

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALDRICO CALUZA, ACCUSED-APPELLANT.

*G.R. No. 131810. May 29, 2002*

Ponente: PUNO, J.

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### PUNO, J.:

Appellant Aldrico Caluza is charged with rape under par. 2, Art. 235 of the Revised Penal Code filed by private complainant May P. Fag-ayan. The Complaint reads as follows:

“That on or about November 5, 1995 in the early morning thereof, at Sum-at, Caluttit, Bontoc, Mountain Province and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and after causing the undersigned to drink intoxicating liquor which made her sleep and unconscious, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of the undersigned while she was in such state of drunken sleep and unconsciousness, without her knowledge and consent, and against her will, afterwhich said accused threatened to harm or kill the undersigned, who is a minor, 17 years of age and single, if she reported the sexual assault on her, all to her damage and prejudice.

CONTRARY TO LAW.”[1]

A warrant of arrest[2] was issued on 13 March 1996 by Presiding Judge Artemio B. Marrero of the Regional Trial Court, Branch 36, Bontoc, Mountain Province. On 27 March 1996, appellant filed a Motion for his Voluntary Surrender with Motion to Set Case for Arraignment[3] simultaneous with his Application for Bail.[4] On that same day, appellant voluntarily submitted himself to the court of Judge Marrero who ordered his commitment to the Provincial Jail of Bontoc, Mountain Province. Judge Marrero likewise issued the following Order, to wit:

“Upon motion of the accused in the above-entitled action, the arraignment and hearing on the application for bail of the latter is hereby set for March 28 and 29, 1996 at 2:00 o’clock in the afternoon.

SO ORDERED.”[5]

Upon arraignment, appellant pleaded “not guilty” but the hearing of his application for bail was reset[6] to April 11 and 12, 1996. The April 11 hearing was further transferred to April 15 on motion of the prosecution as its main witness appeared indisposed. Private complainant moved for cancellation of the April 15 hearing as she was going to file a petition for change of venue in this Court. On 26 April 1996, private complainant filed said petition and hearings on appellant’s application for bail were suspended in obedience to this Court’s temporary restraining order.

On 10 September 1996, this Court[7] granted the petition and transferred the case at bar to the Regional Trial Court of Baguio City. It was raffled to Branch 61 under Presiding Judge Antonio C. Reyes. On 5 November 1996, he issued the following Order, viz:

“The above-entitled case having been raffled to this Court, let the hearing be set on December 5, 1996 at 8:30 o’clock in the morning.

The Provincial Jail Warden of Bontoc, Mt. Province is ordered to effect the transfer of accused Aldrico Caluza to the Baguio City Jail before the aforesaid date of hearing.

Furnish a copy of this Order to the counsel of the accused, the Provincial Jail Warden of Bontoc, Mt. Province and counsel of the private complainant.

SO ORDERED.”[8]

In the ensuing hearings, the prosecution presented the following witnesses: private complainant May Fag-ayan, Teresita Fag-ayan, Rebecca Fag-ayan, Dr. Errol D. Ciano and Dr. Amefil J. Alejandro.

May Fag-ayan (May) testified that she worked as a waitress and kitchen helper at the Cyrus Canteen owned by appellant Caluza at Bontoc, Mountain Province, from 24 October to 5 November 1995. On 4 November 1995, she reported for work from 7 o'clock in the morning up to 10:00 in the evening. She and another employee, Golda Pacliwan, were about to close the canteen when appellant, together with a companion named Ambot Bede, came and invited the ladies to partake of a big-sized Gilbey's gin. Initially, May refused, but due to the insistence of appellant, she and Golda partook of the gin. They finished at almost midnight and closed the canteen. Appellant, together with Bede, drove the two ladies to the apartment of May using his government-owned pick-up truck. When they reached the place, May and Golda went inside the apartment. They were fixing their beds when they heard appellant knocking at the door. They did not pay him attention. It was only when appellant started shouting and pounding on the door that May got up from bed and opened the door to let him in. She saw that appellant brought along another Gilbey's gin. Appellant ordered May to get four glasses and forced her to another round of drinks with him, Bede and Golda. Golda later left the three in the sala when she went back to her bed to sleep. A little later, Bede vomited and fell asleep in the sala, leaving May and appellant alone drinking. Appellant continued to force her to drink until she lost consciousness. She was only awakened when she felt pain in her private parts. She found herself and appellant naked and the latter was on top of and inside her. She tried to shout but appellant covered her mouth with his hand and threatened to box her if she did not keep still. She struggled away from appellant who, before leaving with Bede, reiterated his threat to inflict upon her physical harm if she reported the incident. She got pregnant and delivered a baby girl by caesarian section on 13 August 1996. May claimed moral damages and testified that she spent P28,000.00 for her professional and hospital bills.

