

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS.
ALEXANDER CORRO Y ESTALOSA AND FREDLANDER BOTABARA Y
CEA, ACCUSED/APPELLANTS.**

G.R. No. 62673, May 15, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 12 September 1979, private complainant Marilyn Maglinte lodged a complaint which read as follows:

"The undersigned complaint accuses ALEXANDER CORRO y ESTALOSA, ALIAS NESTOR SALVALOSA and ALIAS SAMSON, the last named accused whose true and real identities have not as yet been ascertained of the crime of rape, committed as follows:

That on or about the 28th day of May, 1979, in Quezon City, Philippines, accused ALEXANDER CORRO y ESTALOSA and ALIAS SAMSON in conspiracy with co-accused NESTOR SALVALOSA and with NOEL TIGLAO y OCAMPO, the latter being charged with the same offense with the Juvenile and Domestic Relations Court, this City, with lewd designs and by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously, hold and pin down to the ground the arms of the undersigned, MARILYN MAGLINTE y CERVANTES thus enabling their co-accused one alias NESTOR SALVALOSA to have sexual intercourse with the undersigned MARILYN MAGLINTE y CERVANTES, a minor, 14 years of age, without the consent and against the will of the latter, to her damage and prejudice in such amount as may be awarded to her under the provisions of the Civil Code.

Contrary to law."^[1]

The complaint was subsequently amended by substituting the name of accused-appellant Fredlander Botabara for that of Nestor Salvalosa. "Alias Samson" was never apprehended, while Noel Tiglao was charged with the same offense before the Juvenile and Domestic Relations Court.

Upon arraignment, accused-appellants pleaded not guilty, and the case proceeded to trial.

The facts as found by the trial court are as follows:

"Marilyn C. Maglinte, aged fifteen (15) when she took the witness stand on November 21, 1979, is on record as having testified that she is the complainant who caused the filing of the herein amended complaint (Exhs. 'A' and 'A-1'); that having been from the Farmers Market, at about 8:30 o'clock in the morning of May 28, 1979 she was walking along July Street in Congressional Village, Quezon City on her way to her employer's house when she was accosted by accused Alexander Corro and two others; that she was asked about Emy, a co-worker in a restaurant; that the trio resented her not knowing the whereabouts of said Emy, and pulled her towards a vacant lot where accused Fredlander Botabara was waiting; that accused Corro, alias Samson and Noel Tiglao held her arms and pressed her mouth as she was dragged to the vacant lot, where accused Botabara removed her panty, and himself took off his pants and briefs; that accused Botabara laid her down on the grass, while accused Corro continued to hold her by her left arm, and the other two by her right arm, all the while

pressing her mouth; that Botabara, after achieving an erection, placed himself on top of her and attempted to penetrate her private parts; that she struggled without avail, and accused Botabara completed the penetration after about five (5) minutes, and thereafter took advantage of her for another ten (10) minutes; that after disengaging himself, Botabara dressed up, and all four (4) ran away in the rain towards July Street.

Marilyn Maglinte then put on her panty and went to the Muñoz Market where she telephoned a friend, Lagrimas de Silva, who told her to wait there while Lagrimas fetched their employer to get her; that she told Lagrimas about her having been raped; that she, when she saw the group of four (4) crossing the street, boarded a bus for Quiapo after a ten (10) minute wait, and from Quiapo took another ride to her employer's Taft Avenue restaurant, where Lagrimas sponged her and had her sleep for about an hour. Marilyn's employer thereafter arrived and accompanied her to the Quezon City Police Headquarters where the incident was reported; Patrolman Venancio Dimaculangan took her statement regarding the incident on the same day (Exh. '3'). Complaining witness did not see a policeman on her way to the Taft Avenue restaurant, and was unable to tell people about what happened to her because she was crying; she did tell her co-employees again about the incident upon arrival at the restaurant.

Complaining witness Marilyn Maglinte submitted to an examination by a medico-legal officer, after she had been investigated. The perpetrators of the offense, except for alias Samson, were apprehended by the police authorities and were identified by her as accused Alexander Corro (Exh. 'C'), Noel Tiglao (Exh. 'D') and accused Fredlander Botabara (Exh. 'E'), upon confrontation at police headquarters.

