

SECOND DIVISION

[G.R. No. 115191, December 21, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOLITO MORENO Y LANCION ALIAS "LOLOY", ACCUSED-APPELLANT.

DECISION

BUENA J.:

This is an appeal from the decision^[1] of the Regional Trial Court (Branch 38) of Boac, Marinduque convicting accused-appellant LOLITO MORENO of rape committed against his 14-year-old cousin TIFFANY MORENO, and sentencing him to reclusion perpetua and to pay the private complainant the sum of P30,000.00 as moral damages and P525.00 as actual litigation expenses.

The complaint^[2] for rape was filed before the Municipal Trial Court of Mogpog, Marinduque, on November 11, 1991 by Froilan M. Moreno, father of the private complainant. After conducting the preliminary examination and finding insufficient evidence^[3] to warrant the filing of a case for rape in court, municipal trial judge Eduardo Mirafuente recommended to the Provincial Prosecutor the dismissal of the complaint for rape.^[4] Upon a review of the aforesaid resolution of the Municipal Trial Court, the provincial prosecutor^[5] resolved to set the case for re-investigation.^[6] After due proceedings in the Provincial Prosecution Office which found probable cause against accused-appellant,^[7] an information^[8] was filed with the Regional Trial Court of Boac, Marinduque, Branch 38, charging him with the crime of rape committed as follows:

"That on or about the 7th day of July 1991, at around 12:00 o'clock noontime, in barangay Sayao, municipality of Mogpog, province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused entered the secluded house of complainant, and by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously lie on top of his 14-year old cousin, complainant Tiffany Moreno y Pakaigui, who was alone and then and there forcibly succeeded in having carnal knowledge of her against her will and consent, and to her damage and prejudice.

CONTRARY TO LAW."

During arraignment, accused-appellant expressed his willingness to enter a plea of guilty to the lesser offense of simple seduction. However, the private complainant's father and another relative refused to lower the charge from rape to simple seduction, hence accused-appellant pleaded not guilty to the charge of rape.^[9] Thereafter, trial ensued. The prosecution presented as its witnesses, private complainant Tiffany Moreno and her father Froilan Moreno, and on rebuttal,

Gervacio Recamara, barangay captain of Sayao, Mogpog, Marinduque. The parties stipulated on the genuineness and due execution of the medical certificate (Exh. C) issued by Dr. Reynaldo Montegrejo, rural health physician of Mogpog, Marinduque; the sworn statement of private complainant made before the provincial prosecutor (Exh. A); the statement signed by private complainant before the barangay captain of Sayao, Mogpog, Marinduque; (Exh. B); and private complainant's birth certificate (Exh. D).^[10]

For its part, the defense had as its witnesses accused-appellant Lolito Moreno, his wife Delia Moreno and Liza Leynes-Palomares, Delia Moreno's goddaughter.

The facts, according to the prosecution, are as follows:

Around 12:00 noon of July 7, 1991, private complainant, then 14 years old, was allegedly raped by accused-appellant, her first-degree cousin, being the son of her father's brother, at her parents' house situated in a coconut land in Ilaya, Sayao, Marinduque.^[11] She testified that she was alone in the kitchen frying fish when the accused-appellant suddenly appeared.^[12] Upon seeing him, she did not greet him but instead told him that he should not come in because she was alone and her parents were away.^[13] She did not inform him where her parents were at that time.^[14] Instead of heeding her, accused-appellant held both of her hands and pointed a bolo at her body so she would not shout.^[15] She tried to free herself (nagpalagpalag) from his hold.^[16] Then, accused-appellant lifted her with his lower arms at the level of his abdomen as if carrying something loaded on his lower arms.^[17] When he lifted her, he did not lay down his bolo but continued to point the bolo against her body.^[18] Accused-appellant carried her to the living room which was about 8 feet away from the kitchen with the bolo still pointed against her.^[19] Private complainant did not make any outcry at all.^[20]

Accused-appellant then laid her down in a makeshift bed (papag) with the bolo still in his hand.^[21] He undressed her^[22] by pulling down the pair of shorts she was wearing^[23] with the bolo now on the makeshift bed (papag).^[24] The t-shirt she was wearing was not removed.^[25] When her shorts was fully removed from her body,^[26] accused-appellant returned the bolo to its scabbard on his waist, removed his own shorts and underwear,^[27] and immediately went on top of her while holding her hands.^[28]

