

## FIRST DIVISION

[ G.R. No. 120620-21, March 20, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIRILO BALMORIA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PANGANIBAN, J.:**

Rape may be proven by the credible and unbiased testimony of the offended party. In this case, such testimony is confirmed by the sister of the appellant and corroborated by medico-legal findings. Hence, the conscience of the Court rests easy in affirming the conviction of the appellant for the rape of his two young daughters.

The Case

This is an appeal from the Decision<sup>[1]</sup> dated December 15, 1994 of the Regional Trial Court of San Juan, Southern Leyte, Branch 26, in Criminal Case Nos. 1089 and 1090, convicting Cirilo Balmoria of two counts of rape inflicted on his two daughters, Marissa and Lorena.

Two Informations,<sup>[2]</sup> both dated September 2, 1993, were filed by Provincial Prosecutor II Andres G. Yu, Jr. against appellant. In Criminal Case No. 1089, the Information reads:

“That on or about the 28th day of January, 1991 at around 7:30 o'clock in the evening, more or less, in Barangay Sug-angon, St. Bernard, Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lustful intent and lewd design, by means of deceit, force and intimidation and taking advantage of the confidence afforded by the offended party, Marissa G. Balmoria, to him as a father, did then and there willfully, unlawfully and feloniously made her lay down on the copra drier house locally known as “tapahan,” and had sexual intercourse with her against her will, thereby resulting to the loss of her virginity, to the damage and prejudice of the said victim and her family.

CONTRARY TO LAW.”

The Information in Criminal Case No. 1090, on the other hand, states:

“That on or about the 29th day of January, 1991 at around 12:00 o'clock noon, more or less, in Barangay Sug-angon, St. Bernard, Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lustful intent and lewd design, by means of deceit, force and intimidation and taking advantage of the confidence afforded by the offended party, Lorena G. Balmoria, to him as a father, did then and there willfully, unlawfully and feloniously made her lay down on the floor, and had sexual intercourse with her against her will, thereby resulting to the loss of her virginity, to the damage and prejudice of the said victim and her family.

CONTRARY TO LAW”

Upon arraignment, appellant pleaded not guilty to both charges. The two cases were tried jointly and, on December 15, 1994, the trial court promulgated the assailed Decision, the dispositive portion of which reads:

“WHEREFORE, the foregoing premises considered, the court hereby finds the accused guilty beyond all reasonable doubt of the crime of RAPE in Criminal Case No. 1089 and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* and to indemnify the victim Marissa G. Balmoria the sum of P50,000.00.

In Criminal Case No. 1090, the court also finds the accused guilty beyond all reasonable doubt of the crime of RAPE and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* and to indemnify the victim Lorena G. Balmoria the sum of P50,000.00.

The court in imposing the maximum penalty for the crime charged has taken into consideration the aggravating circumstance of relationship.

Considering the seriousness of the penalty herein meted out, the Officer in-Charge of the Sub-Provincial Jail, San Juan, Southern Leyte, is hereby ordered to immediately transport the accused to Abuyog Penitentiary, Abuyog, Leyte, as precautionary measure against breaking jail. Costs against the accused.

SO ORDERED.” [3]

Hence, this appeal. [4]

#### The Facts *Version of the Prosecution*

The prosecution’s version of the facts is narrated by the trial court as follows: [5]

“Lorena G. Balmoria testified that she [was] no longer going to school[,] and at the time of the assault upon her honor by the accused, she was only 8 years old. At the time of the trial, she was already 11 years old. The incident happened on January 29, 1991, at around 12:00 o’clock noon. Lorena testified that at that particular time in their small house at BRGY. Sug-angon, St. Bernard, Southern Leyte, while her elder sister, Marissa[,] and brother were sent by her father and herein accused to grind palay, she was raped by her father, Cirilo Balmoria, the accused herein. She alleged that at the time of her rape, her mother was already out of their house to seek employment in Manila. She was alone with the accused. Lorena further testified that the accused made her lie down. Their house is just a one-room affair [sic] structure. Then she was told to remove her panty. When she refused to obey the order, the accused forcibly removed her panty. Then the accused who also removed his pants, mounted on her. Then he inserted his male organ into her vagina. Because she felt terrible pain, she cried and the accused slapped her face and told her to shut up. Lorena further alleged that her father-accused made push and pull movement with his organ and shortly thereafter, she noticed blood and some whitish substance coming out of her vagina. Her father told her not to reveal what he did to her or else, he will kill her and her sister, brother and mother with the use of a small bolo used in stripping abaca locally known as “tuksi.” The accused according to Lorena is usually drunk and whenever he is drunk, he would abuse her. Lorena testified that she was raped twice. She further testified that she saw her

father also raping her elder sister, Marissa, in their house. Their house has no partition and all of them are sleeping in the same room, also used as living and dining room.

