

## THIRD DIVISION

[ G.R. No. 130684, February 05, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARTURO  
MANAMBAY Y DIAMSON, APPELLANT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated August 27, 1997 of the Regional Trial Court, Branch 95, Quezon City in Criminal Cases Nos. Q-97-69584-85 convicting Arturo Manambay y Diamson, appellant, of two counts of rape and sentencing him to *reclusion perpetua* in each case.

The criminal complaints against appellant are quoted as follows:

Criminal Case No. Q-97-69585

"That on or about the 8th day of December 1996, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undress one JOVITA SALAS Y YONSON and, at the point of a bolo, put himself on top of her and thereafter have carnal knowledge of the undersigned complainant against her will and without her consent.

"Contrary to law."

Criminal Case No. Q-97-69584

"That on or about the 9th day of December 1996, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undress one JOVITA SALAS Y YONSON and, at the point of a bolo, put himself on top of her and thereafter have carnal knowledge of the undersigned complainant against her will and without her consent.

"Contrary to law."

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to both charges. Trial ensued thereafter.

The evidence for the prosecution, consisting of the testimonies of private complainant Jovita Salas and Dr. Ma. Cristina B. Freyra, discloses that in 1996, appellant was living with his common-law spouse, Anita Salas, in a rented house located at No. 11 Capri Street, Villa Nova Subdivision, Novaliches, Quezon City. Anita's younger sister, Jovita Salas, and a lady boarder named Lourdes, also stayed

with them in the same house.[2]

On December 8, 1996, at around 8:00 o'clock in the evening, Jovita was alone in the house watching television when appellant, whom she identified in court, arrived. Visibly drunk, he approached Jovita, pointed a bolo at her breast and ordered her to follow him to the room. Extremely scared he might kill her, Jovita followed him. Once inside the room, appellant commanded her to remove her clothes and to lie down on the bed. Still afraid, Jovita obliged. Appellant then hurriedly removed his short pants and brief and placed himself on top of her, with his right hand holding the bolo still pointed at her. While in that position, appellant forcibly inserted his penis into her vagina. She felt pain. (At this juncture, the trial court noted that Jovita was crying while narrating such harrowing experience.)[3] When appellant withdrew his penis, Jovita noticed some blood oozing from her vagina. Then he stood and told her to dress up and to act as if nothing wrong has happened. He warned her not to tell anyone about it, or else he would kill her sister Anita. That was the first time Jovita had a sexual experience.[4]

The following day, December 9, 1996, at around 9:00 o'clock in the morning, Anita left the house and went to her place of work. Jovita also tried to leave, but appellant blocked her way by closing the door. With a bolo pointed at her, he told her to "accommodate him again" ("*Pagbigyan ko siya uli.*"). He then ordered her to go to her room. Due to extreme fear, she complied. While inside, he ordered her to remove her clothes and lie down. Thereupon, he undressed himself, went on top of her and inserted his penis into her vagina. At that time, his right hand was holding the bolo pointed at her, while his left hand was holding her right hand. After satisfying his lust, he warned her not to reveal the incident to anyone, especially to her sister, or else he would kill both of them.[5]

After a few days, Jovita mustered enough courage to reveal the rape incidents to her elder brother who immediately accompanied her to the police. On December 27, 1996, Jovita was physically examined by Dr. Rosaline O. Cosidon, Medico-Legal Officer of the Philippine National Police (PNP) Central Crime Laboratory, Kamuning, Quezon City.[6] Her Medico-Legal Report No. M-1872-96,[7] issued on the same day, states:

"PURPOSE OF LABORATORY EXAMINATION:

To determine physical signs of sexual abuse.

"FINDINGS:

x x x

"Genital: There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same, disclosed an elastic fleshy-type hymen with deep, healed lacerations at 3 and 9 o'clock position. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

"CONCLUSION:

"Subject is in non-virgin state physically. There are no external signs of recent application of any form of trauma at the time of examination.

"REMARKS:

"Vaginal and peri-urethral smears are negative for gram-negative diplococci and spermatozoa."

