

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR BALILI Y LIBOT, ACCUSED-APPELLANT.

G.R. No. 125908. September 05, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the judgment[1] of the Regional Trial Court of Davao City, Branch 13, in Criminal Case No. 34,082-94, finding appellant Victor Balili guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the victim Maylin Abajo, P30,000 as indemnity, together with the costs.

On May 24, 1994, the Davao City Prosecutor charged the appellant as follows:

That on or about May 3, 1994, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Maylin Abajo, who is 15 years of age, against her will.

CONTRARY TO LAW.[2]

Upon arraignment, the appellant entered a plea of not guilty. Thereafter, trial on the merits ensued.

According to the prosecution's evidence, herein appellant Victor Balili, married, 31 years old, was a neighbor for about fourteen (14) years and a frequent visitor of the Abajo family at San Vicente, Buhangin, Davao City.

In the afternoon of May 3, 1994, at about 2:30 P.M., the appellant went to the Abajos' house. He told private complainant, 15-year-old Maylin Abajo, that he was hungry, and so she served him food. After eating, Victor Balili asked Maylin where her mother, a vegetable vendor, was.[3] Maylin replied she went to the hospital to attend to her sick sister. He then asked Maylin who would accompany her that evening to buy vegetables. At about 7:30 in the evening, while Maylin was standing by the roadside, about five (5) meters away from their house, Balili approached her and asked her again who her companion to buy vegetables would be. She said Olympia Libot, another vegetable vendor. Balili then left. After that, she went home to get a sack. When Olympia arrived, she and Maylin proceeded to Hillside Subdivision where the market was located. Olympia, who was entrusted with the money by Maylin's mother, paid for the vegetables. Maylin went home ahead of Olympia since the latter was a slow walker. She waited for Olympia near a roadside store where she sought shelter from a heavy downpour. The store, 150 meters away from her house, was closed. There were no people around.[4]

Suddenly, somebody pulled her from behind, covered her mouth with his right hand and with his left hand around her neck, the man started dragging her. She struggled and was able to break free. She ran towards the direction of her house but her aggressor caught up with her, pulling the back of her dress and covering her mouth. She bit the man's hand and the latter boxed her twice, once on the mouth and once on her breast. Then he dragged her backwards to a banana grove, 25 meters away from the place where earlier the man caught up with her after she

struggled to be free from his clutches. She again struggled to free herself but to no avail.

Upon reaching the banana grove, the man held a scythe and aimed it at her neck placing his left hand on her shoulder. With his face covered with a T-shirt, they faced each other. He told her to remove her shorts and panty, but she did not obey. The man again boxed her twice and pushed her. She was thrown to the ground and as she faced the sky, the man removed her shorts and panty. She tried to free herself but he boxed her again on the breast. She felt pain. The man placed himself on top of her, inserted his penis in her private part and as he was not able to penetrate her organ, he inserted his finger in her vagina, then afterwards inserted his penis inside her private part, this time penetrating her. She said she felt great pain as if she were going to die. In the course of ravishing her, he removed his mask and she saw that the man was Victor Balili, her neighbor.[5]

After satiating his lust, Balili stood up. At that moment, lightning streaked through the heavy rain, illuminating the place. Again, she saw clearly that the person who had abused her was Balili. She told him he was cruel, considering that they were just neighbors but he violated her. She called him “Nong Loloy.” He threatened her not to tell anyone because if she did, he would kill her and anyone else who would know about the incident. Balili disappeared into the night, after ordering her to run.[6]

Drenched and scared, she put on her clothes. She ran towards home. While running, she met Olympia and she told her to run too. She woke up her older sister, Myrna Abajo, who was surprised to see her in such a woeful condition. She was wet, muddy, and crying. She then narrated her ordeal but she did not tell her sister who had raped her because of Victor Balili’s threat. Her sister cried.[7]

The following day, one Pesyong Flores told Jimmy Tangonan, a purok leader of their barangay, that she was raped and Tangonan accompanied her to the Buhangin Police Station to report the crime. She also did not tell Tangonan who raped her since she was scared of Balili’s threat.[8]

At the police station, she was interviewed by a policeman but when asked to name the person who raped her, she only remained silent, also for fear of Balili’s threat. Afterwards, Tangonan and Olympia accompanied her to the City Health Office. On the way, Tangonan asked her again who raped her but still she refused to reveal Balili’s identity. Dr. Ledesma, Medico Legal Officer, physically examined her.

