

## EN BANC

[ G.R. No. 133005, April 11, 2002 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PONCIANO BALUYA @ NONONG, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

Before us for automatic review is the decision<sup>[1]</sup> of the Regional Trial Court of San Pablo City, Branch 15, promulgated on February 26, 1998 in Criminal Case No. 10077-SP finding accused-appellant, Ponciano Baluya alias Nonong guilty of rape and sentencing him to suffer the maximum penalty of death.

The Information reads as follows:

That on or about June 7, 1996, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously rape and have sexual knowledge with undersigned complainant EMILY MARTINEZ VDA. DE VALLON, by undressing her and then had sexual intercourse with said offended party against the will of the latter.

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

Upon arraignment on September 17, 1996, the accused-appellant, assisted by counsel pleaded "not guilty."<sup>[3]</sup> Thereafter, trial on the merits ensued.

The facts are as follows:

The victim, Emily Martinez was 24 years old at the time of the rape. She was a widow and a resident of Sitio Mabilog, Brgy. Sta. Catalina, San Pablo City. She has two (2) children, Jimmy Boy, who is seven years old and a daughter, aged three years old. The accused-appellant, Ponciano Baluya was the common-law husband of her eldest sister, Marilyn.

On June 7, 1996 at around ten o'clock in the evening, Emily and her two children were already sleeping, when she heard the accused-appellant calling and asking her to open the door on the pretext that there was somebody outside with him.<sup>[4]</sup> As soon as Emily opened the door, the accused-appellant suddenly grabbed her, poked a knife on her neck and threatened to kill her if she shouted. Thereafter, the accused-appellant kissed her several times, undressed her by removing her duster and panty. While naked, she fearfully sat on the floor with her children on her lap.<sup>[5]</sup> Then the accused-appellant pulled her children away from her and pushed down Emily on the floor. He swiftly removed his shorts, twisted Emily's arms and mounted

on her. He forced her legs apart and forced himself on her while kissing her on the mouth, sucking her tongue and mashing her nipples.<sup>[6]</sup> She shouted for help but the accused-appellant covered her mouth with his hands.<sup>[7]</sup> Unfortunately, the victim's mother, Marcelina Martinez, who just lived next door adjacent to her house was not around at that time as she was attending the wake of a dead sister in Quezon Province. The houses of their other neighbors were quite far from them.

Emily pleaded with the accused-appellant not to continue with his bestial act because it was painful.<sup>[8]</sup> Even the children pleaded to him but he was unmindful of them. After the sexual assault, the accused-appellant pushed away the children, threatened to kill all of them if the matter was reported and then left.<sup>[9]</sup>

Fearful of their safety and the thought that the accused-appellant might return to their house, Emily decided to leave the house that night. Together with her children, they went to their nearest neighbor, Felomina Gutierrez. In getting there, they had to pass a creek and climb a hill. She did not tell Felomina of what had transpired because of the accused-appellant's threat on their lives once they reported the incident. They stayed in Felomina's house that night.<sup>[10]</sup>

Emily and her children returned to their house the next day. Upon her mother's arrival from Quezon, Emily confided to her about the sexual violation committed by the accused-appellant. Her mother told her to leave their house at Mabilog and go to the house of her younger sister, Myrna at Brgy. Sandig, San Pablo City. She obeyed, and they stayed in her sister's house for three months. Upon her sister's advice, the matter was reported to the barangay authorities and then she gave her statement before the police authorities.<sup>[11]</sup>

Jimmy Boy, the seven year old son of the victim corroborated the testimony of his mother and pointed to his "Tiyo Nonong" as the rapist. According to him, he heard the voice of his Tiyo Nonong calling from the outside and knocking at their door. The light coming from the gas lamp enabled him to recognize the accused-appellant. He testified that Tiyo Nonong pointed a bolo at the neck of her mother, stretched her legs and laid on top of her. The accused-appellant removed the underwear of her mother ("*hinubuan*") and he was also naked when he mounted on her. At that time, he and his younger sister were on her mother's lap when they were thrown near the wall by the accused-appellant. Her mother tried to fight him but the accused-appellant was just too big. He saw the private organ of his Tiyo Nonong being inserted into the vagina of his mother for one hour. He saw him also doing the sexual act ("*kinanyog*"). He pleaded to spare his mother from the dastardly act, but the accused-appellant did not mind him. He heard his uncle threatening his mother not to tell his grandmother about it, otherwise, he will kill her.<sup>[12]</sup> After satisfying his lust, the accused-appellant left them. They too left their house and they went to the house of "*Na, Pilar,*" their neighbor.<sup>[13]</sup> Jimmy Boy added that his Tiyo Nonong likes his mother but her mother does not like him.<sup>[14]</sup>

The defense presented a different version.

