

FIRST DIVISION

[G.R. No. 140216, November 18, 2002]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RENATO C. BACUS, APPELLANT.

DECISION

VITUG, J.:

The case before the Court is an ordinary appeal from the decision of the Regional Trial Court of Cebu City, Branch 14, 7th Judicial Region, holding Renato C. Bacus guilty of rape and meting on him the penalty of *reclusion perpetua*.

On 13 October 1997, 37-year old Viminda J. Sudario was sleeping with her three children at the second floor of their house in Llamas Street, Cebu City. At dawn, about four o'clock, she was roused by a "commotion" at the ground floor of the house. Going down the stairs to investigate, she was surprised to see the main door ajar. She was about to reach for the door when a man suddenly grabbed her from behind. She asked why, and the latter replied that he came for her. The man hushed her not to say a word or, otherwise, be killed. He dragged her to the maid's room where she came to recognize the intruder to be her neighbor Renato C. Bacus. With a .45 caliber gun aimed at her, Viminda was forced to lie on her back. Again, she was told not to make any noise. He raised her skirt and removed her panties. Once she was stripped naked, he touched and licked her private parts. She suffered his advances as the gun was still pointed at her and also because she feared for her children's safety. He removed his short pants and ordered her to spread her legs wide open. He inserted his penis into her vagina and started pumping. He went on ravishing her for thirty to forty minutes. After he had satisfied his lust, he ordered Viminda to open the gate and he left. After he was gone, Viminda told her 19-year old daughter about what had just transpired.

Shortly after daybreak, Viminda reported the incident to the police. She said that the intruder gained entry into the house by removing the window jalousies near the kitchen and reaching for the door knob. She was later brought to Cebu City Medical Center to undergo physical examination. The findings revealed no fresh lacerations but she was positive for spermatozoa. Renato C. Bacus was taken into custody by PO3 Christopher Panes, SPO3 Marvin Belita Mendiola and PO3 Rogelio Racaza Cabonilla of the Mabolo Police Precinct II.

Renato C. Bacus was promptly charged with rape in an information that read:

"That on or about the 13th day of October 1997 at about 4:00 A.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with a gun, with deliberate intent, using force and intimidation, did then and there willfully and unlawfully have carnal knowledge with the undersigned, against her will."^[1]

The accused entered a plea of "not guilty" when arraigned.

Controverting the testimony given by Viminda, Renato C. Bacus pictured an altogether different version of the incident. He testified that he arrived home in Llamas Street, Cebu, at around two o'clock on the morning of 13 October 1997, from his parents' house in Talisay, Cebu. He was about to enter his house when he heard a whistle or "*sitsit*." Turning his head, he saw Viminda. Asked why she was still awake at that late hour, Viminda replied that it was hot inside the house and she needed to get some fresh air. Minutes after a brief conversation, she invited him to come in to the house, assuring him that her live-in partner was not around. He obliged. She offered her Tanduay Rhum but he declined, telling her that he had taken enough beer earlier that evening. Viminda suddenly embraced him. She was so fervid that he even told her to slow down. He also asked for a loan, and she agreed to lend him P500.00. She went up the stairs and told him to wait. Moments later, Viminda descended in her skimpy apparel without any underwear and went to the comfort room to douche herself. She left the door open so that he could see her while she was freshening up. She later emerged from the restroom and started hugging him. Viminda pulled him into the maid's quarter, and it was there where he finally succumbed to her lure. The lovemaking lasted for about forty minutes after first indulging themselves in "foreplay."

Fe Cabanada Abayan, the mother of his live-in partner, Venus Abayan, testified that Viminda and Renato were actually lovers and carrying on since September of 1997. Often, Fe Abayan said, she would see Viminda and Renato affectionately holding each other.

