

FIRST DIVISION

[G.R. No. 112088, March 25, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RONALDO ALMADEN, ALIAS "DODONG", ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J:

Before us is an appeal from the Judgment^[1] of the Regional Trial Court of Tacloban City, Branch 6-A, in Criminal Case No. 91-02-107, convicting appellant Ronaldo Almaden of the crime of rape. The dispositive portion of the appealed Judgment reads:

WHEREFORE, in view of the foregoing, the Court finds accused RONALDO ALMADEN guilty beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 of the Revised Penal Code as amended, and he is hereby sentenced to suffer a penalty of RECLUSION PERPETUA, and to indemnify the offended party (Arlene Saldaña) the amount of Thirty Thousand Pesos (P 30,000) as moral damages.^[2]

A complaint for "sexual assault" was filed on January 4, 1991, by the victim. Arlene Saldaña against appellant Almaden with the Municipal Trial Court of Palo, Leyte.^[3] The municipal trial court conducted a preliminary investigation and recommended that appellant be charged with attempted rape.^[4] However, the provincial prosecutor, after review of the case, filed an information for rape that reads:

That on or about the 27th day of December, 1990, in the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent-and with lewd designs, and by means of force, threats and intimidation did, then and there willfully, unlawfully, and feloniously have carnal knowledge with one ARLENE SALDAÑA- A, a 10-year old girl, without her consent and against her will and to her damage and prejudice.^[5]

Arraignment was initially postponed upon manifestation of the defense that appellant Almaden was suffering from mental disorder.^[6] After a mental examination determined that he was competent to stand trial,^[7] Almaden was arraigned on June 21, 1991.^[8] He pleaded not guilty to the charge of rape.^[9]

To a large extent, the facts of the case are not in dispute. The victim Arlene Saldaña was then a young girl of 11 years.^[10] Appellant admitted that the incident occurred on December 27, 1990, at around 8 o'clock in the morning, in Barangay Cahindok, Palo, Leyte. On that fateful morning, young Arlene was gathering firewood upon instructions of her mother with her friend Edwin Sudario,^[11] also a minor.^[12]

Appellant Almaden chanced upon them as he was on his way to his farm.^[13] He approached the children and ordered them to undress.^[14] Arlene took off her shorts and underwear while Edwin lowered his jogging pants down to his knees. Arlene was ordered to lie on the ground and Edwin to place himself on top of Arlene. They were then made to simulate the sexual act.^[15]

From this point, the versions of the prosecution and the defense vary. According to appellant, he left Arlene and Edwin immediately after the two had commenced to simulate the sexual act, and he continued on his way to his farm.^[16] Yet, according to the prosecution, there was a more malevolent twist to the story. Arlene and Edwin testified that, contrary to appellant's declaration, appellant Almaden did not leave them as they were simulating the sexual act. Rather, appellant positioned himself nearby and closely observed them with his weapon ready.^[17] At the time of the incident, appellant was armed with a bolo.^[18] Appellant Almaden unsheathed his bolo^[19] in order to threaten the minors and compel them to undress and simulate the sexual act. ^[20] After the two minors simulated the sexual act, Almaden ordered Edwin to get up.^[21] He then grabbed the supine Arlene by her arm and made her stand.^[22] With his bolo in one hand and Arlene's arm in the other, appellant dragged Arlene to a nearby bamboo grove.^[23] Meanwhile, Edwin seized the opportunity to escape. He pulled up his jogging pants and ran home. He then told his mother about the incident.^[24]

At the bamboo grove, Almaden again forced Arlene to lie on the ground.^[25] This time, appellant himself got on top of Arlene.^[26] Appellant loosened his shorts, unzipped his fly and proceeded to insert his penis into Arlene's vagina.^[27] Arlene, at the time, had no lower clothing because her shorts and underwear were at the place where she and Edwin were made to lie down. Appellant succeeded in inserting a small portion of his penis.^[28] Arlene felt intense pain causing her to cry out, "Agi!"^[29] Appellant next made Arlene to sit up. He knelt on the ground in front of Arlene and ordered her to suck his penis.^[30] After sucking for about three minutes,^[31] Arlene was made to swallow^[32] a warm substance ejaculated from appellant's penis while inside her mouth.

