

## THIRD DIVISION

[ G.R. No. 100935, June 30, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICENTE ZABALLERO ALIAS "ATOY," ACCUSED-APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

The straightforward, clear, positive and guileless testimony of the offended party, even if she is mentally weak and suffering from occasional epileptic bouts, is sufficient basis to convict appellant of rape. The trial court's assessment of the complainant's credibility is accorded great respect, even finality, absent any showing of arbitrariness or bias.

In a sworn complaint,<sup>[1]</sup> Hermie Galo assisted by her mother, accused Vicente Zaballero alias Atoy of the crime of rape before the Municipal Circuit Trial Court of Catarman-Sagay in Camiguin. After the requisite preliminary investigation and upon finding a prima facie case against Zaballero, the investigating judge forwarded the records to the Office of the Provincial Fiscal for the filing of the appropriate information.<sup>[2]</sup> On April 28, 1988, Provincial Fiscal Julio A. Vivares filed the Information<sup>[3]</sup> charging the accused-appellant of rape allegedly committed as follows:

"That on or about December 12, 1987, at 10:00 o'clock more or less in the morning and sometimes prior thereto, at Sitio Lanao, Cuña, Sagay, Camiguin, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously did lie, and succeeded in having carnal knowledge of said complainant Hermie Galo against her will."

During the arraignment, the accused pleaded not guilty<sup>[4]</sup> and during the trial interposed the defense of denial. After due trial,<sup>[5]</sup> he was adjudged guilty beyond reasonable doubt in a Decision dated May 31, 1991 penned by Judge Sinforoso V. Tabamo, Jr., the dispositive portion of which reads:<sup>[6]</sup>

"WHEREFORE, finding the accused Vicente Zaballero, alias 'Atoy', guilty beyond reasonable doubt of the crime of rape charged in this case, the Court hereby strikes a verdict of conviction, and accordingly sentences him, there being neither aggravating nor mitigating circumstance attending its commission, to suffer the penalty of reclusion perpetua. He is further ordered to indemnify the victim Hermie Galo, also fondly called 'Mimil' in the amount of P20,000.00 in damages."<sup>[7]</sup>

## **The Facts**

### **Version of the Prosecution**

Private Complainant Hermie Galo, who is fondly called "Mimil" in their community,<sup>[8]</sup> was born on August 17, 1973 and was about fourteen (14) years old at the time the incident complained of took place. She and her family resided in Lanao, Cuña, Sagay, Camiguin. Mimil had to attend grade one in the elementary level for two years and could not finish the second grade because of recurrent attacks of epilepsy. She was also observed to be weak and of low intelligence.<sup>[9]</sup>

On December 12, 1987, about 10:00 o'clock in the morning, Mimil picked guavas on the land of Accused Zaballero, also in Lanao, Cuña. While gathering guavas, she was pulled down by the accused who thereafter removed her panty. The accused told her to lie down, then brought out his penis, spat on it and inserted it into Mimil's vagina. She could not shout for help because the accused covered her mouth with his hand. After sating his lust, the accused left her. Mimil proceeded to the house of her Aunt Elvira Galo (a first cousin of her father) to whom she related her shameful experience.<sup>[10]</sup> The latter in turn relayed the same to Mimil's mother, Herminigilda Galo. Herminigilda lost no time in confronting the accused who was at that time near the faucet along the barangay road. The accused did not deny he committed the act. With no little braggadocio, he told Herminigilda to just file a case against him, and even added that his wife had agreed to his having sexual intercourse with Mimil.<sup>[11]</sup>

The confrontation was witnessed by Edilberto Salga, Isidra Zaballero and Victoria Echalico, all of whom gave their testimonies in favor of Mimil. Edilberto Salga, a hilot, accounted for his presence at the confrontation by saying that he was on his way to the house of Elvira Galo to help her daughter who was about to give birth that morning.<sup>[12]</sup> On the other hand, Isidra Zaballero, the accused's sister-in-law, was on her way to Herminigilda's house to borrow rice.<sup>[13]</sup> Meanwhile, Victoria Zaballero Echalico, an elder sister of the accused, was fetching water from the barangay faucet near the place of confrontation.<sup>[14]</sup>

Herminigilda brought Mimil to a doctor for medical examination before proceeding to the police station at Sagay, Camiguin to report the incident.<sup>[15]</sup> Dr. Germanito S. Cain, the resident physician of the Catarman District Hospital, conducted the physical examination on Mimil and found the following:

#### **"EXTERNAL GENITALIA**

- (1) Normal female genitalia with sparse pubic hair
- (2) Laceration at the right side of vaginal opening.

