

SECOND DIVISION

[G.R. No. 128386, March 25, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUDITO ALQUIZALAS Y ALQUILITA, ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

This is an appeal from the decision^[1] rendered on September 12, 1996, by the Regional Trial Court of Barili, Cebu, Branch 60, in Criminal Case No. CEB-BRL-013, which found accused-appellant Judito Alquizalas guilty of the crime of rape.

In an information dated October 30, 1995, Assistant Provincial Prosecutor Ma. Cecilia Bercilles charged herein accused-appellant as follows:

"The undersigned, at the instance and upon a complaint filed by the offended party, accuses JUDITO ALQUIZALAS y ALQUILITA of the crime of Rape, committed as follows:

`That on October 5, 1995, at about 2:00 o'clock in the afternoon, more or less, at barangay Jandiliog, Municipality of Ronda, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of hunting knife and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant, MARISSA BAYANG, 15 years old, against her will.'

CONTRARY TO LAW."^[2]

Upon arraignment, accused-appellant, assisted by counsel, entered a plea of "not guilty". Subsequently, trial on the merits ensued. Thereafter, the trial court rendered judgment, the dispositive portion of which reads:

"The Court is fully convinced that the prosecution has proved the GUILT of the accused beyond reasonable doubt and pursuant to Article 335 of the Revised Penal Code, the accused is hereby sentenced with the penalty of RECLUSION PERPETUA and to pay the victim moral damages in the amount of P50,000.00 and exemplary damages of P25,000.00.

SO ORDERED."^[3]

The trial court summarized the testimony of private complainant, as follows:

"That she is the victim of Rape, allegedly committed by the accused, Judito Alquizalas; that she has known personally and very well the accused for a long time because he is her cousin, her mother and the

mother of the accused being first degree cousins; that she is living in Bolocboloc, Barili, Cebu, Philippines and also the accused; that she properly identified the accused; that on October 5, 1995, at around 2:00 o'clock in the afternoon, she was in her grandmother's house, Lola Remedios, because her grandfather, the husband of Lola Remedios was sick; that the accused, Judito Alquizalas, arrived and told her to accompany him to Ronda, Cebu to get medicine water for her LOLO who was sick; that she conceded because she pitied her Lolo Pedro; that she rode on a motorcycle with the accused, Judito Alquizalas driving at around 2:00 o'clock in the afternoon; that before reaching the place where they were supposed to get medicine water, the accused brought her to sitio Cabunan, Jandili-og, Ronda, Cebu which is very far from national highway; that when she asked if the place they are going to is the place they are going to get medicine water, the accused answered her, 'Don't make any noise. You might fall down from the motorcycle'; that she was brought to a thicketed area and very far from the houses; that they walked towards the thicketed area thinking that it was the place of the medicine man from whom they will get medicine water; that while walking, the accused pulled her and pointed a knife at her and boxed her abdomen three times and she felt very weak and dizzy; that she fell down with her back on the ground and in that position, the accused pulled down her pants and her underwear and her panty with his right hand and the other hand still holding the knife; that being undressed with her pants and panty, the accused placed himself on top of her; that she was not able to run because she was tired and weak and she could not shout because the accused covered her mouth; that the accused inserted his penis into her vagina; that after the insertion, it took the accused about five minutes, more or less, to finish his sexual lust; that once the penis of the accused was inserted into her vagina, she felt extreme pain and it was bleeding; that after the accused had exhausted his lust, he lifted her up from the ground and he brought her to the medicine man at Ylaya, Ronda Cebu, riding the same motorcycle and they were able to get the medicine water; that they went home after securing the medicine water to Bolocboloc, Barili, Cebu; that she reported the incident to her grandmother, Remedios Alquilita in the presence of the wife of the accused, Judito Alquizalas, that she was raped by the accused; that her grandmother requested her auntie, Gertrudes Balongoy to accompany her to the municipal building to report the matter to the police and to go to the Barili District Hospital for medical examination and there, she was examined by Dr. Servillano Nemir who issued a medical certificate."^[4]

