

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO ESGUERRA, ALIAS “BOTOG,” ACCUSED-APPELLANT.

G.R. No. 117482. May 08, 1996

Ponente: PUNO, J.

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PUNO, J.:

Appellant ROMEO ESGUERRA was charged with statutory rape for having carnal knowledge with the eleven-year old victim ROSALINA GARBO.

The Information[1] against him reads:

"That on or about May 1987 and subsequent thereto, in the Municipality of Camiling, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Romeo Esguerra alias "Botog" armed with a knife which he pointed at Rosalina Garbo and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously succeeded in having sexual intercourse with the said Rosalina M. Garbo, 11 years old, against her will.

"Contrary to law."

The Information for rape against appellant was filed on March 20, 1988 at the Regional Trial Court, Branch LXVIII, Camiling, Tarlac. The next day, Presiding Judge Rafael B. Hidalgo issued an order for appellant's arrest. Appellant could not be found and the warrant for his arrest was never served. The case was temporarily archived for failure of the police authorities to locate appellant. It was only in the later part of 1993, or after more than six (6) years, that appellant was apprehended by the police authorities in Camiling, Tarlac. He was arraigned and then tried.

The prosecution evidence consisted of the testimonies of ROSALINA, HELEN and LILIAN, all surnamed GARBO, and DR. EDGARDO LOPEZ of the Camiling District Hospital.

The records show that LILIAN GARBO, a widow, residing at Diego Silang Street, Camiling, Tarlac, was working as a waitress/entertainer at a restaurant in the Camiling public market. She has three (3) daughters, namely: HELEN, ROSALINA and CHARITO, then aged 14, 11 and 6, respectively. Having been widowed in April 1987, Lilian subsequently met appellant ROMEO ESGUERRA and became his paramour.[2]

In May 1987, ROSALINA GARBO, the eleven-year old daughter of Lilian, and her two (2) sisters were in their house in Camiling, Tarlac. Their mother, Lilian, was working in the public market. At about 9:00 a.m., while Rosalina was cleaning the house, appellant suddenly grabbed her and, poking a knife at her neck, dragged her into a room downstairs. As there was no bed in the room, appellant forced her to lie on the ground. Appellant then removed his pants and forcibly took off Rosalina's underwear. He then raised her shirt, exposing her breasts. Rosalina struggled to fend off appellant's lecherous advances but to no avail. Appellant mounted her and spread her legs apart using his hands and legs. He then forced his organ into hers and succeeded in having carnal knowledge with her. Rosalina resisted but her efforts were fruitless due to appellant's strength. She tried to shout

for help but appellant muffled her voice by covering her mouth with his hand or smothering her mouth with kisses. From the moment she was dragged into the room until her penetration, appellant held a balisong with his right hand. He only let go of the knife when he reached orgasm. Hearing a noise outside the room, appellant ordered Rosalina to get dressed. Feeble from her ordeal, Rosalina could not put back on her underwear so appellant did it himself. Rosalina saw her underwear stained with blood and felt intense pain in her organ. Her two sisters, Helen and Charito, who were watching television in a bedroom upstairs, had no inkling about the horrifying fate that befell Rosalina. They remained undisturbed throughout their sister's harrowing ordeal.[3]

Rosalina was unable to stand up as she suffered from intense pain in her pelvis. Appellant carried her into the sala and after about half an hour, ordered her to take a bath. She did as she was told. Appellant stood outside the bathroom, guarding and watching her every move.[4]

Appellant's lust had not run its course. At about 3:00 p.m. that same day, appellant, brandishing his balisong, again dragged Rosalina into the same room downstairs and sexually attacked her a second time. Rosalina tried to fight off his advances, kicking and pushing him, but her efforts proved futile. She tried to make noise, hoping that her sisters, who were still watching television in their bedroom upstairs, would hear her. Nobody did. Appellant covered her mouth with his palm, and drowned her pleas for help. After satisfying his lustful desire, appellant warned Rosalina not to report the incident to any one, otherwise her two sisters would also suffer the same fate. He also threatened to kill her mother. Appellant then left. Gripped with fear, Rosalina kept the incident to herself and thought that was the end of her misfortune. Sadly, she was mistaken.[5]

In the morning of June 12, 1987, appellant, with knife in hand, again forcefully deflowered Rosalina in the same room of their house. As they were wont to do, her two sisters, Helen and Charito, were in the bedroom upstairs bewitched by the television. They were completely unaware of the bestial crime perpetrated by appellant against their sister. So was Rosalina's mother who was in the public market attending to her work.[6]

