

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY LINING AND LIAN SALVACION, ACCUSED. GERRY LINING, ACCUSED-APPELLANT.

G.R. No. 138401. July 11, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Gerry Lining and Lian Salvacion were both charged with the crime of Abduction with Rape under an Information that read:

That on or about the 5[th] day of October, 1997, at 1:00 o'clock in the morning, more or less, in sitio Buho, Barangay Mabuslot, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and acting in common accord, with lewd and unchaste design, did, then and there, wilfully, unlawfully, feloniously and with threat and intimidation with use of a deadly weapon, forcibly abduct one Emelina Ornos, a 15-year-old girl, towards an unoccupied house and thereat and pursuant to their criminal conspiracy and motivated with lustful desire, wilfully, unlawfully and feloniously lay with and had carnal knowledge one after the other of said victim against her will and without her consent, to the damage and prejudice of the latter.

That in the commission of the crime, the aggravating circumstances of nocturnity, use of deadly weapon and abuse of superior strength are attendant.

CONTRARY TO LAW.[1]

Accused Lian Salvacion remained at large and trial proceeded against Gerry Lining alone, who entered a plea of Not Guilty.

Gleaned from the questioned decision of the trial court, as well as the records of the case, the facts are as follows:

On October 4, 1997, at around 12:30 in the afternoon, Emelina Ornos, then fifteen (15) years old,[2] requested permission from her parents to visit her aunt Josephine at Sitio Buho, Barangay Nabuslot, Pinamalayan Oriental Mindoro where she was supposed to spend the night.[3] She arrived at her aunt's house at around one o'clock in the afternoon.[4] While in her aunt's house, Emelina was invited by one Sajer to a dance party to be held at the barangay basketball court.[5] Emelina accepted the invitation and at around seven o'clock in the evening of the same day, she went to the party, accompanied by her aunt.[6] Josephine then left Emelina at the party, telling her that she had to go home but she would return later to fetch her.[7] Josephine's house was about 500 meters away from the barangay basketball court.[8]

At around 12:30 in the morning, the party ended but Josephine still had not returned.[9] Emelina decided to go home alone. On her way to her aunt's house, Emelina was accosted by Gerry Lining and Lian Salvacion, both of whom were known to her since they were her former neighbors.[10] Lining poked a kitchen knife at Emelina's breast and the two held her hands. Emelina was dragged towards the ricefield and was forcibly carried to an

unoccupied house owned by Mila Salvacion.[11]

Inside the house, Lining removed Emelina's t-shirt, pants and undergarments. She was pushed to the floor and while Salvacion was holding her hands and kissing her, Lining inserted his penis inside her vagina.[12] Emelina shouted and tried to ward off her attackers, but to no avail.[13] One Russel heard her cries and tried to help her but he left when told not to interfere ("Huwag kang makialam").[14] After Lining had satisfied his lust, he held Emelina's hands and kissed her while Salvacion in turn inserted his penis inside her vagina.[15] Thereafter, the two directed Emelina to put on her clothes. The accused then looked for a vehicle to transport Emelina to Barangay Maningcol. Emelina saw an opportunity to escape, and she returned to her aunt's house.[16] However, because of fear, as the accused threatened her that she would be killed if she would reveal what they did to her, she did not tell her aunt what transpired.[17] She next went to the house of her friend Evelyn Saguid where Gerry Selda, a friend of her father, saw her crying. She told him about the rape incident and Selda accompanied her to the barangay captain.[18] However, since the barangay captain was not in his house, Selda brought Emelina to the Chief of Police, Commander Amador Mogol.[19] Emelina's statements were taken at the police station and she was subjected to a medical examination.[20] The Chief of Police immediately ordered the arrest of Lining but Salvacion was able to escape.

Dr. Adelaido Malaluan, the Municipal Health Officer of Pinamalayan, Oriental Mindoro, who conducted the medical examination on Emelina on October 6, 1997,[21] reported the following findings:

GENERAL AND EXTRAGENITAL -

Fairly developed, fairly nourished, coherent and ambulatory, breast and conical with brownish areola, right breast with contusion on nipple inner part measuring 1.5 cm., abdomen is flat and soft.

Contusions on antero-lateral part of the neck left and right area.