Failing to be convinced by the defense, the trial court gave the case for the prosecution. The court *a quo* held:

"WHEREFORE, in view of all the foregoing considerations, JUDGMENT is hereby rendered convicting the accused of the crime charged and he is hereby imposed or punished by a penalty of Reclusion Perpetua. The accused is further directed to indemnify the victim moral damages in the sum of P50,000.00 plus costs."^[2]

In his appeal to this Court, appellant would insist that he should not be held responsible because the actuations of Viminda before and during the act of intercourse, including their "foreplay," were simply incongruous with the idea of rape. Claiming that the filing of the rape charge was an afterthought, the original complaint lodged with the police being one for robbery, appellant would point to the propensity of Viminda to lie. He recited an inconsistency in her affidavit where she stated that she called up the police authorities as early as four-thirty in the morning on 13 October 1997 but, later in her testimony in court, she said that it was not until eight o'clock in the morning when she went to the police station.

In reviewing rape cases, the Court has, like before, been guided by the reality that an accusation for rape can be made with facility; that it is difficult to prove but even more difficult for an accused, although innocent, to disprove; and that by the peculiar nature of the crime, it is, more often than not, only the accused and the complainant who can give testimony on the incident. Great care must thus be exercised in the scrutiny of testimonial evidence given by the parties. It should also stand to reason that the findings of the trial court on the credibility of the witnesses are to be accorded great weight for the trial judge, obviously, would be in a better

position to personally perceive from the witnesses the veracity of their asseverations and see the thin line between fact and prevarication.^[3]

Perusing the records and guided by the above principles, the Court fails to find any cogent justification to make it ignore the assessment of the trial court on the conflicting asseverations made before it. Neither does the Court see flaws in the statements made by private complainant on the witness stand which, on the contrary, appear to be particularly candid and straightforward. Viminda Sudario has testified thusly:

"Q - On October 13, 1997 at about 4:00 o'clock in the morning, can you recall where [you were]?

"A - I was sleeping in my house in the upper floor.

"Q - Can you tell us where your house is located?

"A - No. 7 F. Llamas St., Mambaling, Cebu City.

"Q - Who were with you at that time?

"A - My three children and my single daughter who were sleeping in the other room.

"Q - While you were sleeping at your residence on October 13, 1997 at about 4:00 o'clock in the morning, can you tell us if there [was] anything unusual [that] happened?

"A - I heard some commotion downstairs.

"Q - After you heard some commotion downstairs, what did you do?

"A - I went down to investigate.

"Q - And when you investigated, what happened?

"A - When I was already downstairs, I noticed that the main door was already opened.

"Q - So, when you noticed that the main door was [open], what did you do?

"A - I was about to close the door when suddenly a person embraced me from my back and poked a gun at my head.

"Q - And what was your immediate reaction?

"A - I asked what's happening (*unsa man ni*), what's this.

"Q - And was there any reply from that person who raped you?

"A - He said do not make any [sound] if you don't want to die because my intention is you only.

"Q - And what did he do next?

"A - He held me towards the [maid's] room.

"Q - By the way, is that portion of your house lighted?

"A - In the dining table there is a circular light there, which we intentionally [leave] on throughout the night.

"Q - Were you able to see the face of that person who pointed a gun at you?

"A - When he was already dragging me, holding me at my side, I saw his face.

"Q - Were you able to identify him?

"A - Yes, because he is a neighbor.

"Q - Is that person inside the court room now?

"A - Yes, sir.

"Q - Will you please point to him?

"INTERPRETER:

(Witness pointed to the accused who responded to the name Renato Bacus.)

"PROS. SOLIMA:

"Q - You said that he is your neighbor?

"A - Yes, Sir, a neighbor adjacent to my house.

"Q - You said that the accused drag you, where?

"A - At the [maid's] room.

"Q - Upon reaching the [maid's] room, what did he do?

"A - He pushed me on the bed, saying lie down.

"Q - And what happened to you?

"A - And he was pointing his gun at me and he pulled up my skirt or raised my skirt.

"Q - Then, what did he do next?

"A - He removed my panty.

"Q - Did you not shout?

"A - No, Sir.

"Q - Why not?

"A - I did not shout because the gun was poked at me and I was also afraid that if I will shout my children maybe [awakened] and the suspect might panic and he might [draw] on shooting rampage.