 1993) [was] done voluntarily and with their express consent as lovers

IV. The lower court erred in finding the herein appellant guilty beyond reasonable doubt of the crime of rape and in imposing [upon] him the penalty of life imprisonment"^[8]

The Court's Ruling

We affirm the conviction of appellant. However, we modify the penalty which should be *reclusion perpetua*, not life imprisonment.

First Issue:

Sufficiency of Prosecution Evidence

Appellant assails the following pieces of documentary evidence: (1) Exhibit A - affidavit of May Linga; (2) Exhibit B - Criminal Complaint of May Linga; (3) Exhibit C