

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO
“JIMMER” BOLADO AND ERNESTO ASEÑAS, ACCUSED,
ERNESTO ASEÑAS, ACCUSED-APPELLANT.**

G.R. No. 105375. September 28, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal by accused-appellant ERNESTO ASEÑAS from the decision[1] of the Regional Trial Court of Dumaguete City, 7th Judicial Region, Branch XXXII in Criminal Case No. 9549 finding him guilty beyond reasonable doubt of the crime of RAPE.

On December 20, 1990, an Amended Information was filed against accused Virgilio "Jimmer" Bolado and accused-appellant Ernesto Aseñas for the crime of RAPE committed as follows:

"That on August 26, 1990, at about 6:00 o'clock in the morning at Sitio Cambo-ay, Barangay Canaway, Siaton, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, mutually helping each other and acting under the same accord and purpose by means of violence and intimidation did then and there, willfully, unlawfully and feloniously have carnal knowledge with Delia Ellurig, a deaf mute, against the latter's will and without her consent." [2]

On September 9, 1991, the trial court issued an Order[3] treating the affidavit[4] executed on November 5, 1990 by Irene Ellurig, mother of the victim, as the required Complaint.

Upon arraignment, accused Bolado and accused-appellant Aseñas both pleaded "Not Guilty" to the offense charged.

The facts, as gathered from the evidence on record are, as follows:

At around 6:00 a.m. of August 26, 1990, Delia Ellurig, a 17-year old deaf-mute, went to the Canaway River to take a bath when accused Bolado and accused-appellant Aseñas hit her head with stones and thereafter carried her to the ground where they repeatedly abused her for three (3) times.

Upon arriving home, Delia Ellurig, whose forehead was bleeding, told her mother, Irene Ellurig, through sign language that two persons attacked her and thereafter pointed to her private part where the latter discovered the presence of blood in her panties. Immediately, the victim's mother brought her to the Siaton District Hospital in Siaton, Negros Oriental where her head wounds were examined and sutured by Dr. Edgar Y. Retuya and arrived at the following findings:

"Multiple Lacerated Wounds:

"1. Forehead, (L) measuring approximately 5 cms. length x 0.5 cms. deep.

"2. Scalp, parietal area, (L) measuring approximately 5.5 cms. length x 0.5 cms. deep.

"3. Anterior auricular area, (L) measuring approximately 3 cms. length x 0.5 cms. deep.

"4. Mid-forehead, measuring approximately 2 cms. length x 0.3 cms. deep."[5]

During trial, Dr. Edgar Retuya confirmed that Delia Ellurig is a mute and testified that the lacerated head wounds could have been caused by stones with sharp edges which were violently struck upon Delia Ellurig and might have caused her to lose consciousness.[6]

On September 3, 1990, Dr. Portia Pauline P. Hachuela examined Delia Ellurig, who was still confined in the same hospital, and arrived at the following findings:

"Genitalia:

"Labia Majora - Negative Pertinent Findings

"Labia Minora - Negative Pertinent Findings

"Vagina - Admits 2 Fingers Easily

"Hymen - Healed Laceration at 6 o'clock & 7 o'clock positions."[7]

Dr. Hachuela testified that when she conducted Delia Ellurig's internal examination, there was evidence of recent penetration on the vagina of Delia Ellurig and the hymenal laceration could have been caused by the entry of an erect penis, which laceration can heal in one to two weeks' time. However, she was unable to examine the presence of spermatozoa in Delia Ellurig's vagina because the latter resisted.[8]

The prosecution's evidence was further corroborated by Diomedes Quirit who testified that:

"x x x on August 26, 1990, at about 6:00 A.M. at Barangay Canaway, Siaton Negros Oriental, x x x [he] went to the Canaway river to retrieve his shrimp traps. While he was wading through a shallow portion of the river, he saw the defendants and Delia Ellurig on the river, about twenty five (25) meters away from him. As Delia Ellurig was being wrestled by the two (2) defendants, he moved back to the ground and hid behind a 'colon-colon' tree about two (2) feet from the edge of the river. From behind the tree, he saw Jimmer Bolado struck [sic] Delia with a stone twice on the forehead. Ernesto Aseñas also struck her with a stone hitting her head. Diomedes saw blood oozing from Delia's forehead and she became weak, apparently unconscious. The two (2) defendants then lifted and carried Delia to the ground and laid her on a spot about four (4) feet from the river bank. Her dress (blouse) was down to her waistline only. She had no panty. Her scarce pubic hair was visible. In carrying Delia, Ernesto held her arms, while Jimmer held Delia's two (2) legs which were spread like the handles of a wheelbarrow.

