

FIRST DIVISION

[G.R. No. 125080, September 25, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEMESTOCLES LOZANO @ TOMMY, ACCUSED-APPELLANT.**

DECISION

PANGANIBAN, J.:

Alibi and denial cannot prevail over the clear and positive identification of the appellant as the perpetrator of the crime and the victim's detailed narration of the events on that fateful day. Aside from civil indemnity, a rape victim may be awarded moral and exemplary damages. The appreciation of ignominy as a generic aggravating circumstance, absent any mitigating ones to offset it, entitles the victim to exemplary damages.

The Case

Temestocles Lozano seeks the reversal of the February 29, 1996 Decision^[1] of the Regional Trial Court of Maasin, Southern Leyte, Branch 25, in Criminal Case No. 1471, convicting him of rape, sentencing him to *reclusion perpetua* and ordering him to pay civil indemnity of P50,000.

Provincial Prosecutor Iñego A. Gorduiz charged appellant with rape in an Information dated October 24, 1990, which reads as follows:

"The undersigned, acting upon a sworn complaint originally signed and filed by the offended party, Lilia L. Montederamos, hereby accuses TEMESTOCLES LOZANO, alias Tommy, a resident of Ibarra, Maasin, Southern Leyte and is presently detained at the Provincial Jail, Maasin, Southern Leyte of the crime of RAPE, committed by him as follows:

"That sometime in the afternoon of August 29, 1990, in [B]arangay Ibarra, [M]unicipality of Maasin, [P]rovince of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lustful intent and lewd design and by means of force, threats, intimidation and/or violence did then and there willfully, unlawfully and feloniously sexually attack, assault and ravish the offended party, Lilia L. Montederamos, and had carnal intercourse without her consent and against her will, to her damage and [to the prejudice of the] social order."^[2]

Upon his arraignment on March 13, 1991, appellant, assisted by Counsel de Parte Porfirio P. Siayngco, pleaded not guilty.^[3] Trial on the merits ensued in due course. On February 29, 1996, the trial court rendered its Decision,^[4] the dispositive portion of which reads:

"WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATION, the Court hereby renders judgment finding the accused Temestocles Lozano, guilty beyond reasonable doubt of the crime of Rape as defined and punished by Art. 335 of the Revised Penal Code, as amended, and is accordingly sentenced:

1. To suffer the penalty of reclusion perpetua;
2. To indemnify the offended party [in] the amount of Fifty Thousand Pesos (P50,000.00) without subsidiary imprisonment in case of insolvency; and
3. To pay the costs.

"The preventive imprisonment undergone by the accused Temestocles Lozano shall be fully credited [to] the service of his sentence if he voluntarily agrees in writing to abide by the same disciplinary rules and regulations imposed upon convicted prisoners, otherwise, he shall be credited with only four-fifths (4/5) of the time during which he underwent preventive imprisonment."^[5]

The Facts **Evidence for the Prosecution**

In the Appellee's Brief,^[6] the solicitor general^[7] presents the following narration of the facts:

"On August 29, 1990 at about 4:30 o'clock in the afternoon, private complainant, Lilia Montederamos, a resident of Barangay Sta. Rosa, Maasin, Southern Leyte, was requested by her mother, Catalina Montederamos to buy rice at the neighboring barangay of Ibarra (pp. 3-4. TSN, July 23, 1991).

"On her way to Ibarra, Lilia passed by the coconut plantation of Luding Bandibas where she saw appellant Temestocles Lozano (p.5, TSN, Ibid.).

"When Lilia resumed walking to her destination, Lilia noticed that appellant was following her. As she was alone, Lilia got frightened and started to run. Eventually, however, appellant caught up with Lilia (p. 6, TSN, Ibid.).

"Once astride each other, appellant suddenly covered Lilia's mouth, poked a sharp-pointed stick on her side and warned her not to make any noise or else she [would] die (p. 7, TSN, Ibid.).

"Lilia pleaded to appellant not to do anything to her because she was pregnant but the plea fell on deaf ears. Instead, appellant forcibly brought her to a banana plantation at the lower portion of the road (p. 11, TSN, Ibid.).

"When Lilia tried to shout, appellant boxed her thrice on her right cheek causing her to feel dizzy (p. 5, TSN, September 18, 1991).

"After delivering the fist blows, appellant ordered Lilia to take off her clothes and threatened her with death if she refused. When Lilia finished undressing, appellant took off his clothes but his pants and brief[s] were only pulled down xxx to his knees (pp. 12-13, TSN, May 23, 1991). He then ordered Lilia to [lie] down on the stony ground (p. 16, TSN, October 23, 1991) after which, he lay on top of Lilia and inserted his penis into her vagina (p. 15, TSN, Ibid.).

"Thereafter, appellant pulled out his penis from the vagina of Lilia, wound it up with banana fiber and inserted it again [in] to Lilia's vagina. Then, he pulled out again his penis and forced Lilia to suck it (pp. 20-21, TSN, October 23, 1991).

"After he was through, appellant brought Lilia with him. As they proceeded to the Bodega of Montalbo, Lilia saw persons coming towards their direction. Lilia seized this as an opportunity for escape especially so that the left arm of appellant was no longer holding her neck. She then pushed appellant and ran to the persons coming towards their way. She recognized these persons as Aniceto Malasaga, Diony Malasaga and Juanito Bandibas (p. 18, TSN, July 23, 1991).