Accused-appellant inserted his penis into her vagina,^[29] guiding his organ with his right hand while his left hand was holding her right upper arm.^[30] The bolo was no longer held by the accused-appellant but was placed in the makeshift bed.^[31] However, on cross-examination, private complainant testified that while accused-appellant was on top of her making push and pull movements, the bolo and scabbard were in the accused-appellant's waist.^[32] She tried to free herself (nagapilig-pilig po ako) from accused-appellant's hold^[33] by twisting her body from right to left^[34] but to no avail. She felt pain when accused-appellant inserted his organ inside her organ.^[35] After about two (2) minutes on top of private complaint, accused-appellant jerked her (inayod po ako) and then left.^[36]

Private complainant then proceeded to finish her cooking.^[37] Her parents were in the farm at that time and they returned only in the afternoon of the same day, July 7, 1991.^[38] They did not ask her what happened.^[39] The following day, July 8, 1991, however, she was asked by her mother who had raped her^[40] because private complainant was apparently previously examined by a "*manghihiilot*" and was found to be already pregnant.^[41] Private complainant replied that it was accused-appellant who raped her.^[42] When asked by the trial court who caused her pregnancy, private complainant replied that it was accused-appellant Lolito Moreno^[43] because "it was only him who 'halay' me"^[44] but she originally denied having sexual relations with accused-appellant prior to July 7, 1991. When subsequently asked by the trial court to clarify her statements, she then admitted that prior to July 7, 1991 she had sexual relations with accused-appellant but she could not remember the date when accused-appellant had sexual relations with her for the first time.^[45] She claimed that on a certain day prior to July 7, 1991, the date of which she could not remember, accused-appellant had sexual relations with her without her consent.^[46]

Three months later, or on October 5, 1991,^[47] private complainant was brought by her parents before the barangay captain of Sayao to report the alleged rape incident.^[48] She executed a "Malayang Salaysay" before the barangay captain (Exh. B).^[49]

On October 8, 1991, she was brought for medical examination to the Rural Health Unit, Department of Health, Mogpog, Marinduque, where she was examined by Dr. Reynaldo Montegrejo, Rural Health Physician of Mogpog, Marinduque, who issued a Medical Certificate dated October 17, 1991 (Exh. C) with the following findings:

"Labias Minora and Majora - presence of smegma; no sign of injury.

Hymen - healed lacerated, wounds, located at 5 o'clock; 8 o'clock; 11 o'clock positions.

Fossa Navicularis - healed lacerated wound, about 1 cm.

Internal examination - admit 1 (one) non-lubricated small finger and 2 (two) lubricated fingers; no instrumentation done."^[50]

The same examining physician suggested that private complainant submit to a pregnancy test and in connection therewith, referred her to the Marinduque Provincial Hospital. The pregnancy test revealed that private complainant was about five (5) months pregnant.^[51]

Froilan Moreno, father of private complainant, testified that on July 7, 1991, at noontime, he was working in the farm while his wife, the mother of private complainant was selling foodstuff in school.^[52] He went back to their house around 12:00 noon^[53] just as private complainant finished frying fish. He noticed that private complainant was crying while seated on a bench but he did not ask her why she was crying.^[54] His wife was not in their house when he arrived and he did not

know what time she arrived because he immediately went back to the farm.^[55]

Sometime in October, 1991 he noticed that the belly of private complainant was enlarging.^[56] He had his daughter examined by a "licensed hilot" who later informed him that she was pregnant.^[57] He asked her to tell the truth regarding her pregnancy for almost three (3) days and it was only on the third day that she told him that it was accused-appellant who raped her. Upon learning this he went to the barangay captain of Sayao, Mogpog, Marinduque where he had a confrontation with accused-appellant and the latter's wife, Delia Moreno.^[58] He asked accused-appellant "why he did it to his [my] daughter" however accused-appellant did not answer but instead he got angry.^[59] The following day he went back to the barangay captain and asked for permission to file the case in court.^[60]

On cross-examination, Froilan Moreno testified that he and his wife talked about the enlargement of private complainant's belly only in October, 1991.^[61] Prior to their confrontation before the barangay captain, he first summoned accused-appellant but it was the latter's wife, Delia Moreno who went to his house. He asked her why accused-appellant did it to his daughter but she said she does not know.^[62] She told him that she would talk to accused-appellant.^[63]