Teresita Fag-ayan, aunt of complainant, testified that she was the business partner of appellant at the Cyrus Canteen. It was upon her instance that May was employed by appellant as waitress. She narrated that she was not in the apartment that she shares with May during the time the incident allegedly took place. She left for Manila on 4 November 1995 and only learned of the ordeal of her niece when she returned to Bontoc on 21 November 1995.

Rebecca Fag-ayan, mother of private complainant, testified that she learned of the tragic incident only on 26 November 1995 when May returned to the family home. She recounted that on 2 December 1995, she saw appellant by chance. She confronted him why he raped her daughter but he gave no reply. When she continued to ask what he would do if May got pregnant, appellant answered that such was impossible because she was bleeding at the time of the alleged incident.

The prosecution also presented Dr. Errol D. Ciano who subjected May to an internal and speculum examination on 2 December 1995. He stated that May had three lacerations in her vagina which could have been caused by the insertion or penetration of a blunt object like the male organ, although they could have been caused by some other blunt instrument.[9]

Dr. Amefil J. Alejandro also took the witness stand. She is the obstetrician and gynecologist whom May twice consulted for pre-natal check-ups and her eventual delivery.

After presenting the above witnesses, the prosecution submitted its Formal Offer of Evidence.

Appellant interposed the defense of alibi. Defense witnesses Alban Emmanuel Fanusan, Vincent Cariño Castañeda, Alladin Gasmena Caluza and Jenny Claire Serrano testified that appellant was in Metro Manila when the rape incident allegedly took place, making it physically impossible for him to be in V. Luna at 4:00 in the afternoon of 4 November 1995 and be at Bontoc committing the crime at about midnight.

Collaborating each other, Fanusan, Castañeda and Caluza declared that they passed the entrance examinations of the Philippine Military Academy in 1995. As part of the admission process, they were required to undergo physical and medical examinations at the V. Luna Hospital in Quezon City on 4 November 1995. They requested appellant to accompany them because he knew his way around Metro Manila. Besides, appellant's brother, Alladin, also passed the examination. The group, including Jenny Claire Serrano, left Baguio City at about 10 o'clock in the evening of 2 November 1995 and arrived in Metro Manila at about 4 o'clock in the morning of 3 November 1995. They broke in two groups at the bus station. Fanusan and Castañeda proceeded to the boarding house of Castañeda's brother while appellant, his brother Aladdin and Serrano went to Project 4, Quezon City. They agreed to meet at the Liaison Office of the Armed Forces of the Philippines Medical Center in the afternoon of the following day, 4 November 1995.

The group met at the V. Luna Medical Hospital as agreed upon. Appellant, as a representative of his brother, also attended a seminar on the activities of the prospective cadets.

Witness Jenny Claire Serrano corroborated the testimony of Fanusan, Castañeda and Caluza. She added that after leaving V. Luna Hospital at about 4 o'clock in the afternoon, she and appellant proceeded to SM Megamall where they window-shopped, ate, and saw a movie. After which, they headed back to Project 4 and separated at around 12:00 am of 5 November 1995. Appellant boarded the 1:00 am trip of the Dagupan Bus for Baguio City while Serrano proceeded to her boarding house in Blumentritt.

The defense also presented Minnie Sagandoy who works part-time at the Cyrus Canteen. She testified that May often violated the rule not to drink with customers. She said that May would often get drunk while entertaining customers. She further said that in the afternoon of 4 November 1995, an uncle of May named "Bong" went to the canteen and got the keys to her apartment. On that night, May went home to her apartment despite her advice not to spend the night alone with her (May) uncle. The following day, she noticed that May looked like she had a problem and when she inquired, May confided that her uncle "Bong" entered her room that night.

