

SECOND DIVISION

[G.R. Nos. 145318-19, May 29, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SONNY BUENDIA Y BENJAMIN, ACCUSED-APPELLANT.

DECISION

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 130, Caloocan City, finding accused-appellant Sonny Buendia guilty of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* in each case and to indemnify the offended party, Maribel Caliwag, in the amount of P50,000.00 as civil indemnity and an additional P50,000.00 as moral damages per count of rape, or P200,000.00 in totality, and to pay the costs.

The complainant in the two cases, Maribel Caliwag y Garcia, is the sister of the common law wife of accused-appellant Sonny Buendia.

The information in Criminal Case No. C-42738 alleged —

That on or about the month of September, 1992 in Kal. City, MM, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and taking advantage of his superior strength, by means of force, threats and intimidation employed on the person of one, MARIBEL CALIWAG y GARCIA, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with the undersigned, a minor of sixteen (16) years old, against her will and without her consent.

CONTRARY TO LAW.^[2]

On the other hand, the information in Criminal Case No. C-42739 charged —

That on or about the month of November, 1992 in Kal. City, MM, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and taking advantage of his superior strength, by means of force, threats and intimidation employed on the person of one, MARIBEL CALIWAG y GARCIA, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with the undersigned, a minor of sixteen (16) years old, against her will and without her consent.

CONTRARY TO LAW.^[3]

Upon arraignment, accused-appellant entered a plea of not guilty, whereupon the cases were jointly tried.

The prosecution presented evidence to the following effect:

Sometime in September 1992, at about 4 o'clock in the afternoon, Maribel Caliwag was alone lying in the sala of their house in Mulawin Street, Amparo Subdivision, Novaliches, Caloocan City, when accused-appellant Sonny Buendia arrived. Accused-appellant proceeded to the kitchen, got a knife, and with it ordered Maribel to get up. He held her hand and dragged Maribel inside a room. He then removed her shorts and panties, raised her T-shirt, and pushed her down on a low wooden bed ("*papag*"). Maribel pleaded with him, saying, "*Hwag, natatakot ako sa iyo!*" (Don't, I'm afraid of you!), but accused-appellant ordered her not to make any noise or he would harm her. He placed himself on top of Maribel, and lowered his pants and briefs down to his knees. Maribel resisted accused-appellant's advances, but the latter proved to be stronger. Accused-appellant kissed her on the lips and cheeks and spread her legs apart. He then held his penis and inserted it into her vagina. Maribel felt pain as accused-appellant had sexual intercourse with her for about two minutes. When accused-appellant was through, Maribel noticed a white and thick substance coming out of his organ. Accused-appellant left, but not before warning her not to tell anybody about the incident or else he would kill her and her family. Maribel could not do anything but cry. She told no one of the incident because she was afraid of the threats made by the accused.^[4]

Two months later, in November of the same year, she was again raped by accused-appellant. According to Maribel, at about 11 o'clock in the morning, she was asked by her mother to get a bowl from her sister Remy's house, located about 50 meters from their house. When she reached the house, only Remy's children, aged five and three years old, were there playing in the backyard.

While Maribel was in the kitchen of the house, accused-appellant Sonny Buendia, whose house was beside that of Remy, came. He locked the door behind him and ordered Maribel not to shout. When she asked him what he wanted, accused-appellant took a small knife, poked it at her waist, and forced her to go upstairs. As before, accused-appellant began kissing her on the lips and the cheeks. He lowered her shorts and panties, and then his own shorts and briefs down to his knees. Accused-appellant lifted Maribel and pushed her to the floor. She pleaded with him, saying, "*Hwag po!*" (Please, don't!), but he did not heed her.^[5] Accused-appellant put his body on top of her, pinned her hands, and spread her legs, as complainant continued pleading, "*Hwag, natatakot ako!*" (Don't, I'm afraid!) Maribel struggled to free herself, but accused-appellant succeeded in having sexual intercourse with her. Maribel said she felt pain in her vagina. Maribel claimed she could not shout even if she wanted to because she was afraid accused-appellant might harm her. When he had finished with her, accused-appellant warned her not to report the incident to anyone or he would kill all of them and then left.

On March 21, 1993, no longer able to contain her fear as accused-appellant kept following her around with evident evil desire, Maribel finally asked her classmate, Florida Tadeña, to help her go to the house of their former classmate, Rex Babuyog, who was a member of the Bantay Bayan, so that they could seek assistance from the authorities. Bantay Bayan is a group of male residents living in their area organized for the purpose of keeping peace in their community and is an accredited auxiliary of the Caloocan City PNP. Upon Maribel's complaint, members of the Bantay

Bayan arrested accused-appellant and turned him over to the Caloocan City Police Sub-Station at Urduja, Caloocan City.^[6]

Florida Tadeña corroborated Maribel's testimony. According to her, at about 3 o'clock in the afternoon of March 21, 1993, Maribel went to her house, crying. She appeared to be frightened. ("*Takot na takot at umiiyak.*") Florida said Maribel told her that she (Maribel) had been raped twice by her brother-in-law, accused-appellant Sonny Buendia. Florida therefore accompanied Maribel to the house of Rex Babuyog, their former high school classmate and a member of the Bantay Bayan, who in turn took them to Sonny Alberca, Chief and Organizer of the Bantay Bayan. The party went to the house of accused-appellant, but the latter was not in his house when they arrived thereat. Hence, the three proceeded to the house of Maribel and told her parents about the incidents that befell their daughter.

Upon learning what had happened, Maribel's mother fainted, while her father raged. On the other hand, Imelda, the common law wife of accused-appellant, pulled Maribel's hair and slapped her to reproach her for not telling them about the incidents earlier.