GENITALIA:

There is scanty distribution of pubic hair, Labia Majora are full, cervix and coaptated, there is superficial fresh erosion along the vaginal wall, with healed laceration 6, 8 and 9 o'clock on the part of the hymen. External vaginal orifice offers moderate resistance to the introduction of the examining finger and the virgin-sized speculum. Tinea cruris is also noted on the inguinal region.

LABORATORY EXAMINATION:

Negative for Spermatozoa.

REMARKS:

SUBJECT IS IN NON-VIRGIN STATE PHYSICALLY.[22]

Dr. Malaluan testified that Emelina's contusions could have been caused by a blunt object, a forcible kiss or a bite,[23] and that the fresh erosion along the vaginal canal could have been caused by an erect penis.[24]

Accused Lining denied the accusations against him and disputed the findings of the trial court. He alleged that in the morning of October 4, 1997, his brother-in-law Artemio Salvacion invited him to attend a barangay dance in Nabuslot.[25] Later that afternoon, he fetched Ildefonso Magararu and together, they went to the house of Artemio, arriving thereat at about eight o'clock in the evening where they also met Russel Bolquerin, Allan Salvacion and Lian Salvacion.[26] However, Lining was not able to attend the dance party because Artemio requested him to look after the palay in his house. Instead, he and Ildefonso had some beer and pulutan in the house of Artemio.[27]

At around 12:00 midnight, after they had finished their drinks and when Artemio returned from the dance, Ildefonso requested Lining to accompany him on his way home because of his poor eyesight. Thus, Ildefonso, Allan, Lian, Russel and Lining proceeded to Barangay Palayan, about one and a half (1-½) kilometers away.[28] Since it was raining when they arrived at Palayan, the group spent the night in Ildefonso's house and only returned to the house of Artemio at around five o'clock in the morning.[29] Lining then decided to proceed and sleep in the house of Mila Salvacion where the police later apprehended him.[30]

Artemio Salvacion, brother-in-law of Lining and father of Lian, as well as Ildefonso Magararu, corroborated the testimony of Lining.

Salvacion declared before the court that Lining did not attend the dance and stayed in his house until about one o'clock in the morning when he joined Lian, Allan and Russel in bringing Ildefonso home.[31] When asked where his son Lian was, Salvacion stated that he left the house because he got a job and had not returned since. He disclaimed any knowledge of the whereabouts of his son who, according to him, had not written any letter nor sent any money since he left.[32]

Ildefonso Magararu confirmed that the group of Lining accompanied him home and stayed in his house from one-thirty to around five o'clock the morning of October 5, 1997.[33]

After trial, the court found Gerry Lining guilty beyond reasonable doubt for the crime of forcible abduction with rape, and for another count of rape. It ruled:

ACCORDINGLY, accused GERRY LINING is hereby found GUILTY beyond reasonable doubt, as principal of the complex crime of ABDUCTION WITH RAPE and another count of RAPE and is hereby sentenced to TWO (2) DEATH penalties.

Additionally, accused is ordered to indemnify Emelina Ornos the amount of P50,000.00.

In so far as the accused at large LIAN SALVACION is concerned, let the records of this case be sent to the archives without prejudice to its being revived upon his arrest.

SO ORDERED.[34]

Before this Court, accused-appellant alleges:

I

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT INDEED HAD CARNAL KNOWLEDGE WITH PRIVATE COMPLAINANT, THE TRIAL COURT, NONETHELESS, ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH.[35]

After a careful review of the records of this case, the Court finds no reason to reverse the findings of the trial court.

Time and again, the Court has ruled that the factual findings of the trial court deserves respect, if not finality, since the trial judge had the unique opportunity to observe the demeanor of the witnesses as they testify.[36] The straightforward and candid testimony of Emelina Ornos, who was crying as she recalled her ordeal before the trial court, is certainly more credible than the testimonies of the defense witnesses. Emelina testified:

Q. While you were on your way going home that night, what happened? Please tell us.

A. Lian Salvacion and Gerry Lining accompanied me (sinabayan) sir.

Q. And at that time, do you know personally this Gerry Lining and Lian Salvacion?

A. Yes, sir.

Q. Why do you know personally Gerry Lining?

A. Because Gerry Lining is a kumpadre of my father, sir.

Q. How about Lian Salvacion, under what circumstance did you come to know him?

A. They were my former neighbors at Buho, sir.

Q. Tell us: Did you reside formerly at Buho?

A. Yes, sir.

FISCAL (Continuing):

Q. When you were already going home and (these) two accused were in company with you, what happened? Tell us if there is any.