At lunchtime, Helen and Charito took their lunch in the bedroom upstairs. Rosalina, on the other hand, partook of her lunch alone in the dining room. At about 1:00 p.m., Helen left the house and went with her friends to the public market.[7] An hour later, appellant also left the house and went to a restaurant in the public market to drink beer. He was seen by Lilian, his paramour, when the latter passed by the restaurant on her way to a nearby store.[8]

At about 3:45 p.m., Rosalina went to the bedroom upstairs to prepare their clothes for laundry. Her six-year old sister, Charito, was then playing at the ground floor. After a couple of minutes, appellant arrived. Inebriated, appellant barged into the bedroom upstairs and once more forced Rosalina on the bed. He undressed, stripped Rosalina's underwear and again sexually abused her.[9]

When Helen returned to the house, she heard the creaking sound of the bed upstairs. She rushed upstairs and peeped into the glass portion of their bedroom door. She was shocked to see appellant lying on top of her sister Rosalina. She kicked the bedroom door and then used her shoulder to break down the locked door. She succeeded in entering the bedroom but appellant just glanced at her. Despite Helen's presence, the drunken appellant continued ravishing Rosalina who could only weep.[10]

Helen ran to their nearest neighbors to seek succor. She also went to the public market to look for her mother. When their neighbors proceeded to the house of the Garbo's, they failed to find appellant. He had already fled.[11] Helen and her mother rushed back to their house and saw Rosalina still crying, with bleeding and swollen lips. Rosalina confirmed she was raped by appellant and that he had been molesting her in the past. Forthwith, Lilian and Helen accompanied Rosalina to the police station where they gave their statement.[12] They also brought Rosalina to the Camiling District Hospital for medico-legal examination. The examination revealed

the following:

"FINDINGS:

- Conscious, Coherent, Ambulatory, not in distress.
- LMP - April 2 to April 11, 1987 with irregular mense.
- Breast - conical, firm
- I.E. vagina admits 2 fingers with difficulty.
- Hymen - with laceration at 6:00 o'clock, fresh.
- Vaginal Smear Done - June 12, 1987.
- Result - Positive for Spermatozoa."[13]

Appellant denied committing the crime at bar. He claimed that he was working in Manila, doing maintenance work at Masinag Supermarket in Cogeo, Rizal at the time of the incident. He, however, admitted that Lilian Garbo was his paramour and that, at times, he would see Lilian's children at the latter's house whenever he visits.[14]

After trial, the trial court found appellant guilty of statutory rape.[15] The dispositive portion of the Decision reads:

"WHEREFORE, the Court finds and so holds that the crime of rape charged against the accused has been clearly established beyond reasonable doubt and he is hereby sentenced to suffer the extreme penalty at that time (now more severe, by death) of reclusion perpetua and, to indemnify the offended party the amount of P50,000.00. Costs against accused.

"IT IS SO ORDERED."

Hence this appeal.

In his Brief, appellant assails the credibility of the prosecution witnesses. He claims that the delay of the victim in reporting the crime to her mother and sisters is fatal to the veracity of her accusations. Appellant cites the cases of *People v. De la Cruz*, *People v. Besa* and *People v. Gonzales*[16] where this Court ruled that delay of a victim or witness to report a crime would open to doubt the truthfulness of his testimony. Appellant further contends that Rosalina and Helen, hated him for having replaced their recently deceased father in their mother's life.

We are not persuaded.

We do not find any reason to doubt the credibility of the prosecution witnesses in the case at bar. The records show that in the course of the trial, the 11-year old victim, Rosalina, paused and broke into sobs while narrating the ignominy she suffered in the hands of appellant. Rosalina's delay in reporting appellant's sexual assaults on her is understandable. After each sexual encounter, appellant, armed with a bladed weapon, forced Rosalina into silence - he impressed on her that her silence would ensure the safety of her mother and prevent the same fate to fall on her two (2) sisters.[17] In many a case, we have taken judicial notice of the fact that it is highly inconceivable for a young barrio lass, inexperienced with the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation unless she was motivated by a potent desire to seek justice for the wrong committed against her.