Thereafter, she and her companions went home.[9]

In the evening of May 4, 1994, at about 7:00 o’clock, she was brought to the Buhangin Police Station to point out the person who had raped her. At the police station she saw several suspects, among them Daniel Tolomoro, Vicente Muana, Calixto Muring, and Balili. She was asked to identify her ravisher. Maylin did not point out Balili as the rapist because he was angrily looking at her, which all the more scared her. She later went with Tangonan to his residence and stayed there. Of the four (4) suspects who were rounded up by the police, she did not point to any one, but Daniel Tolomoro was detained by the police. When she learned of this fact, she went to the police to tell them to release Tolomoro because he was not the person who raped her.[10] At about 4:00 P.M. of May 5, 1994, she went home. At about 7:00 P.M., her older brother, Lito Abajo, 25 years old, arrived. It was then that she told her brother that the person who raped her was “Nong Loloy”. She explained she identified him only then because Balili had threatened her not to tell anyone. She and Lito went to Tangonan to inform him that Maylin already identified Balili as the person who raped her. As Tangonan suggested, they went to the police station the following morning.[11]

Policeman Arcilla, who prepared her affidavit, asked with annoyance why she revealed the name of the rapist only then. She explained her reason. The affidavit was given to her but the contents were not fully explained to her by Arcilla. She was told to go to the Fiscal’s Office and was instructed that if the fiscal asked her if she

understood the contents of the affidavit, she should answer in the affirmative. At the Fiscal's Office, she did as she was told. Later, she revealed she did not read the affidavit since she understood little English and realized only when the case was already in court that some of the contents of the affidavit were not true, particularly the portion which said that at the time she was raped, she recognized only the voice of Victor Balili. She said she told Arcilla that she saw the face of the man who raped her, and not merely heard his voice. She explained that when her older brother, Lito, arrived in their house she gathered the courage to name appellant as her rapist because she was no longer scared to speak since her brother was already there to protect her.[12]

For the defense, SPO2 Ricardo Arcilla and appellant Victor Balili took the witness stand.

SPO2 Ricardo Arcilla testified that appellant and two (2) other suspects were invited for questioning by the police the night after the rape occurred. But Maylin failed to point to Balili as the rapist, so he was released from custody. She had then pointed to Daniel Tolomoro, another suspect. However, Maylin said she was not sure of Daniel's identity. Thus, the latter was also released.

In his testimony, appellant denied committing the crime.

After trial, the trial court rendered its decision dated September 28, 1995, disposing as follows:

WHEREFORE, the accused Victor Balili y Libot is hereby sentenced to suffer the penalty of reclusion perpetua. He is also ordered to indemnify his victim, Maylin Abajo, in the sum of P30,000.00 and to pay the costs of suit.

SO ORDERED.[13]

Hence, the instant appeal. Appellant assails the said decision, assigning the following errors:

1. THE LOWER COURT ERRED IN FINDING THAT PRIVATE COMPLAINANT MAYLIN ABAJO POSITIVELY IDENTIFIED THE ACCUSED AS THE PERSON WHO RAPED HER.
2. THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGED.[14]

In raising the issue of Maylin's credibility as complaining witness, appellant argues that her belated identification of him as the rapist creates a serious doubt on her truthfulness. To bolster his claim, appellant points to the following: (1) Exhibit "1" & "1-A" - excerpt from the daily records of events of Buhangin Patrol Station dated May 4, 6, and 7, 1994 stating that the victim was not able to identify him as her assailant; (2) Exhibit "4" & "4-A" - entry in the Release Log Book of the said police station on May 4, 1994 certifying that appellant and the two other suspects were released; (3) Exhibit "5" & "5-A" - entry in the Release Log Book of the same police station that one Daniel Tolomoro was released after complainant manifested that she could not ascertain the identity of the person who raped her; (4) Exhibit "2", "2-A", & "2-B" - affidavit of private complainant, which appellant claims to be a belated statement by the former, identifying the accused as offender; and (5) Exhibit "6" & "6-A" - affidavit of SPO2 Ricardo Arcilla, the police investigator, who declared that four suspects were apprehended and were later on released as the victim could not really ascertain and identify the offender.

What appellant essentially assails is the assessment made by the trial court of the credibility of the testimony of the private complainant. In this review, however, we are guided by the well-established principle that, unless it is shown that the trial court has failed or neglected to consider significant facts that could alter the result, the assessment regarding the credibility of a witness by the trial court is entitled to great respect. As held in *People vs. Antonio*: [15]

Long settled in criminal jurisprudence is the rule that when the issue is one of credibility of witnesses,

appellate courts will not disturb the findings of the trial court. This rule is justified by the fact that the trial court is in a better position to decide the question. Having the advantage of directly observing witnesses, “the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.” (Citing *People v. Llaguno*, G.R. No. 91262, 285 SCRA 124, 135 [1998]).

Rape under Article 335 of the Revised Penal Code, is committed by a man having carnal knowledge of a woman under any of the following circumstances: (1) By using force or intimidation; (2) When the woman is deprived of reason or otherwise unconscious; and (3) When the woman is under twelve years of age or is demented.

That carnal knowledge took place between appellant and private complainant is amply supported by Maylin’s testimony which the trial court found to be sincere, candid and free from suspicion.

