

## SECOND DIVISION

[ G.R. No. 132135, May 21, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DOMINGO  
SABARDAN, APPELLANT.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before us is an appeal from the Decision<sup>[1]</sup> of the Regional Trial Court of Binangonan, Rizal, Branch 69, in Criminal Case No. 1590-B convicting appellant Domingo Sabardan of serious illegal detention with rape, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering the appellant to indemnify the private complainant, Richelle Banluta, the sum of P50,000.00.

The Information<sup>[2]</sup> against the appellant reads:

That about and during the period beginning the 15th day of September 1991, to the 30th day of September 1991, in the Municipality of Binangonan, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and by force and intimidation, detain and keep lock one Richelle Banluta, a girl twelve (12) years of age in his rented apartment at No. 5 Linaluz St., SCH-Subdivision-Tayuman, Binangonan, Rizal, from September 15 to September 30, 1991, or a period of fifteen (15) days, under restraint and against the will of said Richelle Banluta, and said accused during said period of detention did then and there willfully, unlawfully and feloniously have a carnal knowledge of the complainant Richelle Banluta while she is deprived of reason or otherwise unconscious by reason of a drug which he administered to her, against her will and consent.

Contrary to law.

When arraigned on June 9, 1992, the appellant pleaded not guilty. Trial thereafter ensued.

### **The Case for the Prosecution**

Richelle Banluta was born on August 10, 1979. When she was about four (4) years old, Nimfa Banluta, a beach resort owner, allowed Richelle to stay in their house and considered her as a natural daughter. Nimfa had Richelle enrolled in the elementary school using her surname, "Banluta."

Sometime in 1990, the Banluta family transferred their residence to No. 5, Linaluz Street, San Carlos Subdivision, Tayuman, Binangonan, Rizal. Opposite their house

was that of Elizabeth de Luna. Another neighbor of the Banluta family was the appellant, then fifty-year-old Domingo Sabardan, a catechist who resided in a two-storey apartment about fifteen meters away from the Banluta residence. The appellant came to meet Richelle as he frequented the Banluta house and befriended Rico Banluta, Nimfa's twenty- one-year-old son.

At about 10:00 p.m. on September 15, 1991, Nimfa berated Richelle for playing with the diaper of her niece. Richelle, who was then a little more than twelve years old, placed some underwear, shorts, long pants, and four shirts in her school bag and surreptitiously left the house. She passed by the appellant's apartment while the latter was on his way out to throw garbage. The appellant inquired where she was going, and Richelle replied that she was earlier berated by her mother and was leaving the house. The appellant invited Richelle to his apartment, and to spend the night therein. Richelle agreed. She felt happy, thinking that she was in good hands.

[3] Besides, she had nowhere to go. [4]

The appellant led Richelle to a room on the second floor of the apartment, where she slept without removing her pants and underwear. The following morning, the appellant served breakfast to Richelle in her room. He told Richelle that Ella, who stayed in the house, had left earlier at 5:00 a.m. The room where Richelle slept had three padlocked windows with jalousies. [5]

Later that day, the appellant served lunch and dinner to Richelle in her room. That night, the appellant entered the room completely naked. Surprised, Richelle asked what he was doing in the room, but the appellant did not respond. Richelle kicked him and pulled his hair, and told him to get out. The appellant left the room.

The next morning, Richelle told the appellant that she wanted to go home already. The appellant dissuaded her from leaving and told Richelle that her mother might get angry if she found out that she had slept in his apartment.

The appellant later left the house. When Richelle tried to open the door, she found out that it was locked from the outside. [6]

In the evening of the fourth day of her detention, or on September 18, 1991, Richelle was seated on a couch in the sala on the ground floor of the apartment. [7] The appellant forced her to drink a glass of ice cold beer. When she refused, the appellant threatened to kill her. Afraid for her life, she drank the beer from a glass. The appellant then embraced her, kissed her and touched her breasts. Richelle resisted. Momentarily, she felt dizzy and fell unconscious.

Early the next morning, Richelle woke up and found herself lying in bed completely naked. She felt severe pains in her vagina. She saw the appellant beside her, also completely naked. [8] She noticed that her vagina was bleeding profusely. She asked Sabardan what he did to her and he told her nothing. [9] Richelle washed her vagina with water. [10]

In the evening of the fifth day of her detention, or on September 19, 1991, while Richelle was sitting on the sofa on the ground floor, the appellant again forced her to drink beer. She resisted but the appellant threatened to kill her anew. She drank the

beer, but consumed only about one-half of the contents of the glass. She felt dizzy and lost consciousness. When she woke up in the morning, she again felt severe pains in her vagina and saw blood in it.<sup>[11]</sup>

The appellant forced Richelle to drink either beer or juice on four other occasions. Richelle felt dizzy afterwards, and would wake up completely naked, feeling pains in her vagina.

On September 30, 1991, the appellant left the house, but closed the door outside with three padlocks. At about 5:00 a.m. on that same day, Elizabeth de Luna, a housewife who lived about thirty meters away from the appellant, heard someone hysterically shouting, "*Mang Domeng!*"<sup>[12]</sup> Elizabeth sensed that the voice was that of Richelle's. She looked out of the window of her house and saw the appellant in the upper floor of his apartment, walking to and fro.<sup>[13]</sup>

Elizabeth waited for daybreak, and at 6:00 a.m. reported the incident to Val Banluta, Richelle's brother. Elizabeth and Val went to the appellant's house and knocked on the door. No one responded. The two left and kept the incident to themselves.<sup>[14]</sup> At about 11:00 a.m., Elizabeth sensed that someone in the appellant's house was watching television. She related the incident to Richelle's other brother, Rico Banluta, who climbed the wall of the appellant's house which abutted a vacant lot, and through the window saw Richelle inside the apartment. Rico informed Val of his discovery. They proceeded to the police station where they reported the incident. Three policemen arrived, and along with Rico and Val, they proceeded to the appellant's apartment. They saw that it was locked from the outside with three padlocks. Instead of destroying the padlocks, the policemen asked Rico and the latter's friends to climb over the wall. Toto and Binoy, who were friends of Rico, climbed the wall, and managed to extricate Richelle from the second floor of the apartment through the window, after removing the jalousies.<sup>[15]</sup> The appellant was not in the house at that time.