Ponciano Baluya, testified that on June 7, 1996, at around five o'clock in the afternoon, he was in their house taking care of his child who was about three months old. His wife Marilyn, was just outside of the house gathering bananas.

After a while, one of his workers, Rudy Libit came to their house followed by Apolonio Pontiaga. Rudy Libit was requesting for an advance payment for his work which his wife readily gave him. Later, Marilyn asked the accused-appellant to go to the house of Emily to inquire about the date of interment of their dead aunt. She, likewise, requested Rudy and Apolonio to accompany her husband. The three left the house at around seven o'clock in the evening. Emily's place was located in Sta. Catalina which was about two kilometers away from where they lived.<sup>[15]</sup>

When they were more or less six (6) meters away from Emily's house, the accused-appellant noticed a man running away from the side of her house. Arriving thereat, Emily invited the group for coffee. She informed them that for two nights Fernando Gesmundo "Nanding" alias "Bukol" attempted to enter their house. They could not leave immediately after finishing their errand as Emily prevailed them to stay and help her check her mother's house which she feared was robbed. Upon checking the house, Emily could not, however, say which items were missing. They noticed a mat and pillow laid on the floor. They surmised that Emily had a lover. The group left the place at about midnight, and they went to the house of Rudy to sup.

Ponciano Baluya denied having raped Emily. According to him, Emily filed the case against him because she was mad at him. He caught her having sexual intercourse with his "*bilas*", one Zosimo Bueno which he reported the matter to his wife and mother-in-law. Aside from that, she caught Emily thrice stealing fruit crops from the landholding he was managing for which she was scolded. He denied the allegations of Jimmy Boy that he likes Emily and that he was the one who raped her.<sup>[16]</sup>

Marilyn Baluya, the common-law wife of the appellant for twenty (20) years also testified for the accused-appellant. She added that her relationship with her sister was good. On June 8, 1996, she saw Emily in her house, but they were not able to talk to each other. She saw her again on June 22 and this time, they talked and teased each other but nothing was said about the rape. After June 7, 1996, she also saw her mother but not a word was mentioned about the rape. She only learned about the incident when her husband received the subpoena from the fiscal's office.<sup>[17]</sup>

She surmised that Emily had filed the case against her husband because she was angry with him. The accused-appellant used to scold Emily every time the latter took crops from the land he was managing. Otherwise, Marilyn suspected that the case was instigated by her sister Myrna and her mother for they have an axe to grind against her husband. Her sister, Myrna and the accused-appellant were former lovers before she and the accused-appellant eloped and started living-in together. On the other hand, her mother was angry at her because she refused to marry the man whom her stepfather wanted for her,<sup>[18]</sup> and when she brought to her attention that her stepfather attempted to rape her.<sup>[19]</sup>

Another witness presented by the defense was Rudy Libit who worked as a grass cutter in the land being leased by the accused-appellant. He corroborated what the accused-appellant testified.<sup>[20]</sup>

Norilyn Baluya, the daughter of the accused-appellant was likewise presented. She testified that the victim was her aunt. On June 8, 1996 at around nine o'clock, she saw her aunt gathering coconuts that fell on the ground. They talked for awhile and

during their conversation, Emily manifested her dislike for Norilyn's father because he was very talkative and "*pakialamero sa kanilang pamilya.*" Emily allegedly told her that she will do something to stop her father from meddling into her affairs.<sup>[21]</sup>

Norilyn learned of the rape charge against her father when they received the subpoena on June 17, 1996. It was not true that her father raped her aunt. Her cousin, Jimmy Boy's testimony should not be believed because he might just be following the dictates of her mother who is cruel to her children and who is used to spank them.<sup>[22]</sup>

The last witness presented by the defense was Apolonio Pontigas who affirmed the contents of the affidavit he executed which merely corroborated the testimony of Rudy Libit.<sup>[23]</sup>

On February 26, 1998, the trial court rendered a judgment of conviction. The dispositive portion of which reads:

WHEREFORE, the Court hereby finds the accused PONCIANO BALUYA @ NONONG guilty beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of DEATH AND TO INDEMNIFY THE VICTIM EMILY MARTINEZ VDA. DE BALLON the amount of P50,000.00 as moral damages. With costs.

