

ELEVENTH DIVISION

[CA-G.R. CR NO. 00213, May 03, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO ALBALATE, JR., DEFENDANT-APPELLANT.**

DECISION

PERLAS-BERNABE, E., J:

Before Us is an appeal filed by accused-appellant Reynaldo Albalate, Jr. alias Reynaldo Pulong/Jun Jun, from the Decision^[1] dated July 24, 2002 of the Regional Trial Court (RTC) of Calauag, Quezon, Branch 63, in Crim. Case Nos. 3169-C and 3170-C, finding him guilty beyond reasonable doubt of the crime of Rape in both cases, the decretal portion of which reads :

“WHEREFORE, in view of all the foregoing considerations, this Court hereby finds accused Reynaldo Albalate, Jr. GUILTY beyond reasonable doubt of the crime of RAPE both in Criminal Case No. 3169-C and Criminal Case No. 3170-C and hereby sentences said accused to suffer the penalty of RECLUSION PERPETUA in both cases and to pay the private offended party Marivic Pulong the amount of FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity plus the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages in each case.

The accused is to be credited of his preventive imprisonment if proper and any pursuant to the provision of Article 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214.

SO ORDERED.”

Culled from the testimony of private complainant Marivic Pulong y Celo, the circumstances surrounding the subject rape are as follows:

On Nov. 21, 1998, she was raped two (2) times by accused-appellant, who is her uncle, in her grandmother’s house in San Andres, Lopez, Quezon. In the first rape which occurred at about 8:00 o’clock in the morning, accused-appellant was armed with an ice pick^[2]. When accused-appellant undressed her, she resisted (“nagpapalag po ako”)^[3]. Thereafter, he placed himself on top of her, and, while kissing her, inserted his penis in her private part which caused her pain as that was her first sexual experience^[4]. Accused-appellant threatened that if she will tell anybody, he will kill her^[5].

Her cousin, Ruel Celo, whom she earlier instructed to tend the carabao, witnessed the first rape when he returned to the house and immediately, reported to her Ate Roselyn^[6]. On the other hand, the second time she was raped by accused-appellant was in the evening of the same day. Before the rape, accused-appellant just boxed

her.^[7]

Consequently, accused-appellant was indicted of the crime of Rape on two (2) counts under separate Informations which read:

Criminal Case No. 3169-C:

"That on or about the evening of the 21st day of November, 1998, at Barangay San Andres, Municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle and a relative by consanguinity within the third civil degree of one Marivic Pulong, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of said Marivic Pulong, a minor, 12 years of age, against her will.

Contrary to law."^[8]

and

Criminal Case No. 3170-C:

"That on or about the 21st of November, 1998, at around 8:00 o'clock in the morning, at Barangay San Andres, Municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle and a relative by consanguinity within the third civil degree of one Marivic Pulong, armed with an ice pick, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Marivic Pulong, a minor, 12 years of age, against her will.

Contrary to law."^[9]

Accused-appellant was arraigned on Sept. 28, 1999 and, with the assistance of Atty. Arnelo Mesa, pleaded Not Guilty to the crime charged under the two (2) afore-quoted Informations.^[10]

In his testimony before the RTC, the accused-appellant denied any knowledge of the charges against him^[11] and alleged that he did not rape the private complainant. He attributed the filing of these cases to the fact that private complainant Marivic's parents were mad at him on account of the "sharing of copras".^[12] He further narrated that when they were young, Marivic's father, who is his half-brother, being the son of his mother by her second marriage, was always striking him so he learned to fight back^[13] and on one occasion, the former chased and boxed him, causing him to fall to the ground. In response, he hacked Marivic's father.^[14] During those times, however, no case was filed in court because their parents settled their case.^[15]

While he was entertaining some anger against Marivic's father (Julio) because he would like to have an equal share with him in the farm they are tilling, nevertheless, he did not turn his anger upon Marivic and rape her.^[16]

Defense witness Florentina Escleto corroborated accused-appellant's defense of denial, claiming that on November 21, 1998, accused-appellant was with her and her family helping them make copras.^[17] She claimed that accused-appellant arrived in their place on Nov. 18, 1998, left only at the end of November, 1998 and did not leave the house nor the Barangay in the morning and in the evening of November 21, 1998^[18]. She claimed to have no relation to accused-appellant, the latter being only their helper.^[19]

Notably, accused-appellant, in his testimony before the RTC, did not raise the defense of alibi or that he was not at the alleged scene of the crime on the date and time of the alleged occurrence thereof.

After due proceedings, the RTC of Calauag, Quezon, rendered the assailed judgment of conviction dated July 24, 2002. Dissatisfied, accused-appellant filed the instant appeal, with the records initially forwarded to the Supreme Court because the penalty imposed is reclusion perpetua. Subsequently, however, by virtue of the Decision rendered in the case of *People of the Philippines vs. Efren Mateo y Garcia*^[20] which modified the pertinent provisions of the Revised Rules of Criminal Procedure by allowing an intermediate review by the Court of Appeals of cases where the penalty imposed is death, reclusion perpetua or life imprisonment, the records of this case were transferred to the Court per resolution dated Sept. 29, 2004 of the First Division of the Honorable Supreme Court.

In the instant appeal, accused-appellant raised the following lone assignment of error, to wit :

"THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF TWO (2) COUNTS OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."^[21]

The appeal is bereft of merit.

Well settled is the rule that positive identification of the accused when categorical and consistent and without any ill-motive on her part prevails over alibi and denial which are negative and self-serving, and undeserving of weight in law.^[22]

In the case at bar, records show that in convicting accused-appellant, the RTC gave no merit to the latter's defense of denial and alibi in view of his (accused-appellant's) positive identification by private complainant Marivic, made in a straightforward and categorical manner^[23]. As no evil motive to give false testimony could be attributable to private complainant Marivic, accused-appellant attempted to impeach her credibility by pointing to the alleged animosity between him and Marivic's father over their respective shares in the farm. Accused-appellant would like to create the impression that Marivic was used by her father in concocting a story of her defloration by way of retaliation against him with whom he (father) has quarreled through the years and who accused-appellant acknowledged in open court to have hacked^[24]. This is, however, a weak defense which even the Honorable Supreme Court has refused to dignify pursuant to the doctrine that "no member of the victim's family would subject the victim to the stigma and embarrassment concomitant with a rape trial, if he or she is not motivated by an