

FIRST DIVISION

[G.R. No. 115282, October 16, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MEDEL MAMALAYAN, NOEL MAMALAYAN AND (AT LARGE)
REYNALDO GARCIA, (AT LARGE), ACCUSED-APPELLANTS.
D E C I S I O N**

HERMOSISIMA, JR., J.:

This is an appeal from the decision^[1] rendered on June 21, 1993 by the Regional Trial Court of Calamba, Laguna, Branch 34, in RTC Criminal Case No. 3228-92-C, which found accused-appellant Medel Mamalayan guilty of the crime of robbery with rape and sentencing him to reclusion perpetua and indemnify the offended parties in the sum of P35,680.00 as actual damages and P100,000.00 as moral damages.^[2]

In an information,^[3] dated October 2, 1992, Assistant Provincial Prosecutor Loreto Masa charged the herein accused-appellant together with the other accused, Noel Mamalayan and Reynaldo Garcia, with the special complex crime of robbery with rape under Article 294, sub. Par. 1 of the Revised Penal Code,^[4] allegedly committed as follows:

“That on or about May 31, 1988, at Barangay Lawa, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named with intent of gain and with the use of force upon things, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously enter the house of BONIFACIO LEGASPI by then and there detaching the glass window where they gain entrance, and once inside, take, steal and carry away with them the following items, to wit:

- | | | |
|----|---------------------------------------|-----------|
| 1. | One Armalite M16
Rifle | |
| | with SN RP 005417 | P8,000.00 |
| 2. | Seven (7) banana
type magazines | |
| | of armalite M16 and
210 live ammos | |
| | of the same caliber | 3,780.00 |
| 3. | One (1) Wall Clock
(Seiko) | 300.00 |

4.	One (1) Colored TV set 14" (Sony)	12,000.00
5.	One (1) Seiko Wrist Watch	600.00
6.	One (1) Gold ring	2,000.00
7.	One (1) pair of earring	3,000.00
8.	One (1) Stereo Cassette	1,000.00
9.	Cash Money	5,000.00
	having a total value of	₱35,680.00

that on the same place and occasion accused armed with fan knife, by means of violence and intimidation, conspiring, confederating and mutually helping one another take turn in having carnal knowledge with Marina Legaspi against her will and consent.

CONTRARY TO LAW."^[5]

Upon arraignment on December 16, 1992, the herein accused-appellant Medel Mamalayan, assisted by counsel, entered the plea of "not guilty." Thereafter, trial on the merits proceeded as against accused Medel Mamalayan alone. His co-accused, Noel Mamalayan and Reynaldo Garcia, had remained at large.

On June 21, 1993, the trial court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused GUILTY of the crime penalized and defined under Article 294 sub. Par. 1 of the Revised Penal Code thus rendering judgment CONVICTING the accused of the crime charged.

He is hereby sentenced to suffer an imprisonment of RECLUSION PERPETUA and to indemnify Bonifacio Legaspi the amount of ₱35,680.00 and to pay moral damages in the amount of ₱100,000.00

SO ORDERED."^[6]

The evidence for the prosecution established the following facts:

The spouses Bonifacio and Marina Legaspi gave evidence to the effect that, on May 31, 1988, only Marina and her stepson Edwin Legaspi were left in their house. Bonifacio Legaspi, who was a member of the Special Operation Group, Civil Relation Service, Armed Forces of the Philippines

(AFP), was then on duty at Camp Aguinaldo, Quezon City.^[7]

At about 3:00 o'clock in the morning of the same date, Marina and Edwin were awakened by the barking of their dog. Marina was surprised to find accused-appellant Medel Mamalayan, Noel Mamalayan and Reynaldo Garcia already inside their room. She came to know later that the three (3) malefactors effected their entry by removing the glass panels of one of their windows. The accused-appellant, then carrying a fan knife, poked the same at her. The three culprits, helping each other, gagged Marina's mouth with a T-shirt. They subsequently tied her hands and feet with plastic straws.^[8]

Thereafter, appellant together with Noel began ransacking the victims' house, while Reynaldo, who was armed with a six (6) inch knife, stayed behind to guard both Marina and Edwin. The culprits were able to cart away the couple's pieces of jewelry, cash, and appliances. They were also able to take Bonifacio's M-16 armalite rifle, with seven (7) banana-type magazines, and 210 live ammunitions. Noel later threatened to shoot Marina with the rifle, remarking: "Eto na pala ang armalite, ang sabi mo wala. Ipatatay ko ito sa iyo eh."^[9]

The malefactors then cast their lustful eyes upon Marina. And, to make sure that Edwin would not stand in their way, Reynaldo took Edwin out of the room by kicking the boy towards a corner of the living room, about two (2) arm's length away from Marina. Accused-appellant then approached Marina who was seated on her bed and tore her dress by grabbing it from the neckline down to the hemline. This exposed the victim's whole body who was only wearing an undergarment. Medel, excited to see Marina's almost naked body, untied the latter's feet, began kissing her and roughly pulled off her underwear, destroying it in the process. While Medel was doing all of these things, Noel was watching and pointing the armalite rifle against Marina, while Reynaldo was guarding Edwin.^[10]

Subsequently, the accused-appellant undressed himself, pushed Marina to the bed, went on top of her, forced her to part her thighs, and forcibly inserted his penis to her private part. The victim who was then squirming and kicking her abuser was able to avoid the appellant's ejaculation within her organ. The accused nonetheless ejaculated after Marina was able to dislodge his penis from her private part. And, while all of these things were taking place, Noel was constantly pointing the rifle at Marina.^[11]