Appellant's reliance on the cited cases of *People v. De la Cruz*, *People v. Besa* and *People v. Gonzales* is misplaced. The facts of said cases are different. To start with, all three (3) are murder cases where none of the victims survived to testify about the incident. In the case at bar, aside from Helen Garbo, the victim herself, Rosalina Garbo, narrated in detail the atrocity committed by appellant on her virginal virtue. Moreover, in the case of *De la Cruz*,[18] the alleged eyewitness withheld the identity of accused while she was being investigated

by the police authorities and it was only after more than eight (8) months that she disclosed accused's complicity in the crime. In said case, we did not find any satisfactory reason for the witness' delay in revealing the accused's identity for nowhere was it shown that the witness was threatened, intimidated or coerced to remain silent. In the case at bar, the prosecution clearly established that force and intimidation were employed by appellant before, during and immediately after the assault on Rosalina's virtue, threatening the life of her immediate family should she reveal the incident to any one. Upon the other hand, in the case of Besa,[19] eyewitness Apregil waited two (2) years to tell his story. He explained this delay by simply saying that the crime was none of his business. After two (2) years, he voluntarily testified in court without giving any reason for his sudden interest in the case. Hence, the rejection of his testimony. Finally, in the case of Gonzales,[20] the Court held against eyewitness Huntoria his delay of eight (8) months in revealing the details of the crime he allegedly witnessed. In said case, we found that there was no reason for the delay as the witness was not threatened by the accused.

We entertain no doubt about the guilt of the appellant. The testimonies of the victim and eyewitness Helen bear the earmarks of truth. They are corroborated by the medical examination conducted on the victim's body two hours after she was last molested by appellant. The examination showed fresh laceration on the victim's hymen and the presence of spermatozoa in her genitalia. Finally, it would not be amiss to state that appellant offered no witness to corroborate his defense that he was some place else at the time the crime was committed. His alibi can not overthrow his positive identification by the victim and her sister, Helen. Thus, both the physical and testimonial evidence of the prosecution negate the plea of innocence of the appellant.

As the prosecution proved that appellant committed four (4) counts of rape, he should have been found guilty in each count, each act of rape being considered separate and distinct from one another. The penalty to be imposed on appellant should thus be reclusion perpetua for each of the four (4) counts of rape. The indemnity to be paid by appellant to the offended party should likewise be modified to fifty thousand pesos (P50,000.00) for each count, or a total of two hundred thousand pesos (P200,000.00).[21] Finally, it was also proved that the crimes were committed with the aggravating circumstance of dwelling, hence, exemplary damages should be awarded.[22] Hence, an award of twenty five thousand pesos (P25,000.00) for each count of rape should be awarded to the offended party as exemplary damages, or a total of one hundred thousand pesos (P100,000.00).[23]

IN VIEW WHEREOF, appellant ROMEO ESGUERRA alias "Botog" is found guilty of four (4) counts of statutory rape and is sentenced to suffer the penalty of reclusion perpetua for each count. In addition, appellant is ordered to indemnify the offended party Rosalina Garbo in the total amount of three hundred thousand pesos (P300,000.00) as exemplary damages. Costs against appellant.

SO ORDERED.

Regalado (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

[1] Original Records, p. 1.

[2] TSN, April 11, 1994, pp. 4-10.

[3] TSN, March 21, 1994, pp. 5-17.

[4] Ibid., pp. 18-19.

[5] Ibid., pp. 20-25.

[6] Ibid., pp. 26-29.

[7] TSN, April 6, 1994, pp. 3-4.

[8] TSN, April 11, 1994, pp. 35-40.

[9] TSN, March 23, 1994, pp. 49-50.

[10] TSN, April 4, 1994, pp. 7-10; TSN, April 6, 1994, pp. 5-12.

[11] TSN, April 6, 1994, pp. 13-14.

[12] TSN, April 11, 1994, pp. 15-16.

[13] Medico-Legal Report, Exhibit "A", Original Records, p. 159.

[14] TSN, July 18, 1994, pp. 11-12,29-32.

[15] Penned by Judge Prudencio V. L. Ruiz, Regional Trial Court. Third Judicial Region, Branch LXVIII, Camiling, Tarlac.

[16] G.R. Nos. 90907-12, August 7, 1991, 200 SCRA 379; G.R. No. 78899, March 22, 1990, 183 SCRA 533, and G.R. No. 80762, March 19, 1990, 183 SCRA 309, respectively.

[17] TSN, March 23, 1994, p. 65.

[18] Supra.

[19] Supra.

[20] Supra.

[21] People v. Mandap, G.R. Nos. 106385-88, May 29, 1995,244 SCRA 457, 466.

[22] Article 2230, New Civil Code.

[23] People v. Villanueva, G.R. Nos. 112164-65, February 28, 1996, citing People v. Padilla, G.R. Nos. 111956 and 111958-61, March 23, 1995, 242 SCRA 629.

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