Corroborative in part of testimony given by Marilyn Maglinte is that of Lagrimas de Silva, a waitress in a restaurant owned by Mr. Paterno Mangahas, who also owned a canteen whereat Marilyn worked as a helper. Lagrimas de Silva declared that on May 28, 1979 while at the restaurant, she received a phone call from Marilyn at about 9:00 o'clock in the morning and was told by the latter that she had been raped after being accosted by four (4) persons; that Marilyn asked her to pick up the former at the Muñoz Market, and she accordingly told Marilyn to wait while she contacted their employer; that when she got to see Marilyn at the restaurant, the latter's dress was crumpled and her hair unruly, and appeared to be 'wala sa sarili' and 'tulala'; that Marilyn's dress was wet and her arms muddy; that she sponged Marilyn, after which the latter slept until the 11:00 a.m. arrival of their employer, Mr. Mangahas; that Marilyn again recounted to Mr. Mangahas what happened and was brought to the Quezon City police headquarters.

Lagrimas de Silva recalled that Marilyn's voice over the telephone was 'medyo garagal' and sounded nervous; that Marilyn arrived at the restaurant about one (1) hour after their telephone conversation; that she did not notice any bruises or marks on Marilyn's legs; that she saw blood stains on her shorts, but none on her dress. She informed their employer about Marilyn's report, when she called Mr. Mangahas at his Congressional Village residence.

Patrolman Venancio Dimaculangan investigated the complaint for rape lodged by Marilyn Maglinte (Exh 'B'), the identity of the suspects being first unknown. As part of his investigation, he proceeded to the vacant lot at the corner of Spring Drive and July Street at Congressional Village where the crime took place (Exh. 'F'), and determined that it was planted to bananas and was grassy. In the course of his investigation, he came to know the identity of the suspects, of whom accused Alexander Corro was positively identified by the complaining witness on July 3, 1979 (Exh. 'C'). Noel Tiglao was identified on the following day (Exh. 'D'). Information about the whereabouts of accused Botabara caused him to undertake surveillance in the Araneta Center area, and he apprehended said accused after about a week. Accused Botabara was identified at headquarters by Marilyn Maglinte (Exh. 'E').

The matter was reported to Patrolman Dimaculangan at about 2:30 p.m. of May 28, 1979 by Marilyn Maglinte, who was accompanied by a Mr. Mangahas, and was duly entered in the blotter. In addition to conducting an ocular inspection at the scene of the crime, Patrolman Dimaculangan observed that the victim's dress and underwear were blood-stained. The victim was referred to the P.C. Crime Laboratory for treatment and

examination. His findings on ocular inspection showed that bent grass found at the vacant lot was indicative of a struggle thereat.

Dr. Dario Gajardo, a medico-legal officer of the PC Crime Laboratory, examined the person of Marilyn Maglante upon formal request therefor (Exh. 'G'), and rendered a medico-legal report on his findings (Exh. 'H'). He found no fresh lacerations, swelling or bruises in the subject's hymen, nor evidence of spermatozoa; the deep healed lacerations on the hymen indicated that the subject had lost her virginity long before actual examination on May 29, 1979."^[2]

On 20 November 1989, the Assistant Director of Prisons informed this Court of the death of Fredlander Botabara. Nevertheless, the Court believes it should pass upon the culpability of Fredlander if only because of the civil liability aspects of the criminal offense charged.

In the instant appeal, appellants assign errors which may be summarized as follows:

"The guilt of accused-appellants was not established beyond reasonable doubt."^[3]

Appellants mainly assail the credibility of the testimony of the prosecution witnesses, contending that the offense charged could not have been committed considering that: 1. the presence of force and intimidation was not sufficiently established; 2. the crime charged could not have been possibly committed at the alleged scene; and 3. there are inconsistencies vitiating the testimonies of the prosecution witnesses.

