

THIRD DIVISION

[G.R. No. 119225, July 26, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODRIGO ABUTIN Y GIL, ACCUSED-APPELLANT.**

DECISION

MELO, J.:

Charged with the crime of rape, Rodrigo Abutin was later convicted by Branch 124 of the Regional Trial Court of the National Capital Judicial Region stationed in Caloocan City in its decision dated February 10, 1995, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, this Court finds the accused RODRIGO ABUTIN Y GIL guilty beyond reasonable doubt of Rape as charged and hereby sentences said accused to suffer imprisonment by Reclusion Perpetua to indemnify Lilian de la Cruz in the amount of P50,000.00; as consequential damages and to pay the costs.

The accused shall be credited in the service of his sentence with the full period of time he has undergone preventive imprisonment provided the condition imposed by Art. 29 of the Revised Penal Code have been complied with.

(p. 28, Rollo.)

From said decision, the present appeal has been interposed, imputing the following alleged errors to the trial court:

I

The trial court erred in giving weight to the incredible, inconsistent and improbable testimony of private complainant.

II

The trial court erred in not finding that the delayed reporting of the alleged rape incident to her relatives and to the police authorities greatly affected private complainant's credibility.

III

The trial court erred in disregarding the testimony of appellant and his witness that private complainant is his girlfriend.

IV

Finally, the trial court erred in not acquitting the appellant on the ground of reasonable doubt.

(pp. 59-60, Rollo.)

The facts of the case as borne out by the evidence are correctly summarized in the brief submitted by the Office of the Solicitor General as follows:

At about 9 o'clock in the evening of September 30, 1992, victim Lilian de la Cruz, then an employee of Landmark Department Store, was on her way home to her residence at 156-C Name Street, Kalookan City when she noticed appellant Rodrigo Abutin at the corner of Rizal Avenue Extension and 2nd Avenue, Kalookan City. Appellant, a former co-worker of the victim at Ever Department Store at Avenida Rizal and her "compadre" (the victim having stood as godmother to appellant's youngest child two and a half months earlier), approached the latter and asked if they could talk for a while (TSN, Aug. 19, 1993, pp. 1-4, 22-23; Sept. 10, 1993, p. 6). Lilian inquired from appellant what they would talk about but the latter vaguely replied that it was about something important and that he had a problem. Lilian replied that since it was getting late and her parents were waiting for her at home appellant better say whatever he wanted to tell her at once. Appellant, however, refused to do so allegedly because of the presence of many people on the street corner. He instead invited Lilian to a nearby restaurant for a snack and where they could allegedly talk in private. Lilian acceded to the request but stated that it should be quick because it was getting late and she had to go home (TSN, Aug. 19, 1993, pp. 5-6).

The two proceeded to the Apollo Restaurant located near the corner of 2nd Avenue. Appellant, who appeared to be under the influence of alcohol, seated himself beside Lilian and ordered softdrinks. At this, Lilian transferred to the seat at the opposite side of the table (TSN, Sept. 3, 1993, pp. 7-8).

Appellant declared his love for Lilian. Lilian replied that even if he meant it as a joke the same was in bad taste because appellant was already married and her "compadre" to boot. Appellant replied that he was even willing to leave his wife to be with her. Lilian refused appellant's amorous advances (TSN, Aug. 19, 1993, pp. 6-7).

At this point, appellant seated himself at Lilian's left side. He suddenly put his right arm around Lilian. Lilian was shocked when she felt appellant poking a knife against her hips inside her blouse. Lilian asked, "What is the meaning of this?" Appellant told Lilian not to make a scandal otherwise he would kill her and then himself (TSN, Aug. 19, 1993, p. 8; Sept. 10, 1993, pp. 6-8). Appellant forcibly brought Lilian to the motel at the second floor of the restaurant. There appellant called for a roomboy and asked for a room. All this time, he held Lilian in an embrace. Lilian stood petrified with fear because of the knife held against her. Neither the roomboy nor the two persons inside the motel office noticed anything unusual since the knife was hidden inside the victim's blouse away from

sight. Appellant transferred the knife to his left hand and poked the same against Lilian's thighs while he signed the registration book. Appellant took the key from the roomboy and, still poking the knife at Lilian, proceeded to the rented room which was already open. He then shoved the victim inside and locked the door (TSN, Sept. 10, 1993, pp. 8-15; Sept. 24, 1993, pp. 3-4, 6; Aug. 19, 1993, p. 9).

Inside the room, appellant stood beside the door and started to undress. Appellant held the knife between his teeth while he did so (TSN, Aug. 19, 1993, p. 11; Sept. 24, 1993, pp. 8-9).

Appellant ordered the victim to take off her clothes. Lilian refused and pleaded with the appellant not to go through with his intent to rape her. Unmoved by Lilian's pleas, appellant poked the knife against the former's neck and started to forcibly remove her clothing beginning with her blouse which lost some buttons. Appellant took off the victim's skirt next destroying the zipper. This was followed by the victim's bra. Still unmoved by the victim's pleas, the appellant shoved the victim to the bed and took off her panties. Appellant started kissing the victim who moved her face from left to right to avoid appellant's kisses. Appellant was able to forcibly engage in sexual intercourse with the victim (TSN, Aug. 19, 1993, pp. 12-14; Sept. 14, 1993, pp. 9-10).

After satisfying his lust, appellant threw Lilian's clothes at her and told her to dress up. Lilian pleaded to be allowed to go home but appellant refused, keeping her in the motel room until the following morning when she was finally allowed to leave but not before being threatened with death should she report the rape (TSN, Sept. 24, 1993, pp. 11-12; Aug. 19, 1993, pp. 14-15).

Lilian conceived as a result of the rape. She, however, did not report the rape for fear of her life because appellant continued making threatening phone calls at home and at her workplace (TSN, Aug. 19, 1993, pp. 16-17). She was finally constrained to resign from work on March 10, 1993 and went into hiding at her aunt's place in Nueva Ecija. Lilian summoned enough courage to report her plight to her aunt and together they told Lilian's father, Ernesto dela Cruz, about the rape on June 2, 1993 (TSN, Aug. 19, 1993, pp. 17-18; Sept. 24, 1993, pp. 15-16). Father and daughter reported the matter to the police on June 4, 1993 (TSN, July 29, 1993, pp. 6-7). Lilian also submitted herself to a medical examination at the NBI. NBI Medico-Legal Officer, Dr. Lowella Nario, who conducted the medical examination prepared "Living Case No. MC-93-540 (Exh. "C") which contained the following conclusions:

- (1) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination
- (2) Positive signs of pregnancy present, age of which corresponds to the latter part of the third trimester.

Dr. Nario further testified that the stage of the victim's pregnancy at the time of the medial examination was compatible with the occurrence of