

THIRD DIVISION

[G.R. No. 96249, February 19, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALIPIO QUIAMCO AND EDDIE AGIPO, ACCUSED-APPELLANTS.**

DECISION

FRANCISCO, J.:

Charged with and prosecuted for the rape of Ederliza Pepito were herein appellants Alipio Quiamco and Eddie Agipo. The information reads:

"That on July 12, 1985, at about 10:00 o'clock in the evening, at Sitio Ponong, Daan Lungsod, Placer, Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and helping one another and taking advantage of nighttime forcibly entered the dwelling of the complainant, Ederliza Pepito, and once inside did then and there wilfully, unlawfully, and feloniously, by the use of force and intimidation, and armed with a scythe (sangot), wrestle the hands of the said complainant and drag her to her kitchen with accused Alipio Quiamco placing the scythe on her neck telling her not to shout otherwise her neck will be cut, and once in the kitchen accused Eddie Aquipo forcibly removed the underwear of the complainant and insert his finger into her genital organ (vagina) and when she was already lieing (sic) down accused Eddie Agipo place the scythe on her neck telling her not to shout and resist while accused Alipio Quiamco had sexual intercourse with the complainant and when he was through accused Eddie Agipo followed and has sexual intercourse twice with the complainant and due to the pains that complainant felt she became unconscious and accused Alipio Quiamco and Eddie Agipo left her."^[1]

The respective versions of the prosecution and defense had been aptly summarized by the trial court, viz:

"For the prosecution, it appears that on July 12, 1985 at about 10:00 in the evening, at Sitio Ponong-Daan Lungsod, Placer, Masbate, while Maria Pepito and her two children were sleeping in the house of complainant Ederliza, Pepito whose husband was out fishing at Naro, Cawayan, Masbate, they were awakened by shouts of 'Eddie we know you are upstairs and that if you will not open the door we will spray you with bullets and your house are (sic) already surrounded with my men and I am Commander Potiokan.' Ederliza Pepito crawled to her main door and peeped. She saw accused Eddie Agipo and Alipio Quiamco pushing her door until it was forcibly opened. Thereupon, accused Alipio Quiamco and Eddie Agipo entered and wristled (sic) her hands. She was hauled to the kitchen. Accused Alipio Quiamco pointed a scythe at her neck while Eddie

Agipo removed her underwear and touch her private parts. She was sexually abused by accused Alipio Quiamco. When accused Alipio Quiamco finished his physical sexual contact with her, Eddie Agipo took his turn, by placing his body over her body and similarly abused her. After the rape, she was threatened by both accused not to report the matter to the police authorities, otherwise, they will cut her neck as well as that of her children. The accused left. Because of pains, she lost consciousness. When she recovered, she found Maria Pepito helping her.

Maria Pepito corroborated the testimony of Ederliza Pepito. She positively identified accused Eddie Agipo and Alipio Quiamco. who were her neighbors for so long a time, as the authors of the crime.

For the defense, Accused Alipio Quiamco averred that on July 12, 1985, he went fishing by a Baby Trawl with Dorotheo Jubay at the sea waters of Esperanza, Masbate, by some 20 kilometers away and negotiated for about an hour by a pumpboat to Placer, Masbate. They returned home at Placer, Masbate at around 7:00 o'clock the following morning. The motive of the complainant in filing this rape case against them was because she got mad when he took a bath at her well, and the bath-water he used fell into the said well.

Accused Eddie Agipo testified that on July 12, 1985, he went to Domorog, Taingan, Masbate to plant rice some 19 kilometers away from Placer and a one hour trip by truck, bus or Jeepneys. He stayed at the house of Edgar Carillo and he returned to Placer, Masbate on July 16, 1985. However, he did not know the motive of the complainant in filing rape case against him."^[2]

Judgment of conviction was thereafter rendered against appellants, the decretal portion of which reads:

"WHEREFORE, the guilt of both accused Eddie Agipo and Alipio Quiamco for the offense charged was established beyong (sic) reasonable doubt, for which they are hereby sentenced to suffer the penalty each of reclusion perpetua together with the accessory penalties provided for by law; to indemnify Ederliza Pepito in the sum of P25,000.00 (Peo. vs. Lualhate, GR 66638, 3-16-89, first Div., Griño-Aquino, J) without subsidiary imprisonment in case of insolvency; with four-fifths (4/5th) of their preventive imprisonment to their credit (Art. 29, RRC)."^[3]

Before us, appellants plead for their acquittal by raising the following errors:

I.

The court a quo erred in lending credence to the testimonies of prosecution witnesses Ederliza Pepito and Maria Pepito in the face of their marked inconsistencies, improbabilities and implausibilities apart from the fact that these testimonies do not corroborate each other on substantial points.

II.

The court a quo erred in convicting the accused-appellants of the crime charged despite failure of the prosecution to prove their guilt much less their complicity therein by proof beyond reasonable doubt.

III.

The court a quo erred in disregarding the testimonies of the defense witnesses.

The appeal has no merit.

It is appellants' position that victim Ederliza's story of rape is unworthy of belief, considering her testimony to the effect that "when she saw appellants allegedly force open her door or at anytime prior thereto, she did not cry for help despite her awareness that her in-laws' house is just 50 meters away (pp. 17-18, Tsn., May 23, 1986) and that there were four of them inside the house at the time (pp. 11-12, Tsn., Feb. 10, 1988)."^[4] They also put stress on the absence of telltale signs of force employed on Ederliza or struggle on her part, and that she did not sustain any injury resulting from the alleged rape.^[5]

We do not subscribe to appellants' view. Ederliza could not have dared risk her life by screaming for help inasmuch as appellants immediately pressed a scythe on her neck after barging into her house. As testified to by Ederliza:

"Q: Now, you said the door was forcibly opened by those people outside. Were you able to recognize those persons who forcibly opened your door?