In claiming that no force or intimidation had been exercised, appellants point to the narration of Maglante that she did not offer any resistance from the time that her assailants dragged her to the vacant lot up to the time that the crime was consummated.^[4] Appellants also assailed her claim that she was pinned down to the ground by the appellants and their companions, pointing to the findings of the medical doctor that there were no signs of physical violence on the body of private complainant and the medical conclusion that she was no longer a virgin^[5] at the time of the alleged rape contrary to her testimony that that was her first coitus.

That different persons react differently to the same situation, has been recognized by the Supreme Court in the case of *People v. Romenaldo Murallon*:^[6]

"The lack of an outcry on the part of the complainant likewise does not render improbable the commission of rape against her. Human reactions vary and are unpredictable. A person at one moment may cry her heart out over her misfortune but may be dry-eyed the next time she recalls her tragic fate. Besides, as earlier stated, the complainant was cowed into silence by the menacing demeanor of appellant."

For a 15 year old girl, the menacing presence of four (4) men may well have been enough to petrify her and render her defenseless; she may have reacted differently and contrary to the behavior that other women may well exhibit but this does not negate the fact that the force and intimidation necessary for the commission of the crime had been applied on her. The force used need not be irresistible. It need but be present and so long as it brings about the desired result, all consideration of whether it was more or less irresistible is beside the point.^[7] For rape to be proved, it is not necessary that there be marks of physical violence present on the victim's body.^[8]

Upon the other hand, virginity is not an essential element of the crime of rape.^[9] Whether inflicted upon a public woman or upon the chastest of virgins, rape is a criminal offense. Moreover, hymenal lacerations may be brought about by causes unrelated to introjection of a male member.^[10] Finally, even assuming that Maglante had indeed experienced prior sexual intercourse contrary to her testimony, this inconsistency would not by itself be enough to destroy her credibility. The testimony of a prosecution witness can be believed as to some facts and disbelieved as to others.^[11]

Similarly, the argument of appellants that it is impossible for rape to have been committed near a populated and

frequented place, like the place here involved, does not persuade. It is of common knowledge that rape has been committed in many different places which to many would appear to be unlikely and high-risk venues for sexual embraces.[12]

Appellants point to alleged inconsistencies in the testimonies of the prosecution witnesses Lagrimas and Dr. Gajardo, the medical officer. They contended that while Lagrimas testified that Maglinte was pale and not her usual self, Dr. Gajardo said private complainant was coherent and could talk intelligently.

The varied reactions seem natural. Maglinte could understandably have been incoherent right after her harrowing experience and this was the state being described by prosecution witness Lagrimas. Maglinte's relative composure during the medical examination is similarly understandable for that examination was conducted the day after the claimed rape, when she had regained some measure of equanimity.

Testimonial inconsistency is also alleged by appellants between the narration of Lagrimas De Silva and that of Patrolman Dimaculangan. Appellants argue that while Lagrimas de Silva stated that she saw blood stains on her underwear, but none on her dress, Pat. Dimaculangan stated that the victim's dress and underwear which were presented to him at the police headquarters were blood-stained.[13] Appellant Botabara further contended that on the basis of Maglinte's testimony that she was laid to the ground, then her dress should have been stained with mud instead of blood, since she testified that it had rained at the time that she was being raped.[14]

We do not believe that the above inconsistencies, if that is what they were, destroy the credibility of the prosecution witnesses. Witness Lagrimas de Silva did not claim to have minutely examined the clothing of Maglinte. Indeed, Maglinte apparently lay down to rest soon after arriving at the restaurant where Lagrimas worked; she fell asleep in the same dress she wore during the sexual assault earlier in the morning. Moreover, a heavy rain fell that morning after, not during, the rape incident. The site was covered with grass and banana trees which in any event would have rendered improbable her being covered all over with mud.[15]

Finally, appellants assail the failure of the prosecution to present the clothing worn by the victim at the time of the incident, and the absence of a photograph or sketch of the scene of the crime to corroborate Pat. Dimaculangan's allegation that he conducted an ocular inspection of the place.