On rebuttal, the prosecution presented Gervacio Recamara, barangay captain of Sayao, Mogpog, Marinduque who testified that on October 5, 1991, private complainant, Froilan Moreno and his wife, and Lolito Moreno and his wife had a confrontation before him regarding the accusation that accused-appellant twice raped the private complainant.^[64] The barangay captain noticed that Froilan Moreno and accused-appellant were already having a heated argument, hence he stopped them. Thereafter, Froilan Moreno left. The barangay captain further testified that after Froilan Moreno left, he told accused-appellant that "it might be true what is being complained about him," then accused-appellant admitted that he really raped (hinalay) the private complainant but only once.^[65]

For its part, the defense put up denial and alibi. Accused-appellant, a 38-year-old farmer, on direct examination, originally claimed that on July 7, 1991, around 12:00 noon, he was in his house located near the river of Sayao and about half a kilometer away from the house of private complainant.^[66] Still on direct examination, he later claimed that on July 7, 1991, from 7:00 a.m. to 3:00 p.m., he was in Sta. Cruz, Marinduque.^[67] When asked by the trial court to clarify his previous statements, accused-appellant admitted that on July 7, 1991, around 12:00 noon, he was in his house together with his wife doing nothing.^[68] He further testified that on August 7, he learned for the first time that private complainant was accusing him of rape because his wife, who was earlier fetched by Froilan Moreno's wife,^[69] told him that he was being accused of having raped private complainant.^[70] He did not react to that statement.^[71] He denied having had any confrontation with private complainant's family before the barangay captain but admitted having received summons from the latter.^[72]

Accused-appellant's wife, Delia Moreno, on the other hand, testified that on July 7, 1991, around 12:00 noon, she was with accused-appellant and Liza Leynes in Sta.

Cruz, Marinduque for the purpose of renting a wedding gown for Liza Leynes.^[73] They allegedly left their residence at 7:00 a.m. to fetch Liza Leynes in Tarug, Mogpog and stayed in Sta. Cruz, Marinduque from 11:00 a.m. until 3:00 p.m.^[74] They arrived back in Sayao at 7:00 p.m.^[75] She further claimed that private complainant and her family filed a case against accused-appellant because private complainant learned that she was pregnant and her boyfriend had left for Manila.^[76] They allegedly pointed to her husband as the culprit because he was the one who was in Marinduque^[77] and she suspected that private complainant had a liking (crush) on accused-appellant.^[78]

The defense also presented Liza Leynes-Palomares, a goddaughter of Delia Moreno, to corroborate the testimony of the latter that on July 7, 1991, around 12:00 noon, they were in Sta. Cruz, Marinduque to rent gowns for her wedding.^[79]

At the conclusion of the trial, the trial court in a decision^[80] dated November 12, 1993, found the accused-appellant guilty beyond reasonable doubt of the crime of rape and sentenced him accordingly.^[81] The trial court ruled that "[a]lthough there were some inconsistencies noticed by the court from the testimony of Tiffany Moreno, those were on minor matters and did not reflect on the element attendant in the execution of the sexual intercourse. Tiffany Moreno was very certain that it was herein accused who sexually abused her on July 7, 1991 while alone at their residence."^[82] The trial court found private complainant's testimony to be "credible" and "straight-forward."^[83] All told, the trial court found "...the private complainant's version to be credible enough to be relied upon."^[84]

Accused-appellant is now before this Court seeking the reversal of his conviction on account of the following errors allegedly committed by the trial court:

I

THE COURT A QUO ERRED IN GIVING EVIDENTIARY WEIGHT TO THE INCREDIBLE, IMPLAUSIBLE, INCONSISTENT IF NOT CONTRADICTORY TESTIMONY OF COMPLAINANT RELATIVE TO THE ASSAILED INCIDENT.

II

THE COURT A QUO ERRED IN CONCLUDING THAT COMPLAINANT WAS SEXUALLY ASSAULTED BY APPELLANT CONSIDERING THAT SHE DID NOT OFFER ANY TENACIOUS RESISTANCE.

III

THE COURT A QUO ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE EVIDENCE ADDUCED BY THE DEFENSE.

IV

ON THE ASSUMPTION THAT APPELLANT IS GUILTY, THE COURT A QUO ERRED IN CONVICTING HIM OF RAPE AS THE CRIME COMMITTED WAS ONLY SEDUCTION.