

## FIRST DIVISION

[ G.R. No. 112692, August 25, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALBERTO RESTOLES Y TUYO, ROLDAN NOEL Y MOLET AND JIMMY  
ALAYON Y DE LA CRUZ, ACCUSED-APPELLANTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the Decision of the Regional Trial Court of Quezon City, Branch 95,<sup>[1]</sup> in Criminal Case No. Q-93-44189 dated October 29, 1993, convicting accused-appellants of six crimes of rape, sentencing them to suffer the penalty of six counts of reclusion perpetua and ordering them to jointly and severally pay private complainant, Virginia Bolante, the amount of P50,000.00 as moral and exemplary damages.

In the early morning of May 2, 1993, around 2:00 o'clock, Virginia Bolante, a thirty-nine year old widow, was in the house of Virgie Llagas at Area B, Sitio Talanay, Barangay Batasan Hills, Quezon City. She was there to help prepare food for the wedding of her nephew, Jon-Jon De La Cruz, to Virgie Llagas' daughter, the following morning. While Virginia was outside the house talking to Elsie and Gerry Vismonte, Tomas Calendario approached and asked Virginia to accompany him to the store to buy cigarettes. She refused because the store was still closed. Tomas held her arms and dragged her out of the yard. Once outside, Tomas drew a balisong (fan knife) and pointed it at Virginia's side, threatening to kill her if she shouted. Virginia had no choice but to go with Tomas.<sup>[2]</sup>

Tomas brought Virginia to a deserted house about nine meters away. Virginia had never been in that house. It had two open windows and two doors, one of which was open. There were no dividing walls inside. When she entered the house, she saw seven men. She was able to see the men's faces from the moonlight shining through the open door and windows, and she recognized them as Alberto Restoles, Roldan Noel, Jimmy Alayon, "Lito", "Boy", "Fernando" and "Unggok", all of whom were her neighbors in Area B, Sitio Talanay, Barangay Batasan Hills, Quezon City.

Tomas tied Virginia's forearms with a rope and removed her pants and panties while she protested verbally.<sup>[3]</sup> She could not move as she was afraid that Tomas, who was still holding the balisong, might kill her. Then Tomas made her lean against the table, after which he forcibly had sexual intercourse with her. Meanwhile, the seven others watched. After Tomas finished, the seven men took turns in having carnal knowledge of her one by one. Virginia kept pleading for them to stop. As each man stood in front of Virginia to have sexual intercourse with her, the moonlight from the opposite window shone on his face.<sup>[4]</sup>

Each of the men had sexual intercourse with Virginia twice.<sup>[5]</sup> The second time, Alberto and Tomas made Virginia lay on the ground.<sup>[6]</sup> After everyone had their second turn, Lito suggested that they kill Virginia. She begged and pleaded them not to kill her and vowed not to tell anyone what they did to her. The others took pity on her and decided to release her. Tomas cut her loose, and she immediately put on her panties and pants and rushed out of the house. It was already daybreak.<sup>[7]</sup>

Virginia walked quickly back to Virgie Llagas' house and, on reaching it, immediately reported to Elsie Vismonte that she had been raped. Elsie then told the mother of Tomas that Virginia was raped by the eight men. Virginia later went home and told her sister and brother-in-law, Alberto Estacio, that she was raped. That evening, Alberto accompanied her to Camp Crame where she was medically examined by Dr. Ma. Cristina Freyra, Medico-Legal Officer.<sup>[8]</sup> Dr. Freyra executed a medico-legal report wherein she indicated the following findings:

#### GENERAL AND EXTRAGENITAL:

xxx. The following injuries are noted:

- 1) Contusion, distal 3rd of the right forearm, measuring 2.8 x 2 cm, along its anterior midline.
- 2) Contusion, distal 3rd of the left forearm, measuring 7 x 3 cm, along its anterior midline.

#### GENITAL:

xxx. Labia majora are full, convex and coaptated with the congested labia minora presenting in between. On separating the same is disclosed an abraded posterior fourchette and a carunculae myrtiformis. External vaginal orifice offers no resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is wide with flattened rugosities. Cervix is normal in size, color and consistency.

<sup>[9]</sup>

Virginia and her brother-in-law went home for a while, then left a few minutes later to go to the barangay authorities in order to report the incident. From there, they proceeded to Police Station 5. There, the police officers conducted a preliminary investigation, and then went to the residences of the alleged rapists, accompanied by Virginia and her brother-in-law. That same evening, the three accused-appellants, Alberto Restoles, Roldan Noel and Jimmy Alayon, were arrested based on the positive identification of Virginia.<sup>[10]</sup>

On May 6, 1993, Virginia Bolante executed a criminal complaint for rape against the three accused-appellants, which pertinently reads:

That on or about the 2nd day of May, 1993 in Quezon City, Philippines, the above-named accused, conspiring, confederating with other persons, whose true identities, whereabouts and other personal circumstances of which have not as yet been ascertained, and mutually helping one another, with lewd designs and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with the undersigned VIRGINIA BOLANTE y CARDENIA, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.<sup>[11]</sup>

On July 5, 1993, all three accused-appellants pleaded not guilty to the complaint against them.

