

THIRD DIVISION

[G.R. No. 146274, August 17, 2004]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIO CABALSE ALIAS "BOLANTOY," ACCUSED-APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

From the July 21, 2000 decision of the Regional Trial Court of Toledo City, Branch 59 finding him guilty of rape, appellant Mario "Bolantoy" Cabalse lodged the present appeal.

In her complaint dated September 6, 1994, private complainant Milagros E. Cañedo (Milagros) charged appellant as follows:

x x x

That on or around 9:00 o'clock in the evening of the 12th day of June, 1994, inside the house of the accused in which the undersigned complainant was a visitor in Barangay Media Once, City of Toledo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was armed with a knife, suddenly grabbed her from behind and with his right hand holding a piece of cloth tightly clasped her mouth to prevent her from shouting and he pressed the knife to her belly with his left hand threateningly telling her that he would kill her if she would shout and then dragged her to the kitchen, pushed her down to the floor and while she was already flat on her back accused pulled down her short pants and panty, forcibly spread her legs and did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant against her will.

x x x^[1]

Appellant pleaded not guilty^[2] on arraignment following which trial on the merits ensued.

Milagros, her brother Lunecito E. Canedo, and Medico-Legal Officer Dr. Hermes L. Labrador were presented by the prosecution.

Milagros, a house helper and 28 years old^[3] at the time she testified on June 16, 1998, narrated as follows:

On June 12, 1994, at around 8:30 in the evening, she and her younger brother Lunecito were on their way to the house of appellant to watch television.

On their way, they met appellant, his wife Tomasa, and the spouses' four-year old

child Aloy who were near a hut fronting appellant's house. After seeking permission to watch television, all of them, except appellant's wife, proceeded to the house of appellant and watched television.^[4]

While they were watching television, appellant sent Lunecito and Aloy on an errand to buy cigarettes.^[5] After the Sharon Cuneta show was over, Milagros continued watching television as she awaited her brother.

When Milagros was about to go out of the house, appellant blocked her way and closed and locked the door. Appellant, who was standing behind her, thereupon covered her mouth with his left hand, and with his right hand he poked a knife at the right side of her waist, threatening to kill her if she shouted.^[6]

Appellant then dragged her to the kitchen, removed her panty and short pants, and with his underwear on, exposed his penis.^[7] On appellant's order, she spread her legs apart.^[8] As she laid down, appellant who was on top of her inserted his penis into her vagina and performed a pumping motion^[9] during which she felt weak and was in pain.^[10] After appellant pulled out his penis from her vagina, he hurriedly left her in the kitchen.^[11]

As she was putting back her panty and shorts, appellant's wife Tomasa arrived.^[12] Upon seeing her, Tomasa cursed her, saying "How dare you, you are devils, you are rotten people. You are having sexual intercourse, here."^[13] Feeling insulted, she cried and left the house.^[14]

On her way home, she met her brother by the road. She did not, however, disclose the incident to him because she was scared, knowing that appellant had already stabbed a certain Raul, and is known in the place as the "worst person."^[15]

She too did not report the incident to her mother as appellant threatened to kill her if she did.^[16]

Weeks after the incident or on July 4, 1994, her mother was informed by her aunt (the sister of her mother) that the wife of appellant had been spreading rumors about it.^[17]

Her mother thus mauled her.^[18] She explained to her mother, however, that she was forced to have sex with appellant. She and her mother thus repaired to the Barangay Captain to file a complaint.^[19] She later submitted herself to a medical examination by Dr. Labrador of the Toledo City Hospital and to Dr. Grace Nardo of the Southern Island Hospital.^[20]

Complainant's brother Lunecito corroborated Milagros' tale that on the evening of June 12, 1994, he accompanied her sister to watch television at the house of appellant and that he was sent on an errand by appellant to buy cigarettes.^[21]

Lunecito went on to declare that he still had to wake up the owner of the store, hence, it took him forty-five (45) minutes to carry out the errand.^[22]

Upon his return to the house of appellant, Tomasa who was already there^[23] was apparently angry at appellant, she uttering words like "he was not yet closing (sic) the zipper of the pants."^[24] Inside the house, his sister who was crying and standing at the door^[25] at once summoned him to leave the house.^[26]

Milagros did not divulge anything to him that night, but he later learned about the rape incident from his mother.^[27]

At the witness stand, Dr. Labrador testified that upon physical examination of Milagros, he noted old healed lacerations of her hymen at 6 and 9 o'clock positions indicating that she was no longer a virgin.^[28] Aside from the healed lacerations, he noted no injuries.^[29]

Denying the accusation, appellant gave the following tale:

On June 12, 1994 at 9:00 o'clock in the evening, while he, his wife and children were asleep, he was awakened by a woman who was uttering outside their house "Bolantoy, Bolantoy w[a]ke up."^[30] Looking out of the window, he saw Milagros who said "Toy, I have to watch your t.v."^[31] He refused to let her in because his children were all asleep and he had to work the next day.^[32] In the meantime, his wife who was roused from her sleep admonished Milagros, saying "What's happening with you woman, why [are] you tempt[ing] my husband, are you itching? [W]hy don't you look for a bachelor [some]where?"^[33] Milagros responded by uttering "You might regret Nang Masing, you might kneel before me someday."^[34]

The following morning, his neighbor asked him "What was done (sic) Bolantoy, you were offered to have sex with her in your house?"^[35] It was then that he found out that earlier that morning, his wife had been spreading rumors that Milagros had offered to have sex with him.^[36]

Sometime after the incident, he again met Milagros who, however, made no mention of any complaint against him.^[37]

On July 18, 1994, his aunt having offered him a job, he left for Mindanao.