Dr. Nemir later testified in this case that in his examination of private complainant's genitalia, he found lacerations at 4:00 o'clock and 7:00 o'clock positions and small amount of blood. He also attested the presence of secretion which looked like semen, while the laboratory examination of the smear from vaginal secretion disclosed the presence of spermatozoa. He further opined that the lacerations of the hymen could have been inflicted within two or three hours before the examination was conducted.^[5]

The accused-appellant told a different version, as follows:

"That he is 24 years old, married, a driver and residing in Kabatoan, Bolocboloc, Barili, Cebu; that on October 5, 1995, he was still a resident of sitio Kabato-an, Bolocboloc, Barili, Cebu; that at about past 1:00 o'clock in the afternoon on said date, he went home after driving a motorcycle and proceeded to the house of his grandfather, Pedro Alquilita, whom he knew to be sick; that when he arrived in the house of his grandfather, Pedro Alquilita, he proceeded to his grandmother, Remedios Alquilita and ask her about the medicine water that her grandmother who is the wife of Pedro Alquilita gave to him the medicine water; that the said medicine water was from barangay Ylaya, Ronda, Cebu; that at the time he administered the medicine water to his sick grandfather, there were Remedios Alquilita and Marissa Bayang; that Marissa Bayang is a granddaughter of Remedios Alquilita; that he told his grandmother that the medicine water is about to be totally consumed and he suggested that he will go back to Ylaya, to get some more to continue the treatment of his Lolo; that Remedios Alquilita, his Lola, approved of his going back to Ylaya, Ronda, Cebu and while he was talking with his grandmother, Marissa Bayang approached him and requested that she be allowed to accompany him to Ronda; that he was not the only one asked by Marissa Bayang but also his grandmother that she will go with him to Ronda; that his grandmother consented to the request of Marissa Bayang and suggested that they should bring a container or a gallon for the medicine water; that Marissa Bayang is a granddaughter of the sister of Pedro Alquilita, the husband and the sick man; that they are related by blood because the surname or the maiden name of Remedios is Alquilita; that instead of proceeding directly to Ylaya, Ronda, Cebu, they dropped at Kasadya Beach; that they were riding on a motorcycle, the sidecar of which was removed; that they passed the road from Bolocboloc, Barili, Cebu to Poblacion, Barili, Cebu and from Barili, they passed by the national highway; that the reason why they passed by Kasadya Beach was because Marissa Bayang asked him which is more beautiful, the Sayaw Beach or the Kasadya Beach; that it was Marissa Bayang who requested him that they would pass by Kasadya Beach; that when they reached the place, he parked the motorcycle and they proceeded to the seashore and then they went to a cottage; that Marissa Bayang suggested that they would take a rest in a cottage because she was tired but he told her that they should not stay in the cottage because it was for a fee; that he told her that they will just rest under the tree which was located near the seashore, about thirty (30) meters, more or less; that they were sitting side by side with each other and, at that moment, Marissa Bayang told him that her shoulders were numbed; that during that time, he was too quick to raise a hand and pressed the shoulders of Marissa; that it was at that time that he developed an evil desire and asked her to have sexual intercourse with him; that at first, Marissa was silent and stared at him but afterwards, when he insisted and asked for the second time, she consented saying, 'I might get pregnant'; that after she consented, he told her to pull down her pants but she was ashamed so, he was the one who unbuttoned the pants; that at that time, they were standing together and that he was about to release the buttons of Marissa's pants; that instead of him pulling down completely the pants of Marissa, Marissa told him, 'Jul, I will be the one to pull down my pants' because she was ashamed and a

