

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. METODIO SOTTO BASIGA, DEFENDANT-APPELLANT.

*G.R. No. L-47425. January 13, 1989*

Ponente: GRIÑO-AQUINO, J.

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### GRIÑO-AQUINO, J.:

This is an appeal from the decision of the Court of First Instance (now Regional Trial Court) of Cebu, 14th Judicial District, Branch VI, convicting the appellant Metodio Sotto Basiga of the crime of rape and sentencing him to suffer the penalty of RECLUSION PERPETUA with the accessory penalties provided by law, and to indemnify the complainant for moral damages in the sum of P12, 000.

As stated in the decision of the trial court, the following facts were established by the evidence of the prosecution:

"On October 26, 1975 at about six o'clock in the afternoon, ROSALINE (HELEN) RACHO, the 13-year old complainant, was biking on the premises of the Labangon Elementary School together with her friends Tibong, Tisoy, Rey, Pamela and Julius. Julius and she remained in the school premises when their companions returned the rented bicycles. While they were waiting for their friends to come back, the accused suddenly appeared, grabbed their hands and introduced himself as a policeman. He announced that he was arresting them for dating in the place. He ordered Julius Melecio to inform HELEN'S parents that she would be taken to the patrol car. Julius was reluctant to leave but the accused shouted at him, so he left.

"Thereafter, the accused pulled Helen toward the cemetery where he said his patrol car was parked. She struggled to free herself and pleaded with him to set her free but the accused drew out his pistol and pointed it at her while dragging her forcibly toward the cemetery. Upon entering the cemetery, the accused ordered her to take off her blouse and pants. Realizing that the accused was not a policeman, she pleaded: 'Please Manoy, allow me to go home.' The accused threatened to kill her and bury her alive if she would not take off her clothes. Because she was afraid of the pistol that was pointed at her, she took off her blouse first, leaving her 'sando' or undershirt. She tried to cover her breasts with her hands. The accused ordered her to take off everything. With the pistol pointing at her, she took off her sando, pants, shorts and her panty. Thereafter, the accused pushed her down to the grassy ground, face up while she pressed her two legs together. He pulled down his pants and briefs and with his pistol pointing at her side and despite her pleas and her tears, the accused, who was strong and heavy, overcame her resistance and succeeded in having sexual intercourse with her. After he had consummated the dastardly deed, accused ordered her to dress up and left her. She hurriedly dressed up. In her rush to get home, she failed to put on her sando and forgot her shorts at the scene of the crime. On her way home, she met a lady friend who told her that her parents and some policemen were looking for her. Upon reaching home, she reported to her mother, her sister, and brother-in-law what had happened to her. They brought her to the police precinct of Taboan, Cebu City, to report the crime. They were advised to go first to the Cebu City Hospital where Helen was examined and a medical certificate was issued to her (Exh. 'A')." (pp. 5-6, Decision; pp. 10-11, Rollo.)

The examination conducted by the senior resident physician of the Cebu City Hospital yielded the following findings:

"Multiple straight abrasions (scratches) located at the back; bleeding lacerations of the hymen at 3:00 o'clock and 9:00 o'clock, the introitus (opening of the vagina) admits easily one finger with severe pain; smear for spermatozoa is positive." (p. 2, Decision; p. 7, Rollo.)

During the trial, the complainant wept when she identified the accused as the man who abused her.

Julius Melecio, Helen's teen-age friend, corroborated her narrative. He affirmed that on October 26, 1975, at past six o'clock in the evening, after he, Tibong, Ray, Pamela, Tisoy, and Helen were finished biking on the school grounds of the Labangon Elementary School, their four friends left to return their rented bikes. He and the complainant stayed behind to wait for their friends as they planned to go home together. Shortly after their friends had left, a person with dark complexion, curly hair, and a protruding belly (whom he identified as the accused) approached him and the complainant and identified himself as a policeman. He held them by the hands and told them that he would arrest them for dating in the schoolgrounds. The accused ordered him to leave and when he hesitated, the accused shouted at him to leave and inform Helen's parents that she would be brought to the police station. He left, but upon meeting some friends and being informed by them that persons found inside the school grounds are not to be arrested he went back to look for Helen. Failing to find her, he reported the matter to Helen's parents.

The defense of the accused-appellant, a 42-year old merchant, was an alibi. He alleged that on October 26, 1975, at past six o'clock in the afternoon, he was at the Metropolitan cathedral with his wife; that it was only on November 25, 1975, upon being apprehended by CIS agents and brought to the PC Headquarters, that he learned that he was accused of rape by Helen Racho; that the complainant's brother-in-law Jun Pontino, a kumpadre of a member of the CIS investigating team, was his competitor in the shellcraft business and only used Helen to extract money from him. His testimony was corroborated by his wife Elsa Basiga, and by Tarcila Bolambao, the owner of the house they were renting.

However, the trial court found the accused guilty beyond reasonable doubt of the crime of rape.

In this appeal, appellant assails the trial court for:

1. giving credit to the uncorroborated testimony of the complainant, which is allegedly replete with contradictions and inconsistencies; and
2. not accepting the appellant's alibi.

As is generally the case in a criminal prosecution, the decision hangs upon the testimony of the witnesses and the trial judge's assessment of their credibility because he had the unequalled opportunity to observe their conduct while testifying and to distinguish whether they were testifying to facts or fiction.

After examining the records of this case, We find no reason to doubt the trial judge's conclusion that the accused is guilty as charged. His defense of alibi crumbles in the face of the positive identification made by the complainant and the prosecution witness Julius Melecio that the accused was the person who accosted them in the school yard and drove him away in order that he (the accused) might be alone with the complainant.

The elements of the crime: (1) having carnal knowledge of a woman (a minor in this case); and (2) through the use of force or intimidation, were fully established.

The complainant had a clear recollection of the identity of her assailant for the school premises where he accosted her and her friend, were well-illuminated by the neon lights of the Science Building from where he dragged her toward the cemetery. Moreover, there was a bright moonlight and the beams of light from an on-going construction near the place where she was ravished made it easy for her to fix him in her memory.

The attempt of the accused to attribute malice to the complainant in filing the charge against him is baseless because the young girl did not even know him. She had believed him to be a policeman and to further mislead her, he told her that his name was "Edgar Ramontahes." (p. 4, Rollo.)

Before the accused was arrested, the complainant was confronted with several suspects brought in by the police investigators for identification. Among them were the witnesses Jose Lepiten and Porferio Berdon, but she informed the investigators that none of them was the rapist, until she chanced upon him in a cornmill and she immediately pointed him out to the CIS agents who were with her, that he was the man who sexually assaulted her.

During the trial, she was straightforward, natural, plausible and consistent. When she identified the accused in the courtroom, she burst into tears and cried unabashedly, so that the court had to order a brief recess for her to regain her composure. The results of the medical examination and the doctor's testimony on her injuries confirmed that she was sexually attacked.

The rape was committed through force and intimidation. Apart from the fact that the strength of the accused, a dark burly man in his forties, was more than enough to cow and overcome the resistance of a puny thirteen-year old, he used a pistol to intimidate her.

The thirteen-year old complainant was not the kind of person to have perjured herself just to get a man into trouble. She had no motive for filing the complaint against the accused other than to seek redress for the outrage that was committed against her and bring to justice the man who had grievously wronged her and left her psychologically and emotionally scarred for life.

WHEREFORE, the appealed judgment is hereby affirmed, except the civil indemnity due the complainant Rosaline (Helen) Racho which increased to P30,000. Costs against the accused-appellant.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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