Dr. Cosidon could not testify as she was transferred to the far-flung province of Cagayan Valley. It was Dr. Ma. Cristina B. Freyra, the PNP Medico-Legal Officer in Kamuning, Quezon City, who took the witness stand and confirmed the findings and results of Dr. Cosidon's Report. Appellant's counsel, Atty. Trebonian C. Tabang, admitted the competency of Dr. Freyra.<sup>[8]</sup> She testified that the deep-healed lacerations at 3:00 o'clock and 9:00 o'clock positions in Jovita's hymen were sustained about 20 days before the examination, and that such lacerations were caused by the insertion of a hard blunt object like an erect penis. She further declared that Jovita could have been a virgin before her hymen sustained lacerations.<sup>[9]</sup>

The appellant denied the charges. He testified that on the night of December 8, 1996, he was not drunk as he was merely watching television with his brother, Jovita herself and Lourdes in their house from 5:00 to 10:00 PM. At 10:30, Anita, his common-law wife, arrived.<sup>[10]</sup> He noticed that Jovita went out of the house twice that night. The following day, December 9, at 7:30 AM, he left the house and went to work in Project 6, Quezon City. Jovita was alone in the house that day. Appellant contends that the charges were filed against him because (1) Jovita wants him to be separated from her sister Anita as they are not married; and (2) he reported to Anita that he saw Jovita and her boyfriend having sex in his house on November 19, 1996. Still, he and Jovita have remained "in good terms."<sup>[11]</sup>

The defense also presented Anita who testified that on December 8, 1996, she reported for work in Diliman, Quezon City at 8:00 o'clock in the morning and returned home at around 10:00 o'clock in the evening of that same day. The following day (December 9) at 8:00 o'clock in the morning, she again left for work (leaving appellant and Jovita in the house) and returned home at 8:00 o'clock that evening. Anita recalled that during those two days, she did not notice any unusual incident that happened in their house.<sup>[12]</sup>

Upon cross-examination, Anita confessed that in December 1996 during Christmas time, she and appellant pleaded with Jovita not to file any complaint for rape against him. Appellant even "walked with his knees asking for forgiveness" from Jovita's elder brother.<sup>[13]</sup>

Romulo A. de Jesus, the last defense witness, testified that since 1993, appellant has been one of his trusted and hardworking employees in the International Distillers Philippines, Quezon City. Appellant was assigned to wash and clean bottles and deliver them to their clients, collect payments, issue sales invoices, and withdraw cash from the bank. He works from Monday through Friday and goes

home Saturday. On December 9, 1996 (Monday), he reported for work. He (witness de Jesus) visited appellant at his detention cell in Novaliches Police Station, Quezon City, and came to know of the rape charge against him.

Upon cross-examination, de Jesus admitted that he did not maintain any daily time record of his employees' attendance, and that when this case was investigated before the Fiscal's Office, he did not execute any affidavit in favor of appellant.<sup>[14]</sup>

On August 27, 1997, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in the following:

"1. In Criminal Case No. Q-97-69584, the Court finds the accused, Arturo Manambay y Diamson, GUILTY beyond reasonable doubt of the crime of rape defined in and penalized by Art. 335 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim, Jovita Salas y Yonson, the amount of P50,000.00 as moral damages;

"2. In Criminal Case No. Q-97-69585, the Court finds the accused, Arturo Manambay y Diamson, GUILTY beyond reasonable doubt of the crime of rape defined in and penalized by Art. 335 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim, Jovita Salas y Yonson, the amount of P50,000.00 as moral damages.

"The period during which the accused was detained at the City Jail of Quezon City shall be credited to the said accused in full provided that he agrees in writing to abide by and comply strictly with the rules and regulations of the said institution.

"With costs against the accused.

"IT IS SO ORDERED."<sup>[15]</sup>

Appellant, in his brief, ascribes to the trial court the following of errors:

"I. The court *a quo* gravely erred in finding the accused-appellant guilty beyond reasonable doubt of two counts of rape.

"II. The court *a quo* gravely erred in not giving weight and credence to the evidence of the defense."<sup>[16]</sup>

The basic issue for our resolution is whether the prosecution has proved appellant's guilt beyond reasonable doubt.

The law applicable to the cases at bar is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, the pertinent portions of which provide:

"Art. 335. *When and how rape is committed.* – Rape is committed **by having carnal knowledge of a woman under any of the following circumstances:**

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

**"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.**

x x x." (Underscoring ours)

The elements of rape under the above provisions are: (1) **the offender had carnal knowledge of the victim**, and (2) **such act was accomplished by using force or intimidation**; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.

Jovita testified that appellant had carnal knowledge of her through force and intimidation, thus:

"PROSECUTOR RIO ESPIRITU on Direct Examination:

x x x

Q On December 8, 1996, do you know where you were at around 8:00 in the evening?

A I was in our house, sir.

x x x

Q Who were present at that time?

A I and my brother-in-law (referring to herein appellant).

x x x

Q What were you doing at that time at around 8:00 in the evening?

A I was inside the house, watching T.V.

Q While watching T.V., what happened next?

A While watching T.V., my brother-in-law approached me,