

FIRST DIVISION

[G.R. Nos. 141773-76, January 22, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSENDO LAYOSO @ SENDONG, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

On April 14, 1999, accused-appellant Rosendo Layoso @ Sendong was charged with four counts of rape under four (4) separate Informations filed before the Regional Trial Court of San Carlos City, Branch 57.^[1] The four similarly-worded Informations, except for the dates of commission, contained the following allegations, to wit:

Criminal Case No. SCC-3040^[2]

That on or about October 22, 1998, in the evening, in Barangay Dumpay, Municipality of Bautista, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Marlene B. Nitoya, a minor of 14 years old, against her will and consent and to her damage and prejudice.

The three other Informations alleged that the rape was committed on November 18, 1998 (Criminal Case No. SCC-3041);^[3] on December 14, 1998 (Criminal Case No. SCC-3042);^[4] and on February 23, 1999 (Criminal Case No. SCC-3043).^[5]

Accused-appellant pleaded "not guilty" on arraignment. The four cases were jointly tried.

Complainant Marlene B. Nitoya^[6] is the daughter of Teodora and Juanito Nitoya, having been born to them on February 15, 1984.^[7] She was 14 years old when the first three acts of rape were committed; while the fourth rape occurred a few days after she turned 15 years old.

On October 22, 1998 at 8:00 in the evening, Marlene went out to buy kerosene at her Aunt Flory's store, about 15 meters from her house. While she was on her way, accused-appellant suddenly pulled her left arm, kissed her face and threatened to kill her if she shouted. He smelled of alcohol. He dragged Marlene to the bamboo grove at the back of the store.^[8] There, he forced Marlene to lie down on the ground. When she refused, he kicked her. He then removed her panties, mounted himself on top of her and inserted his penis into her private parts. Marlene was not able to shout for help out of fear that accused-appellant might kill her.^[9]

Marlene's ordeal was repeated on November 18, 1998 at the same time and place.
[10]

On December 14, 1998, Marlene was washing her face at the pump well near her grandmother's house when accused-appellant embraced her from behind, covered her mouth, repeatedly kissed her and threatened to kill her if she shouted. He forced her to lie flat on the basement of the pump well, lay on top of her, raised her skirt, removed her panties^[11] and inserted his penis into her vagina.

The fourth rape incident happened on February 23, 1999 between 7:30 to 8:30 in the evening. Marlene was again about to buy kerosene at the store of her Aunt Flory when, all of a sudden, accused-appellant grabbed her from behind, covered her mouth with his right hand and brought her to a secluded place fronting the store. He forced her to lie down, removed her panties and threatened to kill her with a bamboo stick if she told anybody what he was about to do. He kissed her on the lips and neck then inserted his penis into her vagina. After he finished having carnal knowledge of Marlene, he again threatened to kill her if she told anyone about it.

Marlene went home and washed her genitals. That night, she had difficulty sleeping because she felt pain in her private parts. When her parents arrived at 10:00 in the evening, she told her mother that she was raped by accused-appellant four times. They went to the PNP of Basista, Pangasinan to report the matter and then to the San Carlos General Hospital where she was physically examined.^[12]

Marlene explained that she remembered the three rapes because she marked the dates on the calendar; while the fourth rape happened close to her birthday.^[13] She knew accused-appellant because he lived 15 meters away from their house and just 5 meters away from the store of her Aunt Flory.

Both Juanito and Teodora Nitoya corroborated the testimony of Marlene that she reported to them that she was raped by accused-appellant.^[14]

Victoriano Nitoya, Marlene's uncle, testified that sometime in the last week of February 1999, Marlene reported to him that accused-appellant threatened her with a bamboo stick and forcibly brought her to a bamboo plantation where she was raped.^[15]

Dr. Ma. Salome G. Romero, the attending physician who examined Marlene, testified that her internal examination of the hymen of Marlene showed that it had complete healed lacerations at 9 o'clock position, healed multiple partial lacerations. The possible cause of this was the penetration of the male organ into the vulva of the patient. Dr. Salome likewise found that the vaginal canal easily admitted two fingers, which is unusual for her age.^[16]

In his defense, accused-appellant vehemently denied the four acts of rape and raised the defense of alibi. He claimed that the cases were filed against him because Marlene's family wanted to avenge an incident which involved him and Marlene's cousin, Robert Nitoya.^[17]

He claimed that from October 3, 1998 to October 31, 1998, he was selling fruits in

Manila with his elder brother, Ador Layoso. He only returned to Basista, Pangasinan on All Saints' Day. After Halloween, he went to in Brgy. Tanolong, Bayambang, Pangasinan, to help his brother-in-law, Jun Casingal, harvest palay. He stayed there from November 8, 1998 to November 21, 1998. It was only on November 22, 1998, that he went back to his house in Dumpay, Pangasinan.

