

FIRST DIVISION

[G.R. No. 143790, May 07, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIANO BERTULFO Y GELEG, ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE JR., C.J.:

This is an appeal from the 24 May 2000 decision^[1] of the Regional Trial Court of Quezon City, Branch 86 in Criminal Case No. Q-96-68588, finding accused-appellant Marciano Bertulfo y Geleg (hereafter MARCIANO) guilty beyond reasonable doubt of the crime of rape committed on Rhiza Oliverio (hereafter RHIZA), imposing upon him the penalty of *reclusion perpetua* and ordering him to pay to RHIZA P50,000 as indemnity, and P50,000 as moral damages.

The accusatory portion of the complaint^[2] states, thus:

The undersigned (complainant) accuses MARCIANO BERTULFO Y GELEG of the crime of Rape, committed as follows:

That on or about the 10th day of November 1996 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously undressed (sic) RHIZA OLIVERIO Y HEMOROS and put himself on top of her and thereafter have (sic) carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.

MARCIANO entered a plea of not guilty at his arraignment.

The first witness presented by the prosecution was 16 year-old RHIZA. She is from Lanao del Norte, but her aunt Normalita Reyes brought her to Ozamis City and then to Manila with the promise of sending her to school. After a year and four months since arriving in Manila, however, RHIZA was still not attending the promised schooling. Instead, Normalita made her wash clothes, clean the house and take care of two-year old Stephen Bryan, Normalita's son with her common-law spouse MARCIANO. Sometime in September 1996, Normalita left the Philippines to work in Japan. Since then, RHIZA stayed with Stephen in his room, unless MARCIANO was around, where upon she would leave the room and sleep in the *sala*.^[3]

On 10 November 1996, at 7:00 a.m., while sleeping alone with Stephen in his room, RHIZA was awakened upon sensing that MARCIANO was beside her. MARCIANO went on top of her and told her in Cebuano, "*Ayaw kang magsinggit, kung magsinggit ka, patyon kita*,"^[4] which means, "Do not shout, I will kill you if you

shout.” MARCIANO removed her shorts and panty then took off his brief. He then inserted and pushed his penis into her vagina and held and sucked her breasts. Even in pain, RHIZA tried to push him away, but her resistance proved unavailing against his brute force. After the sexual assault, which lasted for ten minutes, MARCIANO threatened her not to tell anybody or else he would kill her. RHIZA then went inside the comfort room and waited for the arrival of her aunt Viola Reyes, Normalita’s sister. When Viola arrived, RHIZA immediately related her ordeal.^[5]

Before the incident, RHIZA seldom saw MARCIANO in the house because he came home late in the evening from work. In the succeeding days after the incident, MARCIANO religiously stayed in the house, constantly watching her and Viola. Viola called up Normalita to inform her about the rape incident. On 14 November 1996, when RHIZA had mustered enough courage to report the rape, she requested her aunt Viola and a certain Jenny Tamparo to accompany her to the Baesa Police Station in Quezon City to file a complaint for rape against MARCIANO. At the Police Station, RHIZA executed a *Sinumpaang Salaysay*.^[6] Upon prior instructions from her Aunt Normalita, RHIZA, Viola and Stephen left the apartment and brought along with them their personal belongings because Normalita did not want her son to be involved in the case.^[7]

On cross-examination, the defense counsel confronted RHIZA with a document entitled “*Pinagsamang Salaysay ng Pag-uurong ng Reklamo*”,^[8] dated 18 November 1996, bearing her and Viola’s signatures. RHIZA explained that after the complaint was filed, she and her Aunt Viola were threatened by Emma Tan, sister of MARCIANO, that they will send them to jail and file charges against them for kidnapping Stephen and for qualified theft.^[9] RHIZA declared that she was forced to sign said affidavit of desistance because of Emma’s threats. Later, however, threats notwithstanding, RHIZA pursued her complaint.^[10]

The prosecution then presented Dr. Ma. Cristina B. Freyra, medico-legal officer at the PNP Crime Laboratory. She testified that she interviewed and conducted a physical examination on the person of RHIZA on 15 November 1996.^[11] Her findings are contained in Medico-Legal Report No. M-1693-96,^[12] pertinent portions of which read as follows:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with pinkish brown areola and nipple from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the light brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type and congested hymen with deep healing laceration at 7 o’clock position and shallow healing laceration at 5 o’clock position. External vaginal orifice offers

strong resistance to the introduction of the examining index finger and virgin size vaginal speculum. Vaginal canal is tight with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Findings are compatible with recent loss of virginity. There are no external signs of application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram negative diplococci and for spermatozoa.

