

## EN BANC

[ G.R. No. 124131, April 22, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
SAMUEL BORCE, ACCUSED-APPELLANT.**

### D E C I S I O N

**VITUG, J.:**

Samuel Borce was convicted by the Regional Trial Court of Bangued, Abra, in a decision, promulgated on 23 October 1995, in the jointly-tried Criminal Case No. 1481 and Criminal Case No. 1482. The trial court there adjudged:

"WHEREFORE:

"In Criminal Case No. 1481 for Rape, the Court finds the accused guilty beyond reasonable doubt of two (2) counts of the crime of rape committed with the use of a deadly weapon aggravated by mutilation defined and penalized under Article 335 of the Revised Penal Code in relation to Section 11 of Republic Act No. 7659, and sentences him to suffer two death penalties.

"In Criminal Case No. 1482 for frustrated murder, the Court finds the accused guilty beyond reasonable doubt of the crime of frustrated murder defined and penalized under the provision of Article 248 in relation to Article 50 of the Revised Penal Code and hereby sentences him to suffer an indeterminate penalty of EIGHT (8) YEARS AND TWENTY (20) DAYS of prision mayor as minimum, to FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of reclusion temporal as maximum.

"The accused is hereby ordered to indemnify the victim in the amount of P250,000.00 as actual, moral and exemplary damages, and to pay the costs of the proceedings."<sup>[1]</sup>

The penalty of death having been imposed on the accused by the court *a quo*, the records were elevated to this Court, in accordance with Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659, for automatic review.

Samuel Borce, the accused-appellant, had been charged in two separate informations, to wit:

In Criminal Case No. 1481 for Rape:

"That on or about April 29, 1994, at around 8:30 o'clock in the morning, at the hill of the western part of Bariquir, Barangay San Antonio, Municipality of Bangued, Province of Abra, Philippines and within the

jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of deadly weapon, did then and there, wilfully, unlawfully and feloniously lie upon one REGINA BAGA and succeed in having carnal knowledge against her will and consent and this was repeated for the second time around, to the great damage and prejudice of the said offended party."<sup>[2]</sup>

In Criminal Case No. 1482 for Frustrated Murder:

"That on or about April 29, 1994, at around 8:30 o'clock in the morning, at the hill of the western part of Barangay San Antonio, Municipality of Bangued, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery, use of superior strength and evident premeditation, did then and there, wilfully, unlawfully and feloniously hack the face of one REGINA BAGA, inflicting multiple hack wounds on her face, thus the accused having performed all the acts of execution which would have produced the crime of Murder as a consequence but nevertheless did not produce it by reason of the timely medical attendance rendered to said victim which prevented her death."<sup>[3]</sup>

The accused, assisted by counsel, entered a plea of "not guilty" to the two charges.

The Solicitor General, closely paraphrasing the trial court in its decision, summed up the evidence for the prosecution; thus:

"Complainant Regina Baga is 45 years old, married, and whose husband works abroad as an overseas contract worker. She is thin and weighs not more than 100 pounds. She and appellant, Samuel Borce, are neighbors in Barangay San Antonio, Bangued, Abra (TSN., August 22, 1994, p. 3).

"On April 29, 1994, at about 8:30 o'clock in the morning, Regina took her bolo and ventured alone to gather firewood at Barikir, a forested area situated about one kilometer away from her house. (TSN, August 22, 1994, p. 4) While ascending a hilly portion of the forest, she noticed appellant behind her (p. 3). Without saying a word, appellant approached Regina, took hold of her right arm, twisted it and wrested away her bolo (p. 3). Appellant poked the tip of the bolo on Regina's neck and threatened to kill her (p. 10). At this point, appellant's bestial desires were aroused. Giving vent to it, he pinned complainant on the ground and forcibly removed her 'Cullots' and underpants. Regina unceasingly fought to resist his advances. Nonetheless, being stronger and heavier, appellant placed himself on top of Regina and after a protracted struggle succeeded in raping her. Thereafter, appellant dragged Regina away from the pathwalk and into the woods (p. 7). His lust not yet satiated, appellant raped Regina for the second time. When he was through, appellant dragged Regina farther into the forest. There, he executed his plan to kill and abandon Regina. However, Regina did not die. When she regained consciousness after being strangled by appellant, she noticed that her face was hacked (Ibid. p. 9). Terrified, she screamed for help but [no one] came.

"Meanwhile, Regina's son, Raymund, was worried that at a late hour his mother had not yet returned home (TSN, Sept. 26, 1994, p. 10). Fearing that something bad may have happened, he, together with his brother and sister, went to search for her in the woods. There, they found their mother lying on the ground and bleeding profusely on the face. Her brain tissues were exposed. When asked what had transpired, Regina told her son that she was raped and hacked by appellant. (ibid., p. 11). Immediately Raymund brought her mother to their house."<sup>[4]</sup>

Regina was brought to the Abra Provincial Hospital where she was promptly attended to. Her treatment in the hospital lasted for 16 days. The medical certificate,<sup>[5]</sup> dated 11 May 1994, disclosing the findings of attending physician Dr. Cynthia Cacho Viado on the injuries suffered by the victim, pertinently read:

"IE - Multiple old hymenal lacerations  
Vagina admits two fingers with ease.  
Cervix open 1-2 cm.  
Uterus enlarged to three months size.  
Adnexae ( - )  
Bleeding moderate.

"SPERM ID ( - )

PT ( - )

"x x x x x x

"NOI - Hacking

POI - San Antonio, Bangued, Abra

TOI - 8:30 A.M.