The failure of the prosecution to present these items of real evidence is not fatal to its case. The testimonial evidence adduced on behalf of the people was quite sufficient to establish that the crime of rape had indeed been committed. Whatever inconsistencies there were in the testimonies of the witnesses related to details which do not go to the heart of the matter and seem more apparent than real when considered with the surrounding circumstances.

At the same time, however, we do not find the same degree of reasonable certainty in the evidence concerning the participation in the crime of Corro, on the one hand, and Botabara, in the other.

We turn first to Corro. As his defense, Corro interposed alibi and alleged that his confession was extracted from him through the application of the "water treatment." The record shows that both allegations were not substantiated. Accused-appellant failed to rebut the presumption of regularity in the discharge by the police authorities of their official functions. The allegedly coerced statement was not even presented in evidence and was not taken into account by the trial court.

The alibi of Alexander ran as follows. He claimed that at the time the offense was committed, he was in the performance of his job functions as "pahinante" delivering "Jackbilt" hollow blocks for his employer, a certain Capistrano Cahanding. He presented a delivery receipt covering Jackbilt blocks from one of his employer's consignees or customers covered by their route on that day of 28 May 1979.[16] He made much of the fact that

the receipt was verified by the Fiscal.[17] Scrutiny of the receipt showed, however, that Corro's name did not appear thereon. The verification of the Fiscal confirmed only the due execution of the receipt but not the presence of the accused Corro in that place. His narration of his itinerary on 28 May 1979 should likewise be treated with caution. His account engendered suspicion of a rehearsed testimony.[18] It was improbable for him to have remembered in detail the specific places where he made his deliveries and the different times of delivery. In an attempt to corroborate his alibi, Corro presented the driver who was allegedly with him when the deliveries were made. The testimony of his witness, however, did not support his argument. The driver could not describe the landmarks of the route he claimed to have traversed several times,[19] and the trial court did not accord substantial weight to his testimony. We see no basis for overturning that appraisal.

Corro assailed the manner by which he was identified by private complainant. A review of the records shows that the procedure followed in the arrest was satisfactorily explained by the prosecution, thus:

"Q.

In the course of the investigation did you come to know the suspects later on?

A.

Later on, sir.

Q.

Who were the suspects in this case whose identity you were able to come to know later on?

A.

First of all we were able to identify the suspect pointed by the complainant. He was Alexander Corro.

Q.

Where was Alexander Corro when he was pointed to by the complainant?

A.

He was then inside the Farmer's Market.

Q.

Can you more or less remember the date when he was pointed to by the complainant?

A.

I have executed an affidavit, can I please see the affidavit?

Q.

Yes, you can.

A.

(Witness going over the document.) That was sir, July 3, 1979.

Q.

More or less what time was that?

A.

That was around 12:15 in the afternoon.

Q.

Now, why were you with the complainant at about that time?

A.

We were informed by the complainant that one of the suspects was loitering around the Farmer's Market.

Q.

Where were you when you were informed?

A.

I was in the office.

Q.

After you have apprehended Alexander Corro, what did you do next as investigator of the case?

A.

I brought him to our headquarters and I also fetched the complainant for a confrontation.

Q.

And was there an actual confrontation between Corro and the complainant?

A.

Yes, sir.

Q.

And what happened in that confrontation?

A.

Alexander Corro was positively identified by the complainant.

Q.

This identification which according to you made by the complainant of Alexander Corro, in what manner was that?

A.

Well, actually, sir, Alexander Corro was pointed to me by the complainant herself right there at the Farmers Market.

Q.

And after bringing them to the headquarters, what did you do?

A.

I took down the statement of Alexander Corro. There was a confrontation of complainant Marilyn Maglinte and Corro.

Q.

Were you able to take down the statement of the complainant?

A.

Yes, Sir."[20] (Emphases supplied)

There was no random arrest considering that appellant Corro had already been pointed to and identified by private complainant prior to his arrest. At the police headquarters, Marilyn Maglinte confronted Alexander Corro and

confirmed her identification of him as one of the men who had held her as she was sexually assaulted.

Thus, we find nothing in the record that would support the reversal of the judgment of conviction of accused-appellant Corro.