A. Gerry Lining poked a kitchen knife at my breast, sir.

Q. After poking that kitchen knife on your neck, what else did Gerry Lining and Lian Salvacion do, if any?

A. They held my both hands, sir.

Q. And after holding both your hands, what else did they do?

A. "Kinaladkad po nila ako".

FISCAL (Manifesting):

The witness-complainant is again shedding tears and crying.

Q. When they dragged you, towards what direction were you brought?

A. To the ricefield, sir.

Q. And ultimately, where were you brought?

A. In the house where there was no occupant, owned by Mila Salvacion, sir.

Q. How far was that house from the place where you were first poked with a knife by Gerry Lining?

A. Very far, sir.

Q. And after dragging you towards that house, will you please tell the Court if you were ultimately brought inside the house?

A. They undressed me sir. (Hinubaran ako ng kamiseta)

FISCAL (Continuing):

Q. Who among the two actually undressed you?

A. Gerry Lining, sir.

Q. At that time, what were you wearing?

A. I was wearing T-shirt and pants, sir.

Q. Who removed that pants and T-shirts?

A. Gerry Lining, sir.

Q. And how about your panty and your bra, who removed the same?

A. Gerry Lining also, sir.

Q. And after removing everything from you and when you were already totally undressed, what did Gerry Lining do?

A. He pushed me towards the floor, sir.

Q. And when you are (sic) already lying on the floor, what else transpired? What did Gerry Lining do?

A. He placed himself on top of me sir. (Sumapaw na po siya)

Q. After placing himself on top of you, what was Lian Salvacion doing?

A. He was holding my two hands and kissing me, sir.

Q. You said that Gerry Lining placed himself on top of you; after he placed himself on top of you, what else did he do?

Witness:

A. “Ako po ay inaayod ng inaayod”.

FISCAL (Continuing):

Q. When you stated that, what do you mean?

A. “Inayod po ako ng inayod”.

Q. What did you feel when he was already making that kayod motion?

A. I felt pain on my vagina, sir.

Q. Why did you feel pain in your vagina when he was making that pumping motion?

A. Because it was painful, sir.

Q. What was causing the pain in your vagina?

A. His penis, sir.

Q. At the time that he was making that pumping motion, where was his penis?

A. Inside my vagina, sir.

Q. After a short while making that pumping motion, what happened next?

A. I felt something hot, sir.

Q. And thereafter, what did Gerry Lining do?

A. After that, Gerry Lining held my both hands, sir.

FISCAL (Continuing):

Q. And while Gerry Lining, this time, holding your both hands, what happened next?

A. Lian placed himself on top of me, sir.

Q. What is the surname of this Lian?

A. Lian Salvacion, sir.

Q. While Gerry Lining, this Gerry Lining, this time was holding both your hands and Lian Salvacion placed himself on top of you, what else transpired?

A. Inayod din po ako ng inayod.

Q. What did you feel when Lian Salvacion was doing this pumping motion?

A. I felt also a hot thing, sir.

Q. Where did you feel that:

A. Inside my vagina, sir.

Q. At the time that Lian Salvacion was making that pumping motion, what actually was Gerry Lining doing?

A. He was kissing me also, sir.

Q. And at the same time, what was he doing with your both hands?

A. He was squeezing my hands, sir.

Q. And after something had came out of Lian Salvacion inside your vagina, according to you, what else transpired?

Witness:

A. They required me to dress up, sir.

FISCAL (Continuing):

Q. Did you comply?

A. Yes, sir.

Q. And after that, where were you brought?

A. After that, they were looking for a vehicle to hide me at Maningcol, sir.

Q. While they were looking for vehicle, what did you do if any?

A. I escaped from the place, sir.

Q. Where did you go when you escaped?

A. To the house of auntie Josephine, sir.

Q. Thereafter, were you able to talk with Josephine?

A. No, sir.

Q. Why?

A. Because I was afraid of telling that happened to me, sir.

Q. Why were afraid of revealing these things that happened to you that night, to your Auntie Josephine?

A. Because at that time, I was very much afraid, sir.

FISCAL:

May it be made of record that the witness is crying. At this juncture, may we respectfully request for a recess, your honor and we will continue after the witness regain composure.