"Lilia ran directly to Diony Malasaga and told his group that somebody wanted to kill her. The three (3) brought Lilia home and upon arrival thereat, she informed her parents that appellant raped her. On the same night, Lilia's father reported the incident to the Maasin Police Station (pp. 4-6, TSN, February 19, 1992).

"On the following day, August 30, 1990, Lilia went to [the] Maasin Police Station to report the incident[; there] she executed a sworn statement (pp. 3-6, Record).

"Lilia subjected herself to physical examination at the Integrated Provincial Health Office, Maasin, Southern Leyte. Dr. Evelyn Cabal conducted the physical examination and issued a medical certification with the following findings:

Face - swelling and hematoma at R cheek bone
- tenderness with abrasion at the back R lumbar region

Pelvic exam:
- Ext. genitalia grossly normal
- introitus- nulliparous

SE: Cervix is bluish closed with scanty, whitish,
mucoid vaginal discharges

IE: cervix is closed, soft

BME: uterus is enlarged compatible to 5 months AOG

For sperm determination - positive (Exh. A)

(p. 8, Record)

"Prosecution witness Aniceto Malasaga testified that while he was walking on his way home, together with Juanito Bandibas and his wife, he saw Lilia running towards his direction, crying (p. 4, TSN, February 19, 1992). When he asked what happened to her, Lilia kept on crying and asked him to bring her home (p. 5, Ibid.).

"Thereafter, Aniceto brought Lilia to her house. Upon arrival thereat, Lilia was still crying. When asked by her parents what happened to her, Lilia reported that appellant raped her (pp. 6-7, Ibid.)."

Evidence for the Defense

In his nine-page Brief,^[8] appellant alleges alibi and presents this version of the facts:

"Accused TEMESTOCLES LOZANO testified that on August 29, 1990 at about 4:00 o'clock in the afternoon, he was drinking Tanduay 65 with his friend Alfred Yap at the store of Purok Kalamanggam, Ibarra, Maasin, Southern Leyte. Pacita Biton joined them and they conversed on various topics - benefit dance, basketball. At about 6:00 o'clock in the evening, Pacita Biton, went home to Bugnay while he and his companion proceeded to his home in Purok Seaside. Together with his parents and sister Malony, they ate their supper. At 7:00 P.M., he conducted Alfredo Yap on the road and he went home to sleep.

"He testified that Lilia Montederamos was introduced to him during a benefit dance at Sta. Rosa. He courted her, she accepted his proposal and they were sweethearts.

"During the time, they had a relationship, he and Lilia met clandestinely, usually about 7:00 P.M. at Purok Estrella in Ibarra and they would proceed to the premises of Ibarra Elementary School where they would talk and kiss each other as lovers would normally do.

"On August 14, 1990, about 4:00 P.M., he met the victim at the park center of Estrella. The victim was breaking their relationship as she was to be married. He did not accede to said request. On August 27, 1990, he met the victim again. The latter told him that she was pregnant, her fiancé was the father of her unborn child. (TSN. November 5, 1992, pp. 12-15.)"

The Ruling of the Trial Court

In ruling for the prosecution, the trial court gave credence to the victim's testimony, which we quote:

"The evidence of the prosecution clearly show[s] that accused Temestocles Lozano succeeded in having carnal knowledge with victim Lilia Montederamos by using force and intimidation. While its evidence rest[s] mainly on the testimony of victim Lilia Montederamos, yet her

testimony bear[s] much weight and is conclusive and probable.

"Testifying in court, victim went through the agonizing experience of relating the incident of how [the] accused in the afternoon of August 29, 1990 waylaid her and succeeded in ravishing her, using force and intimidation. [De]spite the embarrassment and humiliation she must have felt at the time she was giving her testimony, [the] victim vividly recalled and narrated the savage acts that the accused did to her.

x x x

"The testimony of the victim leaves Lilia Montederamos no room for doubt as to the identity of the perpetrator of the dastardly act. She positively identified accused Temestocles Lozano as the one who sexually abused her."^[9]

Hence, this appeal.^[10]

Assignment of Error

In assailing the trial court's Decision, appellant interposes this assignment of error:

"The trial court erred in not acquitting the accused for the crime of rape despite failure of the prosecution to prove his guilt beyond reasonable doubt."

The resolution of the present appeal revolves around the sufficiency of the prosecution evidence and the credibility of witnesses.

The Court's Ruling

The appeal is devoid of merit.

Sufficiency of the Prosecution Evidence

Appellant argues that the "prosecution failed to categorically and morally ascertain that the elements of rape were in attendance in the case at bar."^[11] Lozada claims that the victim and he knew each other very well; he even alleges that they were sweethearts. He maintains that the victim willingly and voluntarily submitted to the sexual act, and that he helped her remove her clothes. Allegedly, he even placed his jacket on the stony ground where she lay, in order to cushion her back.

These arguments do not persuade. Beyond any reasonable doubt, the prosecution established appellant's guilt.

No Proof That They Were Sweethearts

Appellant's contention that he and the victim were sweethearts must fail. Lilia Montederamos specifically denied the existence of such a relationship, and appellant utterly failed to substantiate his bare allegation. No one took the witness stand to confirm independently that the victim and the appellant were sweethearts. Nobody