Lorena further testified that sometime in May 1993, when her father went to Bukidnon and she and Marissa and her brother stayed with her auntie, Ana Gallamos, she revealed to her aunt the horrible experience she had in the hands of her father who repeatedly raped her and Marissa.

Testifying also for the prosecution, Marissa G. Balmoria alleged that she is the private offended party in Criminal Case No. 1089, for Rape, which she filed against her own father. She testified that she was 13 years old at the time of the trial and was 10 years old at the time the rape first took place on January 28, 1991, at about 7:30 o'clock in the evening. Marissa testified that on January 28, 1991, at about 7:30 o'clock in the evening, while she was inside their house, her father, accused Cirilo Balmoria, who was in their yard, called her and asked her to accompany him towards the copra drier as he was going to defecate. When they reached the copra drier, "tapahan" in local dialect, she was made to lie down. Marissa further alleged that when she was already lying down on top of the drier, she was ordered by her father to remove her panty. When she refused to do so, he himself removed it and he then removed also his short pants and got on top of her. Then her father inserted his male organ inside her vagina and she felt terrible pain. She shouted and cried but her father slapped her face and told her to shut up. After he had made his push and pull movements, Marissa alleged that she saw blood and some whitish substance come out from her vagina. He further told her not to tell anyone about this incident otherwise, he will kill her and her family with a very sharp bolo used to strip abaca locally known as "Tuksi." Marissa knows her father always to be drunk and violent, so, for fear of her life and that of her family, she kept silent about what had been done to her by her father. Marissa further testified that she had been ravished by her father for at least six (6) times more, until sometime in May 1993. Marissa also alleged that she also witnessed her father raping her younger sister, Lorena.

The prosecution presented another witness, Ana Gallamos. Gallamos testified that she is the younger sister of the accused, Cirilo Balmoria, and they are immediate neighbors in Brgy. Sug-angon, St. Bernard, Southern Leyte. Sometime in the month of May, 1993, sometime in the morning while she was fixing her fence, she heard Marissa, her niece shouting and crying, saying 'Kill me, father, if you want, because I can no longer hold on' ('Tay, patya na lang ko, dili na ko maka-antos'). When she heard this, she repaired to the house of her brother, Cirilo Balmoria and she saw that only the accused and Marissa were there inside and she saw the accused zippering up his pants and Marissa very pale and crying. Gallamos did not dare confront the accused as she knows that he is always drunk and violent. She was afraid of him. Gallamos further alleged that after that incident, the accused would not give her a chance to be with his children. But when the house of the accused was burned and he left for Bukidnon, she took the children to her house and she inquired from Marissa why she was shouting and crying and asking her father to just kill her as she could not hold on anymore, Marissa revealed that she was raped by her father and had been repeatedly raped since January 28, 1991. Lorena also revealed to Gallamos her ordeal of being sexually abused by her father since January 29, 1991. Both Marissa and Lorena confided to Gallamos that they were sometimes raped by their father one after the other inside their house. Upon hearing this information, she brought the victims to Anahawan District Hospital, Anahawan,

Southern Leyte, for medical examination. They were examined by Dr. Gil Nanquil, Medical Officer III of the said hospital.

Testifying for the prosecution, Dr. Gil Nanquil, Medical Officer III of the Anahawan District Hospital, Anahawan, Southern Leyte, alleged that on June 9, 1993, he performed pelvic examination on Marissa G. Balmoria and Lorena G. Balmoria, whose aunt requested that they be examined for they are rape victims.

