PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NELSON CABUNTOG, ACCUSED-APPELLANT.

G.R. No. 136337. October 23, 2001

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-136337/

KAPUNAN, J.:

Nelson Cabuntog was charged for multiple rape in an Information that read:

> That on or about the 6[th] day of May, 1995 in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping with another, by means of force and intimidation, did then and there willfully, unlawfully and feloniously take turns in having carnal knowledge of the undersigned against her will and without her consent, to the damage and prejudice of the undersigned in such amount as maybe allowed by law.
>
> Contrary to law.[1]

Cabuntog entered a plea of Not Guilty and trial proceeded against him.

The evidence for the prosecution would show that Edna Durero was the househelper of Vevencia Pareja.[2] Durero was deaf-mute.[3]

Pareja testified that in the evening of 05 May 1995, she was tending her 24-hour sari-sari store and barbeque grill located at Luneta Park, Borromeo St., Surigao City.[4] She was being helped by her granddaughter Gingging Uyan and Durero.[5] At dawn of 06 May 1995, Nelson Cabuntog and his three companions arrived. They proceeded to order some drinks and barbeque.[6] Pareja prepared the "puso" and asked Durero to rekindle the charcoal for the grill.[7] She noticed that Cabuntog went near Durero and brushed his body against hers.[8]

After a while, Pareja decided to check on Durero but the latter could not be found.[9] Cabuntog and one of his companions, known as Bobbit, were also missing.[10] The charcoal was not rekindled at all.[11] Pareja requested Gingging to look for Durero but her granddaughter returned unsuccessful on her errand.[12] Pareja instructed Gingging to look at the Arnoldus Pastoral Office.[13] Again, Gingging returned without finding Durero or Cabuntog. However, she reported that the gate to the pastoral office was open.[14]

Pareja again instructed Gingging to return. This time, Gingging reported that she saw Durero, Cabuntog and Bobbit getting out of the pastoral office.[15]

When Durero, Cabuntog and Bobbit returned to the store, Pareja immediately asked her where she went.[16] Through signs, Durero was able to convey that she was pulled by Cabuntog and taken to the pastoral office.[17] There, she was pushed against the wall and molested by Cabuntog.[18]

Durero testified in court using signs.[19] In sum, her "testimony" disclosed that on 06 May 1995, between three and four o'clock in the morning, the accused dragged and pulled her, pushed her against the wall, touched her private parts and succeeded in having sexual intercourse with her.[20]

Dr. Desiree Chong[21] testified that when examined Durero, she did not find any signs of abrasion or contusion on Durero's body.[22] However, the smear of vaginal fluid taken from Durero was tested positive for the presence of spermatozoa.[23]

In defense, Cabuntog testified that on 06 May 1995, at about four o' clock in the morning, he was in his house at Barangay Guadas, Dinagat, Surigao del Norte, preparing the pukot (fish net) he would use for fishing.[24] He even saw their Barangay Captain, Samson Camposano, who was going to the seashore to buy fish.[25] Cabuntog maintained that he went fishing that morning and in fact, during the whole month of May.[26] He stated that he needed money as his wife just gave birth to their child.[27]

Samson Camposano corroborated the testimony of the accused. He declared that at around four o'clock in the morning of 06 May 1995, he saw Cabuntog, first, while the accused was preparing his fishnet,[28] and later, as the accused was about to leave for the sea.[29] Camposano was about five (5) meters away from Cabuntog's house.[30] He was sure it was the accused because the house was illuminated by a wick lamp.[31]

After trial, Cabuntog was found guilty as charged and judgment was rendered against him in this wise:

> WHEREFORE, for all the foregoing, this Court hereby finds the accused, NELSON CABUNTOG, GUILTY beyond reasonable doubt of the crime of RAPE, as defined and penalized under Section 11, Republic Act No. 7659; without any modifying circumstance for consideration, he is sentenced to suffer and INDETERMINATE PENALTY of Seventeen (17) Years, Four (4) Months and One (1) Day of Reclusion Perpetua maximum as maximum (People vs. Muñoz, 170 SCRA 107); and to pay victim, Edna B. Durero, moral damage in the amount of Forty Thousand Pesos (P40,000.00) and exemplary damage in the amount of Twenty-Five Thousand Pesos (P25,000.00) (People vs. Cristobal, supra) but without subsidiary imprisonment in case of insolvency; to suffer the accessory penalties imposed by law; and, to pay the costs.
>
> His preventive detention on June 6, 1995, up to the present, or a span/period of one (1) year, three (3) months and seven (7) days, shall be deductible, in full, from the penalty imposed herein.
>
> SO ORDERED.[32]

Cabuntog appealed his conviction to the Court of Appeals.