After Medel had dismounted, his co-accused Noel Mamalayan likewise went on top of Marina. Just like Medel, Noel was not able to ejaculate inside Marina's sexual organ because the latter squirmed and moved incessantly.^[12]

After Noel was finished, Reynaldo likewise raped Marina. Unlike the two before him, Reynaldo easily penetrated Marina for she was already too

weak to put up a struggle. However, he failed to ejaculate because he was being hurried by appellant and Noel Mamalayan.^[13]

Thereafter, the malefactors left the house of the victims, taking with them the stolen articles. And, upon their departure, Edwin untied Marina's hands. Shortly thereafter, Sofronio Estemo who was a former janitor at the office of Bonifacio in Camp Aguinaldo, arrived from Bicol bringing with him some crabs intended for Bonifacio. Edwin met him because his stepmother was then in a state of shock. The boy then asked Sofronio to inform and fetch his father in Quezon City.^[14]

Bonifacio Legaspi, when told by Sofronio Estemo of the incident, immediately asked the permission of his superior officer, Major San Miguel, that he be allowed to go home. When he arrived at his house at about 9:00 o'clock that morning, he saw his house in disarray. Bonifacio wanted to ask Marina what happened, but the latter was still in a state of shock. Hence, he could not extract any information from her.^[15]

At about 11:00 a.m. of the same date, Bonifacio then reported the incident to Brgy. Captain Romualdo Garcia. He was advised by the barangay captain to refer the case to the police. He together with his wife, proceeded to the Calamba Police Station. Marina was investigated and a complaint was filed against the three accused.^[16]

The day after the incident or on June 1, 1988, Marina Legaspi submitted herself to a medical examination by Dr. Solita Plastina, Municipal Health Officer of Calamba, Laguna, who issued a medical certificate^[17] finding her negative to sperm examination, but found evidence of sexual molestation.

On the other hand, the accused-appellant presented the defense of alibi and complete denial. Accused-appellant Medel Mamalayan denied his involvement in the aforesaid crime and claims that on the date of the incident, he was not in Brgy. Lawa, Calamba, Laguna but in Brgy. Bunuan, Dagupan City.^[18]

The appellant maintains that on May 7, 1988, he was employed as a costume attendant by Elvira Veneracion, manager of the Manila Royal Group – a group of performers who renders variety shows and performances in different places within the Philippines.^[19] According to Medel Mamalayan, he was at Brgy. Bunuan, Dagupan City, from May 8 to June 8, 1988, because their group was hired by a certain Jun Tan to perform in his club known as the Music Machine Club, which is located at Brgy. Bunuan, Dagupan City.^[20] The group left Quezon City on May 8, 1988 at 1:00 o'clock in the afternoon and reached Dagupan City at around 5:00 o'clock p.m. They proceeded at once to the club upon arrival. The group and accused-appellant took first a rest for an hour and then proceeded to prepare for the show that night. The accused, then, arranged the wardrobes to be used by the dancers i.e., swim suits,

shorts, etc. by taking them out of the luggages and hanged the same in the dressing room. Medel also saw to it that the music records to be used in the show were handed over to the disc jockey of the club. On May 8, 1988, the show started at 8:00 o'clock in the evening and the group first performed a variety show, a dance number and a comedy show. The dance number was performed by Myra Mamalayan, Maricris Lopez, Cristina Arcinas, Monica Mendez and Roxan de Leon. While the group was performing, the accused-appellant claims that he was at the side of the stage watching the performance together with Elvira Veneracion. The show that night lasted up to 2:00 o'clock in the morning of May 9, 1988. After the show, the accused arranged again the costumes of the performers and slept at around 4:00 o'clock in the morning.^[21] Medel Mamalayan further testified that on May 31, 1988, at around 3:15 in the morning, he was inside his quarters at Brgy. Bunuan, Dagupan City, sleeping.

After evaluating the evidence for both parties, the lower court rendered judgment convicting the appellant of the crime charged.

Accused-appellant is now before the Court, imputing to the trial court the following assignment of errors:

I

THE LOWER COURT GRAVELY ERRED IN FINDING THE COMMISSION OF THE CRIME CHARGED SOLELY ON THE BASIS OF PRESUMPTION AND THE TESTIMONIES OF BIASED, PROCURED, PERJURED, SCRIPTED AND REHEARSED PROSECUTION'S WITNESSES.

II

THE LOWER COURT GRAVELY ERRED IN HOLDING THAT APPELLANT WAS POSITIVELY IDENTIFIED ON THE BASIS OF BIASED, PROCURED, PERJURED, INCREDIBLE, REHEARSED AND SCRIPTED PROSECUTION WITNESSES.

III

THE LOWER COURT GRAVELY ERRED IN DISCREDITING ENTIRELY THE TESTIMONIES OF THE WITNESSES FOR THE DEFENSE, PARTICULARLY THE DEFENSE OF ALIBI, IN FAVOR OF THE WEAK EVIDENCE FOR THE STATE.

IV

THE LOWER COURT GRAVELY ERRED IN NOT HOLDING THAT THE PROSECUTION SUPPRESSED EVIDENCE TO COVER ITS WEAK EVIDENCE FOR THE STATE.

V

THE LOWER COURT GRAVELY ERRED IN FINDING APPELLANT GUILTY BEYOND