Between the two versions of the incident, the trial court chose to give credence to the prosecution version and convicted appellant. Hence, this appeal wherein appellant assigns the single error that the trial court convicted him on the basis of "incredible, improbable and inconsistent testimonies of prosecution witnesses."^[33]

As consistently held by the Court, the rule is that the trial court's evaluation of a witness's credibility is entitled to great respect.^[34] And there is sound reason for this rule. It was the trial court that had the opportunity to observe first hand the demeanor of the witness on the stand and to gauge the truthfulness of his narration.^[35] The tentative tone of voice, the flushed face, the pregnant pause in narration and the frequent fidgeting are, to the perceptive judge, telltale marks of truth or falsity. Yet, these same marks are not captured on record and upon review are lost to the appellate court.

In its well-written decision, the trial court observed that the "(v)ictim did not waver during her testimony, but narrated the events with straightforward confidence, clear, convincing and precise in every detail on how the bastardly (sic) act was committed by Ronaldo Almaden"[36] We find sufficient basis in the record for such evaluation of Arlene's testimony. Arlene gave a very candid narration of her ordeal thus:[37]

Q- Now, when you reached the bamboo grove (sic) after you have been dragged by Ronaldo Almaden, what next did Ronaldo Almaden do to you?

A- He made me lie down and he placed himself on top of me.

Q- At the time you were made to lie down by Ronaldo Almaden after you had been dragged to the bamboo groove (sic), where was your city shorts and your panty?

A- At the place where both I and Edwin where (sic).

Q- When accused Ronaldo Almaden placed himself on top of you, was he wearing any pants?

ATTY. SALINAS

Objection, Your Honor, very leading.

COURT

AS I SAID IN THIS STAGE, I WILL ALLOW LEADING QUESTIONS.

PROS. CANDIDO

Yes because the witness is of tender age.

A- Yes, sir.

Q- What did he do with his pants?

A- He pulled down the zipper of his pants.

Q- Do you know why he pulled down the zipper of his pants?

A- Yes, Sir, because he took out his penis.

Q- What did he do with his penis after he had taken that out and he was already on top of you?

A- He placed his penis into my vagina.

Q- Did he succeed in putting his penis inside your vagina?

A- Yes, Sir, but only a small bit of his penis into my vagina, because it would not enter.

Q- Now, did you not try to resist while the accused Ronaldo Almaden was trying to insert his penis inside your vagina?

A- I felt pain from my vagina up to the top of my head and I cried as it was very painful.

Q Did you not try to plead with Ronaldo Almaden not to do what he was trying to do with you?

A- I did that, Sir.

Q- What did you do to him?

A- I said "ouch."

Q- And what did Ronaldo Almaden do in response to your expression of pain?

A- He told me to get up.

Q- But that was after he had succeeded in inserting a little portion of his penis inside your vagina?

A- Yes, sir.

COURT

DO YOU KNOW HOW TO READ A WATCH?

A- Yes, sir.

COURT

MINUTES?

A- Yes, sir.

COURT

HOW MANY MINUTES WAS ALMADEN ON TOP OF YOU?

A- For a time but I cannot estimate how many minutes. Maybe five (5) minutes.

Thus, the trial court rejected appellant Almaden's version that he was unarmed at the time^[38] and very weak because he had just suffered an epileptic seizure.^[39] The trial court also dismissed his claim that he neither touched Arlene^[40] nor employed force or intimidation upon her.^[41]

Appellant Almaden disputes Arlene's claim that she was dragged by him to the bamboo grove. According to him, this is highly improbable because the Medico Legal Report^[42] mentions no injury on the victim's buttocks and legs. Appellant argues that if indeed Arlene was dragged, then she would have suffered injury on her