The case of Fredlander Botabara is quite different.

From the testimony of Maglinte, it was clear that the three (3) men (one of whom was Alexander Corro) who accosted her along July Street in the Congressional Village, demanding to know the whereabouts of her co-employee Emy and who dragged her to a vacant lot where a fourth man was waiting and eventually raped her, were acting in concert with each other. These men having acted in a concerted and coordinated fashion, may be expected to have known each other. Thus, Alexander Corro did name the other men with him that morning -- Nestor Salvalosa, Noel Tiglao and one Samson. But Fredlander was not so named by Corro, and Corro was not able to pick him out and identify him from among other men at the police station.

The testimony of Sgt. Dimaculangan is illuminating on this point. The trial court found his narration to be straightforward, convincing and free of apparent bias, the defense having failed to establish any ill-motive on the part of the police officer falsely to accuse any of the accused-appellants. Sgt. Dimaculangan testified that it was Alexander Corro who had identified the assailants of Maglinte as Nestor Salvalosa and Noel Tiglao but that Corro had denied having known Fredlander or that the Fredlander was the person he had referred to as Nestor Salvalosa. To quote:

"Q:

In your report of July 5, 1979, it is indicated that one Nestor Salvalosa was the one who actually abused Maglinte. Who gave you this information?

WITNESS:

A:

I think that was Corro, Alexander Corro.

ATTY. MELLIZA:

Q:

And that is contained in his statement?

A:

Yes, sir.

Q:

Now after Alexander Corro was arrested, another suspect, Noel Tiglao, was apprehended the day following Corro's arrest also at the Farmer's Market, near the place of work of Marilyn Maglinte, is that correct?

A:

Yes, sir.

ATTY. MELLIZA:

Q:

So in both cases, the victim Marilyn Maglinte did not have to go far from her place or work to point the suspects?

WITNESS:

A:

Yes, sir.

Q:

After Alexander Corro has identified the other suspects you referred the case to the City Fiscal's Office?

A:

When Alexander Corro identified the other suspects and that was when he was apprehended, the following day, we went to the Farmer's Market.[21]

.....

Q:

Also, Alexander Corro confronted Fredlander Botabara?

A:

Yes, sir.

Q:

And you asked Alexander Corro whether Fredlander Botabara was the same person he referred to as Nestor Salvalosa in his statement?

WITNESS:

A:

Yes, sir.

ATTY. MELLIZA:

Q:

And what was his response?

A:

He said, Corro said that he is not the one, he is not Nestor Salvalosa.

.....

FISCAL ATIENZA:

I am objecting to the question on the ground it is misleading, your Honor, please. As a matter of fact, in the report dated September 11, 1979, if counsel has only read it, he is not going to ask that question. It is here on the last paragraph: 'Accused Corro, in the course of the investigation conducted on July 5, 1979, implicated Nestor Salvalosa as the one responsible in committing the offense, however, when Fredlander Botabara was confronted before Corro who was presently detained at the City Jail, the latter verbally stated that Botabara is not the same person' so the question was very misleading' so the question was very misleading.[22]

.....

ATTY. MELLIZA:

Q:

The appearance of Fredlander Botabara differ from the description given by Maglinte the first time she gave a statement to you?

A:

Yes, as I propounded the question.

Q:

Did you indicate in your report about that discrepancy in description of Marilyn Maglinte in your report?

WITNESS:

A:

To the fiscal, inquest fiscal?

ATTY. MELLIZA:

Q:

Yes.

A:

Yes. In fact it was stated here that, I cannot only place or reflect it in the letter one by one all the things that I have conducted in my investigation. I just placed here in my letter referral that Corro, when Fredlander Botabara was confronted before Corro, the latter verbally stated that Botabara is not the same person being implicated.

Q:

That is the only thing you put in your report?

A:

Yes, sir."[23] (Emphases supplied)

The foregoing testimony explains why the first complaint subscribed by Marilyn Maglante bore the name of Nestor Salvalosa and why when Fredlander was apprehended, another complaint was filed, this time with the name of Fredlander Botabara instead of Nestor Salvalosa.