SO ORDERED.<sup>[24]</sup>

Dissatisfied with the judgment, the appellant interposed the following assignment of errors:

#### FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN ACCORDING FULL WEIGHT AND CREDENCE TO COMPLAINANT'S TESTIMONY, WHICH IS NOT ONLY INCREDIBLE *PER SE* BUT ALSO INCONSISTENT WITH THAT OF THE SECOND PROSECUTION WITNESS.

#### SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN FINDING THAT THE CRIME OF RAPE HAD BEEN COMMITTED IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT OF CARNAL KNOWLEDGE AS WELL AS THE EXISTENCE OF FORCE, THREAT OR INTIMIDATION IN OBTAINING SEXUAL CONGRESS.

#### THIRD ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN IMPOSING THE PENALTY OF DEATH IN THE ABSENCE OF ANY ALLEGATION OF THE QUALIFYING CIRCUMSTANCE OF "IN THE PRESENCE OF CHILDREN" IN THE INFORMATION.<sup>[25]</sup>

In the main, the accused-appellant questions the credibility of the complainant and the sufficiency of evidence to convict him of the crime charged.

As in most criminal cases, this Court is confronted with the issue of credibility in

view of the opposing facts established by the prosecution and the defense. This Court however is bound by the prevailing principle founded on a host of jurisprudential rulings that the findings of the trial court on credibility are entitled to the highest degree of respect and will not be disturbed on appeal, absent any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could have affected the result of the case.<sup>[26]</sup> We find no cogent reason to depart from this principle.

In rape cases, the essential element that the prosecution must prove is the absence of the victim's consent to the sexual congress. The gravamen of the crime of rape is sexual congress with a woman by force and without consent.<sup>[27]</sup> Force in rape is relative, depending on the age, size and strength of the parties. In the same manner, 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>[28]</sup>

The act of holding a knife by itself is strongly suggestive of force or at least intimidation and threatening the victim with a knife is sufficient to bring a woman to submission.<sup>[29]</sup> Even assuming *arguendo* that Emily did not repel the physical aggression of accused-appellant, this does not preclude a finding that she was raped. It is well-settled that physical resistance need not be established in rape when intimidation is exercised upon a victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety.<sup>[30]</sup>

Accused-appellant capitalizes on the failure of the victim to escape at the time that he was removing his clothes and not holding any part of the victim's body. This circumstance cannot be taken against her. Not every victim of a crime can be expected to act reasonably and conformably with the expectations of mankind. Different people react to similar situations dissimilarly. While the normal response of a woman about to be defiled may be to shout and put up a wild struggle, others become catatonic because of the mental shock they experience and the fear engendered by the unexpected occurrence. Yet it can never be successfully argued that the latter are any less sexual victims than the former.<sup>[31]</sup>

Accused-appellant in an effort to discredit the victim pointed out the absurdity of her account that she was undressed while seated and was holding her children, with appellant poking a knife at her neck and covering her mouth at the same time. Accused-appellant argues that he could not have done all of those things at the same time since he only has two hands. We agree with the Solicitor General's observation on this point:

The testimony of the complainant as to how she was undressed, at what point she was carrying her child when the knife was poked at her, and the instance when the appellant covered her mouth, must be taken according to the particular stage or sequence of the incident to which they relate. The unprejudiced or unbiased mind could readily make out the following sequence of events from the complainant's testimony both on direct and cross-examination.<sup>[32]</sup>

It is not the first time that the Court is faced with the argument as to the presence of a third hand. In *People v. Lamberte*,<sup>[33]</sup> the Court considered the defense as