In a decision, promulgated on 21 October 1998, the appellate court ruled:

> WHEREFORE, the decision finding appellant guilty of rape is hereby AFFIRMED, subject to the modification that appellant is hereby sentenced to suffer the penalty of reclusion perpetua. The amount of P40,000.00 awarded to Edna Durero is hereby increased to P50,000.00. (People vs. Bondoy, 222 SCRA 216 [1993]).
>
> In view of the penalty of reclusion perpetua imposed on appellant Nelson Cabuntog, the Division Clerk of Court is hereby ORDERED to refrain from entering judgment and to elevate the record to the Supreme Court for review, pursuant to Section 13, Rule 124 of the Rules of Court and in conformity with the ruling in People vs. Traya, 89 SCRA 274 (1979).[33]

Appellant now avers before this Court that:

> THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT HAD CARNAL KNOWLEDGE WITH THE COMPLAINT BY MEANS OF FORCE AND AGAINST THE LATTER'S WILL AND CONSENT.
>
> THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[34]

We sustain the conviction of the accused.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Prefatorily, the capacity of a deaf-mute witness to testify has long been recognized. In People vs. Sasota,[35] the Court stated:

> Formerly deaf and dumb persons were considered incompetent witnesses. That theory, however, has been entirely dispelled. Experience and observation have shown conclusively that the mere fact that a person is deaf and dumb is not sufficient to justify the finding that he is incompetent as a witness.
>
> x x x. When such a witness is produced, the court may ascertain whether he has the requisite intelligence; and the judge will allow the witness to adopt such mode of communicating his ideas, whether by signs or writing, as, under the circumstances, may be deemed most satisfactory. The mode of taking the examination is a matter for the exercise of the sound discretion of the court, which must determine, in the first place, the necessity for an interpreter, and in the next place, the best method of arriving at a knowledge of the witness and of imparting that knowledge to the jury x x x.
>
> x x x
>
> No doubt it may sometimes be wise to examine into the capacity of such persons; but ordinarily, the only question will be as to the possibility of communicating with them by some certain system of signs. x x x.[36]

In this case, the victim does not seem to be mentally deficient. Her capacity to testify was only diminished by her inability to communicate like a normal person. Although almost unschooled,[37] she could write her name and she knew her age.[38] By using signs and signals, she was able to recount her ordeal before the court. Hence:

> ATTY. MOLETA: (propounding questions)
>
> Q
>
> Please tell the Court: Do you know this person seated i0n the accused's bench, this one?
>
> A
>
> (Witness is standing [at] the witness stand pointing to the accused and then after pointing to the accused, raising her left hand in open palm and using her right forefinger and push making a sign to her palm in a through and through direction in a hard manner; and then the witness also has shown her fact in an [angry] mood and push her two palms to the witness stand and there was a sound and the witness is sobbing expressing her apparent anger while looking [at] the accused).
>
> Q
>
> Tell the Court what happen(ed) to you on May 6, 1995 early morning between 3:00 t 4:00 o'clock?
>
> A
>
> Witness pointing to her calendar on May 6 and then at the same time pointing to the accused. And witness again indicating her answer by raising her three middle fingers, small finger, ring finger and middle finger, as if they were drinking and pointing to the accused by holding her hand and dragging and then pushing her.
>
> ATTY. VILLACES:
>
> I request your Honor, that the Official Interpreter will interpret, your Honor.
>
> OFFICIAL INTERPRETER:
>
> She was dragged and pulled and brought towards and pushed to a wall and then she felt dizzy and then her private parts were being touched and then she was undressed and there were two persons. She demonstrated

that both her hands were pulled to the left and right; then her breast(s) were touched and her pants were pulled down.

ATTY. MOLETA:

The witness demonstrating that her hands, your Honor, were held and then the two were signalling towards her private part.

COURT:

Q

What is that two?

A

The two took turns then pointing her vagina by using her forefinger and pointing to her private part; and then the other one which has a mole below the right eye; and then after abusing her the two laughed. (Witness indicating her answer by opening her mouth and at the same time pointing to the accused).

ATTY. MOLETA:

We would like to request the Interpreter, your Honor, to make into the record the fact that the witness has pointed to the accused, that was not entered into the record, your Honor, especially the name of the accused.

COURT:

That was indicated already.

ATTY. MOLETA:

What I mean, your Honor, is the Interpreter, will name the person pointed to.

Q

Here is a signature above the typewritten name Edna B. Durero, complainant, found on page 1 of the record, is this signature your signature?

ATTY. VILLACES:

No basis, your Honor.