On September 27, 1997, he was arrested in Davao, and it was only then that he learned that Milagros had filed a complaint for rape against him.^[38]

His aunt, whom he requested to go to complainant's house to inquire why he was charged of rape, later informed him that the complaint would only be dropped if he agreed to pay One Hundred Thousand (P100,000) Pesos.^[39]

Appellant's wife Tomasa also took the witness stand for the defense. She corroborated appellant's account of Milagros' going to their residence as she wanted to watch television. She went on to declare that she scolded Milagros.^[40]

Tomasa further declared that the next day, June 13, 1994, her neighbors asked why

they were noisy the previous night.^[41] She found out that her neighbors including Romeo Geralla and Eustaquia Geralla were likewise awakened by the noise created by the incident the previous night.^[42]

Continuing, Tomasa declared that Milagros is lecherous and was always looking for appellant whenever she was not around,^[43] drawing her (Tomasa) to at one time tell Milagros that "You have not tempted anybody so now you wanted to tempt my husband;"^[44] and that believing that the complaint for rape against appellant was sparked by her alleged defamatory remarks against Milagros, she did not inform appellant, who was then in Davao, that a complaint for rape had been filed against him.^[45]

Tomasa furthermore declared that while appellant was in Davao, she came to know that Milagros got pregnant and she in fact noticed that Milagros' stomach was big.^[46] She later heard that she (Milagros) had an abortion.^[47] Upon the instance of the mother of Milagros, she appeared before the Barangay Captain as it was suspected that she was the source of rumors of Milagros' alleged pregnancy and abortion.^[48]

Finding for the prosecution, the trial court convicted appellant by Decision of July 21, 2000, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds the accused MARIO CABALSE, GUILTY, beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the the penalty of RECLUSION PERPETUA, and to indemnify the private offended party, MILAGROS E. CANEDO, the amount of FIFTY THOUSAND PESOS (P50,000.00). Costs against accused.

SO ORDERED.^[49]

In his appeal, appellant raises the following errors of the trial court:

I.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE GLARING INCONSISTENCIES IN THE TESTIMONY OF THE PRIVATE COMPLAINANT.

II.

THE TRIAL COURT ERRED IN GIVING DUE CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT DESPITE THE UNEXPLAINED DELAY OF THE LATTER IN REPORTING THE ALLEGED RAPE INCIDENT TO THE POLICE AUTHORITIES.^[50]

This Court finds that the prosecution has not established the guilt beyond reasonable doubt of appellant.

The medical evidence which was credited by the trial court,^[51] taken alone, does

not prove the commission of rape. By Milagros' own admission, the incident complained of was not the first time that she had sexual intercourse with a man, she having priorly had sexual congress with her boyfriend.[52]

Medical evidence of course is not indispensable. An accused can still be convicted of rape on the basis of the sole testimony of the private complainant[53] if it is clear and free from serious contradictions, and her sincerity and candor is beyond suspicion.[54]

By Milagros' account, after appellant took his time to engage in foreplay, his penis penetrated her vagina, without her putting up any resistance.

Q: When you were already nude from waist below accused Cabalse lick[ed] your thighs, am I right?

A: Yes, Sir.

Q: And in fact he even lick[ed] your vagina, is that right?

A: He just played with it.

Q: How did he play with your vagina?

A: By using his finger.

Q: When accused lick[ed] your thigh and played with your sex organ with his hand, you were titillated, am I right?

A: No, Sir, I did not feel the titillation.

Q: But you were sexually arouse[d]?

A: No sir.

Q: Can you give an estimate of (sic) how long did accused lick your thigh and played with your sex organ?

A: I do not know, Sir.

Q:

Q: Did it continue for a long time?

A: After he was satisfied in playing [with] my vagina he even inserted his penis inside my vagina.

Q: When he inserted his penis into your vagina, was your thighs separated from each other?

A: Yes, Sir.

Q: He was able to penetrate your vagina with his penis because you did not move your hips in order to avoid being penetrated by his penis, am I right?

A: Yes, sir.[55] (Underscoring supplied)

Such passive act of Milagros negates the commission of rape. For a ravished woman would instinctively call for help or at best flee from her lecherous captor to safer grounds when opportunities present themselves.[56]

When Milagros was pressed whether she tried to ask for help, she gave conflicting answers. While on October 13, 1998, she readily admitted not shouting for help because a knife was poked at her,

COURT: When you were raped did you shout for help?

A: No your Honor, because a knife was poked on my side.

COURT: Who poked that knife?

A: Bolantoy.

COURT: Did he tell you not to shout?

A: Yes, he told me not to shout and he told me that if I shout