

EN BANC

[G.R. No. 127152, February 12, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FILOMENO AVERGONZADO ALIAS MINOC, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

AAA, a thirteen (13)-year old barrio lass, was walking home midday of 10 June 1994. She just came from the TTFA cooperative store of Sitio TTFA,^[1] Barangay Zamora, Talibon, Bohol, about half a kilometer away from her house to buy salted fish^[2] for her grandmother [REDACTED].

Some twenty (20) meters ahead on her trail was accused Filomeno Avergonzado, a twenty-two (22)-year old farmer and chairman of the *Sangguniang Kabataan* of TTFA, who left the store before she did. Upon reaching the bridge traversing a creek Filomeno tarried and waited for AAA. However she stopped before him and politely suggested that he crossed the bridge ahead. But Filomeno did not respond nor did he show any sign that he was yielding to the suggestion.

As AAA was anxious to go ahead, she decided not to wait; instead, she proceeded on her way passing by him. She had barely taken three (3) steps when Filomeno suddenly placed his arm around her neck and threatened to kill her with his hunting knife on hand if she shouted. He dragged her under the bridge and then to a place about twenty (20) meters away from the creek. He pushed her to the ground. He raised her skirt, removed her panty, unzipped his pants and then inserted his penis in her vagina. AAA felt pain but, fearing for her life, she did not shout for help as he kept pointing his knife at her neck.

After he was through, Filomeno stood up. AAA asked who he was, but he simply told her to inform anyone who would ask that his name was *Boning Polestico*, and then left. AAA then retrieved her underwear and as she put it on again she noticed blood in her private part.

AAA went back to her grandmother crying and told her she was raped. [REDACTED] immediately accompanied AAA back to the store to inquire about the person who sexually assaulted her.

From a salesgirl of the store, [REDACTED] learned that a certain *Minoc*^[3] was also at the store that noon. [REDACTED] then reported the incident to Boyboy Fuentes, chairman of Sitio TTFA, who happened to be there. Fuentes promptly sent for Minoc who turned out to be the accused Filomeno Avergonzado.

When the accused arrived, Boyboy asked AAA, "Is this the man, *Day?*"^[4] AAA answered in the affirmative. Having ascertained the identity of the person who

molested her granddaughter, [REDACTED] took AAA to her parents' house. [REDACTED], AAA's mother, who came home that afternoon after spending a day rehearsing songs at the *Iglesia ni Cristo* was informed of the incident.

After informing her husband about what happened, [REDACTED] forthwith proceeded to the cooperative store to look for Filomeno. She found him drinking with Boyboy Fuentes. When confronted, Filomeno simply stood up and pointed a finger at her. Infuriated, [REDACTED] tried to hack him with a bolo but Boyboy Fuentes intervened and advised her instead to have her daughter examined by a doctor.

The Udarbe spouses brought AAA that evening to the Garcia Memorial Provincial Hospital where she was examined by Dr. Romeo Camargo. The medical certificate issued by Dr. Camargo showed the "presence of blood at the vaginal canal" and the "presence of vaginal laceration at 6:00 o'clock with fresh blood." There was also laceration of the hymen.^[5]

On 11 June 1994 AAA filed a complaint^[6] with the assistance of her mother before the Municipal Circuit Trial Court of Talibon-Getafe, Bohol, charging Filomeno Avergonzado with rape with use of a deadly weapon. On 23 August 1994 the complaint was amended to specifically allege that the rape was committed in violation of Art. 335 of *The Revised Penal Code* as amended by RA 7659.^[7]

When the case reached the Regional Trial Court of Tagbilaran City it was raffled to Branch 1 presided over by Judge Antonio H. Bautista. On 20 December 1994 the accused pleaded not guilty to the charge. On 2 March 1995 the trial started, but due to the retirement of Judge Bautista, it had to be continued by Judge Teofilo B. Buslon, Jr., with the prosecution presenting AAA, [REDACTED], [REDACTED] and Dr. Romeo Camargo as witnesses.

