

FIRST DIVISION

[G.R. Nos. 148689-92, March 30, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. TORIBIO GALIDO Y DE LA CRUZ, APPELLANT.

DECISION

PANGANIBAN, J.:

An information that fails to allege the use of force and intimidation in a rape case is cured by the failure of the accused to question before the trial court the sufficiency of that information; by the allegation in the original *complaint* that the accused is being charged with rape through force and intimidation; and by unobjected competent evidence proving that the rape was indeed committed through such means.

Statement of the Case

Toribio Galido appeals the April 20, 2001 Decision^[1] of the Regional Trial Court (RTC) of Sorsogon, Sorsogon (Branch 53), in Criminal Case Nos. 96-4254, 96-4255, 96-4256 and 96-4257, convicting him of three counts of rape and one count of light threats. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, by reason of the foregoing premises, judgment is hereby rendered against Toribio Galido y de la Cruz:

1. Imposing the penalty of three (3) terms of reclusion perpetua – one for each of the three (3) counts of rape;
2. Imposing the penalty of thirty (30) days of arresto menor for light threats;
3. To pay Mary Grace Jamisola P150,000.00 for civil indemnity and another P150,000.00 as moral damages for the three (3) counts of rape at P50,000.00 for each count in the two (2) categories of damages; and
4. To pay the cost."^[2]

Four separate Informations,^[3] all dated September 11, 1996, charged appellant as follows:

Criminal Case No. 96-4254

"That on or about the 24th day of April, 1994 at Barangay Basud, Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused,

motivated by lust, with lewd design, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one Grace B. Jamisola, 14 years old, against her will and without her consent, to her damage and prejudice."^[4]

Criminal Case No. 96-4255

"That on or about the 7th day of January, 1996 at Barangay Basud, Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, with lewd design, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one Grace B. Jamisola, 14 years old, against her will and without her consent, to her damage and prejudice."^[5]

Criminal Case No. 96-4256

"That on or about the 16th day of May, 1996 at Barangay Barayong, Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, with lewd design, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one Grace B. Jamisola, 14 years old, against her will and without her consent, to her damage and prejudice."^[6]

Criminal Case No. 96-4257

"That on or about the 8th day of August, 1996 at Barangay Basud, Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously, by means of force, threat and intimidation, with lewd design, commence the commission of Rape, directly by overt acts of embracing and kissing one Grace Jamisola, with the intent of having carnal knowledge of her, and if the accused did not accomplish his purpose, that is, to have carnal knowledge of the said Grace Jamisola, it was not because of his own voluntary desistance but because the said offended party succeeded in resisting the criminal attempt of the said accused and because of the opportune discovery and presence of the members of the family of the offended party, to her damage and prejudice."^[7]

During his arraignment on December 17, 1996, appellant, assisted by his counsel,^[8] pled not guilty to the charges.^[9] After a joint trial of the cases, the lower court rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's

version of the facts as follows:

"In 1994, the victim, Mary Grace [Jamisola], was a twelve (12) year old Grade 6 student of Basud Elementary School who lived with her adoptive mother and the latter's daughters in a one-room dwelling in Barangay Basud, Sorsogon, Sorsogon. Appellant lived six to seven meters away from the place where Grace lived.

"On April 24, 1994, around 11:30 in the morning, Mary Grace was alone in their house. She took a bath in the bathroom located adjacent to their house. She was still wrapped in a towel when she re-entered their abode. To her utter surprise, appellant who seemed drunk appeared inside their home. She asked him what he was doing there. Appellant did not answer instead he forcibly took her hand and pulled her. She screamed. Appellant then brought out a bladed weapon and poked it at her mouth. Without removing the weapon from her mouth, he then took off his shirt and tied it around her mouth and with another shirt tied her hands behind her back. Thereafter, appellant lowered down his shorts. She was able to escape briefly but he chased and boxed her. Grace kept on kicking him but appellant managed to force her to lie on the floor. Soon afterward, appellant laid on top of her and succeeded in having sexual knowledge of her. Grace cried in pain. Afterwards, appellant put on his clothes and left.

"On January 7, 1996, around one o'clock in the afternoon, Grace was again alone in their house. She had just taken a bath when appellant suddenly entered their home. Grace recalled what happened to her before and began to be afraid. She raised her right hand and pleaded to appellant not to abuse her again. She could not shout because he already poked a bladed instrument on her chest. Before long, appellant pushed her against the concrete wall of their house, which weakened her. He commanded her to lie on the floor. Thereafter, he pulled down his shorts, removed her panties and placed himself on top of her. He inserted his organ inside hers. Afterwards, he left. When Grace looked down, she saw blood on the floor which she supposed came from her.

