

SECOND DIVISION

[G.R. Nos. 140004-05, November 18, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTORIO NEBRIA Y CABANADA ALIAS "TORIO," ACCUSED-
APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

In a consolidated decision^[1] dated June 24, 1999, the Regional Trial Court of Malaybalay City, Branch 8, acquitted appellant in Criminal Case No. 8679-97 for Kidnapping and Serious Illegal Detention, but convicted him in Criminal Case No. 8678-97 for Rape. He was sentenced to *reclusion perpetua* and to indemnify the victim of the rape in the amount of P50,000.

Separate informations for rape and kidnapping and serious illegal detention were both filed on October 21, 1997. In Criminal Case No. 8678-97, the information for rape alleged:

That on or about and sometime January, 1992 and many times thereafter, at sitio Tulogan, barangay Portulin, municipality of Pangantucan, province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, prompted by lewd design, thru force and intimidation on the person of IVY ABINES,^[2] a thirteen (13) year-old-minor, did then and there willfully, unlawfully and criminally remove the dress and panty of IVY ABINES; place himself on top insert his penis into the vagina and have sexual intercourse with IVY ABINES a 13 year-old-minor against her will, to the damage and prejudice of IVY ABINES in such amount as may be allowed by law.

Contrary to and in violation of Article 335 of the Revised Penal Code.^[3]

In Criminal Case No. 8679-97, the information for Kidnapping and Serious Illegal detention alleged:

That on or about and sometime [in] the month of February 1994 at sitio Tulogan, barangay Portulin, municipality of Pangantucan, province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, together with SERGIA NEBRIA who is still at large, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnap IVY ABINES, a fifteen (15) year-old-minor detaining said minor at Pinuyak, Lala, Lanao del Norte for a period of almost three (3) years, against her will; to the damage and prejudice of the victim in such amount as may be allowed by law.^[4]

Upon arraignment appellant, assisted by counsel, pleaded not guilty. Per agreement of the parties, the cases were tried jointly.^[5]

As summarized by the trial court, the prosecution evidence against the accused, now appellant Victorio Nebria, showed the following:

Private complainant Ivy Abines is the daughter of Azucina^[6] Abines who is the live-in partner of the accused.

Ivy Abines testified in the evening, during the first week of January 1992, which she remembered to be a Saturday, she was in their house already lying down on the floor ready to sleep. Their house was in sitio Tulogan, barangay Portulin, Pangantucan, Bukidnon. Besides the accused, her companions were her younger sister Ester and Benyjun Nebria, who is the young son of the accused with her mother. Ester was also lying on the floor at her left side and to her right Benyjun Nebria, son of the accused with her mother and still a baby, and next to him was the accused. Being a Saturday, her mother who sells vegetable[s] for a living at the market place in the poblacion was not at home; it was customary for her to go to the poblacion every Saturday morning and would return home on Monday. All the house occupants [sleep] in one, common space because there was no separate bedroom. A kerosene lamp, its light greatly reduced, was at a small altar.

Ivy testified that she was not yet asleep at 9:00 o'clock. The accused went over to her and at once removed her skirt and panty. Too scared to scream, she tried to close her thighs together, but accused forced his knee in between and succeeded in penetrating her vagina with his penis. He threatened to kill her if she would reveal what had happened. Thereafter, accused returned to his place. But at about 10:00 o'clock that same evening, accused raped her again. Ivy did not report the incident to her mother upon her return [on Monday].

Since, then, accused repeatedly sexually abuse Ivy specially because her mother was always away. The constant sexual violation resulted in her pregnancy.

Ivy became aware she was pregnant in August 1994. Upon learning about Ivy's pregnancy and the author thereof, her mother, accompanied by the accused, brought her to Lala, Lanao del Norte. She was made to stay with the aunt of the accused, Sergia Nebria, a spinster. Ivy's mother had lied to her that their going to Lanao was only for a brief vacation. In fact, she was brought there so that her brothers and sisters [would] not know about her condition. Two days after their arrival, however, her mother and the accused went back to Pangantucan, leaving her behind.

