

## THIRD DIVISION

**[ G.R. No. 140392, September 27, 2002 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MELCHOR ESTEVES Y PITEL, ACCUSED-APPELLANT.**

### DECISION

**CORONA, J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Regional Trial Court, Branch 8, City of Malaybalay, Bukidnon, in Criminal Case No. 8974-98 convicting accused-appellant of the crime of simple rape and sentencing him to reclusion perpetua and to pay the private complainant the sum of P50,000 as civil indemnity plus P25,000 as moral damages.

Accused-appellant Melchor Esteves was charged in an information dated June 17, 1998 which alleged:

That on or about the 25th day of April, 1998, in the afternoon at Sitio Magsaysay, Barangay Kuya, Municipality of Maramag, Province of Bukidnon, and within the jurisdiction of this Honorable Court the above-named accused prompted with lewd design, called GRACE TORREGOSA to come to his house, and once inside by means of threat and intimidation did then and there willfully, unlawfully and criminally embrace, kiss, remove her pants and panty and have sexual intercourse with GRACE TORREGOSA, fifteen (15) years old against her will, to the damage and prejudice of GRACE TORREGOSA in such amount as maybe allowed by law.

Contrary to and in violation of Article 335 of the Revised Penal Code, amended by R.A. 7659 and R.A. 8353.<sup>[2]</sup>

Upon arraignment, the accused pleaded "not guilty". Trial on the merits subsequently ensued.

The facts as adduced by the prosecution follow.

In the afternoon of April 25, 1998, private complainant Grace Torregosa, who was then 15 years of age and a resident of Barangay Kuya in Maramag, Bukidnon, was in the house of her grandfather which was about 100 meters away from her parents' house, watching some game cards since her parents at that time were in another town attending a town fiesta.

At about 3 p.m., Grace decided to return home. While passing by the house of the accused-appellant which was about 30 meters from her grandfather's house, the latter called her, "Day, please come here".<sup>[3]</sup> Thinking that accused-appellant wanted her to do some errand, Grace trustingly approached him. But even while she

was yet in the balcony, accused-appellant grabbed and pointed a knife at her, and forced her inside a room.<sup>[4]</sup>

Accused-appellant made her lie down on the floor by choking her neck using his right hand while his left hand took off her pants and panty. He also took off his own pants and brief. Still holding the knife, the accused kissed her lips then licked her nipples. Grace, the private complainant, was too scared to make a sound. In a short while, appellant forced his penis into her vagina. She felt great pain. After making push and pull movements, his penis emitted a sticky substance.<sup>[5]</sup>

After consummating his lust, accused-appellant ordered private complainant to put on her clothes. However, before letting her go, he again pointed a knife at her neck and threatened her with death should she reveal the incident to her parents.

Private complainant's parents returned home that evening but she decided not to tell them about what happened since she was afraid of what her father might do.

In the evening of April 27, 1998, the victim went to her grandparents' house and disclosed to them what accused-appellant had done to her. Her grandfather immediately brought her back to her house and informed her parents of what Grace had told them. Her father, upon hearing the story, wanted to go immediately to the house of the accused-appellant but her grandfather cautioned him not to take the law into his own hands.<sup>[6]</sup>

The next morning, her parents and grandfather accompanied the victim to the police station in the Poblacion of Maramag to lodge a complaint against the accused-appellant. Upon advice of the police, they proceeded at the Bukidnon Provincial Hospital of Maramag to have private complainant physically examined.

Dr. Clarita A. Paggao, Chief of Hospital of the Bukidnon Provincial Hospital, conducted a physical examination of the private complainant on April 28, 1998. She made the following findings:

"No physical injuries noted – Old healed perineal lacerations at 1:00 o'clock, 6:00 o'clock, 11:00 o'clock

-Admits index finger with case"

Dr. Paggao's remark in said Certificate she wrote: "For sperm determination, negative for sperm cell."<sup>[7]</sup>

In her testimony, Dr. Paggao explained that the date when a recent hymenal laceration occurred can still be estimated up to seven days thereafter.<sup>[8]</sup>

The prosecution also presented as witnesses the victim's grandfather, Mauricio Torregosa, Sr. and father, Mauricio Torregosa, Jr. to corroborate the narration of the private complainant respecting her revelation to them of what the accused-appellant did to her.

Accused-appellant denied the charge filed against him. To controvert the charge, the defense presented the testimonies of accused Melchor Esteves, one Ricardo Bumutad and Erlinda Estorio.

Accused-appellant, a farm laborer, testified that he was also a resident of Barangay Kuya, Maramag, Bukidnon. He lived in his house with his grandson, a certain Reyamar, since his spouse and children were all in Manila.

Accused-appellant gave a detailed account of his whereabouts on that particular day. In the morning of April 25, 1998, he and his grandson, Reyamar, left his house at Sitio Magsaysay, Barangay Kuya, Maramag, Bukidnon to work in his rice farm at Sitio Poultry. On their way to the farm, they met his neighbor, a certain Jomac Pat, who requested him to help slaughter a pig at his (Jomac's) house. At about 10 o'clock in the morning, they were done with it and after Jomac Pat gave him a few kilos of pork, accused-appellant decided to return home to cook it.

On his way home, accused-appellant saw his brother-in-law, Ricardo Bumutad, whom he invited to his other house at Crossing, Magsaysay, so they could cook the pork. He left Reyamar, his grandson, with Ricardo's wife. They had lunch together after which they had a drinking session in his house that allegedly lasted up to 6 o'clock in the evening. Thereafter, accused-appellant went to Sitio Poultry to fetch his grandson Reyamar.