"In yet another fateful day on May 16, 1996, around twelve thirty in the afternoon, Grace was on her way home from a barrio fiesta in Barangay Barayong, Sorsogon, Sorsogon. She was walking through an infrequently traversed trail in the woods when she heard a tree branch snap. When she turned around, she saw appellant more or less eight (8) meters behind her. Grace ran uphill while shouting for help but to no avail. Appellant overtook her, grabbed her hands and pulled her hair. They both tumbled downhill but he chased her still and even boxed her on her shoulder. He then pulled out his knife and ordered her to lie on the grass. He covered her mouth, tied her up and undressed her. After undressing himself, appellant ravished the 14-year-old Grace again.

"In all three x x x occasions of sexual molestations, appellant threatened Grace not to tell anybody of the rape incidents or else he would kill her and her family. She frightfully complied.

"On August 8, 1996, around eleven o'clock in the evening, Grace, together with her two elder sisters, was sleeping inside their houses. Their mother was away for work. Grace was awakened when appellant covered her mouth with a shirt. He then poked a knife at her as he was undressing her. She tried to kick appellant but instead she hit her sister Rosalie. The latter woke up and when she beamed a flashlight on Grace she saw appellant poking a bladed weapon on Grace who was crying. Appellant immediately left. Grace was reduced to tears.

"The following day, August 9, 1996, around six o'clock in the evening, the victim's mother, Remedios Juntalan Estiola, arrived home from work. One of the victim's sisters, Rosalie, related to her the incident. She then summoned the victim who confirmed the tale. The victim likewise narrated that she was sexually abused since she was twelve. The victim and her mother then proceeded to the barangay captain who advised her to return the following morning and report the matter to the police authorities.

"The next morning, the victim went to the police station and executed a sworn statement. A criminal complaint was then formally filed.

"Afterwards, on August 15, 1996, the victim and her mother went to the Municipal Health Officer of Sorsogon, Dr. Liduvina Dorion, who conducted a physical and mental examination on the victim for which she issued two (2) Medical Certificates. The medical findings stated therein, in part, as explained by Dr. Liduvina Dorion on direct examination, were as follows:

'Pelvic Examination—wide flourchet in [the area of the] developing [vulva] x x x; moderate pubic hair; IE shows healed lacerations at 6:00 and 10:00 o'clock over the vaginal orifice; easily admits one finger; great difficulty with two. Extremities—no significant findings.'

"The examining physician explained that the finding of 'wide flourchet' suggests that the penetration happened several times. The membrane covering the vagina or hymen, which is the first part that is lacerated is already absent. The healed lacerations indicate that they are more [than] two (2) weeks old. She concluded that indeed there was penetration."^[10] (Citations omitted)

Version of the Defense

In his Brief, appellant presents his version of the facts in the following manner:

"Accused Toribio Galido testified that during the farming season, he operated a hand tractor and during the harvest season he operated a thresher. December and January are the farming season. Harvest season is on March, April and May.

"On April 24, 1994 at around 1:00 p.m., he was operating the palay thresher at the place of his godfather. They began working at 7:00 a.m. until 5:00 p.m.

"The fiesta of Rocadel is on April 27, not April 24.

"If you are inside the house of Mary Grace and will shout, it will be heard by the nearest neighbor. There were 3 neighbors' houses.

"The motive of the private complainant is that before, they requested him to testify on a case of a certain Junior Jasoro but when he refused, they got angry with him. Junior was convicted of a crime and has already been transferred to the Bilibid Prison. Mary Grace is the complainant in the case against Junior.

"On January 7, 1996 at around 1:00 p.m., he was at the ricefield operating the tractor owned by Tio Lando del Rosario. The ricefield was about 1 and a half kilometers from the house of Mary Grace. He was with Otoy, his godbrother.

"He started working at around 5:00 a.m., and finished at 4:00 p.m. He took his lunch in the center of the ricefield.

"On May 16, 1996 at around 12:30 p.m., he was threshing the palay. This was the barangay fiesta at Barangay Bayoyong. He did not go to the fiesta because they were threshing the palay.

"They began their work at 7:00 a.m., at the home of Padrino Juanito. They finished at 4:00 p.m.

"It is not true that his son accompanied Grace because of the fact that they are angry with him for his refusal to testify against accused Junior.

"He denied that on August 8, 1996 at around 11:00 p.m., he tried to rape Mary Grace. How can he do that when Grace had companions inside the house. He was also sleeping at the time.

"Edgar Bonos testified that he was a barangay captain. He knows Brgy. Pocdol. April 27 is their barangay fiesta."^[11]

The Trial Court's Ruling

The RTC gave full credence to the clear and positive testimony of private complainant. It found the "responses of x x x Grace during both her direct and cross testimon[ies] x x x prompt, direct to the point, simple and forthright. x x x. In fact, her responses during the cross examination tended to improve her recollection of her harrowing experience from the beastly acts of the accused. These characteristics of her testimony, to the mind of the court, are badges of truth."^[12]

The trial court rejected the defense of alibi proffered by appellant and observed that it was not physically impossible for him to be at the *locus criminis* when the alleged crimes were committed.^[13]

As regards the charge of attempted rape, however, the trial court found that the