The accused-appellants raised the defense that Tomas Calendario and complainant Virginia Bolante were lovers. They presented as witness a certain Irene Santos who testified that she was a resident of Sitio Talanay, Area B, Batasan Hills, Quezon City. At 2:00 o'clock in the morning of May 2, 1993, she said she was sleeping inside her house when she heard voices. She looked out the window and saw Tomas Calendario and Virginia Bolante talking in front of the door of the vacant house. Their arms were around each other and then they kissed on the lips. Irene Santos also saw three men near the vacant house. Tomas and Virginia entered the house. Irene stepped outside her house and peeped through the open door. She saw Virginia sitting on the papag. Tomas undressed and they had sexual intercourse. Virginia was smiling and moaning. After Tomas finished, he went outside the house. Joselito Restoles entered the house and also had sexual intercourse with Virginia. Then Joselito stepped out of the house. Lito Tuyo went inside and also had sexual intercourse with Virginia. After Lito finished with her, Jun Calendario followed and had sexual congress too with Virginia. At this juncture, Irene Santos picked up three stones and threw them at the roof of the vacant house. Jun Calendario emerged from the house, followed by Virginia. When Virginia came out of the house, Tomas put his arm around her. The other three men joked with each other and walked away. Tomas and Virginia, who were left behind, kissed and then walked towards the house of Virgie.<sup>[12]</sup>

Irene Santos further testified that she was able to talk to Virginia Bolante later and ask her why the accused-appellants were arrested, to which Virginia replied that Tomas promised to marry her but suddenly disappeared, and that if Irene can locate Tomas, she will have accused-appellants released.<sup>[13]</sup>

Accused-appellant Roldan Noel testified that he was in the house of Virgie Llagas from 8:00 o'clock in the evening of May 1, 1993 until early the next morning, helping in the food preparations. At 10:00 o'clock, Tomas Calendario and Virginia Bolante, whom he knew to be lovers, left together to get a frying pan in Eden Jimenez's house. Tomas and Virginia left again at around 1:30 o'clock in the morning of May 2, 1993. They returned at 3:00 o'clock. When he saw the two arrive, he asked them when they will get married, and Tomas confided that they were already living together. His co-accused, Alberto Restoles and Jimmy Alayon, were also there. Tomas and Virginia left Virgie Llagas' house at quarter to five because Virginia got mad when they teased her in front of Tomas, saying that if Tomas married her, he will be gaining not only a wife but also a mother. He, together with Restoles and Alayon, all left at around 5:00 o'clock that morning.<sup>[14]</sup>

Alberto Restoles substantially corroborated his co-accused's narrative.<sup>[15]</sup> When he was asked to comment on Virginia's charge of rape against him, he stated that according to Tomas, it was he who had intercourse with her since he was her boyfriend; and that Virginia had in fact asked Tomas to live with her.<sup>[16]</sup>

Jimmy Alayon gave the same story as the other accused-appellants, but said he knew of no reason why Virginia would charge him with rape.<sup>[17]</sup>

On October 29, 1993, the trial court promulgated the appealed decision, the dispositive portion of which reads:

WHEREFORE, the Court finds accused Alberto Restoles y Tuyo, Roldan Noel y Molet, and Jimmy Alayon y De La Cruz each guilty beyond reasonable doubt of six crimes of rape, defined and punished in Art. 335 of the Revised Penal Code, as principal in the commission thereof, with the aggravating circumstances of nocturnity, abuse of superior strength, and ignominy and, accordingly, each of said accused is hereby sentenced to suffer the penalty of reclusion perpetua for each of said six crimes of rape and pay the proportionate costs, without prejudice to the application of Rep. Act No. 6127; and, further, said three accused are hereby ordered jointly and severally to indemnify the offended party, Virginia Bolante, in the total sum of fifty thousand pesos as moral and exemplary damages.

IT IS SO ORDERED.<sup>[18]</sup>

In convicting accused-appellants, the trial court found that Virginia's testimony was credible and consistent with the physical evidence. Thus:

That Virginia's forearms were hogtied with a rope is corroborated by the contusions found on both her forearms by the medico-legal officer who examined her; and, per the examining physician's testimony, said contusions could have been brought about by forceful holding or by tying and they could indicate struggle. Too, according to the same medico-legal officer, said contusions, together with the degree of abrasion in the posterior fourchette and of the congestion in the labia minora, as well as the presence of spermatozoa in Virginia's vagina, were consistent with the allegation of rape; for, according to the doctor, if the sexual intercourse were consensual, the degree of congestion in the labia minora and of abrasion in the posterior fourchette would have been different from her findings, for in consensual sexual intercourse, there would have been lubrication.<sup>[19]</sup>

On the other hand, the trial court refused to believe accused-appellants' version for being contrary to ordinary human behavior, and rejected the defense of alibi.

Accused-appellants raise the following assignment of errors in their appeal before this Court:

I

THE LOWER COURT ERRED IN NOT FINDING THAT COMPLAINANT'S TESTIMONY IS UNCORROBORATED, DOUBTFUL, UNRELIABLE, INCONSISTENT AND CONTRADICTORY.

II

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANTS.

Accused-appellants list down several points of alleged inconsistencies in Virginia's testimony. Most of these inconsistencies, however, are too irrelevant to deserve consideration. Some are *non sequiturs*. Still others are misleading statements which are contradictory to the record. Those that deserve discussion, however, are really minor inconsistencies which do not affect the credibility of the witness. Rather,