#### **INTERNAL EXAMINATION**

- (1) Vaginal orifice old laceration at 9:00 o'clock
- (2) Admits one finger with ease

(3) Smear taken from the secretion of the cervix and posterior vagina”<sup>[16]</sup>

Dr. Cain testified that insertion of the male genital organ was a possible cause of the lacerations found in private complainant’s genitalia.<sup>[17]</sup> But during cross-examination, he stated that the lacerations were at least three (3) days old and could not have been inflicted within two (2) days prior to the examination.<sup>[18]</sup>

Policeman Maureno Salva, who was assigned at the guard station of the INP Office in Sagay when Accused Zaballero was brought in by the arresting officers about 6:00 p.m. of December 14, 1987, attested to the fact that said accused admitted to Station Commander Eliseo Borromeo that he had sexual intercourse with the complainant. Salva added that when the station commander jokingly remarked that the accused must have had a big penis, the latter actually showed his sexual organ to them.<sup>[19]</sup>

Private complainant further stated in court that previous to the December 12 incident, accused-appellant had carnally abused her five times.<sup>[20]</sup>

### **Version of the Defense**

Feliciano Zaballero, the accused’s father, stated in court that he had ten (10) children among whom were Accused Vicente Zaballero and Prosecution Witness Victoria Zaballero Echalico. Another prosecution witness, Isidra Zaballero, was his daughter-in-law. He testified<sup>[21]</sup> that about 8:00 o’clock in the morning of December 12, 1989, the accused passed by his house on the way to Bugang, also in Sagay, Camiguin, to obtain a vale from a certain Saay. Vicente came back around 4:00 o’clock in the afternoon with half a sack of rice and a sack of corn grits. Bugang was about five (5) kilometers from Feliciano’s house in Songgoc, Alangilan, Sagay which in turn was about two (2) kilometers from Lanao, Cuña where the rape incident occurred.

The accused’s father also stated in court that Witnesses Victoria and Isidra, his daughter and daughter-in-law, respectively, probably testified against the appellant because they envied him for his having acquired real properties through his own industry.<sup>[22]</sup>

Witness Cresencio Yu, a copra dealer in Bugang, Sagay, Camiguin testified<sup>[23]</sup> that on December 12, 1987, Accused Zaballero personally came to his store about 10:00 o’clock in the morning. The accused even ate lunch there and went home afterwards. Yu presented in court accused’s vales (list of cash advances and goods on credit) obtained from the former on various dates, among which was the vale<sup>[24]</sup> for December 12, 1987.

The third defense witness, Mory Abecia, a coconut gatherer of the accused, testified that on December 10, 1987<sup>[25]</sup> he started climbing coconut trees on the land of the accused about 7:00 o’clock in the morning. After having gathered 500 dried nuts, he placed copra in the kiln then went to gather firewood. It was while gathering firewood that he saw Mimil and a man, whom he failed to recognize, having sexual intercourse in the bushes. When he arrived later at the house of the accused, the

latter told him that the man with Mimil was Dodo, the son of Monico Rabongue.<sup>[26]</sup>

Accused Vicente Zaballero's account<sup>[27]</sup> of December 12, 1987 is as follows: About 6:30 o'clock in the morning, he was on the land of Carlos Corrales fixing its fence and planting bananas. Herminigilda Galo, private complainant's mother, approached him and asked him whether he knew of the rumor that Monico Rabongue's son had sexual intercourse with her daughter Mimil. The accused confirmed the news and informed her that, while pasturing his carabao and horse, he himself saw Mimil and Conrado<sup>[28]</sup> Rabongue having sexual intercourse. He further advised Herminigilda to have Mimil medically examined and volunteered to testify in their favor. During cross-examination, the accused denied the presence of either Elvira Galo, Edilberto Salga, Isidra Zaballero or anyone else while he was talking with Herminigilda.<sup>[29]</sup> After their talk, he went home to eat and changed clothes, after which he proceeded to the store of Singing Yu in Bugang, Sagay, Camiguin to obtain some goods on credit. He arrived in Bugang around 10:00 o'clock that same morning after passing by his father's house.