Maylin’s testimony is buttressed by the result of the medical report of Dr. Danilo P. Ledesma, who examined her a day after the rape, finding “complete laceration, which meant the laceration was actually bleeding at the time of the examination”.[16]

That there was violence and intimidation during the rape was likewise clearly established by the testimony of Maylin and Dr. Ledesma who found (1) reddish purple contusion on the right side of the upper lip of the victim’s face caused by a blow;[17] (2) contusion on her neck which Dr. Ledesma described as more of a kiss mark which could have been caused by a person who kissed and at the same time sucked;[18] (3) abrasion on the right chest which went down to the upper lip of the abdomen; (4) abrasion on the lower portion of the right arm; and (5) abrasion on the right forearm which Dr. Ledesma explained could be caused by scratching.[19] Significantly, his medical conclusion is that “the above physical injuries were noted on the body of the subject, age of which is consistent with the alleged date of infliction.”[20]

The medical findings of Dr. Ledesma dovetails with Maylin’s narration that during the rape she struggled to break free from the rapist, but the latter boxed her twice, once on the mouth and once on her breast, before she was dragged to a banana grove. That there was intimidation is evident from Maylin’s testimony that the appellant poked a scythe at her neck. It is enough that the intimidation produced fear that if she did not yield to the bestial demands of the appellant, something far worse would happen to her.

Appellant has not shown any ill motive why the victim would testify against him. It is settled that where there is no evidence to indicate that the principal witness for the prosecution was actuated by any improper motive, the presumption is that she was not so actuated and her testimony is thus entitled to full faith and credit.[21] Moreover, considering that the private complainant was only aged 15, quite innocent in the ways of the world and with unblemished reputation, we have no hesitation in conceding that she brought her complaint and testified against appellant for the sole purpose of seeking justice, i.e., of righting a wrong done to her person and honor.

Although Maylin initially vacillated in identifying her aggressor, her vacillation was sufficiently explained. Appellant had threatened to kill her and all those to whom she would tell of her misfortune. Complainant was only fifteen years old at the time of the rape. She was small and fragile. She lived in a predominantly female household; at that time they were uncertain of any protection against appellant. Her fear and her helplessness had

basis. Significantly, when her 25-year-old brother arrived the day following the rape, she immediately revealed the identity of her rapist. Her brother's arrival emboldened her and she lost no time in revealing appellant's identity. We have held before that the failure of a witness to volunteer information to law enforcement officers does not necessarily impair her credibility.[22] Ordinarily, delay by a witness in divulging what she knows about the commission of a crime, such as the identity of the offender, is not by itself a setback to the probative value of her testimony.[23] What is important is that where there is nothing to indicate that Maylin had any improper motive to implicate appellant, her testimony is entitled to full faith and credit. A young girl's revelation that she had been raped, coupled by her voluntary submission to medical examination and willingness to undergo public trial where she gave out the details of the assault on her dignity, cannot be easily dismissed as mere concoction.[24]

All told, the Court finds no sufficient reason to disturb the findings of the trial court. Nor is there any showing of a circumstance sufficient to alter its verdict. We agree with the trial court that appellant's guilt has been proved beyond reasonable doubt. The sentence of reclusion perpetua is in accord with the amendments introduced by R.A. 7659, the prevailing law on rape at the time of its commission.

On the matter of damages, the trial court awarded P30,000 as indemnity. Conformably with prevailing jurisprudence, however, modification is in order: civil indemnity awarded to the victim should be increased to P50,000.[25] In addition, the victim is also entitled to the award of moral damages in the amount of P50,000 without need of proof other than the fact of rape. By way of public example, and to promote respect for women's virtue, as well as to deter sexual abuses, the amount of P25,000 should also be awarded as exemplary damages.

WHEREFORE, the judgment of the Regional Trial Court of Davao City, Branch 13, finding appellant VICTOR BALILI guilty beyond reasonable doubt of the crime of rape, in Criminal Case No. 34,082-94, is AFFIRMED with MODIFICATION. He is sentenced to suffer the penalty of reclusion perpetua and ordered to pay private complainant MAYLIN ABAJO the amount of P50,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages, together with the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Austria-Martinez, JJ., concur.

[1] Rollo, pp. 16-23.

[2] Information, Records, p.1.

[3] TSN, September 16, 1994, pp. 5-6.

[4] Id. at 7-11.

[5] Id. at 11-15.

[6] Id. at 16.

[7] Id. at 17-18.

[8] Id. at 19-20.

[9] Id. at 21.

[10] Id. at 22-23.

- [11] Id. at 24-26.
- [12] Id. at 27-29.
- [13] Rollo, p. 23.
- [14] Id. at 129.
- [15] G.R. No. 118311, 303 SCRA 414, 427-428 (1999).
- [16] TSN, September 5, 1994, p. 6.
- [17] Id. at 4.
- [18] Id. at 5.
- [19] Ibid.
- [20] Ibid.
- [21] People vs. Eduardo dela Cruz, G.R. No. 108180, 229 SCRA 754, 762 (1994).
- [22] People vs. Alberca, G.R. No. 117106, 257 SCRA 613, 631 (1996).
- [23] People vs. Bautista, G.R. Nos. 120898-99, 290 SCRA 58, 70 (1998).
- [24] People vs. Molas, G.R. Nos. 88006-08, 286 SCRA 684, 690 (1998).
- [25] People vs. Decena, G.R. No. 131843, 332 SCRA 618, 626 (2000).

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