Another defense witness, Theodore Dalog, the officer-in-charge of the provincial motor pool in Bontoc, Mountain Province, testified that he approved the application of appellant for a Leave of Absence on November 2 and 3, 1995 to accompany some prospective PMA cadets for physical examination at the V. Luna Hospital in Quezon City. Dalog also presented the attendance logbook of the employees which showed that appellant was on leave on November 2 and 3, 1995. He also identified the Daily Time Record (DTR) of appellant showing that he was on leave on November 2 and 3, 1995.

Also a defense witness was Gabriel Coteng, the recorder of the Knights of Columbus of Bontoc, Mountain Province who recorded the attendance of the club members in their meeting on November 5, 1995. Coteng identified the attendance sheet showing that appellant was absent during the said meeting.

The defense submitted its Formal Offer of Evidence after presenting the above witnesses.

The prosecution presented Romeo "Bong" Bagatilla on rebuttal. He admitted visiting May at the Cyrus Canteen but explained that he did so on 1 November 1995. He admitted that he entered May's room that night, but only to pull up her blanket. At this juncture, May was awakened and elbowed him. He said that he went out of the room

immediately.[10] Private complainant also testified on rebuttal and substantially corroborated Bagatilla's story.

On 11 August 1997, the trial court gave the following Order, to wit:

"x x x x x x x x x x

Counsels are given fifteen (15) days simultaneously to file their respective memorandum, after which the case will be deemed submitted for decision.

SO ORDERED.

x x x x x x x x x x."[11]

In compliance, the parties filed their respective memoranda.

On 1 October 1997, the trial court promulgated a Decision which found appellant guilty beyond reasonable doubt of the crime of rape. He was sentenced to suffer a prison term of reclusion perpetua, ordered to indemnify private complainant in the amount of P50,000.00 as moral damages, P28,000.00 as actual damages, and to pay the costs.[12]

Appellant filed a Motion for Reconsideration[13] contending that the Decision of the trial court, being a judgment on the merits, was premature. He alleged that only the issue of bail was submitted for resolution. For this reason, he averred, defense withheld the presentation of appellant himself and three other material witnesses.

On 15 October 1997, the trial court denied reconsideration. It held:

"x x x First of all, applications for bail in crimes which are punishable by reclusion perpetua or higher are discretionary upon the trial court and when this court decided the case on the merits, the petition for bail has become, as stated earlier, moot and academic.

Secondly, the Order of August 11, 1997 by this Court clearly stated that the case was deemed submitted for decision upon the filing of the parties' respective memorandum. This Order was never questioned by the accused. x x x"[14]

Hence, this appeal where appellant raises the following Assignment of Errors:

"I. THE TRIAL COURT ERRED IN DECIDING THE CASE ON THE MERITS WHEN IT SHOULD HAVE ONLY RESOLVED THE APPLICATION FOR BAIL OF ACCUSED-APPELLANT THEREBY DENYING ACCUSED-APPELLANT THE CONSTITUTIONAL RIGHT TO BE HEARD BY HIMSELF. TO PRESENT SOME MORE MATERIAL AND VITAL WITNESSES IN HIS BEHALF, AND TO DUE PROCESS OF LAW; AND

II. TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE OFFENSE CHARGED WHEN IT SHOULD HAVE ACQUITTED ACCUSED-APPELLANT FOR FAILURE OF THE PROSECUTION TO PROVE THE OFFENSE CHARGED BEYOND REASONABLE DOUBT."

We rule for the appellant.

A perusal of the records will show that the trial court presided by Judge Antonio C. Reyes erred in deciding the case on the merits when it should have limited itself in resolving appellant's application for bail. Before the case at bar was transferred to Judge Reyes, there is no question that the incident to be resolved was appellant's application for bail. Its hearing was set on April 11 and 12 and then reset on April 30, 1996 by Judge Artemio B. Marrero in whose sala the case was originally filed. These hearings on appellant's application for bail were aborted as this Court changed the venue of the trial from Bontoc, Mountain Province to the RTC of Baguio City and presided by Judge Reyes.

