

## THIRD DIVISION

[ G.R. No. 104865, July 11, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICTORIANO PONTILAR, JR., ACCUSED-APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

Rape violates the person of the victim, sears her mind with debilitating trauma and unfairly stigmatizes her reputation. For this, the offender must be brought to justice -- more so in this case where the victim is a young girl only fourteen.

This is an appeal from the February 20, 1992 Decision<sup>[1]</sup> of the Regional Trial Court of Cebu City, Branch 5<sup>[2]</sup> in Criminal Case No. CBU-19353 convicting Accused Victoriano Pontilar, Jr. of the crime of rape.<sup>[3]</sup>

Third Assistant Cebu Provincial Prosecutor Antonio T. Echavez filed an Information dated July 23, 1990 charging accused-appellant with the crime of rape allegedly committed as follows:<sup>[4]</sup>

"That on or about the 5th day of June, 1990 at 5:00 o'clock in the morning, more or less, in the Municipality of Catmon, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Marilou Bornea, against her will and consent."

The accused, assisted by Counsel de parte Recto de Dios, pleaded not guilty upon arraignment.<sup>[5]</sup> Trial ensued in due course. On February 20, 1992, the trial court promulgated the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, all the foregoing being considered, this Court finds accused Victoriano Pontilar, Jr. guilty beyond reasonable doubt of the crime of consummated rape and hereby sentences said accused with the penalty of RECLUSION PERPETUA with all the accessory penalties prescribed by law; to indemnify the victim Marilou Bornea the sum of P30,000.00, in line with the prevailing jurisprudence on the matter (People vs. Isip, Jr., G.R. 70568, 20 Aug., 1990); moreover, it appearing that both accused and the offended party are unmarried, accused is further sentenced to acknowledge and support the offspring as a result of the crime, if any.

Accused in the service of his sentence, shall be credited with the full time

during which he had undergone preventive imprisonment if he had agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, four-fifths (4/5) of the period of his preventive imprisonment.

SO ORDERED.”<sup>[6]</sup>

Hence, this appeal.

### **The Facts**

#### Version of the Prosecution

The prosecution presented six witnesses: (1) Marilou Bornea, the rape victim and sole eyewitness to the crime, and her companions that morning, namely: (2) Anabel<sup>[7]</sup> Bacus, (3) Arnold Ares, (4) Sinforoso Ares, (5) Peter John Mangubat and (6) Ernie Nuñez. In the appellee’s brief, the Solicitor General gave the following summary of case facts:

“At about 5:00 o’clock in the moonlit morning of June 5, 1990, Marilou Bornea, Anabel Bacus, Enie Nuñez, Arnold Ares, Sinforoso Ares, Peter John Mangubat, Nene Salazar and Elizabeth Salazar were on their way home from a coronation which they attended at Bactas, Catmon in Cebu. While walking on the national road towards Catmon Daan, the group of Bornea noticed that two persons were following them. One of these two persons, who was appellant, overtook and ordered the group of Bornea to stop. Appellant frisked the four male members of the group for any firearms. When he found nothing and on the pretext that he had to do something at Catmon, appellant asked for their respective names, school grades and identification cards. (TSN, January 14, 1991, pp. 4-5)

Identifying himself as an NPA and holding a hand grenade, appellant warned the group against making any false move. He then ordered the group to go on their way with the exception of Bacus. Bacus cried because she did not want to stay behind, so Bornea remained with her. Appellant, together with Bacus and Bornea, followed the group from a distance. When they reached a tamarind tree, appellant ordered Bornea to join the group because “he has some intention with Anabel Bacus.” (Ibid, pp. 6-7).

Later, the group saw appellant and Bacus approaching them. Appellant shouted at Bornea to remain in place while Bacus and the rest of the group were ordered to proceed. Bornea and the group did not want to obey at first but appellant’s threat that he will throw the grenade at them, they acceded to his orders out of fear. (Ibid., p. 7)

Alone with Bornea, appellant dragged and forced her to lie down beside some stone files. He placed his hand grenade at Bornea’s right side. Bornea struggled hard to be released but was overpowered by appellant. (TSN, January 24, 1991, pp. 6 & 10). Constantly reminding her of his hand grenade and pistol and threatening her with death, appellant pulled

down Bornea's pants and panty to her knees. Appellant then placed his naked body on top of Bornea, inserted his penis into the vagina of Bornea and made push and pull movements. Unperturbed by Bornea's continued cries of pain, appellant only stopped his push and pull movements only after what could have been the longest fifteen minutes for Bornea. After achieving penetration and consummating his vile desires against his fourteen year old victim, appellant ordered Bornea to put on her pants and to rejoin the group. (TSN, January 14, 1991, pp. 9-10)

Bornea met Bacus and Sinforoso Ares about four minutes later and Bacus asked Bornea what appellant did to her. (TSN, January 28, 1991, p. 4) Bornea was not able to answer right away because she did not stop crying and because of fatigue. Bornea nevertheless related her traumatic experience to her two friends and later, to her grandparents. (TSN, January 14, 1991, p. 12)

A day prior to reporting the rape incident to the police on June 8, 1990, Bornea was examined by Dr. Lilia Diaz who declared the following findings:

- '1. Introitus examining finger easily;
2. Hymenal lacerations noted at 5:00, 9:00 and 11:00 o'clock;
3. Presence of blood on examining finger.'