For Marissa G. Balmoria, he found 'positive healed laceration at 11 o'clock.' For Lorena G. Balmoria, he found 'positive healed laceration at 4 o'clock and 8 o'clock.' Dr. Nanquil alleged that he had conducted several medico-legal cases already in the past and as such, he is qualified as expert witness. The accused did not object to his qualifications as expert witness to testify on his findings on the victims."<sup>[6]</sup>

## Version of the Defense

Claiming denial and alibi, appellant views the facts as follows:

"Cirilo Balmoria testified that on January 28, 1991 he worked in the abaca farm of his father and finished working at about 4:00 o'clock in the afternoon after which he dropped by at his house and changed his wet clothes. At that time his two daughters, Lorena and Marissa [,] did not yet arrive. After changing his clothes, he proceeded to the house of his father and delivered abaca and there at [sic] bought some drinks. They engaged in drinking spree together with Enroy Eduarte and Gerardo Carcasona until 7:00 o'clock in the evening. Thereafter, Gerardo Carcasona invited him to catch frogs at the stream in the irrigation canal. They were able to catch frogs and shrimps about one half net bag until 9:00 o'clock in the evening. They went directly to the house of Gerardo Carcasona where they skinned and cooked the frogs. He went home past 10:00 o'clock in the evening.

On January 29, 1991, he likewise worked in the abaca farm of his father together with the latter, Enroy Eduarte and Gerardo Carcasona. They started cleaning the farm after breakfast and finished cleaning at about 4:00 o'clock in the afternoon. From 7:00 o'clock in the morning up to 4:00 o'clock in the afternoon he was in the farm of his father. He took his lunch there. He declared that his daughter Lorena and Marissa were attending classes at Tambis Elementary School, a few kilometers away from their residence. His daughters took their lunch in school.

He further declared that he could not rape his own children because they are his own blood and the rape charges against him are all lies and fabrication as his children could be mad at him because he usually punish [sic] them for failure to attend classes and instead they go to the stream to take a bath."<sup>[7]</sup>

## The Issues

Appellant submits the following assignment of errors:<sup>[8]</sup>

"I

The trial court gravely erred in giving full weight and credence to the inconsistent and improbable testimonies of the private complainants Marissa Balmoria and Lorena Balmoria.

II

The trial court gravely erred in considering extraneous statements/matters not testified to by the prosecution witnesses during the trial.

III

The trial court gravely erred in finding accused-appellant Cirilo Balmoria guilty of two counts of rape despite the insufficiency of the evidence for the prosecution that would warrant a conviction beyond reasonable doubt.”

Simply put, appellant questions the sufficiency of the prosecution’s evidence to prove his guilt beyond reasonable doubt.

### This Court’s Ruling

The appeal is completely bereft of merit.

### Sufficiency of Prosecution’s Evidence *Credibility of Witnesses*

In reviewing rape cases, this Court has always been guided by the following principles: (a) an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime which usually involves only two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits; it cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[9]</sup> Thus, courts scrupulously examine the testimony of the complainant, bearing in mind that the conviction of the accused depends heavily on the credibility of the offended woman.<sup>[10]</sup>

As a rule, appellate courts will not disturb the findings of the trial court on the credibility of witnesses, for the trial court is in a better position to decide the question.<sup>[11]</sup> However, this doctrine will not apply in this instance, because the judge who penned the assailed Decision, Jose H. Mijares, did not personally hear the evidence for the prosecution and the defense.<sup>[12]</sup> It was Judge Leonardo T. Loyao who heard the testimony of the witnesses in this case. Accordingly, this Court waded through the entire records of the case and stringently examined the testimonies of the witnesses.

After a thorough review of the said records, we find no reason to disturb the findings of the trial court that the two victims, Marissa and Lorena, “candidly, positively and categorically testified as to their harrowing experience and their testimonies deserve utmost weight and credit.”<sup>[13]</sup> Not only did they testify convincingly that they -- before reaching the age of twelve -- had been sexually assaulted by their father against their will; they also emphatically stated that each of them witnessed the rape perpetrated against the other. The salient portion of Lorena’s testimony is reproduced below:

“Q Why is your father in court now?

A He raped.

Q Who was raped by your father?

A I, sir, and my elder sister.

Q You were raped by your father, where?

A In our house.