COURT:

We resume at exactly 9:30.

xxx

Note: Trial resumed at 10:00 o'clock A.M.

COURT:

This is a continuation of the direct-examination of Emelina Ornos. Proceed.

FISCAL (Continuing his direct-examination):

Q. During all the time that you were being raped, by either of the accused, Gerry Lining and Lian Salvacion, what were you doing?

A. I shouted and tried to fight, sir.

Q. How long did you shout while you were gangled up and raped by the two?

A. Quite a long time, sir. I cannot remember anymore.

Q. For how many hours more or less were you held by the two in that unoccupied house?

A. More or less four (4) hours, sir.

FISCAL (Continuing):

Q. What time more or less were you able to leave that morning?

A. 4:30 o'clock in the morning, sir.

Q. Was it already dawn?

A. Yes, sir.

Q. You stated that while the two were looking for a vehicle with which to take you to Maningcol, you were able to escape and according to you you went to the house of your Auntie Josephine and you were not able to reveal what happened to you, to your Auntie Josephine. My question is, were you not able to reveal what happened to you to your Auntie Josephine?

A. Because they threatened me not to reveal this matter because I will be killed.[37]

Accused-appellant has nothing to offer other than alibi. Unfortunately for him, alibi is weak in face of the positive identification by the victim of the perpetrator of the offense.[38] Further, the testimonies of accused-appellant and the other witnesses for the defense are not consistent on some material points. Accused-appellant testified that he was not able to attend the dance party because his brother-in-law Artemio Salvacion asked him to look after the

palay.[39] On the other hand, Artemio Salvacion testified that Lining did not attend the party upon the request of Elding (Magararu) who would not attend as he was only wearing shorts.[40] Lining and Magararu testified that when they arrived at Artemio's house, the beer and the pulutan were already on the table.[41] In contrast, Artemio testified that Lining requested for a case of beer and pulutan, and that Lining, Elding (Magararu), Lian (Salvacion), Russel and Allan were already in his house when he brought the beer and pulutan inside.[42] These inconsistencies only added doubt on the mind of the Court regarding the veracity of the statements of the defense witnesses.

The non-presentation of Russel to prove that he saw Emelina being raped does not weaken the cause of the prosecution since his testimony would at best only be corroborative. In rape cases, corroborative testimony is not absolutely necessary.[43] The lone testimony of the victim may suffice to convict the rapist.[44] The Court notes that neither the defense presented Russel to contradict the testimony of Emelina and to bolster the claim that accused-appellant never left the house of Artemio.

The medical finding that the victim was already a non-virgin, nor the fact that she had sexual relations before, would not matter. Even a woman of loose morals could still be a victim of rape, for the essence of rape is the carnal knowledge of a woman against her will and without her consent.[45] Neither the absence of physical injuries negates the fact of rape since proof of physical injury is not an element of rape.[46] In the same way, the absence of spermatozoa does not mean that the rape did not take place.[47] The absence of spermatozoa in the genitalia of the victim does not destroy the finding of rape since ejaculation is never an element thereof.[48]

Nevertheless, accused-appellant could only be convicted for the crime of rape, instead of the complex crime of forcible abduction with rape. Indeed, it would appear from the records that the main objective of the accused when the victim was taken to the house of Mila Salvacion was to rape her. Hence, forcible abduction is absorbed in the crime of rape.[49]

The Court sustains the trial court in not appreciating the aggravating circumstance of nocturnity. The mere fact that the rape was committed at nighttime does not make nocturnity an aggravating circumstance.[50] Further, the fact that the accused took turns in holding Emelina's hands while the other was raping her would not warrant the appreciation of abuse of superior strength. In *People vs. Quiñanola*,^[51] the Court ruled that "the law^[52] should be deemed to have already considered this circumstance in qualifying the crime to its 'heinous' character rendering in the context abuse of superior strength as an inherent element thereof."^[53] The Court could not separately appreciate as aggravating circumstance the use of a knife in the commission of the crime of rape, as there was no evidence that the knife was used to subdue Emelina while the rape was being committed. The testimony of Emelina showed that the accused poked a knife at her when they accosted her.^[54] However, Emelina was taken by the accused to another place, particularly, to the house of Mila Salvacion. The testimony on the acts of rape no longer mentioned the knife, not even to threaten Emelina to submission. She only recalled that the accused took turns in raping her and that one would hold her hands while the other would perform the act of rape.