DOI - 4-29-94

"Multiple hacking wound - face (Mid) portion."<sup>[6]</sup>

Samuel Borce denied the accusation. Presented at the witness stand by the defense were the accused himself, his mother Lydia Borce and one Dr. Herminio Venus. Highlighting the testimony of the defense witnesses, the Public Attorney's Office, acting as counsel for the accused, narrated its version of the case; thus:

"Accused Samuel Borce testified that on April 29, 1994, he went to get the firewood that he gathered and when he arrived in the place he saw Regina Baga gathering the firewood which he already gathered; then he prevented the victim from gathering the firewood. She tried to hack him with her bolo so that they grappled for possession of the bolo and while grappling, the bolo hit the head of Regina Baga after which the accused left her. He denied having raped Regina Baga. After grappling with the bolo, the accused went home and thereafter he went to see Regina Baga when he was informed that she was already dead and this was the time

he was arrested and detained up to the present. When he was arrested by the police officers he was not informed of his human and constitutional rights.

**"LYDIA BORCE** testified that she is the mother of the accused. That on April 29, 1994, she said that she and her son went to gather firewoods and after gathering firewoods they went home and that he never raped the complainant. She admitted that she did not see Regina Baga stabbed the accused because she went home already. She only learned Regina Baga was hurt from the people who told her. She tried to go and help her but she was already brought to the hospital. She testified that when her son was brought to the police station he narrated that he accidentally hacked her (Regina Baga) when the latter attempted to steal his firewood. She also asked the accused if he raped Regina Baga and told her that he did not rape Regina Baga. Her son was detained up to the present. She stated that she was not able to do anything for her son because they are poor and have nothing to offer. She tried to asked the help of the Brgy. Captain but they did not pay attention to her. When asked by the Court Regina Baga alleged that when victim prevented her son to get the firewood gathered by her son she personally witnessed the incident in fact she tried to prevent her and not to steal the firewood, but Regina Baga did not heed her.

**"DR. VENUS** when asked by the court if there was rape committed against victim stated, thus: 'As to my findings there is no physical injuries.' He stated that the lacerations were old ones and when rape committed within three hours, the lacerations would have been fresh and not old. The victim was allegedly raped on April 29, 1994 so that on the same day she was examined. The doctor also admitted if there are no lacerations there is consent to the sexual intercourse. The doctor also admitted that moderate bleeding was due to menstrual period. When asked if there is spermatozoa, he answered in the negative. He stated that a spermatozoa has a lifetime of within 24 hours or for 2 days and if the spermatozoa were inside already in the vagina it will live for 17 days."<sup>[7]</sup>

The trial court, Hon. Benjamin A. Boñgolan presiding, was not persuaded by the theory put up by the defense in the face of the strong evidence submitted by the prosecution. The accused was convicted, as aforesaid, of the crimes charged.

In this appeal from the judgment finding him guilty, appellant Samuel Borce assigned two related errors allegedly committed by the court below; to wit:

"1. The trial court gravely erred in giving full weight and credence to the testimonies of the witnesses of the prosecution and in disregarding the theory of the defense.

"2. The trial court gravely erred in convicting accused-appellant Samuel Borce of double rape despite the fact that the results of the medical findings contradicted to the testimony of Regina Baga thereby showing that no rape was committed."<sup>[8]</sup>

At the cost of being overly repetitious, the court, once again, must here echo the familiar doctrine that in the assessment and evaluation of contradictory asseverations of witnesses, it is with the trial court where the main responsibility, as well as its concomittant authoritativeness, really lies. The appellate court, absent cogent justifications that can warrant otherwise, would almost certainly defer to the findings and conclusions made thereon by the trial court. Several reasons have been advanced, nurtured by a host of jurisprudential holdings, that are all too compelling to be ignored. The trial judge is he who gets the opportunity to directly and intimately observe the witnesses and to determine, by their demeanor at the witness stand, the probative strength or weakness of that which they declare. The witnesses can reveal much more than what can ordinarily be reflected in and perceived from the transcripts that merely would contain the matter which is stated but not how it is said. Tell-tale marks of either honesty or fabrication, truth or concoction, reality or imagination, may eventuate from a meaningful pause or spontaneous ready reply, the angry or subdued denial, the forthright stare or the elusive eyes, the sudden pallor or the flush of face, and all that characterizes the deportment and peculiar outward behavior of witnesses when their response to both direct examination and cross examination is elicited. These signs, although available to the trial judge,<sup>[9]</sup> are, however, easily lost on the appellate court.

In rape cases particularly, the judge is often asked to arbitrate between the discordant and irreconcilable declaration of the victim and the denial of the accused. In the estimation of such conflicting versions, hardly can the appellate court assert a preponderant competence over that of the trial judge. It is true, of course, that an accusation for rape can be managed with facility, while the defense, upon the other hand, is invariably hard put to dispute the claim of rape. It is precisely for these reasons that a court does not merely take in stride the charge but gives a full and concentrated attention on, as well as great caution in, the assessment and evaluation of the victim's testimony.

With all the above considerations in mind, the Court itself has gone over the testimony of Regina. Here is how she has testified:

"FISCAL FLORES:

"Q Will you please state your name, age and other personal circumstances?

"A Regina Baga, 45 years old, married, a housekeeper and a resident of San Antonio, Bangued, Abra.

"Q Madam Witness, do you know a person by the name of Samuel Borce?

"A Yes, Sir.

"Q And will you tell the Court why you know Samuel Borce?

"A I know him because he is my neighbor in San Antonio, Sir.

"Q Where are you neighbors in one another?

"A In San Antonio, Bangued, Abra, Sir.