

## SECOND DIVISION

[ G.R. No. 111710, January 07, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROGELIO ABUAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the decision<sup>[1]</sup> rendered by the Regional Trial Court, Branch 44, Dagupan City, finding accused-appellant Rogelio Abuan guilty of rape and sentencing him to *reclusion perpetua* and to pay the private complainant, Rosita Villanueva, the sum of P40,000.00 as civil indemnity and P7,000.00 as expenses and costs.

The information against accused-appellant, dated October 9, 1992, alleged<sup>[2]</sup> -

That on or about April 8, 1992 in the evening at barangay Bolo, municipality of San Jacinto, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with ROSITA VILLANUEVA against her will and without her consent, to her damage and prejudice.

CONTRARY to Art. 335, of the Revised Penal Code.

At the time of the commission of the offense, Rosita Villanueva was 13 years old,<sup>[3]</sup> an elementary school student at Barangay Bolo, San Jacinto, Pangasinan. Rosita's sister, Delia, is married to a son<sup>[4]</sup> of accused-appellant.

Rosita testified<sup>[5]</sup> that in the evening of April 8, 1992, accused-appellant went to their house, woke her up, and asked her to go with him, but as she was "hesitant," accused-appellant "forced [her] to go with him." Rosita said that, upon arriving in the house of accused-appellant, the latter took her to the kitchen<sup>[6]</sup> and there, after warning her not to tell anyone, forced her to have sexual intercourse with him. Rosita narrated how she was allegedly abused: accused-appellant kissed her and then removed her short pants. She tried to cross her legs, but accused-appellant was able to draw them apart. Accused-appellant inserted first his index finger into her vagina and then his penis, causing her considerable pain. Rosita said she did not resist accused-appellant "because he has a big body."<sup>[7]</sup> Rosita said that, after accused-appellant had performed the copulative act, she felt something warm come out of his penis; that accused-appellant afterward "became weak" and fell asleep but not before he had warned her not to report the incident to her mother otherwise accused-appellant would kill her and her parents.

An hour after the incident, according to Rosita, accused-appellant's wife arrived from Baguio City and found her in the toilet. She was asked if accused-appellant had had sexual intercourse with her, to which Rosita said she replied in the affirmative. According to Rosita, accused-appellant's wife told her not to report the matter to her (Rosita's) brother Lando, or accused-appellant might kill her (Rosita).<sup>[8]</sup> She said she was forbidden by accused-appellant's wife from going home that night.<sup>[9]</sup>

Rosita kept quiet about the rape. It was only on July 1, 1992 at the barangay conference when she told the barangay captain, who had asked her and her sister Virgie Lyn if they had been sexually molested by accused-appellant, that she said she had been.<sup>[10]</sup> On July 9, 1992 Rosita executed an affidavit, narrating the circumstances of the rape:<sup>[11]</sup>

1. That in the evening of April 8, 1992, Rogelio Abuan came to our house to visit his daughter in law, Delia Villanueva who is my elder sister;
2. That when he was about to leave our house, Rogelio Abuan ask permission from my parents that I will sleep in their house that evening because in the morning he would give me some ampalaya fruits;
3. That my parents permitted me to go with him because he is the father in law of my sister Delia Villanueva;
4. That while in the house of Rogelio Abuan at about 8:00 in the evening, he advised me as follows: "SAAN KA NGA AGTAGTAGARI TA ONGNGUAN KA," and at the same time embraced me and then kissed me;
5. That while kissing me, Rogelio Abuan unbuttoned my short pants, and then removed my pants together with my panty;
6. That after removing my short pants and panty, Rogelio Abuan began to insert his finger inside my vagina and then forced me to lie down on the floor in the kitchen, and while lying down, Rogelio Abuan went on top of me and then brought my legs wide open and began inserting his penis but because I am a virgin, he had difficulty inserting his penis inside my vagina;
7. That after about five minutes or less, Rogelio Abuan finally succeeded in inserting his penis inside my vagina, and then he pushed and pulled his penis inside my vagina until he ejaculated;
8. That after having sexual intercourse with me, Rogelio Abuan warned me not to tell my parents or else he will kill me including my parents;
9. That at the time Rogelio Abuan was embracing and kissing me and at the same time removing my pants and panty, he threatened me by saying: "SAAN KA NGAAGRIRIAW TA AWAN KADUAK DITTOY BALAY, TA NO SAAN PATAYEN KA;
10. That because of the threats made by Rogelio Abuan, I did not report what Rogelio Abuan did to me on April 8, 1992 until rumors have been spreading in the barangay that my elder sister was raped by Rogelio Abuan, and when my

sister was being investigated by the barangay captain that was the time I told the barangay captain that I was the one raped by Rogelio Abuan;

11. That during the investigation, the culprit Rogelio Abuan offered to pay my parents P5,000.00 to settle the case, but my parents refused to accept the amount.