COURT:

Witness may answer.

A

(Witness indicating her answer by nodding her head in a positive way up and down and then signalling as if writing her name).

ATTY. MOLETA:

We pray, your Honor, that this complaint be marked as Exhibit "C".

COURT:

Mark it.

ATTY. MOLETA:

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

And the signature of the complainant, your Honor, as Exhibit "C-1".

COURT:

Mark it.

Q

In this Medical Certificate already marked EXH. "A", there is a signature above the typewritten name Edna B. Durero, is this signature your signature?

A

Witness indicating her answer that this is her signature and in a positive nod, when she was examined by a Doctor. (Witness indicating again her answer by pointing to the instrument inserted both of her ears that a Doctor examined her and then signalling her private part that there was something taken and placed on the blade or an instrument and writing something or describing the examination conducted on her by the Doctor).

ATTY. MOLETA:

We pray, your Honor, that the signature of the witness as identified by her be marked as Exhibit "A-3".

COURT:

Mark it.

ATTY. MOLETA:

That will be all your Honor.[39]

The Court noted the difficulties encountered by Durero during the cross-examination but the counsel for the defense was then asking questions that were not easy to interpret, such as, "What is the name of the accused?" "How long have you known the accused?" "What kind of identification or marks to show that the accused was the one who really abused you?" However, Durero could readily answer questions propounded during the cross-examination when these questions could easily be interpreted to her. Thus:

ATTY. VILLACES:

Q

How many persons who (sic) abused you?

A

(The witness indicating her answer by raising her two fingers and pointing again to her palm in a hard manner).

Q

Can you tell this Honorable court if these two persons are now present in court?

A

(Witness indicating her answer by pointing again to the accused and indicating a person with a mole and that he is not here in the courtroom by pointing to a distance and the witness again pointing to the accused's bench), so that the answer, the other one has gone by pointing to a distance outside.

Q

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Who brought you to the physician for examination?

A

(Witness indicating her answer by pointing to a woman inside the courtroom when asked her name answered that she is Vivencia Pareja) and witness indicating her signs also by riding in a motorcycle together with Mrs. Pareja).

ATTY. MOLETA:

We make of record, Your Honor, that Vivencia Pareja was the first witness of the prosecution, your Honor.

COURT:

As I said, everything is recorded here. Proceed.

ATTY. VILLACES:

Q

Do you recall whether you were investigated by a police?

A

(Witness indicating her answer by saluting and then with a patch on the left shoulder, and it means "yes").[40]

x x x

ATTY. VILLACES:

Q

Could you recall what was the attire of the accused when he was (sic) allegedly abused you?

A

(Witness indicating her answer by pointing a green colored shirt and then with a long sleeve and then with a hat and has a short pant colored brown pointing to the Interpreter's table, dark brown short pant; then she was afraid with a tough looking man and that scared her).

Q

How about the other accused what is (sic) he wearing?

A

Sleeveless then with white cap. (witness indicating her answer by pointing to the Interpreter's polo barong).

Q

Did you report what happened to you to your employer?

A

Yes, and she reported and crying in front of her employer while at that time she was still frightened or at (sic) state of shock while her employer was attending to her store giving something.[41]

From the foregoing, the competence of the victim as a witness was clearly established, and after a careful review of the records of this case, we find no reason to digress from the findings of the trial court that she was, indeed, raped by accused-appellant.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

The testimony of Vevencia Pareja corroborated that of the victim's. She confirmed that the accused and his three companions went to her store at around 4:00 a.m. of 06 May 1995 and ordered drinks.[42] She confirmed that sometime thereafter, she noticed that the accused, one of his companions and Durero was no longer around.[43] More importantly, she testified that when Durero returned, the latter, through signs communicated to her that she was abused by accused-appellant.[44]

Finally, the fact of the rape was also confirmed by Dr. Chiong who testified as follows:

> ATTY. MOLETA:
>
> Q
>
> In connection with your findings which are entered in this Medical Certificate, "CERVICAL SMEAR: (+) Positive for presence of spermatozoa and for abrasions/contusion." Will you elaborate further your findings, Doctor?
>
> A
>
> I examined this patient as noted in my certificate and I did not find any signs of abrasion. This is negative for abrasion (or) contusion but when I took a smear on the vaginal fluid and I examined in the laboratory an spermatozoa was seen in the smear and it is positive.
>
> Q
>
> With your findings that there was indeed presence of spermatozoa, is that conclusive that there was a sexual intercourse?
>
> A
>
> Yes, it is very conclusive because the sperm cannot enter the vaginal canal without sexual intercourse.[45]