Ricardo Bumutad, a brother-in-law, corroborated the testimony of the accused-appellant. He testified that he was with the accused-appellant in the latter's house at Crossing, Upper Magsaysay on the day that the crime was allegedly committed. He stated that their drinking session started at about past 12 o'clock noon and lasted until 6 o'clock in the late afternoon. It was only after their drinking spree that the accused-appellant Esteves left the house to fetch his grandson<sup>[9]</sup>.

Another witness for the defense, Erlinda Estorio, sister-in-law of accused-appellant, testified that on the evening of April 27, 1998, her brother-in-law, Melchor Esteves, who was drunk at that time, slept in their house at about 8 o'clock in the evening.<sup>[10]</sup>

The trial court gave credence to the evidence of the prosecution and convicted accused-appellant of the crime of simple rape.

The dispositive portion of the decision rendered on August 18, 1999 read:

WHEREFORE, judgment is hereby rendered finding accused Melchor Esteves GUILTY beyond reasonable doubt of the crime of simple rape in violation of the pertinent provisions of Republic Act No. 83563, amending Article 335 of the Revised Penal Code, and he is therefore, sentenced to suffer the penalty of reclusion perpetua. He is also ordered to indemnify his victim Grace Torregosa the sum of P50,000.00, and to pay moral damages in the sum of P25,000.00

SO ORDERED.<sup>[11]</sup>

Accused-appellant filed a notice of appeal from the judgment of the trial court raising this lone assignment of error:

The trial court erred in convicting accused-appellant Melchor Esteves considering that his guilt has not been proven beyond reasonable doubt.<sup>[12]</sup>

In his Brief, accused-appellant claims that since the information charged him with rape committed by means of threat and intimidation, it was incumbent on the prosecution to prove the existence of these elements. The defense asserts that the prosecution failed to discharge this burden as a scrutiny of private complainant's testimony reveals that the required elements were wanting.

Accused-appellant belabors the fact that while the victim Grace Torregosa testified that she was choked by the accused-appellant, the medical examination four days after the alleged rape incident disclosed that there were no physical injuries noted on her person.<sup>[13]</sup> He also took note of the remarks made by the doctor who conducted the physical examination on Grace that the injuries in the private part of the complainant were "old healed lacerations," though the doctor could not identify how old these lacerations were.<sup>[14]</sup> Hence, accused-appellant insists that, in cases of rape where private testimony and a medical certificate are offered in evidence, both should in all respects complement each other. To rely on the testimonial evidence alone, in utter disregard of the manifest variance in the medical certificate, would be "productive of unwarranted or mischievous results."<sup>[15]</sup>

The defense also points to the fact that private complainant never even attempted to shout and that she offered no resistance all throughout. Hence, he contends that, since the complainant did not offer any resistance or protestation against the alleged sexual assault, he could not be convicted of rape. The fact that the complainant was a simple barrio girl was no guaranty that she could not make a false accusation.<sup>[16]</sup>

In convicting the accused-appellant, the trial court relied heavily on the testimony of private complainant as against the defense of denial and alibi of the accused-appellant. The lower court once again reiterated the doctrine that a simple barrio girl like herein private complainant would have preferred to suffer in silence and protect herself from public scandal had she not been motivated by a genuine desire to seek justice for the wrong done to her. Moreover, the trial court did not find any ill motive on the part of herein private complainant to falsely implicate the accused-appellant who was old enough to be her father.<sup>[17]</sup>

The lower court also held that the fact that private complainant's genitalia exhibited healed lacerations when she was physically examined did not diminish the credibility of her testimony nor was it evidence that she was not raped.

The appeal before us is without merit.

Accused-appellant's insistence that the prosecution failed to establish the threat and intimidation has no basis. The victim's testimony was very convincing:

Q- Why did you go near him?

A- I was thinking that he is going to let me do something.

Q- When you came near him, what did he do?

A- He held and pulled me and then pointed a knife at me.

Q- To where did he pull you?

A - Inside a room.

Q- In his house?

A- Yes.

Q- Now, when he pulled you to a room what happened there?

A- He let me laid (sic) down and kissed me.

Q- How did he let you lay down?

A- He choked my neck and let me laid (sic) down.

Q- Can you demonstrate to the court, how did the accused let you lay down?

A- (Witness demonstrating by pointing her right hand to the Interpreter who is acting as the victim and pushed the Interpreter with the right hand). He let me laid (sic) down.

Q- What was his left hand doing when he ordered you to lay down?

A- He undressed me.

Q- This time of undressing you, were you already lying down or still standing up?

A- I was in the process of lying down.

Q- You laid down in (sic)) the flooring (sic) or on the bed?

A- On the floor.

Q- And when you were already lying down on the floor, what happened?

A- He kissed me.

Q- After kissing you, what did he do next?

A- He removed his pants and his brief.

Q- By the way, what part of your body was kissed by the accused?

A- On my neck and down to my nipple.

Q- By the way, how long was that knife he used?

A- (Witness demonstrating with her two hands the length of 12 inches).

Q- After he removed his trouser (sic) and brief, what did he do next?

A- He placed himself on top of me.

Q- After the accused placed himself on top of you, what did he do next?

A- He made a push and pull movement.