Richelle was, thereafter, brought to the police station for investigation. There, she executed a written sworn statement dated October 2, 1991. She also signed a criminal complaint charging the appellant of serious illegal detention with rape.<sup>[16]</sup>

Dr. Jesusa O. Nieves, a medico-legal officer of the PNP Crime Laboratory Service, conducted a physical and medical examination on the private complainant on October 3, 1991. She prepared a Medico-Legal Report,<sup>[17]</sup> with the following findings:

...

#### General and Extragenital:

Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

#### Genital:

There is lanugo-type growth of pubic hair. Labia majora are full, convex

and slightly gaping with the pinkish brown labia minora presenting in between. On separating, the same is disclosed an elastic, fleshly-type hymen with deep, healed laceration at 7 o'clock. External vaginal orifice offers moderate resistance to the introduction of 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 violence.

#### REMARKS:

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

### **The Defense of the Appellant**

The appellant denied having raped Richelle. He testified that he was single, 56 years of age, and was residing at No. 11 Luz Street, San Carlos Heights Subdivision, Tayuman, Binangonan, Rizal.<sup>[18]</sup> He alleged that he taught catechism in front of the Central School of Angono and the school in Barangay Pag-asa.<sup>[19]</sup> He was a person of good moral character and could not have perpetrated the crime charged.

According to the appellant, he never saw Richelle during the period of September 15, 1991 to September 30, 1991, nor did he invite her to stay in his apartment.<sup>[20]</sup> He further asserted that he had nothing to do with the offense charged and that Richelle was merely trying to exact money from him.<sup>[21]</sup>

Prosperidad Sabardan Soriano, the appellant's sister, testified that she customarily paid a visit to her brother's apartment. During the period of September 15, 1991 up to September 30, 1991, she visited her brother on four different occasions. The first was on September 17, 1991, which was the appellant's birthday; the second was on September 25, 1991, the witness' natal day. The third was on September 29, 1991; and finally, on September 30, 1991. She never saw Richelle in her brother's apartment.<sup>[22]</sup>

After due trial, the court rendered judgment on October 25, 1997, the decretal portion of which reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of **Serious Illegal Detention with Rape**, and therefore sentence (sic) him to suffer the penalty of *reclusion perpetua*, and to indemnify the private complainant the sum of P50,000.00 and to pay the cost.

SO ORDERED.<sup>[23]</sup>

The appellant now appeals the decision, contending that:

- I. THE LOWER COURT ERRED IN CONVICTING THE ACCUSED SINCE THE EVIDENCE PRESENTED DID NOT CONFORM TO THE CRIME CHARGED.
- II. THE LOWER COURT ERRED IN FINDING THAT PRIVATE COMPLAINANT HAD SUFFERED DETENTION OR THAT SHE HAD BEEN RAPED.
- III. THE PROSECUTION'S EVIDENCE DOES NOT JUSTIFY THE AWARD OF DAMAGES.<sup>[24]</sup>

### **The Court's Ruling**

Anent the first and second assigned errors, the appellant contends that he was deprived of his right to be informed of the nature and cause of the accusation against him because he was charged of detaining and raping the private complainant in his apartment at No. 5 Linaluz Street, San Carlos Heights Subdivision, Tayuman, Binangonan, Rizal. However, the prosecution's evidence shows that she was detained and raped at No. 11-C Luz Street, San Carlos Heights Subdivision, Tayuman, Binangonan, Rizal. Furthermore, the appellant asserts that under the allegations of the Information, the private complainant was raped when she was "deprived of reason or otherwise unconscious by reason of a drug" which the appellant supposedly administered to her. The prosecution, however, failed to adduce evidence that he administered any drug to the private complainant before she was raped.<sup>[25]</sup> If this were true, Richelle could not have known that she was raped by the appellant since she testified that she felt dizzy and lost consciousness after drinking beer and juice.

The appellant asserts that the prosecution failed to prove that Richelle was illegally detained by the appellant in his apartment, and that he forced her to have sexual intercourse with him. The evidence on record, the appellant insists, shows that Richelle agreed to stay with him in his apartment after leaving their house and consented to having sexual intercourse with him. From the time Richelle arrived at his apartment in the evening of September 15, 1991 up to September 30, 1991, she never tried to escape, nor shouted for help, despite the proximity of the appellant's apartment to their house and that of Elizabeth de Luna.

The contention of the appellant does not persuade.

The verisimilitude and probative weight of the testimony of Richelle, that the appellant detained her against her will and raped her in his apartment, were not debilitated by her mistake in declaring that the apartment of the appellant was at No. 5-C Linaluz Street, when, in fact, it was at No. 11-C Luz Street, San Carlos Heights Subdivision, Tayuman, Binangonan, Rizal. It must be stressed that the situs criminis is not an essential element in rape. The gravamen of the felony is the carnal knowledge by the accused of the private complainant under any of the circumstances provided in Article 335 of the Revised Penal Code, as amended. Richelle's mistake was only minor and collateral to the gravamen of the crime