Fredlander's testimony corroborated the police officer's account, to wit:[24]

"Q:

What transpired at the office of the captain at the city jail?

A:

They called for Corro.

Q:

Right, when Corro was brought to you in the city jail, what happened?

A:

I was with many persons inside the office and they asked Corro whom he knows among those who are gathered inside.

Q:

Who asked Corro to do that?

A:

That investigator, sir.

Q:

What was Corro's response?

A:

He answered, 'none, sir.'

.....

Q:

According to the information you allegedly committed the rape with a certain Alexander Corro. When for the first time did you and Mr. Corro meet?

A:

When I was taken to the office of the captain.

Q:

On what occasion was that?

A:

He said they will show me to Corro to determine whether Corro knows me." (Emphases supplied)

While Fredlander's defense of alibi proved weak because of the failure of the dining supervisor, Mrs. Yengco, to corroborate his claim that he was at his place of work at the time the crime was committed, evidence introduced by the prosecution itself tended to show that Marilyn Maglinte may have been mistaken when she identified Fredlander as the man who had actually raped her.

Private complainant's 28 May 1979 "Salaysay" read:

"09. Tanong:

Ano ba ang itsura nitong lalaki na siya mismong gumahasa sa iyo?

Sagot:

Mataas po, payat, maigsi ang buhok, maitim, may manipis na bigote, medyo guwapo at nakasuot ng pantalong maong, dilaw na t-shirt at naka-rubber shoes na kulay puti." [25] (Emphases supplied)

Upon the other hand, her "Salaysay" dated 11 September 1979 states:

"06 Tanong:

Natitiyak mo ba na itong itinuro mo sa aking lalaki na tumutugon sa pangalang FREDLANDER BOTABARA y CEA ay isa sa nanggahasa sa iyo?

Sagot:

Natitiyak ko po, sila lang naman po ang gumahasa sa akin, itong tatlo niyang mga kasama niya ay tumulong lang sa kanya.

07 Tanong:

Papaano mo natandaan itong Fredlander Botabara y Cea?

Sagot:

lyon pong anyo niya, ang kanyang mukha na may butas-butas, itong kanyang kulot na buhok. Hindi po maaaring makalimutan ko ang pagmumukha niya talaga, tandang-tanda ko siya." [26]

.....

(Emphases supplied)

When asked about the inconsistencies in her statements, Maglinte stated that:

"08 Tanong:

Noong ika 28 ng Mayo 1979, ng mga bandang alas 2:30 ng hapon noon, ikaw ay nagbigay ng salaysay sa akin at sa salaysay mong ito, mayroon akong tanong na may bilang 09, sa pahina 2, na kung ano ang itsura nitong lalaking mismong gumahasa sa iyo at ang naging sagot mo sa akin, ay mataas siya, payat, maigsi ang buhok, maitim, may manipis na bigote, medyo guwapo at nakasuot na pantalong maong, dilaw na T-shirt at naka-rubber shoes na kulay puti, bakit itong lalaking itinuturo mo sa akin ngayon ay lumalabas na naiiba sa sinabi mo o sagot mo noon?

Sagot:

Maaring noong sabihin ko sa inyo ang tungkol sa itsura niya ay magulong-magulo pa ang isipan ko, dahil sa kapapangyarihan pa noon. Pero hindi po ako nagkakamali, talagang siya ang mismong nanggahasa sa akin.[27]
(Emphases supplied)

Given the differing descriptions offered by Maglinte of the actual rapist, and even discounting the fact that her first statement was given on the afternoon of the very day of the rape, we believe that a reasonable doubt had entered the picture. In the case of *People vs. Ablao, et al.*, [28] the physical description by a prosecution witness of the person who had committed the crime did not fit the accused-appellant therein. The Supreme Court found such identification evidence inconclusive and fatal to the case of the prosecution. In the case at bar, we are unable to rest easy with the identification given by Marilyn Maglinte of Fredlander.