"Jimmy Bolado then took off his brown-colored brief. His penis was visible. He then mounted himself on top of Delia and executed pumping movements of his buttocks. Simultaneously, Ernesto was busy massaging Delia's breast and kissing her. After Jimmer finished with his carnal act with her, Ernesto removed his blue-colored brief, exposing his penis, and placed himself on top of Delia. He likewise made pumping movements of his buttocks while on top of Delia. While Ernesto was having sexual intercourse with her, Jimmy Bolado was also kissing Delia's breast. After Ernesto dismounted, Jimmer Bolado placed himself for the second time on top of Delia and executed again pumping motions of his buttocks. At this juncture, Diomedes Quirit left the vicinity. He reported what he just witnessed to his parents."[9]

In his defense, accused-appellant Aseñas, however, denied raping Delia Ellurig and maintained that on August 26, 1990, he was at his house being treated by an "ambolario" named Vicenta (Dodo) Paera called by his father as he was suffering from severe headache and high fever for almost a week. Additionally, he attributed ulterior motives on the part of Diomedes Quirit when the latter testified against him as he had caused the eventual arrest of Diomedes Quirit after reporting the latter to the police authorities for being an active member of the NPA.

On March 16, 1992, the trial court rejected the defenses proffered by accused-appellant and rendered its decision the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the Court finds accused Virgilio "Jimmer" Bolado and Ernesto Aseñas guilty beyond reasonable doubt of three (3) distinct crimes of rape penalized under Article 335 of the Revised Penal Code as amended. By reason of the privileged mitigating circumstance of minority, accused Virgilio "Jimmer" Bolado is hereby sentenced, after applying the Indeterminate Sentence Law, to three (3) indeterminate prison terms ranging from 12 years of prison mayor as minimum to 20 years of reclusion temporal as maximum together with all the accessory penalties provided for by law. Not being entitled to any mitigating circumstance, accused Ernesto Aseñas is hereby sentenced to three (3) prison terms of reclusion perpetua together with all the accessory penalties provided for by law. For both accused, the prison terms imposed herein shall be served successively, subject however to the three-fold rule which in no case shall the total exceed 40 years in accordance with Art. 70 of the Revised Penal Code as amended by Com. Act No. 217 (P. v. Sendaydiego, 81 SCRA 147).

"Both defendants are ordered to pay jointly in equal shares the victim, thru her parents, the sum of P50,000.00 as moral damages.

"The jailer is hereby ordered to make the proper reduction of the period during which the defendants were under preventive custody by reason of this case in accordance with law."[10]

In his bid for the reversal of said decision, accused-appellant assails the guilty verdict on the ground of want of jurisdiction by the trial court over the case as the Information was defective having been filed only by the mother of the offended party and not by the offended party herself as required under the Revised Rules of Court.

We do not agree.

Paragraphs 3 and 4, Section 5 of Rule 110 of the Revised Rules of Court provides that:

"The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. x x x.

"x x x. Where the offended party who is a minor fails to file the complaint, her parents, grandparents, or guardian may file the same. x x x."

There is no question, therefore, that the mother of the offended party may file the complaint in behalf of the offended party if the latter is still a minor. In the instant case, Delia Ellurig was only 17 years old when she was raped by accused-appellant and his co-accused Jimmer Bolado. Thus, the complaint for rape filed by the mother of the offended party is deemed to be sufficient compliance with the requirement of the law. Besides, the records revealed that the offended party subsequently signed the complaint during the pre-trial stage. Moreover, the enunciated doctrine is that it is not the complaint of the offended party in rape cases and the other private offenses enumerated in Article 344 of the Revised Penal Code which confers jurisdiction on the Court. The complaint required by said Article is merely a condition precedent to the exercise by the proper authorities of the power to prosecute the guilty parties. It is the Judiciary Law that vests jurisdiction on the Courts.[11]

As to the credibility of the witnesses, this Court finds no compelling reason to disturb the findings of the trial court since the latter is in a better position to decide the issue of credibility of prosecution witnesses having heard the witnesses and observed their deportment and manner of testifying during trial, unless certain facts of substance and value have been plainly overlooked which, if considered, might affect the result of the case.

Accused-appellant's insinuation that his implication in this case by prosecution witness Diomedes Quirit was

motivated by revenge in trying to get even with him for allegedly reporting said witness to the police authorities as an NPA member, is incredible to say the least. Other than his assertion to that effect, no corroborating evidence was ever presented to prove it. In imputing ulterior motives to Diomedes Quirit, accused-appellant hopes to convince this Court that the charges filed against him are fabricated. The rule is well settled that in the absence of evidence to show that the witnesses for the prosecution were actuated by improper motive, the identification of the accused-appellant as the assailant should be given full faith and credit.[12] As correctly pointed out by the trial court:

"The Court has no reason to doubt Diomedes Quirit's story. At the time of the incident on August 26, 1990, he was barely 17 years old. He immediately told his parents about the bestial attack upon the person and honor of Delia but not to the authorities for the reason that the two defendants are his uncles. It was only on November 1, 1990, at the Cambo-ay market day, that he told Barangay Lupon Ireneo Ejera about the incident, when the latter asked him about it. He decided to reveal the truth, as according to him, he was bothered by his conscience. Delia, although already a deaf-mute, was his classmate in Grade III. It was Ireneo Ejera, who in turn, told Delia's parents about what Quirit related to him. Subsequently, he was investigated by the police and his affidavit was taken on November 5, 1990 (Exh. "B, B-1 and B-1?A").