Where the rape is committed by two or more persons, the imposable penalty ranges from reclusion perpetua to death; however, where there is no aggravating circumstance proved in the commission of the offense, the lesser penalty shall be applied.^[55] Anent the award of damages, the Court sustains the award of P50,000.00 as civil indemnity to the victim and, in addition, grants a separate award of P50,000.00 as moral damages founded on the victim's shame, mental anguish, besmirched reputation, moral shock and social humiliation which rape necessarily brings to the offended party.^[56]

Finally, it should be stressed that one who clearly concurred with the criminal design of another and performed overt acts which led to the multiple rape committed is a co-conspirator.^[57] For this reason, accused-appellant is

deemed a co-conspirator for the act of rape committed by his co-accused Lian Salvacion and should accordingly be penalized therefor.

WHEREFORE, accused-appellant GERRY LINING is found guilty beyond reasonable doubt of two (2) counts of rape and is sentenced to suffer the penalty of reclusion perpetua in each case. Accused-appellant is likewise ordered to pay Emelina Ornos the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of rape. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

[1] Records, p. 1.

[2] Per her birth certificate, Emelina was born on January 14, 1982, id., at 9.

[3] TSN, March 16, 1998, pp. 18-19.

[4] Id., at 4.

[5] Id., at 4-5.

[6] Id., at 5, 21.

[7] Id., at 23-24.

[8] Id., at 5.

[9] Id., at 5, 24.

[10] Id., at 6.

[11] Id., at 7.

[12] Id., at 7-9.

[13] Id., at 12.

[14] Id., at 13.

[15] Id., at 9-10.

[16] Id., at 10-11.

[17] Id., at 14.

[18] Id., at 14-16, 29.

[19] Id., at 16.

[20] Id., at 17.

[21] TSN, March 3, 1998, p. 4.

[22] Records, p. 8.

- [23] TSN, March 3, 1998, pp. 5-6.
- [24] Id., at 6.
- [25] TSN, August 10, 1998, pp. 3-4.
- [26] Id., at 4-5.
- [27] Id., at 6.
- [28] Id., at 7-8.
- [29] Id., at 8-9.
- [30] Id., at 9.
- [31] TSN, March 23, 1999, pp. 4-9.
- [32] Id., at 14-15.
- [33] TSN, June 22, 1998, p. 7.
- [34] Records, p. 63.
- [35] Rollo, pp. 44-45.
- [36] People vs. De Villa, 351 SCRA 25 (2001).
- [37] TSN, March 10, 1998, pp. 6-14.
- [38] People vs. Ayungon, G.R. No. 137752, June 19, 2001.
- [39] TSN, August 10, 1998, p. 6.
- [40] TSN, March 23, 1998, p. 5.
- [41] TSN of Lining, August 10, 1998, p. 6; TSN of Magararu, June 22, 1998, p. 12.
- [42] TSN, March 23, 1998, p. 5.
- [43] People vs. Tabanggay, 334 SCRA 575 (2000).
- [44] People vs. Bacalano, 336 SCRA 615 (2000).
- [45] People vs. Bernaldez, 322 SCRA 462 (2000).
- [46] People vs. Rafales, 323 SCRA 13 (2000).
- [47] People vs. Sapinoso, 328 SCRA 649 (2000).
- [48] People vs. Baid, 336 SCRA 656 (2000).
- [49] See People vs. Mejorado, 224 SCRA 837 (1993), People vs. Sabredo, 331 SCRA 663 (2000).
- [50] People vs. Lomerio, 326 SCRA 530 (2000).

[51] 306 SCRA 710 (1999).

[52] Republic Act No. 7659.

[53] At 737.

[54] TSN, March 10, 1998, p. 6.

[55] People vs. Sabredo, 331 SCRA 663 (2000).

[56] People vs. Galeno, G.R. No. 135976-80, June 20, 2001.

[57] People vs. Antonio, 336 SCRA 366 (2000).

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