

SECOND DIVISION

[G.R. No. 125937, August 28, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO MOSTRALES, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

Teodocia Mabunga, a married woman and a mother of five (5), accused Roberto Mostrales of raping her, allegedly committed as follows:^[1]

“That on or about June 14, 1992, in the Municipality of Enrile, Province of Cagayan, and within the jurisdiction of this Honorable court, the said accused, Roberto Mostrales y Nicolas, armed with a gun, with lewd design and by the use of force, violence, threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with the offended party, Teodocia A. Mabunga, against her will.

“Contrary to law.”

Accused pleaded ‘not guilty’ upon arraignment and underwent trial.

The prosecution evidence came chiefly from the testimonies of Teodocia Mabunga, her husband, Pedro Mabunga, Dr. Susan Tan, and SPO4 Paulo Gammad.

The records show that in the evening of June 14, 1992, spouses Teodocia and Pedro Mabunga were resting in their hut (“kalapao”) situated in the middle of their two-hectare farm in Enrile, Cagayan. Teodocia was then 40 years old while Pedro was 63 years old.

At about 10:00 p.m., they heard three (3) gunshots fired at one minute interval. After the third gunshot, the accused, Roberto Mostrales, then 24 years old, barged into their hut. The spouses recognized him as he was their neighbor in Liwan Norte and he is related by affinity to Pedro.^[2] Pointing a short gun at the spouses, the accused informed them that he is a member of the New People’s Army (NPA) and bragged that his firearm belongs to their commander. He told Pedro that their commander wanted to talk to Teodocia and warned him not to follow them because his NPA companions posted outside the hut might kill him. Pedro got scared and did not inquire why the alleged NPA commander wanted to speak to his wife.^[3]

The accused led Teodocia to an empty hut several meters away from their hut. When accused undressed, she begged him: “Berto, please don’t use me, I am pregnant and you are calling me your Auntie and my husband your Uncle.” Accused then undressed her, forced her to lie down and forcibly took off her panty at gunpoint. Teodocia failed to resist nor shout while she was being raped by the

accused as she felt her effort would be fruitless. Accused had carnal knowledge with her three (3) times.^[4]

At about 12:00 midnight, accused brought Teodocia back to their hut. After accused had left, she tearfully revealed to Pedro that she was raped. Pedro, however, did not take any immediate action as he knew that accused was armed with a gun. They stayed awake that night discussing what they should do.^[5]

After a few days, they reported the rape to the army detachment in Enrile and accused's firearm was confiscated.^[6] They also informed the *barangay* chairman about the incident.

On June 18, 1992, Teodocia was examined by Dr. Susan Tan, a medical health officer at the Cagayan Valley Regional Hospital. Dr. Tan's examination showed that Teodocia was five (5) months pregnant and her sexual organ had no traces of spermatozoa.^[7]

On June 19, 1992, upon the advice of their *barangay* chairman, the spouses went to the Enrile Police station. They executed their sworn statements^[8] before then SPO3 Paulo Gammad. Thereafter, a criminal complaint was filed against accused.^[9]

The defense gave a different version of the incident through the sole testimony of the accused.

Accused claimed that he and Teodocia are lovers. Allegedly, their liaison began when she borrowed from him two hundred and thirty pesos (P230.00) during a gambling session in the house of a friend. On December 17, 1991, he tried to collect the debt. She was unable to pay, instead, they engaged in sex in his house. That same month, he again went to her house to collect the debt. She still had no money and she invited him into her room where, once more, they had intercourse. Her only companion then was her child, about two or three years old. Their next sexual tryst took place on January 10, 1992, inside the bathroom in the house of Teodocia.^[10]

Accused alleged that on June 14, 1992, they agreed to meet in a farm hut. They arrived in the hut at around 10:00 a.m. After their sexual liaison, he accompanied Teodocia back to her hut. She was scolded by Pedro who was waiting for her.^[11]

The next day, June 15, 1992, he met Teodocia in a gambling house owned by Armando Lucas, a neighbor. They again had sex before they parted ways. That was their last meeting. Teodocia was never able to pay her debt. Even then, accused did not inform his uncle Pedro about his wife's debt.^[12]

After trial, accused was found guilty as charged. The dispositive portion of the judgment^[13] of the trial court reads:

"WHEREFORE, finding the accused Roberto Mostrales guilty beyond all reasonable doubt of the crime of rape defined and penalized by Article 335 of the Revised Penal Code, he is hereby sentenced to *reclusion perpetua*, and to indemnify Teodocia Mabunga P30,000.00 as moral damages. Costs against the accused.

