

## THIRD DIVISION

[ G.R. Nos. 148368-70, July 08, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EDUARDO FABIAN Y MARI, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

On review is the Decision<sup>[1]</sup> of the Regional Trial Court of Quezon City in Crim. Cases Nos. Q-99-85973 to 75, dated March 21, 2001, finding appellant Eduardo Fabian y Mari guilty beyond reasonable doubt of three (3) counts of rape, and imposing upon him the penalty of imprisonment of *reclusion perpetua* for each count.

In three (3) separate Informations, Eduardo Fabian was charged with three (3) counts of rape, committed as follows:

Crim. Case No. Q-99-85973

That on or about the 3<sup>rd</sup> day of October 1998, in Quezon City, Philippines, the said accused, by means of force and intimidation did then and there wilfully, unlawfully and feloniously undress one MARIETTA TINGSON Y SUIZA inside her house located at No. 35 Gitna Street, Brgy. Apolonio Samson, this City, put himself on top of her and thereafter have carnal knowledge with her against her will and without her consent.

CONTRARY TO LAW.<sup>[2]</sup>

The Informations in Criminal Cases Nos. Q-99-85974-75 were similarly worded except as to the dates of the commission of the other two rape incidents. One was committed allegedly on August 16, 1998,<sup>[3]</sup> and the other on March 15, 1999.<sup>[4]</sup>

Appellant pleaded not guilty to all offenses charged and was tried for three (3) counts of rape. Having the same accused and the same victim in all the three cases, the latter were consolidated and tried jointly.

Appellant Eduardo Fabian is 31 years old and a resident of No. 35 Kaingin Bukid Gitna, Barangay Apolonio Samson, Quezon City. Private complainant Marietta Tingson is 51 years old, a widow who makes a living by doing laundry work. At the time material to the alleged rape incidents, she was living with her mentally retardate twenty-year old son, renting a room at the ground floor of the house of appellant's mother. The appellant was living with them in the same house.

The prosecution's evidence is based on Marietta's narration of the events that transpired on those three (3) fateful days. Marietta testified that the appellant raped

her on three (3) occasions. The first time took place at around 1:00 a.m. of August 16, 1998. She was fetching water near the door of their house when she saw the appellant descending from the stairs. The latter sat beside her and all of a sudden, kissed her on the lips. Angered, Marietta stood up holding a "tabo". But the appellant immediately embraced her, inserted his right hand inside her blouse and touched her breast, while his left hand reached inside Marietta's "duster" and touched her genitalia. Marietta hit the appellant with the "tabo" she was holding and then tried to go inside the house, attempted to close the door but she was easily pulled out by the appellant. Marietta shouted and called her son who was then sleeping. Before complainant could wake her son, appellant covered her mouth and brought her to the room of his brother located at the second floor. Once inside, appellant pushed Marietta who fell to the floor. Unmindful of Marietta's pleas, appellant stripped her of her clothes and then removed his own clothes, placed himself on top of her, inserted his penis into her genitalia, and made some pumping motions. Marietta tried to push him away, to no avail, for he managed to penetrate her for the second time. After satisfying his lust, appellant warned Marietta not to tell anyone of what transpired between them.<sup>[5]</sup>

Despite the threat, Marietta disclosed the incident to the appellant's older sister named Nene who could only assure her that she would advise her brother. The thought of reporting the matter to the police crossed her mind but she felt confused because of the respect she still has for the family of the appellant, having known them and lived with them for so long now. She likewise confided her ordeal to Maming, their neighbor and sister-in-law of the appellant. Maming could not offer any help because of fear of being driven out of the house by the mother of the appellant.<sup>[6]</sup>

Marietta was raped again on October 3, 1998. At about 8:00 a.m., while she was in her room dressing up and preparing to leave for work, she remembered that her flat iron that she would be bringing to work was borrowed by the mother of the appellant. So she went upstairs and even met Maming on her way up. Then she heard somebody saying that the flat iron is under the bed. Upon entering the room of appellant's mother, Marietta saw no one but heard a voice coming from the direction of the door. The voice turned out to belong to the appellant. The latter immediately closed the door and windows, after Marietta struggled to open them. Marietta however couldn't get out as she was pulled in by the appellant. She put up a fight with the appellant, having been able to grab the latter's wrist watch which was destroyed while the two (2) were grappling with each other. Consequently, appellant got mad. He held Marietta's neck and pulled her to the corner of the room. Thereafter, he pushed Marietta to the floor, undressed her, then held her feet and dragged her. In a kneeling position while Marietta was lying on the floor, he inserted his finger into her vagina and bit her breast. Not satisfied, appellant turned Marietta around, making her lie with her face downward, then penetrated her from behind. Hurt, she rolled over the floor. But the appellant, still wanting more, held up her thighs, then again inserted his penis into her vagina, and proceeded to make pumping motions. After the appellant had ejaculated, he put on his shorts. Marietta, using her panties, wiped her vagina which was bleeding and already swollen. Upon seeing this, appellant even advised Marietta to take some medicine. Marietta could not let out any reply as she could no longer hold back her tears.<sup>[7]</sup>