In the evening of the same day, Bantay Bayan members went back to accused-appellant Sonny Buendia's house and finally arrested him.^[7] Rex Babuyog,^[8] Sonny Alberca^[9] and Alberto Caliwag^[10] corroborated the testimony of Florida Tadeña.

PO3 Dicoroso Domingo, Police Investigator of the Caloocan City Police Station II, testified that at around 7 o'clock in the evening of March 21, 1993, he conducted an investigation on the charges against accused-appellant. He said that when accused-appellant was presented to Maribel Caliwag, the latter positively identified the former as the person who had raped her. According to PO3 Domingo, he took the statement of the complainant^[11] and prepared the letter-request addressed to the NBI for the examination of complainant^[12] and the Referral Slip^[13] addressed to the City Prosecutor.^[14]

Dr. Louella Nario, medico-legal officer of the NBI, testified that she conducted a physical and genital examination on Maribel Caliwag and recorded her findings in Living Case Report No. MG-93-253,^[15] the pertinent portions of which state:

LIVING CASE REPORT NO. MG-93-253

GENERAL PHYSICAL EXAMINATION:

Height: 150.0 cms.
43.5 Kgs.

Weight:

Normally developed, fairly nourished, conscious, coherent, ambulatory subject. Breasts, developed, hemispherical, doughy. Areolae, brown, 3.5 cms. in diameter. Nipples brown, protruding, 0.8 cm. in diameter. No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and minora, coaptated.

Fourchette, lax. Vestibular mucosa, pinkish. Hymen, moderately thick, moderately tall, intact. Hymenal orifice, annular, admits a tube, 2.0 cms. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
2. Hymen, intact and its orifice small (2.0 cms in diameter) as to preclude complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury.

For the defense, accused-appellant Sonny Buendia testified in his own behalf. He said that Maribel Caliwag is his sister-in-law because she is the sister of his wife Imelda. He denied having raped her. He claimed that, in the month of September 1992, when the first rape was allegedly committed, he was working at the Marble Supply Company in Sauyo, Novaliches, Quezon City. This place, according to him, was very far from his house and would take two jeepney rides to reach from his house. He said he worked there six days a week, from 8 o'clock in the morning up to 5 o'clock in the afternoon. He left home for work at 6 o'clock in the morning and arrived home from work at about 8 o'clock in the evening, so that it was impossible for him to have committed the crime at 4 o'clock in the afternoon. Buendia further claims that he often went to the cockpit on Sundays from 9 o'clock in the morning up to 8 o'clock in the evening so that he could likewise not have committed the crime on this day. In the month of November 1992, when the second incident allegedly took place, Buendia claimed he was working at the same Marble Supply Company. On Sundays, he was likewise at the cockpit from 9 o'clock in the morning up to 8 o'clock at night.

Buendia said that he talked to his father-in-law sometime in 1996, after the criminal case against him had been filed, and that he asked the latter if it was possible to drop the rape charges against him. His father-in-law allegedly asked for P50,000.00 as a condition for settling the cases against him, but accused-appellant said that he could afford to pay only P10,000.00.^[16]

On August 28, 2000, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court finds the accused SONNY BUENDIA y BENJAMIN guilty as principal of TWO (2) COUNTS of rape as charged in Criminal Cases Nos. C-42738 and C-42739, and there being no mitigating nor aggravating circumstances that attended the commission of the crime, hereby sentences him to suffer for each count the penalty of RECLUSION PERPETUA, with all the accessory penalties prescribed by law. He is further sentenced to pay to the complainant MARIBEL CALIWAG y GARCIA the amount of P50,000.00 as indemnity and P50,000.00 as moral damages in each case, or a total of P200,000.00 and to pay the costs.

SO ORDERED.^[17]

Hence, this appeal.

I. Accused-appellant contends that the trial court erred (a) in giving credence to the testimony of private complainant which allegedly is contrary to human experience; (b) in not taking into account that private complainant did not put up any resistance when accused-appellant allegedly made advances at her; (c) in not considering the delay of six months before private complainant reported the crime; and (d) in disregarding the presumption of innocence in his favor.^[18]

Accused-appellant argues that the testimony of complainant Maribel Caliwag is incredible and contrary to human experience. Accused-appellant asserts that if the victim's panties and shorts had been pulled down to her knees, it was impossible for her to climb the wooden bed or "*papag*," in the same way that he could not have climbed the same to perform the sexual act because he too was supposed to have lowered his shorts and briefs down to his knees. Accused-appellant likewise contends that Maribel's testimony that some white substance from accused-appellant's sex organ fell on her panties is also incredible since her panties had been drawn down to her knees. Furthermore, accused-appellant asserts that it was not natural for Maribel to have seen the former everyday after the rape incident without showing fear or anger at what he had allegedly done to her.^[19]

These contentions are without merit.

A. Maribel never said that her panties and shorts were wrapped around her knees as were accused-appellant's pants and briefs so as to make it impossible for both of them to have climbed the wooden bed ("*papag*") where he had sexual intercourse with her. What she said was that accused-appellant removed her shorts and panties to her knees, laid her down on the "*papag*," and spread her legs in order to insert his penis into her vagina. Maribel's testimony is as follows:

Q What did the accused do after you had entered the room?

A He removed my shorts and my panties.

Q By the way, what were you wearing at that time?

A Shorts and panties.

Q How about the upper part of your body?

A T-shirt.

Q Who removed your shorts and panties?

A Sonny Buendia.

Q When he removed your shorts and panties, what was your position?

A I was standing.