The accused took the witness stand in his defense. He denied raping AAA and claimed he was in Brgy. San Agustin, Talibon, Bohol, sawing coconut trees from the 8th to the 11th of June 1994. He said that Brgy. San Agustin was approximately seven (7) kilometers away from the center of TTFA. To corroborate his claim, the defense presented Felix Polistico, owner of the coconut trees he allegedly sawed and in whose house he lodged in Brgy. San Agustin.

The defense also presented Herminigildo Caparoso, brother-in-law of the accused who ran his own store twenty (20) meters away from the TTFA cooperative store. Caparoso testified that about noon of 10 June 1994 AAA went to his store to buy a bottle of *kulafu* wine but asserted that at that time he did not see Filomeno among those in the TTFA cooperative store.

The trial court did not sustain the alibi of the accused Filomeno Avergonzado. On 9 July 1996 the court adjudged him guilty of rape, sentenced him to death, and ordered him to indemnify his victim AAA the sum of P50,000.00 for moral damages.^[8]

The case is now before us on automatic review. Accused Filomeno Avergonzado contends that the court *a quo* erred in its findings and urges the reversal of his conviction. As his conviction hinged primarily on her testimony, he assails the credibility of complainant AAA and claims that the trial court erroneously relied on

her testimony that was tainted with discrepancies.

We find no merit in the appeal. While the trial court was not unmindful of some lapses in the testimony of the complainant, it found them to be minor and insignificant to destroy the integrity of her testimony which the court characterized as "plain and straightforward."^[9]

Time and again this Court has deferred to the trial court's assessment of the witnesses and their credibility having the opportunity to observe the witnesses on the stand and to detect if they were telling a lie.^[10] This Court does not have the vantage position of a trial judge but merely relies on the cold records and the judge's discretion. In the absence of any showing that his factual findings were reached arbitrarily or without sufficient basis, these findings are to be received with great respect by this Court, and indeed are binding upon it.^[11] A cautious examination of the records and stenographic notes required in reviewing rape cases convinces us that the supposed inconsistencies have been satisfactorily explained.

The defense makes much of the alleged failure of AAA to inform chairman Fuentes that the name of the person who raped her was *Boning Polestico*, and of the swift summons made by the chairman specifically for the accused notwithstanding the fact that the complainant did not disclose the name of her abuser. But the omission to relay the name given by the rapist is understandable. It is incredible for a person who perpetrated the crime of rape to leave his real name to his victim, like giving her his printed calling card, and thus pave the way for his easy apprehension and facilitate his prosecution. Neither AAA nor her grandmother could have been expected to accept the name left by the culprit as his correct name. Apparently, it was ██████ skepticism that led her back to the store together with AAA to ascertain the real identity of the rapist.

We do not find anything suspicious with the action of the sitio chairman to summon the accused. The accused was sent for precisely because he was known by the sitio chairman as *Minoc*, the same person identified by the salesgirl to have been present that noon at the store, and who was suspected to be the same person who sexually assaulted AAA.

It is also suggested that the complainant lied when she claimed that she did not know the accused before the sexual encounter. The defense points out that both the complainant and the accused were residents of the same sitio and had on several occasions assisted in palay harvests in other people's ricefields. In her first affidavit, which was sworn before the mayor of Talibon and filed with her complaint,^[12] AAA claimed that she knew the accused for a long time. In the second, executed before MCTC Judge Romualdo G. Buno who conducted the preliminary investigation,^[13] she stated that she knew him only recently.

We agree with the Solicitor General that we cannot infer from the mere fact that they were residents of the same sitio that the complainant and the accused already knew each other before then. There is no showing that their houses were located in close proximity. AAA was barely in her teens and had yet to attend any of the social gatherings in their community.^[14] The two (2) were also unlikely to share the same circle of friends as the accused is almost ten (10) years her senior. Nor can we presume such an acquaintance only because of their presence at palay harvests