We find corroboration of the probability of a misidentification of Fredlander in the testimony of Mrs. Yengco, the Dining Area Supervisor of the Ang Pulo Restaurant where Fredlander was a waiter, relating to the character and personality of Fredlander, to wit:

"Q:

And will you please tell us the events leading to Fredlander Botabara's arrest by Sgt. Dimaculangan?

A:

Sgt. Dimaculangan asked me if Fredlander is working for us and I said, yes. He said, where is he? 'He is here', I said, 'He is eating his lunch upstairs in the kitchen.' He said, 'Puede bang makausap?' 'Yes,' I said, and I was surprised because he is a policeman. He said he is wanted for rape and I said, 'Why, rape? Babakla-bakla.' So, I asked the waiter to call for Fredlander upstairs where he was taking his lunch.

Q:

What did you tell Botabara?

A:

It was not me. I don't know if it was me who said, 'O, iyan kakausapin ka ng police.'

Q:

What was his reaction?

A:

He was stunned. He was surprised.

Q:

What did you tell him?

A:

I told him, 'Iyan magusap kayo.' The sergeant asked him to go with him and he said he will go if it is needed.

Q:

Where did the policeman bring Mr. Botabara?

A:

In that restaurant in the Farmer's Market, Bicolano Restaurant.

Q:

What did this policeman do there?

A:

The policeman asked the girl and asked us to go.

Q:

And after that?

A:

They proceeded to the precinct."^[29]

We conclude that Fredlander Botabara must be acquitted of the crime of rape, for the evidence against him fell significantly short of the required quantum of proof.

WHEREFORE, all premises considered, the Decision of the Court of First Instance, Branch IV, of Quezon City is hereby MODIFIED. The judgment of conviction of Fredlander Botabara is hereby REVERSED while that of Alexander Corro is hereby AFFIRMED. Accused-appellant Alexander Corro is hereby ORDERED to pay Marilyn Maglinte the amount of P30,000.00^[30] as moral damages and costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Records, p. 1.

[2] Rollo, p. 2.

[3] Id., pp. 2-4.

[4] Id., pp. 62 and 114.

[5] Id., pp. 16-17.

[6] G.R. No. 85734, 13 September 1990.

[7] People vs. Savellano, 57 SCRA 320 (1974); U.S. vs. Villarosa, 4 Phil. 434 (1905).

[8] People vs. Viray, 164 SCRA 135 (1988).

[9] Article 335, Revised Penal Code. E.g., People v. Hortillano 177 SCRA 729, (1989); People vs. Poculan, 167 SCRA 176 (1988).

[10] People v. Lamberte, 142 SCRA 685 (1986).

[11] People vs. Pacada, Jr., 142 SCRA 427 (1986).

[12] People v. Rafanan, G.R. No. 48362, 28 February 1990, citing People vs. Gamboa, 145 SCRA 289 (1989); People vs. Lopez, 141 SCRA 385 (1986); People vs. Aragona, 138 SCRA 569 (1985).

[13] Rollo, pp. 67-117.

[14] Id., p. 118.

[15] TSN, 11 December 1979, pp. 13-14, 28, 53-68.

[16] Rollo, p. 68; Brief of Accused-Appellant Alexander Corro, p. 15.

[17] Id.

[18] TSN, 11 February 1981, pp. 7-14. E.g., People vs. Agudo, 137 SCRA 516 (1985).

- [19] TSN, 4 August 1981, p. 5.
- [20] TSN, 28 April 1980, pp. 20-27.
- [21] Testimony of Dimaculangan, TSN, 23 June 1980, pp. 30-32.
- [22] Id., pp. 46-50.
- [23] Id., p. 55.
- [24] Testimony of Fredlander Botabara, TSN, 25 March 1981, pp. 22-24.
- [25] Records, p. 129.
- [26] Id., p. 133.
- [27] Id., pp. 133-134.
- [28] G.R. No. 70556, 26 December 1990.
- [29] Testimony of Cecilia C. Yengco, TSN, 15 December 1980, pp. 359-361.
- [30] People of the Philippines v. Aspili, G.R. Nos. 89418-19, 21 November 1990.

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