The accused surmised that his sister Victoria and sister-in-law Isidra testified against him because they were envious of his good fortune.<sup>[30]</sup> He also mentioned that he did not have good relations with Mimil's parents because Crisanto Galo, the father, stole the accused's bananas and chicken and covered the holes that the accused had dug for cacao planting in the land of Carlos Corrales.<sup>[31]</sup>

### **The Trial Court's Ruling**

In finding with moral certainty that the accused committed rape against Mimil, the trial court made the following assessment and evaluation of the evidence presented by both parties:

"From the evidence now on record, and from the deportment of witnesses while testifying, the Court gathers that there was not even a single eyewitness to the commission of the offense charged in this case. x x x the uncorroborated but straightforward lone testimony of the complainant, a 14-year old minor, admittedly of weak mentality and of low intelligence quotient and immature though she is, finds no contradictory version from the accused who can only muster as much as an alibi. That the complainant could not shout for help as she was tightly held by the accused x x x who threatened her with physical harm, x x x added by (sic) the fact that the accused had the convenience of possessing a great moral ascendancy over the complainant who is his close relative -- a niece, because complainant's father is a first-degree cousin of the accused, are facts that are too bold and heavy as they loom large and clear in the evidence. Against this set of circumstances the accused can only put up the defense that he was not at the scene of the incident at the time it happened because he had gone down seven (7) kilometers away in the store of Cresencio Yu to obtain a 'vale' of rice, corngrits (sic), petroleum and bread. Of course, this alibi is inherently weak. For the accused has indeed failed to demonstrate by convincing proof that it was absolutely impossible for him to be at the scene of the crime complained of at the time it happened. x x x'

x x x  
x

x x  
x x x

"The version of the accused x x x is plain diversionary tactic. But it profits him none. His uncorroborated and insincere testimony cannot stand against the testimony of his own full-blood sister and sister-in-law x x x; not to mention the straightforward and forceful testimonies of Herminigilda Galo, Elvira Galo and Edilberto Salga on the same matter.

"Another diversionary but futile and meaningless version is defense witness Mory Abecia's testimony to the effect that x x x while he was gathering firewood to fuel the copra kiln/drier, he chanced upon a woman moaning and cursing in pain while a man whom he did not know (but later knew when the accused supplied him the name of Dodo Rabongue, son of Monico Rabongue) had sex with her. Mory's testimony lies flat and tasteless in the face of his declaration that he started climbing and gathering the coconuts of the accused at about 7:00 in the morning, and was already able to pile, split, extract the meat of no less than 500 matured nuts and loaded it in the copra drier at 10:00 in the morning. Tasteless testimony that spells falsehood, because the task so described by Mory Abecia is a superman's task - and Mory Abecia failed to demonstrate that he is such a superman. For climbing, gathering, piling, splitting and extracting the meat of 500 matured nuts is even impossible to be finished and done with by any single man in a whole period of one working day."<sup>[32]</sup>

### **Issues**

In his 65-page appeal brief,<sup>[33]</sup> accused-appellant declares that the trial court erred in: (1) making findings and conclusions not supported by the evidence on record, (2) giving full weight and credit to the complainant's testimony which was allegedly replete with inherent improbability, incredibility and material contradictions, and (3) not acquitting the accused on reasonable doubt.<sup>[34]</sup>

Appellant's assignment of errors boils down to two issues: (1) credibility of complainant's testimony and (2) sufficiency of the prosecution evidence.

### **The Court's Ruling**

The appeal is bereft of merit. We painstakingly studied the testimonies of all witnesses and the records of the case, and arrived at a firm conclusion no different from the trial court's. The court a quo erred, though, in stating that the accused could "only put up the defense" of alibi. In fact, he did not. Instead, accused-appellant's sole defense was denial. Culling from his testimony, he admitted having been within the vicinity where Mimil was raped and even claimed he saw Dodo Rabongue having sexual intercourse with Mimil. Neither did he deny Herminigilda Galo's conversation with him -- only the subject thereof. The testimonies of Feliciano Zaballero and Cresencio Yu to the effect that appellant could not have committed the crime at that particular time (10:00 o'clock in the morning) merely corroborate