

## THIRD DIVISION

[ G.R. Nos. 143143-44, January 15, 2002 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALBERTO GONZALES JR., APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

Appellant's claim that he cannot be convicted of two counts of rape on the basis of an information that charged only one count is negated by the plain fact that he pleaded guilty to two separate though identically worded Informations bearing different case numbers. Furthermore, his counsel cross-examined complainant on these two separate charges. In his own testimony, appellant also denied committing either of the two acts of rape.

### Statement of the Case

Alberto Gonzales Jr. appeals the August 5, 1999 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of San Mateo, Rizal (Branch 76) in Criminal Case Nos. 3514 and 3515, <sup>[2]</sup> finding him guilty beyond reasonable doubt of two counts of rape. The RTC disposed of the cases as follows:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Crim. Case No. 3514, finding accused Alberto Gonzales, Jr. **[g]uilty** beyond reasonable doubt of the crime of rape, as defined and penalized under Art. 266-A, par. 1 and Art. 266-B, par. (1) of the Revised Penal Code, as amended by R.A. 8353 in relation to Sec. 5 (b) R.A. 7610, and sentencing him to suffer the penalty of reclusion perpetua, and to indemnify the private complainant, Maria Anub y Mangadan in the amount of P50,000.00 as moral damages and to pay the costs.
2. In Crim. Case No. 3515, finding accused Alberto Gonzales, Jr. **[g]uilty** beyond doubt of the crime of rape, as defined and penalized under Art. 266-A Par. 1 and Art. 266-B, Par. (1) of the Revised Penal Code, as amended by R.A. 8353 in relation to Sec. 5 (b) R.A. 7610, and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the private complainant, Maria Anub y Mangadan in the amount of P50,000.00 as moral damages and to pay the costs."<sup>[3]</sup>

On March 4, 1998, two separate but identically worded Informations<sup>[4]</sup> charged appellant thus:

"That on or about the 26<sup>th</sup> day of January 1998 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant did then and there willfully, unlawfully and feloniously have sexual intercourse with MARIA ANUB y MAGADAN, a minor fifteen (15) years old without her consent and against her will."<sup>[5]</sup>

On April 13, 1998, the prosecution amended the Informations for the two criminal cases by changing the victim's age from 15 to 16 years as follows:

"That on or about the 26<sup>th</sup> day of January 1998 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant did then and there willfully, unlawfully and feloniously have sexual intercourse with MARIA ANUB y MAGADAN,<sup>[6]</sup> a minor sixteen years old, without her consent and against her will."<sup>[7]</sup>

Upon his arraignment on March 19, 1998, appellant, duly assisted by his counsel, Atty. Regino M. Garillo, pleaded not guilty to the two offenses charged.<sup>[8]</sup> After trial on the merits, the trial court convicted him.

### **The Facts** **Version of the Prosecution**

In its Brief,<sup>[9]</sup> the Office of the Solicitor General presents the factual incidents of the case:

"Maria Anub was a housemaid of Mrs. Mariel Caboteja in San Mateo, Rizal when the incidents of rape occurred. She hails from Buyang Norte, Cambigce, Bohol. She did not finish Grade 4.

"About 10 o'clock in the evening of January 26, 1998, she went to the nearby store of Mama Ti to deliver the ice candy that she prepared. As she went out of the store, appellant, a next-door neighbor, waved to her, asking her to come near. She went near him and he asked her to massage him. She said that she would have to ask permission first from Mama Ti. Appellant told her not to ask permission anymore as Mama Ti might get angry. Appellant was known to Maria as she sometimes took care of his four-year old son, Paulo.

"Appellant brought Maria to his house which was just beside the house of Maria's employer. Appellant turned off the lights in his room and when Maria asked him why it was dark inside his room, he told her that it was really like that. Appellant then removed his shirt and handed an Omega painkiller bottle to Maria and asked her to start the massage. Maria started to massage appellant's back but after a few minutes, appellant

pushed her down on the floor. He removed her clothing and covered her mouth with his right hand. He threatened her that he would cut off her head if she shouted. While appellant was removing Maria's T-shirt, she was elbowing him away but he proved too strong for her. Also, she was afraid that he would box her. Appellant then went on top of Maria and inserted his penis into her vagina. Maria felt pain so that she moved her body. She felt something hot (like urine) come out from appellant.

"Maria wanted to stand up and escape but was unable to do so because appellant was still on top of her, holding her hands. Then, he again inserted his penis into her vagina. When appellant released her hands, she was able to stand up and r[u]n outside the room. She wore her shorts and T-shirt at the sala, then opened the door to the kitchen and ran outside. She jumped off the fence going to her employer's house.

"Regino Bravo, a neighbor, saw Maria running down the stairs to where she lived about 12:30 after x x x midnight. He noticed she was crying and was pale and trembling. She did not respond to him when he greeted her.

"It was only the following day that Maria's employer learned of the incident. Alma Legaspi, who was also Maria's employer (Mariel's sister), was informed by their mother about 10 o'clock in the evening to check on their housemaid who was not feeling well the whole day. She found Maria lying on the bed covered with a blanket. She did not respond to her inquiries as to what was wrong. She kept on crying and mumbling that her head would be cut off. After sometime, Maria, who had difficulty speaking in Tagalog, was able to reveal that appellant raped her, 'nagalaw siya' by their neighbor, Alberto Gonzales, Jr. Alma called her elder sister, Mariel Caboteja, and told her what happened. Maria told them that appellant raped her twice.