Cabuntog has no other defense than alibi. Unfortunately for him, alibi is inherently weak as it is easy to contrive and difficult to prove.[46] For alibi to prosper, it would not be enough for the accused to prove that he was elsewhere when the crime was committed but more importantly, that it would have been physically impossible for him to be at the crime scene at the time of its commission.[47] The mere denial of the accused, particularly when it is not properly corroborated and substantiated by clear and convincing evidence, cannot prevail over the testimony of affirmative witnesses who testify on affirmative matters.[48] Alibi is practically worthless against the positive identification made by prosecution witness, especially by the rape victim.[49]

As regards the contention of accused-appellant that no abrasion or contusion was found on Durero's body, negating her claim that she was dragged by the accused, suffice to say, that the absence of external injuries does not negate rape.[50] Proof of physical injury is not an essential element of the crime of rape.[51] So also, the absence of abrasion or contusion on the victim does not signify that there was no force or intimidation. The law does not impose a burden on the rape victim to prove resistance.[52] It need not be stressed that if resistance is futile because of intimidation, the fact that none was offered by the victim does not mean she consented to the assault.[53] Intimidation is subjective and must be viewed in the light of the victim's perception and judgment at the time of the crime.[54] Hence, even if a man lays no hand on a woman, if by an array of physical forces he so overpowers her mind that she fails to resist or ceases resistance because of fear or greater harm, the consummation of the sexual act between them is rape.[55]

The Court of Appeals correctly stated that the imposable penalty should be reclusion perpetua in accordance with

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. Furthermore, the appellate court correctly increased the amount of indemnity from P40,000.00 to P50,000.00 in accordance with the ruling of the Court in People vs. Bondoy.[56] Also in line with recent jurisprudence and in recognition of the victim's injury as being inherently concomitant with and necessarily resulting from the crime of rape, an additional P50,000.00 should be awarded to the victim as moral damages.[57]

WHEREFORE, the judgment of conviction of the Regional Trial court of Surigao City, Branch 30, is AFFIRMED with MODIFICATION by increasing the penalty imposed upon Nelson Cabuntog to Reclusion Perpetua. Accused-appellant is also ordered to indemnify Edna Durero in the amount of P50,000.00 and to pay an additional amount of P50,000.00 as moral damages.

Cost against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

---

[1] Decision of the Court of Appeals, p. 2.

[2] TSN, 26 July 1995, p. 4.

[3] Id., at 5.

[4] Id., at 6.

[5] Id.

[6] Id., at 6-7.

[7] Id., at 7.

[8] Id.

[9] Id., at 6-7.

[10] Id.

[11] Id., at 7.

[12] Id., at 8.

[13] Id.

[14] Id.

[15] Id.

[16] Id., at 8-9.

[17] Id., at 9.

[18] Id.

[19] Her testimony was interpreted by her sister, Lucita Durero-Madlos, TSN, 23 August 1995, p. 9.

[20] Id., at 12.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[21] Medical Officer III at Surigao Provincial Hospital.

[22] Id., at 5.

[23] Id.

[24] TSN, 16 October 1995, p. 12.

[25] Id.

[26] Id., at 14.

[27] Id.

[28] Id., at 5.

[29] Id., at 6.

[30] Id., at 5.

[31] Id., at 8.

[32] CA Rollo, p. 31-32.

[33] CA Decision, pp. 11-12.

[34] Rollo, p. 19.

[35] 52 Phil. 281 (1928).

[36] At 285-286.

[37] She was unable to finish Grade I, TSN, 23 August 1995, p. 12.

[38] Id., at 11.

[39] Id., at 12-14.

[40] Id., at 21.

[41] Id., at 22-23.

[42] TSN, 26 July 1996, pp. 6-7.

[43] Id., at 7-8.

[44] Id., at 9-12.

[45] TSN, 23 August 1995, p. 5, underscoring supplied.

[46] People vs. Peñaflorida, 313 SCRA 563 (1999).

[47] People vs. Reduca, 301 SCRA 516 (1999).

[48] People vs. Acala, 307 SCRA 330 (1999).

[49] People vs. Henson, 270 SCRA 634 (1998).

[50] People vs. Managaytay, 305 SCRA 316 (1999).

[51] People vs. Abella, 315 SCRA 36 (1999).

[52] People vs. Alquizala, 305 SCRA 367 (1999); People vs. Cantos, Sr., 305 SCRA 786 (1999).

[53] People vs. Limon, 305 SCRA 367 (1999).

[54] People vs. Sagun, 303 SCRA 382 (1999).

[55] Ibid.

[56] 222 SCRA 216 (1993).

[57] See People vs. Prades, 293 SCRA 411 (1998).

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.