"It is unfortunate that the victim Delia Ellurig cannot, by herself, testify on the outrage she suffered. She would have been the best witness to narrate the details of the sexual assault upon her. But this circumstance does not diminish[ed] the strength of the prosecution's evidence."[13]

Finally, accused-appellant's defense of alibi is much too weak and incredible against prosecution witnesses' positive identification of accused--appellant as the co-conspirator of raping Delia Ellurig on that fateful morning. The denial made and the alibi advanced by the accused-appellant cannot prevail over his positive identification and that of his companion, Jimmer Bolado, by the prosecution witnesses. It has been stated time and time again that for the defense of alibi to prosper, it must be established by clear and convincing evidence that the accused was at some other place for such a period of time as would negate his presence at the time and place where the crime was committed.[14] The trial court correctly held that:

"As to accused Ernesto Aseñas' alibi, no evidence was also adduced by him to show that it was physically impossible for him to be at the scene of the crime at that time it was committed. At the time of the incident, he was residing at Luan-luan, Canaway, which is in the same barangay where the rape took place. Even if it is true that he was sick with headache and fever, there are persons, especially those who are still young and able-bodied who can engage in some normal human activities, even if they have a headache. Hence, there was no physical impossibility for Ernesto Aseñas to be at the Canaway river in the early morning of August 26, 1990."[15]

It is significant to note that during the trial of the case, Delia Ellurig, on two separate occasions, pointed at accused-appellant and his co-accused as the two (2) persons who had attacked and raped her.

We quote, in the proceedings in the court below:

"During the trial on October 10, 1991:

'Fiscal Salman:

'Q You were able to communicate with the victim in this case when you treated her on these wounds?

'Dr. Retuya:

'A The patient is a mute.

'Q If she is here in the courtroom now, will you kindly point to her for purposes of identification?

'A Yes, sir.

Interpreter:

(When the victim in this case was pointed to by witness Dr. Retuya, she stood up and pointed to the two (2) accused seated behind her and made a sign language with the use of her two (2) fingers representing two (2) persons).

'Atty. Betinol:

We have to strike out the interpretation of the interpreter, Your Honor, for the reason that it is not responsive to the question, Your Honor.

'Court:

Let it stay on the record for whatever it is worth.

'Fiscal Salmin:

That is why, we would like to manifest for the record, Your Honor, that when the Doctor pointed to the patient whom he said is a deaf-mute stood up and pointed to the two (2) persons at the back who is (sic) already known to the Court as the accused in this case. For the record, Your Honor.'

(TSN, October 10, 1991, page 9).

'Fiscal Salmin:

x x x

'Q And your internal exam was conducted on one Delia Ellurig. Can you still identify her if she is inside the courtroom?

'Dr. Hachuela:

'A Yes.

'Q Please point to her. (Witness pointing to a girl sitting and wearing a stripe colored shirt).

'Court:

You ask the woman pointed to what is her name.

Court Interpreter:

'Q What is your name?

(In a sign language, the woman being asked pointed to the two persons sitting at her back. The two persons pointed to, when asked their names answered Ernesto Aseñas and Jimmer Bolado.'

(TSN, September 13, 1991, pages 12 & 13)."[16]

There is no question that the guilt of the accused-appellant had been proven beyond reasonable doubt as accused-appellant was placed at the scene of the crime and positively identified by the prosecution witnesses.

WHEREFORE, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

- [1] Penned by Judge Eleuterio E. Chiu.
- [2] *Id.*, at p. 12.
- [3] Original Records, pp. 135-138.
- [4] Folder of Exhibits, Exh. "D".
- [5] *Id.*, Exhibit "G".
- [6] T.S.N., October 10, 1991, pp. 6-9 & 17.
- [7] *Ibid.*
- [8] T.S.N., September 13, 1991, p. 9.
- [9] Rollo, pp. 31-32.
- [10] Rollo, pp. 45-46.
- [11] *People vs. Cabodac*, 208 SCRA 787 [1992].
- [12] *People vs. Lozano*, 206 SCRA 234 [1992].
- [13] Rollo, p. 39.
- [14] *People vs. Escamillas*, 208 SCRA 441 [1992].
- [15] Rollo, pp. 36-37.
- [16] *Ibid.*, pp. 129-131.

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