On July 10, 1992, Rosita filed a complaint<sup>[12]</sup> in the Office of the Provincial Prosecutor in Dagupan City, which became the basis of the information filed in this case.

Rosita's mother, Lorina Villanueva, also testified.<sup>[13]</sup> She said that on July 1, 1992 a conference was called by the barangay captain because of reports ("issue" as she called them) that her daughter Virgie Lyn had been raped by accused-appellant. According to Lorina, accused-appellant, instead of coming, sent his wife Avelina (Belen), who, upon being informed that her husband was being accused of having abused Virgie Lyn, allegedly said: "She is not the one, but my husband had sexual intercourse with a certain girl named Rosita Villanueva. It should be Rosita Villanueva who should come here." Lorina said that because of the failure of accused-appellant to appear, another conference was held during which accused-appellant acknowledged his "fault" and said that he was willing to pay P5,000.00, apparently by way of reparation, but Lorina said she demanded P30,000.00. As accused-appellant allegedly failed to appear at the next conference on the "7th day of that month [presumably July]" Lorina said they filed a complaint against accused-appellant.

Barangay Captain Federico Ronquillo testified that Lorina Villanueva filed a complaint for rape against accused-appellant on June 28, 1992.<sup>[14]</sup> He said he took down Rosita Villanueva's statement<sup>[15]</sup> in the presence of accused-appellant's wife,<sup>[16]</sup> after which he entered the following entry in the barangay blotter:<sup>[17]</sup>

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Rosita Villanueva - Complainant

This case was forwarded to the higher Court on  
7/7/92

Ronquillo testified that he did not report the matter to the police immediately because "both parties [were] trying to settle the case."<sup>[18]</sup>

Dr. Lilia Santos, specialist in obstetrics and gynecology, examined Rosita Villanueva on July 7, 1992 and made the following findings:<sup>[19]</sup>

- No Menarche yet
- Conscious coherent ambulatory, no signs of external physical injury.
- Genitalia: Hymen-healed lacerations at 3:00, 9:00, 11:00 o'clock position, cervix close, uterus small adnexae (-) no abnormal discharge.

- Vaginal smear: Negative for spermatozoa.

Accused-appellant's defense was alibi. He testified that at 8:00 a.m. of April 8, 1992 he and his wife Avelina Abuan, Teodoro Abuan, and Domingo Bayuda left for Baguio City to sell mangoes. They arrived in Baguio City at around 11 a.m. and from that time on, until 11 a.m. of April 15, 1992, when they left for home, they did not leave Baguio City. They arrived home in Barangay Bolo only at 2 p.m. of April 15, 1992. [20] He claimed that he was summoned by the barangay captain in connection with the claim of Lorina Villanueva for payment of her services in taking care of accused-appellant's daughter-in-law during the latter's pregnancy. [21]

Accused-appellant's claim that from April 8 to April 15, 1992 he was in Baguio City was corroborated by his wife Avelina Abuan [22] and Teodoro Abuan. [23]

Delia Villanueva Abuan, Rosita's sister who is accused-appellant's daughter-in-law, testified that she and her family lived in her father-in-law's house but, in February of 1992, she decided to stay in her parents' home because there was no one in her parents-in-law's house who could take care of her after her delivery. She said that on the night of April 8, 1992, Rosita slept in their parents' house with one of her (Delia's) children. [24]

As already stated the trial court found accused-appellant guilty and sentenced him accordingly. Hence this appeal.

Accused-appellant contends (1) that private complainant's testimony is at odds with her affidavit and is full of contradictions and untruths; (2) that the medical examination of complainant shows that the complainant was not raped; and (3) that considerable time elapsed between the date of the alleged rape on April 8, 1992 and July 10, 1992, when complainant executed her letter-complaint. Accused-appellant contends that Rosita was only being used to persecute him. Accused-appellant faults the trial court for not giving credence to his defense of alibi and to the testimony of Delia Abuan that her sister, complainant Rosita Villanueva, had slept with her on the night of the alleged rape in their parents' house. He claims that the entry in the barangay logbook shows that the complainant was Virgie Lyn Villanueva and Rosita Villanueva only claimed to be the victim.

After going over the records, we have concluded that accused-appellant's conviction cannot stand. By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that usually only the participants can testify as to its occurrence. For this reason courts scrutinize the story of the complaining witness, especially where as in this case it appears that she did not make an immediate outcry or there was unexplained delay in instituting criminal proceedings. [25] The accused may be convicted on the basis of the lone uncorroborated testimony of the private complainant, but the testimony must be clear, positive, convincing, and otherwise consistent with human nature and the normal course of things. Mere accusation is not enough to convict. Neither can the prosecution rely on the weakness of the defense rather than on the strength of its evidence. [26]

In the case at bar, the prosecution failed to meet the standard necessary to secure