The last incident took place on March 15, 1999. At about 7:00 p.m., Marietta was in

her room fixing her things. Although the door was closed, it was not locked which allowed the appellant to gain entry. He pushed Marietta to the floor, undressed her, and placed himself on top of her. He held her thighs apart and sucked her breasts. Marietta pushed him and was able to get away for a split second. But the appellant easily grabbed her and pushed her to the floor. Again, he went on top of her, and this time, he was able to consummate his lust. Appellant then stood up and ordered his victim not to report the matter to the police. Before leaving, the appellant even had the nerve to ask money from Marietta. When the latter gave none, he searched the room, saw Marietta's wallet from which he took a fifty-peso bill. Appellant got out of the room leaving Marietta crying.<sup>[8]</sup>

On May 13, 1999, Marietta reported the rape incidents to the barangay authorities and gave her statement<sup>[9]</sup> before the Philippine National Police - Laloma Station, Quezon City. On that same day, a medical and genital examination was likewise conducted on Marietta by Dr. Winston Tan, a medico-legal officer at the PNP Crime Laboratory, Camp Crame, Quezon City. She testified that she was unable to report the matter promptly to the police authorities because at that time, she and her son were still living with the appellant and his family, and she still had no money to transfer to another place. She was also afraid that the accused would make good his threat to kill her and her son if she goes to the police.<sup>[10]</sup>

Dr. Tan stated in his report the following findings:<sup>[11]</sup>

**FINDINGS:**

**GENERAL AND EXTRAGENITAL:**

PHYSICAL BUILT: regular built

MENTAL STATUS: Coherent female suspect

BREAST: pendulous with the dark brown areola and nipples from which no secretion could be pressed out

ABDOMEN: flat and soft

PHYSICAL INJURIES: none

**GENITAL:**

PUBIC HAIR: abundant growth

LABIA MAJORA: full, convex and gaping

LABIA MINORA: dark brown

HYMEN: presence of carunculae myrtiformis

POSTERIOR FOURCHETTE: obliterated

EXTERNAL VAGINAL ORIFICE: slight resistance

VAGINAL CANAL: wide with flattened rugosities

CERVIX: slightly protruding from the external vaginal canal, no congestion, no abrasion

PERI-URETHRAL AND VAGINAL SMEARS: Negative for Spermatozoa and for gram negative diplococci.

**CONCLUSION:** Subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.

Dr. Tan later testified in open court and explained on his conclusion that there were no external signs of physical trauma. He said that this is normal because of the age of the victim.<sup>[12]</sup>

The appellant has a different story to tell. He denied having raped Marietta, claiming instead that they were lovers. According to the appellant, their relationship began on January 15, 1999 when Marietta who was then washing clothes seduced him while he was fetching water. She even made him a cup of coffee that night. Since then, they would have sexual trysts twice a week. The appellant added that Marietta always gave him money to buy food and cigarettes. Even their neighbors, Letty and Rachel, knew about the relationship. The former, Leticia dela Cruz, was presented as witness and corroborated appellant's statement that Marietta always gave him money since 1998. She also was often requested by Marietta to call the appellant. According to her, Marietta became angry with the appellant when the latter lived in with her friend Dory. As the appellant testified, it was jealousy that motivated Marietta to file these cases against him because he was already living with another woman named Dory beginning on October 20, 1999.<sup>[13]</sup>

The defense assigns as errors the following:

## I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE AND UNBELIEVABLE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

## II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

As the trial court ruled, the evidence for the prosecution has clearly established that Marietta, in all three instances, was forced to submit to appellant's bestial desires, the latter employing force and intimidation. In all the three (3) rape incidents, the appellant used physical violence upon the person of Marietta to consummate his purpose of copulating with the latter. Marietta put up a struggle every time the accused forced himself upon her, but in all instances, she was inevitably subdued by his strength. As we held in **People vs. Baltazar**,<sup>[14]</sup> nowhere is it required in law or jurisprudence that a woman must offer tenacious resistance to a sexual assault. The law does not impose on the rape victim the burden of proving resistance. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.<sup>[15]</sup> Not all offended parties in the crime of rape react the same way. There are those who even freeze because of fright and shock, unable to move nor shout. We cannot fault the latter for not putting up a "tenacious" resistance. In the case at bar, we find that Marietta put up a good fight, but because of her mature age and the disparity between her and appellant's physical strength, she was easily subdued by her attacker.

Marietta was direct, consistent and unwavering in her claim that she was raped by the appellant. The trial court found her to be a credible witness, without any ill-motive to lie. Her testimony was clear and straightforward. Even appellant's imputation that jealousy motivated Marietta to file these cases against him cannot hold water. He claims that Marietta was jealous and grew angry with him when he