little bit nervous; that she was the one who pulled down her trousers up to the knee; that while it was pulled down up to the knee, he requested her to pull down completely because it was very tight; that she was able to completely pull down her pants; that he let her lie on the ground with her panty still on and in that position, he pulled her panty and he lifted her buttocks; that she told him to pull out slowly while he held her buttocks, he could not resist and he removed his pants and had sexual intercourse with her for about five minutes; that they were about thirty-five (35) meters away from the motorcycle that was parked; that before they had sexual intercourse, they had romance and they had kissing, lips to lips; that after their romance, right then and there, he inserted his penis to the vagina of Marissa Bayang and made it penetrate slowly; that there was a time that she felt pain and that after the sexual intercourse, he told Marissa to put on her dress, combed her hair and they proceeded to the motorcycle; that after they reached the place where the motorcycle was parked, Marissa sitting at the backseat of the motorcycle; that they reached Ylaya, Ronda, Cebu; that they were able to get the medicine water for only about five minutes since he requested the medicine man to attend to his request first that from Ylaya, Ronda, Cebu, they proceeded to Bolocboloc, Barili, Cebu, stopping at a certain store at the Poblacion in order to buy sugar, that Marissa Bayang did not disembark from the motorcycle, that was why he was the one who bought the sugar and after buying sugar, they proceeded to the house of their grandmother; that it was already 3:00 o'clock in the afternoon when they reached the house of Remedios Alquilita and Ideltrudes Balongoy was in the house when they arrived; that an unusual incident took place when they reached the house when his aunt, Ideltrudes Balongoy saw blood stain in the trousers of Marissa Bayang which was white and asked Marissa if she had her monthly cycle; that at the time when Marissa was asked, he left the place so he did not know anymore what transpired after that."^[6]

As his lone assignment of error, appellant faults the trial court in finding him guilty beyond reasonable doubt of the crime of rape despite insufficiency of evidence.^[7]

In his bid to obtain reversal of his conviction, appellant casts doubt on the testimony of private complainant. He claims that the fact that private complainant rode again with him in the motorcycle after the alleged bestial act is an "unlikely attitude of a rape victim."^[8] He insists that his carnal knowledge of private complainant was with the latter's consent.^[9] Appellant further contends that the prosecution failed to establish the crime of rape, as force or intimidation which is elemental in rape was never proven. He argues that although intimidation was present initially, it ceased during or immediately prior to the sexual act. He maintains that private complainant's resistance was not tenaciously continued throughout the sexual intercourse.^[10]

We find appellant's attempt to impugn the credibility of the prosecution evidence not convincing at all. Private complainant's attitude after the sexual assault is understandable. There is no standard form of behavior when one is confronted by a shocking incident especially if the assailant is physically near. Some may shout, some may faint, some may be shocked into insensibility, while others may even

welcome intrusion.^[11] On her part, private complainant was only waiting for the proper time to reveal her harrowing ordeal as soon as possible and that is the reason why she just took the same ride with the appellant to Barili, Cebu. In fact upon her arrival home, she immediately reported the incident to her grandmother in the presence of the wife of appellant.

Moreover, there is no reason to doubt private complainant's story. The records reveal that private complainant could not help but cry during her direct examination.

^[12] The crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.^[13] Besides, evidence to be believed must proceed not only from the mouth of a credible witness but must be credible in itself as when it conforms to common experience and observation mankind can prove as probable under the circumstances.^[14] In the instant case, private complainant is a young country girl and virgin. The parties are cousins and there is nothing to show that private complainant was actuated by ill motive to testify against appellant. In previous cases, we have taken judicial notice of the fact that it is highly inconceivable for a young barrio lass inexperienced with the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation, unless she was motivated by a potent desire to seek justice for the wrong committed against her.^[15] Certainly, if private complainant had consented to have sexual intercourse with appellant, her natural reaction would have been to conceal it or keep silent as this would bring disgrace to her honor and reputation as well as to her family.^[16] Hence, the claim of appellant that private complainant voluntarily had sexual intercourse with him is far from credible.

The law, at the time of the commission of the offense, provided that rape is committed by having carnal knowledge of a woman, inter alia, by using force or intimidation.^[17] The degree of force or intimidation required is relative.^[18] It is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the appellant had in mind.^[19]

In this case, appellant admitted having sexual intercourse with complainant on the aforesaid occasion, although in a different place. Hence, the only element to be established is force or intimidation.

In her testimony, complainant recounted how appellant forced his lust upon her:

"PROSECUTOR RAUL E. LAZARTE

Q: And on the way, thinking that it was the place of this medicine man where you wanted to get medicine water, what transpired next?

A: He pulled me and pointed a knife at me and boxed me in my abdomen.

Q: Were you facing each other when the accused had a knife and boxed your abdomen?