Ivy delivered a baby boy on 19 October 1994. She name[d] him Ricky Abines. His Birth Certificate (Exhibit A) states [that] Ricky's father was "unknown".

On 21 January 1997, Ivy's mother fetched her from Lanao. Sergia Nebria refused to allow Ivy to take Ricky with her. But with the assistance of the DSWD, Ivy was later able to have [her] son back with her.

Ivy went to live with her sister in San Fernando, Bukidnon, who, upon learning the truth about what happened, assisted Ivy in the filing of the instant cases against the accused.

Ester Abines, 15 years old and the younger sister of Ivy, corroborated her sister in the alleged rape the accused committed. At that time she was only nine years old. She told the court that she was just a foot away from Ivy and although she was under a blanket she actually saw everything the accused did to her sister. Her blanket was very thin and there was a small light coming from a kerosene lamp at the altar.^[2]

Appellant consistently claimed innocence of the charges against him. His defense, as summed up by the trial court, is as follows:

In his defense, accused made much of the fact that he could not have committed the crime as charged on January 1992, in sitio Tulogan, barangay Portulin, because during said period he and his family, including private complainant, [were] living in Vismin Village, Poblacion, Pangantucan. He had a house there. It was only on 27 July 1993, when he was able to buy a small house and lot from a certain Danilo Garcia located in sitio Tulogan that he transferred there. Accused showed to the court a deed of sale dated 27 July 1993, executed by Danilo Garcia. Said Danilo Garcia testified in court affirming the truth of the execution of the deed of sale (Exhibit "2"). Said document was prepared by Sitio Leader Angeles Patoy who was also presented by the defense to affirm its due execution. In the same year Patoy listed accused and the members of his household in the Census List of his sitio. (See [two-page list] marked Exhibit "1" and "1-A"; the name of accused encircled, labelled Exhibit "1-B").

Azucina Abines, the mother of Ivy, testified [on] behalf of the accused, affirming the defense's claim that in 1992, she and her children Ivy and Ester were living with the accused in Vismin Village in the poblacion of Pangantucan, not in sitio Tulogan, barangay Portulin. She further testified that in 1994, she brought Ivy with her for a vacation in Maranding, Lala, Lanao. When they were already there, Ivy decided to stay behind in order to find a job. Missing her daughter's absence, Azucina returned to Lanao in January 1997 to get Ivy. To her surprise, she saw that Ivy already has a small child. When asked who the father was, Ivy simply replied that the boy has no father. Azucina brought back Ivy to Pangantucan, and after a week Ivy went to live with her sister in Halapitan, San Fernando, Bukidnon.

Azucina further testified on the motive behind the filing of cases against her live-in partner. In 1985, she and her husband Mauricio Abines separated, and she lived with herein accused. In the first week of September 1997, her children, including Ivy, visited her in Pangantucan. They told her it was time for her and their father to be together again because they have already filed a case against Victorio Nebria. Of course she did not agree. Disturbed by the information her children gave her, Azucina followed her children to San Fernando after a week. She pleaded to them not to proceed with prosecuting Nebria because they would only be fighting among themselves.^[8]

Upon termination of trial, the court decreed as follows:

WHEREFORE, judgment is hereby rendered -

(1) Finding accused Victorio Nebria in Criminal Case No. 8678-97 guilty beyond reasonable doubt of the offense of rape as charged, and he is hereby sentenced to suffer the penalty of reclusion perpetua. He is also ordered to indemnify his victim Ivy Abines the sum of P50,000.00.

(2) Finding accused Victorio Nebria in Criminal Case No. 8679-97 not guilty by reason of insufficient evidence.

SO ORDERED. [\[9\]](#)

Hence, the instant appeal is only in regard to Crim. Case No. 8678-97, for rape. Before us, appellant now assigns the following errors:

I. THAT THE HONORABLE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

II. THAT THE HONORABLE COURT ERRED IN NOT GIVING CREDENCE TO THE DEFEN[SE] WITNESSES. [\[10\]](#)

In fine, the assigned errors in this appeal focus on the credibility of witnesses, for the prosecution as well as for the defense. But the ultimate issue is whether the guilt of appellant for rape has been proved beyond reasonable doubt.