Dr. Freyra further testified that lacerations are inflicted only on the first sexual contact. She noticed strong resistance when she inserted her examining finger in the hymen of RHIZA, more so when she inserted the speculum, which has a bigger diameter. This indicated that RHIZA's hymen was not penetrated very often or that she seldom engaged in sexual intercourse. Dr. Freyra concluded that her findings were compatible with recent loss of virginity.^[13]

The last witness for the prosecution was Mario Hermos, RHIZA's uncle. He declared that he was with RHIZA and Viola when the two were brought to Camp Karingal, and corroborated the testimony of RHIZA that Emma Tan told her to drop the rape case against MARCIANO; otherwise she would pursue the case for kidnapping filed against her and Viola.^[14]

For the defense, MARCIANO testified first. He declared that on 10 November 1996, after coming home from the office at 7:00 p.m., he left their apartment with his friend Junilo Servida and another occupant of the apartment to play bowling. When they arrived home at 2:30 a.m. of the following day, 11 November 1996, he saw RHIZA and several occupants of the apartment drinking beer and brandy. He proceeded to the room of Stephen and slept there, until 7:00 a.m. Nothing unusual had happened in their apartment from the time he came home that night of 10 November until 14 November 1996 at 2:00 p.m. On said date, he suddenly felt uneasy and nervous while he was at his office. He decided to go home and when he arrived at the apartment, he saw that all his belongings and RHIZA, Viola, Lani and his son Stephen were gone. He looked for his son but did not see him anywhere, so he returned home. While resting that evening, he heard someone knock at the door. The door was forcibly opened and a man poked a gun at him. He saw several men in civilian clothes and they brought him to Camp Karingal where he learned that the men were police officers.^[15]

The other witnesses for the defense were Leopoldo David, Junilo Servida, Police Officer Orecio Jurado, and Dr. Antonio Rebosa. Leopoldo, owner of the apartment where MARCIANO stayed, testified on the description of the apartment and the room where the rape incident was allegedly committed. Junilo corroborated MARCIANO's testimony that they played bowling on 10 November 1996, and that they saw RHIZA and other occupants of the apartment drinking beer when they returned later. He proceeded to the second floor of the apartment and slept in another room. MARCIANO, who was following him, slept in the room of his son Stephen.

Police Officer Jurado was presented to rebut the testimony of the prosecution witnesses that RHIZA and Viola were threatened and forced to sign the affidavit of desistance. He admitted, however, that before RHIZA and Viola signed the affidavit of desistance, there was a threat that they would be charged with kidnapping and qualified theft. Neither did he bring RHIZA and Viola before a notary public. He merely gave them a copy of the affidavit of desistance.^[16]

Dr. Antonio Rebosa, a physician, explained the findings made by prosecution witness Dr. Ma. Cristina Freyra. He concluded that the healing laceration, as recorded in the medico-legal report of Dr. Freyra, indicated that the laceration could have been inflicted one to four days prior to the examination. In the absence of any other finding, the hymenal laceration was due to sexual intercourse.^[17]

The trial court gave full faith and credence to the testimony of RHIZA. It characterized RHIZA'S narration of facts as straightforward, sincere, candid and consistent. Thus, in its challenged Decision,^[18] the trial court decreed as follows:

WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused MARCIANO BERTULFO y GELEG, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended, and the Court hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the private complainant Rhiza H. Oliverio the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages with costs against the accused.

SO ORDERED.

MARCIANO seasonably appealed to us from the adverse judgment.

In his Appellant's Brief^[19], MARCIANO asserts that the trial court erred:

I

XXX IN CONCLUDING THAT THE ALLEGED THREATS MADE BY THE ACCUSED PREVENTED COMPLAINANT FROM RESISTING THE RAPE DESPITE THE FACT THAT THE PHYSICAL MAKE-UP OF THE APARTMENT, THE NUMBER OF OCCUPANTS THEREIN AND THEIR RELATIONSHIP TO THE COMPLAINANT MADE THE COMMISSION OF THE CRIME HIGHLY IMPROBABLE.

II

XXX IN CONCLUDING THAT THE COMPLAINANT WAS A TIMID AND SHY BARRIO LASS.

III

XXX IN ITS APPRECIATION OF THE MEDICO LEGAL REPORT.

IV