A: When they were able to open the door, because I was standing near the entrance, I came to know them and they pulled me by my hands and pointed a scythe on my neck.

Q: And what else did these persons do?

A: That they told me not to shout because if I will shout they will cut my neck.

Q: Who were those persons who pulled you and pointed a scythe at you?

A: Alipio Quiamco and Eddie Agipo".^[6]

Appellants never let go of the scythe poised at Ederliza's neck as they then took turns in sexually abusing her. Ederliza recounts:

"Q: You said you were held by your hands by both accused and a scythe was pointed to you. Who pointed that scythe to you?

A: Olipio (sic) Quiamco.

Q: And how about Eddie Agipo, what did he do?

A: Eddie Agipo removed my panty and touched my private part.

Q: How was your private part touched by Eddie Agipo, while this Alipio Quiamco was pointing that scythe on your neck?

A: He squeezed it and put his finger inside.

Q: After this Eddie Agipo placed

A: Then he got the scythe from

his finger inside your private part or vagina, what else did he do? Olipio (sic) Quiamco and Olipio (sic) Quiamco lay on top of me and have a sexual intercourse with me.

Q: While this Alipio Quiamco was having a sexual intercourse with you, what was Eddie Agipo doing? A: He was still pointing the scythe on my neck.

Q: Then how long did this Alipio Quiamco have a sexual intercourse with you over that situation that Eddie Agipo was still placing his scythe on your neck A: It did not take long.

Q: After Alipio Quiamco was through having sexual intercourse with you, what happened if any? A: Then Olipio (sic) Quiamco was the one who held the scythe and Eddie Agipo was the one who lay on top of me and was the one who has sexual intercourse with me.

Q: How long did it take Eddie Agipo to have a sexual intercourse with you while Olipio (sic) Quiamco was placing the scythe on your neck? A: It took a long time.

Q: And after the sexual intercourse made by Eddie Agipo on you, what else happened? A: Then Eddie Agipo took the scythe from Olipio (sic) Quiamco and Olipio (sic) Quiamco lay on top of me and have a sexual intercourse with me again.

Q: You mean to tell this Honorable Court that Alipio Quiamco had sexual intercourse with you twice? A: Yes, sir.

Q: After the sexual intercourse for the second time by Alipio Quiamco on you, what else happened? A: They threatened me not to report to the police because if I will report to the police they will kill me and my two (2) children and also the policemen because they are traitors." [7]

And contrary to appellants' claim that testimonies of Ederliza and defense witness Maria Pepito do not corroborate each other on substantial points, we note that Maria Pepito's story was very much consistent with Ederliza's account. Thus,

Q: When Alipio Quiamco shouted addressing his shout to Ederliza Pepito, what did Ederliza do? A: She did not open.

Q: Because Ederliza did not open the door, what did the accused do if any? A: They pushed the door.

Q: What happened to the door after pushing? A: They point a scythe to Ederliza Pepito.

Q: So, the accused in this case were able to enter the house of Ederliza?

A: Yes, sir.

Q: To whom did they point the scythe?

A: At the neck of Ederliza.

Q: After the accused pointed the scythe towards the neck of Ederliza, what happened next?

A: Undressed Ederliza.

FISCAL:Q: Who undressed Ederliza?

A: Eddie Agipo.

Q: When Eddie Agipo undressed Ederliza, what did Alipio Quiamco do?

A: He was pointing the scythe in the neck of Ederliza.

Q: What particular wear, did Eddie Agipo undressed Ederliza?

A: Panty.

Q: After Eddie Agipo removed the panty of Ederliza, what did Eddie Agipo do?

A: Eddie Agipo pointed also the scythe at the neck of Ederliza.

Q: What happened next?

A: Alipio Quiamco let Ederliza lay down.

COURT:Q: How?

A: Laid down.

FISCAL:Q: What did (sic) Ederliza doing during that time?

A: She did not do anything because they pointed the scythe at the neck of Ederliza.

Q: After Ederliza laid down, what did Eddie Agipo do to Ederliza?

A: Alipio Quiamco laid down at Ederliza and Eddie Agipo pointed the scythe to the neck of Ederliza.

Q: At what particular part of Ederliza did Alipio Quiamco lay?

A: Below.

Q: Will you state what particular part of Ederliza (sic) body below?

A: Yes, sir.

Q: What part?

INTERPRETER-DESIGNATE:

Witness pointing from the breast down.

FISCAL:Q: Did Eddie Agipo undress during that time?

ATTY. BAILON:Leading, Your Honor.

COURT:Sustained.

FISCAL:

Q: What did Eddie Agipo do when the body of Ederliza was already naked?

ATTY. BAILON:We object, Your Honor.

COURT:Sustained.

FISCAL:

Q: After Eddie Agipo remove the panty of Ederliza, what did Eddie Agipo do next?

A: Alipio Quiamco pointed the scythe to Ederliza and Eddie Agipo laid on top of Ederliza.

Q: Was Eddie Agipo wearing anything during that time?

A: Yes, sir.

Q: How about his pants, was he wearing?

A: Yes, sir.

Q: Was the organ of Eddie Agipo during that time already out?

ATTY. BAILON:No basis.