

## SEVENTH DIVISION

[ CA-G.R. CR.-H.C. NO. 01484, August 08, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO BALAHO, ACCUSED-APPELLANT.**

### DECISION

**COSICO, J.:**

Pedro Balaho was indicted before the Regional Trial Court, Branch 38, of Cabarroguis, Quirino for the crime of rape as defined and penalized under paragraph 3, Article 335 of the Revised Penal Code, as amended by Section 11 of RA No. 7659 as alleged in the following information which states:

"That at midnight of July 27, 1997 in Barangay Balligue, Municipality of Maddela, Province of Quirino, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with prurient desire, did then and there willfully, unlawfully, and feloniously have carnal knowledge with SHIRLEY A. ALINDAYU, a 10-year old minor, against the will and consent of the latter.

CONTRARY TO LAW."<sup>[1]</sup>

Balaho pleaded not guilty to the said charge. During trial, accused-appellant Balaho denied the said charge and put into question the credibility of the alleged child-victim. Nonetheless, in discrediting accused-appellant's defense of denial, the trial court found Shirley Alindayu ("Shirley") a credible witness and adjudged accused-appellant guilty of the crime charged. The pertinent portion of the said Decision<sup>[2]</sup> reads as follows:

"**WHEREFORE**, premises considered, the Court finds accused Pedro Balaho guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335, No. 3, of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 and hereby sentences him to suffer the penalty of reclusion perpetua and to pay complainant Shirley Alindayu the amount of Fifty Thousand Pesos (P50,000.00) as and by way of moral indemnification.

**IT IS SO ORDERED.**" [Decision dated April 10, 2001, p.7]

This case before the Court is Balaho's appeal from the judgment of conviction.

### The Facts

As synthesized by the trial court, the prosecution and defense presented two different versions of the events that transpired on the night of July 27, 1997 in the

house of Mateo Dulnuan at Maddela, Quirino, to wit:[3]

"The evidence of the prosecution, in part, consisting of the testimonies of complainant Shirley Alindayu, Theresa B. Alindayu, Dr. Emerson Dumlao and SPO4 Andres Cardenas, shows private complainant, who was born on May 29, 1987 x x x was one of the six boarders of Mateo Dulnuan in the latter's two-storey house in Nagtim-og, Balligui, Maddela, Quirino. On the evening of July 27, 1997, Shirley was sleeping on the second floor at the above-mentioned address with her younger brother and two cousins whose ages ranged from seven (7) to eight (8) years old and accused Pedro Balaho. All of them slept in one common area, so that, in relation to each other, the three (3) boys, Freddie, Samuel and Lando were near each other while accused was on the rear foot of said boys and Shirley about three (3) to four (4) meters away from his brother. At around midnight of said date, July 27, [1997] Shirley was jolted from slumber when she felt pain in her vagina. She turned to discover that Pedro Balaho inserted his sex organ into her private part. Thereafter, accused made the usual pelvic thrusts (pumping motion). The victim did not notice when accused removed the blanket she was then using nor the garterized knee-length shorts and panty she was wearing. During the time that victim was being violated, she could only cry silently as she did not want accused to notice her being awake. She likewise did not attempt to rouse her brother and cousins from their sleep as she was cowed by the fear of being boxed by her attacker.

After spewing his wild oats into his minor victim, accused put on his pants, went downstairs and after a while went up again and slept. The complainant put on her shorts which she wore when she slept the night before and went to the ground floor where her [cousin] Jenny Bulan was sleeping. Shirley did not reveal her harrowing ordeal to Mateo Dulnuan nor to her [cousin] Jenny because she was afraid that accused might kill all of them.

The next day, the victim went to school and even played with her classmates. She did not report her horrifying experience to anyone. Afraid that she will again be molested by the accused, instead of returning back to Mateo's house after school, she proceeded to her other boarding house.

Complainant's mother, Theresa B. Alindayu, testified that she did not notice anything unusual from her daughter whenever the latter went home to their house but observed that the child appeared frightened.

The sexual abuse complainant underwent could not be contained in secrecy forever. On August 10, 1997, Shirley divulged to her mother the fate that befallen her. The mother then brought Shirley to the Maddela Police Station and both of them lodged their complaint against the accused. On August 11, 1997, Shirley was examined by Dr. Emerson Dumlao who reduced his findings into a medico-legal report x x x

During his testimony in Court, Dr. Dumlao explained that the laceration found on Shirley's hymen may have been possibly caused by riding on a bicycle, jumping too high, blood clotting during menstruation or the forceful entry of the penis to the genitals. The said expert witness was not sure whether the laceration in Shirley's hymen was caused by penile penetration but clarifies that it is highly possible that sexual intercourse could result to physiological changes in the hymen.

After said examination, Shirley with her mother executed their respective sworn statement x x x before the Maddela Police Station. During her direct examination, the victim denied the signature x x x appearing in the sworn statement x x x. Consequently, the prosecution presented SPO4 Andres C. Cardenas who testified that using the vernacular, he investigated the victim and took her statement which he typed in English. He declared that in his presence, Shirley affixed her signature in the sworn statement x x x

x x x

The accused denied the commission of rape and argued that the same was impossible. According to him, Mateo Dulnuan is his uncle and that he has been staying in the latter's house since 1994. He knew Shirley who started to live with them in the same house on June 5, 1997. The house had eleven (11) occupants with the boys including the accused sleeping upstairs while the female boarders occupy the ground floor and Mateo's family in the kitchen downstairs. These occupants were all present on the night of the alleged incident. With their sleeping arrangement, accused contended that it would be impossible to have committed the rape as he slept on the second floor with the victim's relatives while Shirley was downstairs. Besides, since he was tired, having worked the whole day at his uncle's farm, he slept ahead of Shirley and that when he got up in the morning, all the female boarders downstairs were not yet awake.