Appellant contends that complainant's conduct from January 1992 to January 1997 strongly manifested the falsity of her claim that appellant had raped her. According to appellant, private complainant continued to live a normal life in the house of appellant without even attempting to run away from home in order to forget the memory of having been raped. Appellant also points to the victim's failure to reveal to her mother or to anyone, for that matter, the alleged rape that happened in January 1992 despite no apparent continuing threat to her life from appellant.

Furthermore, he stresses that complainant did not even mention in her testimony that appellant removed his pants and underwear and inserted his penis in her genitalia. Neither was there mention that when appellant went to bed, he already had nothing on to cover his private parts. According to appellant, the testimony of complainant that he succeeded in penetrating her as found by the trial court is nothing but a conjecture. [\[11\]](#)

Appellant adds that he could not have raped Ivy Abines at Sitio Tulogan because at the time the alleged rape was committed, he and the members of his household, including Ivy, were residing in Vismin Village. [\[12\]](#)

Finally, appellant imputes ill motive against Ivy in filing the charges against him. According to appellant, Ivy did not tell the truth, as she was a willing tool for her sister, Analiza Candole, in filing the case against him in order for her mother and father to be together again. [\[13\]](#)

For the appellee, the Office of the Solicitor General (OSG) contends that the trial court's findings as to the credibility of the prosecution witnesses should be respected, it being the settled doctrine of long standing. The fact that it took Ivy

Abines two years to report the rape committed against her does not affect the veracity of her testimony as people react differently to a given type of situation, according to the OSG. It asks for a modification of the decision to include moral damages.^[14]

On the issue of the credibility of witnesses, time and again we have consistently held that the trial court's findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance which could alter the result of the case if considered correctly.^[15] For the trial judge is in the best position to rule on the credibility of witnesses, since he occupies the vantage point for observing first hand their conduct, demeanor and deportment in court.^[16]

We have painstakingly examined the records of this case, particularly the testimonies of the witnesses for the prosecution and the defense. But we are constrained to state that we find no persuasive much less compelling reason to depart from the findings of the trial court.

Appellant wants to discredit the testimony of the victim, Ivy Abines, by contraposing her conduct that he says belies the alleged rape. Her failure to ask for help, and her not running away from home, could only mean that she was not raped, according to appellant. This argument we find tenuous and unconvincing. It must be borne in mind that people react differently to different situations. There is no standard human reaction when one is faced with an experience that is so traumatic as to make a person suffer in silence the onslaught on her honor rather than reveal her story.^[17] A young barrio lass of 13 could have been cowed into silence, even resignation, by the very fact that the one who abused her is someone whom she looks up with great respect, since he is the common-law husband of her own mother. The daily sustenance of the family depends mainly on appellant, although her mother helps provide for their daily needs. His moral ascendancy over the person of his victim is enough to silence her. Note that the victim's schooling was only grade two, ^[18] though she was already a teenager. Given her personal circumstances, her fear that he would actualize his threats to kill Ivy and her sister Ester if they dared tell anyone,^[19] about Ivy's rape, is simply overwhelming.

The delay in filing the criminal charges by the victim is explained by the fact that she was under constant watch by appellant. He continued to abuse her until she was brought to appellant's aunt, Sergia Nebria, with whom Ivy stayed at Pinuyak, Lala, Lanao del Norte. Ivy testified that when appellant found out that she was pregnant, she was unceremoniously brought to the house of appellant's aunt, where she stayed from 1994 to 1996.^[20] It is noteworthy that appellant maneuvered to have the complainant taken away to stay with his relative. Two months later, specifically on October 19, 1994,^[21] she gave birth to a child whose father was not identified.

Appellant faults the prosecution for failing to provide testimony as to how or when he removed his underpants and inserted his penis into the private parts of the victim. But on record, complainant categorically testified that in the evening of that fateful Saturday of January 1992, appellant went over to her sleeping space in their family shack, removed her skirt and panty, and likewise took off his pants and briefs. Thereafter, appellant placed himself on top of Ivy and inserted his penis