

## EN BANC

[ G.R. No. 152279, January 20, 2004 ]

### PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FRANCO BALLESTER, APPELLANT.

#### *DECISION*

#### **YNARES-SATIAGO, J.:**

Appellant Franco Ballester was charged with Rape before the Regional Trial Court of Ligao, Albay, Branch 13, in Criminal Case No. 4038 in an Information which reads as follows:

That on the third week of January, 1999, at noontime, at Barangay Catumag, Municipality of Guinobatan, Province of Albay, Philippines, within the jurisdiction of this Honorable court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation and while armed with a knife did then and there willfully, unlawfully and feloniously have carnal knowledge with (*sic*) MARICEL ODOÑO, 12 years of age, against her will and consent, to her damage and prejudice.

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

On arraignment, appellant pleaded "not guilty" to the crime charged, whereupon trial on the merits followed.

Sometime in the third week of January 1999, only complainant Maricel Odoño, twelve years old, and her youngest brother, Jeric, two years old, were left inside their house at Catumag, Guinobatan, Albay. On that day, complainant's father, Jaime, and brother, Jameson, were out working in the cornfield while her mother, Clarissa, was in Manila working as a housemaid. Her two younger sisters were also out, playing with their friends.

At around noontime of that day, while complainant was studying her lessons, she heard somebody calling from the outside. She looked out the window and saw her neighbor, appellant Franco Ballester. He asked her for jackfruit. He entered the house holding a knife and threatened complainant not to make a noise. He warned her not to tell her parents or he would kill her. After forcibly undressing complainant, he hurriedly took off his clothes and made her lie down by pressing her hands on the floor. He mounted his victim and inserted his penis into her vagina. She felt pain in her organ but could not tell how long appellant stayed on top of her. After satisfying his lust, appellant repeated his warning not to tell anybody about the incident.

At first, complainant was too scared to reveal her harrowing experience to anybody. Eventually, however, she mustered enough courage to confide her ordeal to her

aunt, Nilda Ordoño, who in turn informed her mother, Clarissa, via telegram. Immediately upon arriving from Manila in June 1999, Clarissa accompanied her daughter to the barangay captain to report the matter. Shortly after, they went to the Guinobatan Police Station where they were advised to see a doctor for complainant to undergo a medical examination.

On 26 July 1999, Dr. Joanna Manatlao, Municipal Health Officer of Guinobatan, Albay, conducted the medical examination on Maricel that resulted in the following findings:

1. healed laceration at 12 o'clock,
2. vagina admits tip of examining finger with ease.

During trial, Dr. Manatlao testified that the laceration on the hymen, such as one found on the organ of the victim, may be caused by inserting a foreign object into the vagina such as a penis or finger. She further opined that it may also be caused by a variety of reasons, like menstrual clots of blood, masturbation, sitting on a hard and sharp object or penis of a man.<sup>[2]</sup>

In his defense, appellant vehemently denied the accusation against him. He insisted that on the date of the alleged rape incident, *i.e.* third week of January 1999, he was nowhere near the house of complainant. Rather, he was in Inasakan, where he had been working as coconut picker since December 8, 1998, under the employ of one Francisco Oxina. He had been working in this capacity for the whole month of December, except on the 24<sup>th</sup> and 31<sup>st</sup>, and for the whole month of January. He decided to leave his employment in July 1999 to visit his aunt in Pio Duran, Albay. When asked what could be the reason why he was being charged of rape, he explained that it might have something to do with an earlier accusation of rape made by Maricel Odoño against his grandfather, Tomas Ballester. According to him, the Odoños were trying to extort P60,000.00 from his grandfather in exchange for the settlement of the criminal case but his grandfather refused to accede to their demands.

On cross-examination, appellant also revealed that the Odoños were a quarrelsome lot, always getting into trouble with their neighbors, that is why they had to change residence every now and then. In fact, according to him, the Odoño children would occasionally get a spanking from his grandfather for being naughty. He also remembered that on one occasion the Ballester family had a confrontation with the Odoños when the former's carabao grazed into and destroyed the latter's plantation.

On December 14, 2001, the trial court rendered judgment finding appellant guilty as charged and sentencing him to suffer the supreme penalty of death, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered finding the accused Franco Ballester guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Arts. 266-A and 266-B of the Revised Penal Code as amended by Republic Act No. 8353 otherwise known as the Anti-Rape Law of 1997 and accordingly, there being no mitigating circumstance but there is the presence of one aggravating circumstance of dwelling, hereby sentences said accused Franco Ballester to suffer the penalty of

death.

The accused is hereby ordered to indemnify the offended party the amount of P75,000.00 and another sum of P50,000.00 by way of moral damages, and to pay the costs.

Pursuant to the provisions in the constitution, let the records of this case together with the exhibits and transcripts of stenographic notes be immediately forwarded to the Supreme Court for automatic review.

SO ORDERED.

In his Brief, appellant assails his conviction by arguing that:

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT TO THE TESTIMONY OF THE OFFENDED PARTY AND IN NOT GIVING FULL WEIGHT AND CREDENCE TO THE DENIAL AND ALIBI OF THE ACCUSED AND HIS WITNESSES.

Appellant argues that the prosecution evidence, particularly the testimony of the offended party and her demeanor, is so incredible that it defies ordinary human experience. He draws attention to the alleged inconsistencies and contradictions in the testimony of the offended party, which cast a heavy pall of doubt on her credibility.

According to appellant, the following inconsistencies conclusively demonstrate that complainant's imputation against him is not worthy of belief: *first*, the offended party claims that she was raped in the third week of January 1999 but it took her almost six months after the incident to report the alleged sexual assault to her mother; *second*, she declared on cross-examination that it was after her aunt sent a telegram to her mother that she finally told her father about the incident despite the fact that she was with her father almost everyday; and *finally*, she stated on cross-examination that upon her mother's arrival from Manila, they had a conversation about what happened in the shallow well on June 27, 1999 when appellant's grandfather, Tomas Ballester, supposedly took advantage of her. Appellant points out that the normal thing to do would have been for complainant to tell her mother right away what she suffered in the hands of appellant, but instead of doing so, she divulged another alleged incident of sexual molestation involving appellant's grandfather. Worse, when complainant was asked by the defense counsel to elaborate on the matter, she could not answer.

We find the inconsistencies to be too trivial and inconsequential to affect the credibility of complainant Marilyn Odoño. A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory. Thus we have followed the rule in accord with human nature and experience that honest inconsistencies on minor and trivial matters serve to strengthen, rather than destroy, the credibility of a witness, especially of witnesses to crimes which shock the conscience and numb the senses.<sup>[3]</sup> More importantly, the alleged inconsistencies referred to by the defense pertain to matters extraneous to the crime of rape that do not detract from the fact that the offended party had indeed been sexually defiled.