"They reported the matter to the Marikina police but they were told it was not within their jurisdiction. They called up the San Mateo police station and two (2) police officers came. Appellant was summoned and they were brought to the barangay hall where Maria pointed to appellant as the one who raped her. They then proceeded to the police station of San Mateo, Rizal to file the complaint.

"The doctor who examined Maria, Dr. Tomas D. Suguitan, is a Medico-Legal Officer of the PNP Crime Laboratory in Camp Crame, Quezon City. He conducted the examination on January 28, 1998 upon the request of the San Mateo Police station. His finding, reduced in Medico-Legal Report No. M-228-98 (Exh. 'C' Rec. p. 8) has the following entries: '. . . On separating the same disclosed an abrade posterior fourchette and an elastic hymen with shallow healed lacerations at 3, 6 and 8 o'clock positions.' Dr. Suguitan concluded that the findings are compatible with the recent loss of virginity. He also opined that the injuries were inflicted less than five (5) days from date of examination and consistent with the injuries caused by insertion of a blunt object, like a penis, into the vagina.

"Police Officer Ronaldo San Diego, who investigated Maria, prepared two statements. In the first statement, he was not able to state that Maria was raped twice so that Maria made handwritten insertions on the left margin. San Diego retyped the statement to reflect the corrections."<sup>[10]</sup>

### **Version of the Defense**

On the other hand, appellant presents the following version of the facts:<sup>[11]</sup>

"On November 24, 1998, the defense commenced presentation of its evidence with the accused- appellant, ALBERTO GONZALES, Jr., taking the witness stand. He DENIED having raped MARIA ANUB and recalled that at about 9:30 in the evening of January 26, 1998, his three (3) friends Josefino 'Matt['] del Mundo, Yayo Dinero and Jaime Reyes, ha[d] a casual drinking meet just outside his house but he just talked to them without drinking. He saw MARIA ANUB passing by and he asked her if she knew how to massage, to which she answered in the affirmative and told him of the fact that she was the one massaging her father; that she promised to massage him later because she would still fix her dishes. At about 11:30 p.m., his drinking friends left, thus, he went inside the house and watched x x x television with his 3-year old son, PAOLO. It was then when the private complainant knocked at his back door and informed him of her intention to massage him to which he declined and told her that it was already late however she insisted so he allowed her to enter his house, which was lighted. She waited while he borrowed the Omega Pain Killer from his next-room mother, who was still awake, thus, he told her about the presence thereof of the private complainant. After massaging him for about 15 to 20 minutes, MARIA ANUB asked permission to leave, hence, he saw her to the door but after he closed it, he noticed that she left her sweatshirt so he called her [and] gave it to her near the door. Thereafter, he switched off the television set and slept with his son.

"It was already about 12:00 o'clock on January 28, 1998 when he learned from the policemen who went to his house that MARIA ANUB was complaining against him and since then he was placed in detention where his 'ninang-neighbor,['] PRISCILLA ANDRADE visited to him and revealed to him that MARIA ANUB admitted that he did not [abuse] her but she was ordered by his 'KUYA' who was a stranger to him, to file the complaint against him.

"The accused testified that while being massaged he was lying down on bed, with his T-shirt raised up to his neck. He drew a sketch of the place showing the relative positions of the houses of the private complainant, REGINO BRAVO, his sister[,], the Regaspi's store and his own, as well as the streets going down the houses and the interior of his house as EXHIBIT '4' with submarkings. He identified his 'GANTING SALAYSAY' as EXHIBIT '5' to 5-a'.

"On cross examination, the accused explained that this [sic] mother was already bedridden for almost two months prior to the incident; that he and 'Helen', his sister's housemaid, jointly took care of her; that his wife

was not at the house in [the] time of the rape; that he did not sexually molest the complainant. He recalled that he was about three weeks in detention cell and he submitted his COUNTER-AFFI[D]AVIT when PRISCILLA ANDRADE told him about the admission to her of MARIA ANUB that he did not rape her. He clarified that his GANTING SALAYSAY or EXHIBIT '5' was based on his originally handwritten account of the incident while he was already in jail, which he gave to his lawyer.

"On re-direct examination, accused clarified that at about 11:30 p.m., of January 26, 1998, when he entered his room and turned on the television, his son was awakened, hence, both of them watched it until the private complainant came, then the boy slept again; that all the time, he kept the door of the room of his bedridden mother [open] so he could always see her, even while the private complainant was massaging him."

[12]

### **Ruling of the Trial Court**

The RTC ruled that plain denial by appellant could not relieve him of liability for the rapes charged. It gave more weight and credence to the positive assertions of the victim that she had been raped twice on that fateful night by appellant. It also noted that, other than her desire to see her ravisher punished, she had no motive whatsoever to testify falsely against him.

Hence, this appeal.[13]

### **Issues**

In his Brief, appellant raises the following alleged errors for our consideration:

"I

The lower court erred in convicting the accused-appellant of two (2) counts of rape in an Information which alleged a single rape.

"II

The lower court erred in not acquitting the accused-appellant [of] the imputed two (2) counts of rape, despite the material incons[i]stencies in private compl[a]inant's statements/testimony, with contradiction from her witnesses and the requisite resistance to the attributed rape." [14]

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

The appeal is devoid of merit.

### **First Issue:** **Defective Information**

Appellant claims that he cannot be convicted of two counts of rape, considering that the Information filed against him alleged a single offense.