On December 14, 1998, he again harvested palay in the rice field from 7:00 a.m. to 5:00 in the afternoon. Afterwards, he stayed in his house the whole evening.

In the afternoon of February 23, 1999, he had a drinking spree with some friends, including Robert Nitoya. The drinking session lasted up to 8:30 in the evening. In the course of the gathering, he and Roberto were involved in a fist-fight, causing him to lose one tooth. It was because of this incident that these cases were allegedly filed against him.^[18]

On November 9, 1999, the trial court rendered a joint decision,^[19] the dispositive portion of which reads:

WHEREFORE, judgement is hereby rendered in the following cases, as follows:

1. In Criminal Case No. SCC-3040, the Court finds the accused guilty beyond reasonable doubt of the crime of rape as defined in and penalized by Article 355 of the Revised Penal Code, as amended by R.A. 7659, and hereby ordered to serve the penalty of *reclusion perpetua* and to indemnify Marlene Nitoya the sum of P50,000.00 and to pay her exemplary damages of P25,000.00 and to pay the cost.
2. In Criminal Case No. SCC-3041, the Court finds the accused guilty beyond reasonable doubt of the crime of rape as defined in and penalized by Article 355 of the Revised Penal Code, as amended by R.A. 7659, and hereby ordered to serve the penalty of *reclusion perpetua* and to indemnify Marlene Nitoya the sum of P50,000.00 and to pay her exemplary damages of P25,000.00 and to pay the cost.
3. In Criminal Case No. SCC-3042, the Court finds the accused guilty beyond reasonable doubt of the crime of rape as defined in and penalized by Article 355 of the Revised Penal Code, as amended by R.A. 7659, and hereby ordered to serve the penalty of *reclusion perpetua* and to indemnify Marlene Nitoya the sum of P50,000.00 and to pay her exemplary damages of P25,000.00 and to pay the cost.
4. In Criminal Case No. SCC-3043, the Court finds the accused guilty beyond reasonable doubt of the crime of rape as defined in and penalized by Article 355 of the Revised Penal Code, as amended by R.A. 7659, and hereby ordered to serve the penalty of *reclusion perpetua* and to indemnify Marlene Nitoya the sum of P50,000.00 and to pay her exemplary damages of P25,000.00 and to pay the cost.

SO ORDERED.^[20]

Hence, this appeal where accused-appellant raises the following errors:

- A. THAT THE HONORABLE JUDGE ERRED IN NOT CONSIDERING THE TESTIMONIES OF THE PROSECUTION WITNESSES ON CROSS-EXAMINATION.
- B. THAT THE HONORABLE JUDGE ERRED IN DISREGARDING THE INCONSISTENCIES IN THE PROSECUTION'S TESTIMONIES.
- C. THAT THE HONORABLE JUDGE ERRED IN NOT CONSIDERING THE INCREDIBILITY OF THE COMPLAINANT'S TESTIMONIES.^[21]

Accused-appellant claims that the trial court failed to appreciate in his favor the testimonies of all the prosecution witnesses on cross-examination. The said testimonies, especially that of private complainant Marlene Nitoya, are fraught with inconsistencies which demonstrate the improbability of the four incidents of rape or, at least, created doubts as to their commission. He asserts that these inconsistencies relate to vital points, *i.e.*, the time of their commission, number of times rape was committed, the *locus criminis*, the time of reporting the incidents of rape and the testimony of the complainant Marlene Nitoya herself.

According to accused-appellant, Teodora testified that Marlene reported to her that the four counts of rape were all committed at 7:00 in the evening. This, however, was belied by the testimony of Marlene, who stated that the four incidents of rape all took place at 8:00 in the evening.

The testimonies as to the number of times rape was committed were likewise incongruous. Juanito Nitoya testified that Marlene reported to him that she was raped three times – on October 22, 1998, November 18, 1998 and February 23, 1999. This was contradicted by Marlene and Teodora who both testified that there were four acts of rape committed on Marlene.

The testimonies as to the place of the commission of the four rapes are also dubious. Teodora Nitoya testified that the alleged rape on February 23, 1999 took place inside their house, while the alleged rapes on October 22, 1998 and November 18, 1998 occurred in an isolated place where there were bamboos. This was disproved by Marlene, whose testimony never showed that any of the alleged rapes took place inside their house.

As regards the place and time of reporting the crimes, Juanito Nitoya claimed that at 8:00 in the morning of February 23, 1999, he reported to the police the alleged incidents of rape of October 22, 1998, November 18, 1998 and February 23, 1999. Accused-appellant contends that if it were true that Marlene was raped at eight o'clock in the evening of February 23, 1999, then Juanito Nitoya could not have reported an incident that has not yet occurred.

In sum, the arguments of accused-appellant boil down to the credibility of the prosecution witnesses.

When the credibility of witnesses is in issue, the trial court's assessment is accorded