It ought to follow that the subsequent hearings conducted by Judge Reyes were hearings on appellant's pending application for bail. His Order of November 5, 1996 setting the case at bar for "hearing" should be taken in this light. It cannot be understood as a hearing on the merits for what was pending for hearing was appellant's application for bail.

It is also clear to both the prosecution and the defense that the evidence they presented during these hearings were for the purpose of resolving appellant's application for bail. Appellant's Memorandum prayed as follows: "Wherefore, premises considered, accused respectfully prays of the Honorable Court that he be allowed to post reasonable bail for his provisional liberty." He did not pray for his acquittal as the case was not to be decided on the merits. Similarly, the Memorandum for the Prosecution prayed as follows: "Wherefore, premises considered, it is most respectfully prayed of this Honorable Court that the Application for Bail of the accused be denied." Again, worthy to note, the prosecution did not pray for the conviction of the appellant which it should have done if the case was submitted for decision on the merits.

The attention of the trial court to its grievous error was called by the appellant in his Motion for Reconsideration. He contended:

"Prior to the rendition of the above-questioned decision, both the prosecution and defense had just terminated the presentation of their respective evidences relative to the accused's petition for bail. As could be gleaned from the submitted formal offer of evidence of both the prosecution and defense as well as their respective memoranda, what BOTH parties submitted for resolution was the issue pertaining to the accused's application for bail. It is in fact with this belief that the defense withheld the presentation of the accused and at least three (3) other witnesses, including Golda Pacliwan who was present during the alleged commission of the rape.

Thus, it is premature for the Honorable Court to have rendered judgment on the merits instead of dealing and limiting its resolution on the issue of bail.

Invariably, the accused's right to trial as well as his right to due process in general were unduly impaired as he was not afforded the opportunity to ventilate all his defenses. Had the accused known that the Honorable Court would not pass upon his application for bail and instead rule on the merits of the case outright, the accused would have opted to present additional evidence and testified himself.

As it is, the accused refrained from testifying as well as desisted from presenting other witnesses as he was confident that no matter what the outcome of the petition for bail would be, he still gets a chance to present his evidences."

Insensitive to appellant's plea, the trial court brushed aside his Motion for Reconsideration. It insisted that the Order of August 11, 1997 stated that the case was deemed submitted for decision and appellant did not take exception to its correctness. As aforesaid, the trial judge's impression is wrong as it is repudiated by the records of the case at bar. The trial court's unyielding attitude is unfortunate for it waylaid appellant's constitutional right to due process of law. Except for a little loss of time, the trial court's processes would not have been prejudiced if it vacated its judgment and heard the testimony of the appellant himself and his other vital witnesses, especially the testimony of Golda Pacliwan. It cannot be overstressed that at stake is the lifetime liberty of the appellant and all our norms of law dictate that he should have been given the widest latitude to be heard in his defense. At the very least, the confusion on whether appellant has submitted his case on the merits should have been resolved in his favor. The decision on the merits handed down by the trial court convicting him is therefore constitutionally flawed and cannot be made to stand. We need not resolve the second assignment of error of the appellant.

IN VIEW WHEREOF, the Decision dated October 1, 1997 of the RTC of Baguio City, Br. 61 in Crim. Case No. 14567-R is set aside and the case is remanded to the said trial court for continuation of the reception of evidence

for appellant Aldrico Caluza. No costs.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Kapunan, Ynares-Santiago, and Austria-Martinez, JJ., concur.

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[1] Original Record, p. 1.

[2] Id., p. 22.

[3] Id., pp. 24-25.

[4] Id., pp. 24-30.

[5] Id., p. 36.

[6] Rollo, p. 41.

[7] Id., pp. 120-123.

[8] Id., p. 125.

[9] TSN, Dr. Errol D. Ciano, 3 March 1997, p. 11.

[10] TSN, Romeo Bagatilla, 5 & 6 August, 1997.

[11] Original Records, p. 365.

[12] Id., pp. 403-412.

[13] Original Records, p. 413.

[14] Rollo, p. 167.

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