(Exhibit 'B' and Exhibit 'B-2')"

### **Version of the Defense**

Appellant denied that he raped Marilou Bornea. The defense presented five witnesses: the accused himself, his girlfriend Imelda Colis, Pedro Colis, Andres Colina, and Verna Pontillas. The trial court summarized the version of the defense as follows:

"Accused Victoriano Pontilar, Jr. put up the defense of denial and alibi. The defense claimed that in the early evening of June 4, 1990, accused was at the dancing place in Barangay Bactas, Catmon, Cebu together with his girlfriend Imelda Colis. They arrived at the place 10:00 o'clock in the evening and stayed there until 4:00 o'clock the following day. Their companions in the dancing place were Florentino Pruel, Bienvenido Duran, Alberto Colis, Ditas Ares, Merlo Ares, Andres Colina and Lucille Colis. The group danced. At 4:30 o'clock in the morning of June 5, 1990, they started to leave the disco place and proceeded to the house of Imelda Colis located about two (2) kms. from the dancing place. At the house of Imelda Colis, accused with his companions engaged in a conversation over cups of coffee. Present in the house were the accused, his girlfriend Imelda Colis, Florentino Pruel, Bienvenido Duran, Ditas Ares, Merlo Ares and Alberto Colis. They had breakfast in Imelda's house at 7:00 o'clock in the morning. Accused upon invitation of his girlfriend slept

in the house of the latter and woke up past 10:00 o'clock in the morning of the same day. Accused denied having raped the complaining witness as charged.

Imelda Colis, the girlfriend of the accused, claimed that there is another suspect in the rape case. He is her second degree cousin, Diego Colepano, Jr., who is refuted (sic) to be a maniac. She admitted, however, that she had no personal knowledge that Diego Colepano, Jr. raped Marilou Borneo because it was the companion of Diego Colepano, Jr. who told her about the rape. She admitted that there is no case filed against Diego Colepano, Jr. for the rape of Marilou Borneo.”<sup>[8]</sup>

## The Issues

Accused-appellant submitted the following assignment of errors:<sup>[9]</sup>

### **“I**

The lower court gravely erred in believing the complaining woman that rape was committed, inspite of her admission that she did not shout nor make any resistance to the alleged sexual advances.

### **“II**

The trial court gravely erred in holding that the witnesses for the prosecution are more credible than the witnesses for the defense.

### **“III**

The trial court gravely erred in holding that accused-appellant should acknowledge the offspring as a result of the crime.

### **“IV**

The trial court gravely erred in convicting the accused-appellant of the crime of rape, inspite of the fact that the prosecution’s evidence has not overcome the presumption of innocence.”

The foregoing, save for the matter of acknowledgment of offspring, all boil down to the question of credibility of witnesses.

## **The Court’s Ruling**

The appeal is not meritorious.

### **First Issue: Credibility of Witnesses**

Appellant questions the credibility of the testimonies of the prosecution witnesses including Marilou Bornea. He also bewails that there were no other eyewitnesses to the alleged rape save for the victim herself. The defense further contends that there

was not even "an initial and manifest resistance on the part of the complaining woman."<sup>[10]</sup> It also brands as "unnatural" the reaction of the other prosecution witnesses who were with the victim until the time she was taken from their company and then raped by the accused -- they did not even shout for help or run to the nearest house for succor.<sup>[11]</sup>

Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. Findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.<sup>[12]</sup>

After a thorough review of the entire records of this case, we find no reason to reverse the trial court's assessment of the credibility of Marilou Bornea and the other prosecution witnesses. The testimonies of these witnesses palpably bear earmarks of truth and jibe on material points. The testimonies of Marilou and Anabel leave no doubt as to their veracity. Both recount (1) how their group<sup>[13]</sup> had been walking at Bactas, Catmon, Cebu around 5:00 a.m.; (2) how they were followed by two men -- one of whom was Accused-appellant Pontilar, Jr. -- who overtook them, blocked their path and ordered their group to stop walking; (3) that their four male companions were frisked; (4) that they were asked to identify themselves; (5) that afterwards Pontilar, Jr. initially ordered the group to go on walking except for the frightened Anabel who was to be left behind; (6) that Marilou chose to remain by her friend's side; (7) that while the group was walking, Pontilar, Jr. ordered them to stop and asked them what he said, to which Peter John Mangubat answered "Hinto"; (8) that Pontilar, Jr. got mad at Peter John, saying, "Putang ina mo" as he kicked the latter; (9) that upon reaching a tamarind tree Marilou was told to join the others and to leave Anabel behind; (10) that the group waited for Anabel; (11) that Pontilar, Jr. and Anabel walked towards the group; (12) that Pontilar, Jr. ordered Marilou to join him and Anabel -- otherwise he would kill the latter; (13) that Marilou obliged Pontilar, Jr. who then ordered Anabel to join the group; and (14) that Pontilar, Jr. was armed with a grenade and a pistol. Consistent with her account, Anabel also testified that she had already filed a criminal case for acts of lasciviousness against accused-appellant Pontilar, Jr.<sup>[14]</sup>

More significantly, Marilou Bornea was unequivocal and unswerving in charging Accused-appellant Victoriano Pontilar, Jr. with rape. Her positive identification of accused-appellant in court was made with no trace of uncertainty. Furthermore, her account of the rape in her sworn statement to MCTC Judge Panfilo F. Alpuerto during the preliminary investigation and her testimony in court during the trial are consistent with each other; they are candid, convincing and certainly damning against Appellant Pontilar, Jr. The relevant portion of said sworn statement is as follows:

24. Q       What did he do with Annabel Bacus?

A       I do not know and few minutes later I was called by Victoriano Pontilar, Jr.