

FIRST DIVISION

[G.R. No. 137586, July 30, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NELSON TAMAYO Y MORALES, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is an appeal from the decision of the Regional Trial Court of Quezon City, Branch 219,^[1] in Criminal Case No. Q98-76375, finding accused-appellant Nelson Tamayo y Morales guilty beyond reasonable doubt of the crime of robbery with rape, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay complainant actual damages, moral damages and costs of suit.

The facts, as established by the prosecution, are as follows:

On March 29, 1998, complainant Mary Ann Guazon, a 24-year old sewer, was alone in her home located at No. 24 Tamasco Market, Barangay Tatalon, Quezon City, since her husband was at work in Baliwag, Bulacan, while her two children were left to the care of an aunt in Fairview, Quezon City. At 1:00 in the morning, she was suddenly roused from her sleep by a man, who simultaneously covered her mouth and poked a knife at the side of her neck. She was told not to move or shout, otherwise, she would be killed.

Mary Ann immediately noticed that the light in the house, which she had switched on earlier, had been turned off. She recognized the man as accused-appellant Nelson Tamayo a.k.a. "Bisaya", because of the light coming from the market outside. Accused-appellant was familiar to Mary Ann because he frequented the market and sometimes sold fish.

Fearing for her life, Mary Ann did not move or make any sound. While the knife was still poked at her, accused-appellant removed his short pants and briefs and then yanked her up to a sitting position. Accused-appellant stood in front of Mary Ann, directed her to hold his erect penis and ordered her to take his organ into her mouth. Although she found it revolting, Mary Ann did as she was told because the knife was held against her neck. While his penis was inside her mouth, accused-appellant goaded her, "*sarapan mo pa*. (make it feel good.)" Apparently not satisfied with what Mary Ann was doing, accused-appellant angrily removed his flaccid penis from her mouth, pulled her hair and made a motion to stab her. Subsequently, however, accused-appellant told Mary Ann to masturbate him, until his penis again hardened.

At that instant, accused-appellant took Mary Ann to a corner of the one-room abode and, for the second time, forcibly shoved his penis into her mouth. Mary Ann balked and felt nauseated, as she found the thought of doing the act as well as the odor repulsive. When accused-appellant was still not content with Mary Ann's oral ministrations, he stripped her clothes, including underwear, and kissed her naked

body from the face going down. He concentrated on sucking her breasts and vagina, and at one point, even bit her private part which made Mary Ann shout.^[2] Because of the noise she made, accused-appellant got angry, pushed her hand away and pressed the knife against her side. After warning her once more not to make any sound, accused-appellant spread her legs and tried to insert his organ into her vagina. Mary Ann resisted by moving her hips from side to side.

Eventually, accused-appellant succeeded in penetrating Mary Ann, although it took quite a while because of her fierce resistance. Accused-appellant made thrusting movements for about three minutes and, thereafter, reached orgasm.

After he had finished, Mary Ann sensed that accused-appellant was going to kill her because he raised his hand with the knife, apparently to strike her. She thus pretended to have enjoyed the sexual encounter and pleaded with him to spare her. Accused-appellant relented and warned her not to report the incident or else she will be killed. He then told Mary Ann to get dressed and handed over her clothes. It was then that she discovered that the P500.00 she earned from doing laundry that day, which she kept in her shorts' pocket, was gone.^[3]

As accused-appellant was leaving the house, his short pants got entangled in a protruding metal by the door. When he struggled to free himself, he turned towards Mary Ann, at which point the latter clearly saw her assailant's identity due to the direct light coming from the market. She took note of accused-appellant's necklace and the black rubber bracelet around his wrist. She concluded that it was indeed accused-appellant who sexually violated her.

When accused-appellant had gone, Mary Ann lost no time in washing off the semen spattered all over her body. Afterwards, she immediately sought assistance from her neighbors and reported the matter to barangay officials. It was 2:00 in the morning.^[4]

Together with Mr. Eduardo Santos, the barangay officer on duty, Mary Ann returned to the place of the incident and searched for accused-appellant in the marketplace. When he was found, accused-appellant voluntarily went to the barangay hall for questioning, upon invitation of Mr. Santos. There, he admitted personally to Mr. Santos that he took Mary Ann's money, but said that it only amounted to P400.00. As for the accusation of rape, accused-appellant denied the same, stating that it was somebody else who committed the crime. Mary Ann, however, very strongly insisted that it was accused-appellant who raped her.