"SO ORDERED."

In this appeal, accused-appellant contends:

"I

"THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE COMPLAINANT WHICH IS INCREDIBLE, UNRELIABLE, THEREFORE NOT SUFFICIENT TO SUSTAIN A CONVICTION BEYOND REASONABLE DOUBT.

"II

"THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT WHEN THE EVIDENCE ADDUCED BY THE PROSECUTION FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN THEIR ERROR (sic) BY CLEAR AND CONVINCING EVIDENCE OF GUILT BEYOND REASONABLE DOUBT."

We affirm the judgment of the conviction.

Article 335 of the Revised Penal Code^[14] provides:

"Art. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstance.

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by *reclusion perpetua*.

"x x x x x x x x."

The evidence shows that the victim was forced to submit to appellant's bestial desires through intimidation. The appellant used a gun to take the victim to an isolated hut where the crime was committed. He also warned the victim's husband not to follow them as his NPA companions were surrounding their place. Inside the hut, the appellant undressed the victim at gunpoint.

Nonetheless, appellant claims that his representation of membership in the NPA does not constitute intimidation. He further contends that the victim consented to have sex with him as she did not shout nor resist during the incident.

Intimidation is addressed to the mind of the victim. It is subjective and its presence cannot be tested by any hard-and-fast rule, but must be viewed in the light of the victim's perception and judgment at the time of the crime.^[15]

In the case at bar, at the time the crime was committed, the victim was forty years old, five (5) months pregnant, unarmed and married to a person older than her by almost twenty years. In contrast, appellant was in his twenties, armed with a gun and purportedly in the company of several NPA members. The crime happened in the evening and in a place where help was impossible. The nearest neighbor of the victim is some three (3) kilometers from their hut. Considering all these

circumstances, we hold that the victim was intimidated to submit to the lustful desire of the appellant. We quote the testimony of the victim:[16]

(FISCAL REMUDARO):

"Q: After firing three (3) shots, do you remember if Roberto Mostrales ever came in?

(VICTIM) :

"A: Yes, Sir, he went inside.

"Q: When he was there, what happened?

"A: While inside, he told us that he was a member of the New People's Army (NPA) and while there, he told us that his gun is owned by the Commander and he used that gun to threaten us.

x x x x x x x x

"Q: Where did accused bring you?

"A: Then he brought me to another hut and while there, he told me to talk to the Commander and while inside the hut, the Commander was not there and I did not see any person inside and I was surprised he undressed me and forced me to lie down.

x x x x x x x x

"Q: x x x what did the accused do next?

"A: While inside the Kalapao- farm hut, he forced me to lie down, he did everything to me that he wanted to do , I wanted to shout but I cannot shout and he used me.

"Q: What (sic) he did something to you, what do you mean?

"A: He had sexual intercourse on (sic) me three (3) times.

"Q: You said he had sexual intercourse with you three (3) times, what do you mean?

"A: Successive, that while inside the hut, he used me and forced me and I told him not to touch me because I am pregnant and married, but despite my pleas to him, he insisted and used me when I was forced to lie down and he did it three times, Sir.

"Q: You said that he had sexual intercourse with you three (3) times, is it by force?

"A: Yes, he forced me because I pleaded to him and still he insisted.

"Q: Did he use a gun?

"A: Yes, Sir, he was holding his gun.

"Q: You said that he had sexual intercourse with you, how do you know that he had sexual intercourse with you for three (3) times?

"A: I said with force because he kept on inserting his penis in my vagina and while he was inserting his penis in my vagina I felt it, despite my plea, he kept doing what he wanted to do." (emphasis ours)