Accused declared that he did not have any misunderstanding with Shirley nor with the latter's family.

Mateo Dulnuan, uncle of the accused testified that the victim who had been staying in his house for more or less six (6) months prior to July 27, 1997 is his niece while the accused is his nephew. He corroborated accused's testimony on the sleeping arrangement of all his boarders and his family. The room upstairs has an area 5 x 4 meters while the ground floor is 10 x 12 feet in size. Working as a driver, he would go out at 6:00 a.m. and would return at 5:00 p.m. He claimed that he didn't know any untoward incident that happened in his house on July 27, 1997." [April 10, 2000 Decision pp. 1-3]

Subsequently, accused-appellant submitted his Memorandum<sup>[4]</sup> before the trial court attacking the credibility of Shirley. Thereafter, the trial court rendered its decision.

### **Ruling of the Regional Trial Court**

As earlier adverted to, the trial court discredited the defense of denial of accused-appellant and held that the testimony of the victim is entitled to full faith and credit. In finding accused-appellant guilty of the criminal charge, the trial court made the following ratiocinations<sup>[5]</sup>:

"It is true that the sworn statement given by Shirley before the police investigator was made the basis for the execution by said offended party of a criminal complaint for rape against the accused, but it must be pointed out that it is the filing of the criminal complaint that signals the start of the prosecutory proceeding and not of the sworn statement. x x x

Further, SPO4 Cardenas who took down the separate sworn written statements in "question and answer form" of the offended party and her mother categorically declared the signing by Shirley of her sworn statement.

x x x

Accused next asserts in his memorandum that the gynelogic examination negates the liability of the accused that there was rape as Dr. Dumlao was not sure whether the hymenal laceration on Shirley was caused by forceful insertion of a penis.

In his testimony, Dr. Dumlao never ruled out the possibility that the broken hymen of Shirley was caused among others, by penile penetration. x x xThe absence of a categorical declaration that the laceration on victim's hymen was caused by penile invasion does not necessarily disprove sexual abuse. x x x

x x x

It is the Court's finding that the rape was consummated even before Shirley was awakened. According to her, she was awakened at the time when she felt pain in her vagina because accused's penis had penetrated her. x x x

x x x

Complainant may not have offered resistance nor shouted for help but it does not mean that Shirley voluntarily submitted to the lust of accused. Intimidation in rape cases is not calibrated nor governed by hard and fast rules. Since it is addressed to the mind of the victim and is therefore subjective, it must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. It is enough that the intimidation produced fear – fear that if the victim did not yield to the bestial demands of the accused, something far worse would happen to her at the moment. x x x

x x x

Moreover, the victim, being below 12 years of age, the consent, or lack of

it, by the girl to have carnal embrace is irrelevant x x x

Lastly, it is accused's argument that he could not have raped Shirley on July 27, 1997 since all the 11 occupants were in the house sleeping in groups and the rooms were not so spacious but only 4x5 meters wide without anyone of them having known the incident.

The contention has no merit. There have been cases showing that fear of discovery or the possible appearance of other people does not necessarily deter the commission of rape. x x x

The very implausibility of the commission of the rape is itself a strong evidence of its truthfulness. Had the charge been merely concocted, Shirley would have made it more acceptable by inventing a more believable circumstances not encumbered by the presence of all the occupants in the house when the rape was committed. The fact that she did not choose to do so suggests that she related the events as they really happened without omission or embellishment even if they might appear to be improbable.”[Decision, pp. 3-7]

Hence the instant appeal.

With the recent ruling of the Supreme Court in the case of *People vs. Mateo* promulgated on July 7, 2004 in G.R. Nos. 147678-87 which modified the pertinent provisions of law insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, the instant action was transferred to this Court via a Resolution<sup>[6]</sup> of the Supreme Court dated September 6, 2004.

### **The Present Appeal**

Accused-appellant ascribes the following errors allegedly committed by the trial court, to wit:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED FOR THE CRIME OF RAPE DESPITE THE WEAK, IMPROBABLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

THE TRIAL COURT DID NOT GIVE DUE CREDENCE TO THE PHYSICAL IMPOSSIBILITY OF COMMITTING THE CRIME OF RAPE.

In his Brief<sup>[7]</sup>, accused-appellant submits that from the evidence adduced by him, it is apparent that no rape happened on July 27, 1997 at the house of Mateo Dulnuan. Mateo Dulnuan testified that he had no knowledge of any untoward incident which happened on that very night. Dr. Emerson Dumlao, the doctor who medically examined the victim testified that the laceration in the latter's vagina might have been caused by riding a bicycle, jumping too high and he was not sure whether it was caused by the forceful insertion of a penis.

Moreover, the testimony of the victim herself is too incredible to be believed. If Shirley Alindayu had in fact been raped, her cousins who were living at that very same house and sleeping with her in the same room should have known of the rape