Mr. Santos then brought accused-appellant to the Galas Police Station where the latter again admitted that he took P400.00 from Mary Ann. On their way to the police station, accused-appellant revealed that the rapist was a man named "Ramil."^[5]

Later, Mary Ann went to the Philippine National Police (PNP) Crime Laboratory for medico-legal examination. Dr. Anthony Joselito R. Llamas made the following findings:

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GENITAL:

There is moderate growth of pubic hair. Labia Majora are full, convex, gaping with congested and abraded labia minora presenting in between. On separating, the same disclosed a congested and abraded posterior fourchette and a carunculae myrtiformis. x x x.^[6]

On the basis of the foregoing facts, accused-appellant was charged with the special complex crime of robbery with rape in an information which alleged:

That on or about the 29th day of March 1998, in Quezon City, Philippines, the said accused, by means of force, violence against, and intimidation, did then and there willfully, unlawfully and feloniously enter the room and residence of one MARY ANNE GUAZON Y PARDINES located at No. 24 Tamasco Market, Bgy. Tatalon, Quezon City, and once inside, poked a fan knife on her throat, covered her mouth and inserted his penis into the mouth of said MARY ANN GUAZON Y PARDINES, held her, undressed her, pulled down her shorts and panty and thereafter succeeded in having sexual intercourse with her against her will and consent; thereafter, accused, with intent to gain, took, robbed and carried away cash money amounting to P500.00, Philippine Currency, belonging to said MARY ANNE GUAZON Y PARDINES to the damage and prejudice of said offended party.

CONTRARY TO LAW.^[7]

Upon arraignment on April 16, 1998,^[8] accused-appellant pleaded not guilty and trial on the merits ensued.

Accused-appellant denied the charge of robbery and rape and insisted that it was "Ramil" who committed the crime because he watched its perpetration through a small opening by the door of complainant's house. He allegedly heard moans coming from the direction of the latter, while he was looking for a copy of "People's Tonight" at past midnight of March 29, 1998. Accused-appellant stated that he became sexually aroused at the sight of the sexual act he witnessed and, as a consequence, he masturbated to contain his urges. He saw "Ramil" come out of the house but did not speak to him. Despite what he saw, however, he did not report the incident to barangay officials.

Accused-appellant testified that the reason why he was being implicated by complainant is because he did not exert any effort to stop "Ramil" from consummating the rape and robbery. He further maintained that at the outset, he had declared before the barangay officials and police that it was "Ramil" who was responsible for the criminal act. He even accompanied the barangay officials to "Ramil's" house the next day, March 30, but they were allegedly told that "Ramil" had gone home to the province.^[9]

Complainant was presented to rebut the testimony of accused-appellant. She declared that it was accused-appellant who ravished her and that she did not know anybody named "Ramil." She added that by attributing the crime to an unknown person, accused-appellant was merely seeking to pass the blame on others.^[10]

On February 2, 1999, the trial court convicted accused-appellant, thus:

WHEREFORE, finding the accused guilty of having committed the special complex crime of Robbery with rape, the Court hereby sentences him (1) to suffer the penalty of Reclusion Perpetua; (2) to indemnify the complainant MARY ANNE GUAZON, in the amount of P500.00 as actual damages; (3) to pay her P200,000.00 as moral damages; and (4) to pay the costs.

SO ORDERED.^[11]

Hence this appeal, based on the following argument:

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH RAPE, DESPITE HIS GUILT NOT HAVING BEEN PROVED BEYOND REASONABLE DOUBT.^[12]

Accused-appellant assails his conviction by asserting that the complainant could not have positively identified him due to the circumstances under which the alleged crime was committed. Since the lights were turned off, it would not have been possible for the complainant to recognize her assailant because the darkness would conceal the latter's real identity.

Furthermore, accused-appellant avers that complainant's declaration in court was far from being straightforward and candid. The testimony of complainant appears to be perfect in all material details, giving rise to the suspicion that it was rehearsed and orchestrated. With regard to the alleged robbery, accused-appellant states that his purported admission before the barangay officer that he took the P400.00 belonging to complainant was made without assistance of counsel, and thus may not be admitted and used as evidence against him.

The Office of the Solicitor General (OSG), on the other hand, maintains that the trial court did not err in handing down a judgment of conviction. However, it posits that the crime committed is not the special complex crime of robbery with rape under Article 294^[13] of the Revised Penal Code, but two separate crimes of rape and robbery. According to the OSG, the primordial intent of accused-appellant, as established by the evidence, was to have illicit carnal knowledge of complainant and not to rob her. The taking of the P500.00 following the rape was merely an afterthought.

We partly agree with the OSG.

That accused-appellant is the person who raped complainant and stole the P500.00 is beyond doubt. Contrary to accused-appellant's assertion, we find his identification as the perpetrator of the crime to be positive and certain. The fact that it was dark at the time and place of the commission of the crime does not make his identification impossible. It was sufficiently explained that the light coming from the market was bright enough to enable complainant to identify him as the one who sexually violated her.

Moreover, complainant took note of specific details that would help her ascertain the identity of the wrongdoer. Accused-appellant's necklace and black rubber bracelet undoubtedly led complainant to conclude that it was him who abused her. No less significant is the fact that when accused-appellant got stuck by the door as he was about to leave, complainant had a good look at his face since the light from the market directly shone into the house.