

THIRD DIVISION

[G.R. No. 137665, January 16, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO PAINITAN ALIAS "ABIE," ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

Was the case proffered by the prosecution, absent contrary evidence presented by the defense, sufficient to warrant a conviction of the accused? The trial court concluded in the affirmative.

AAA, a thirty-seven year old housewife from xxx, and the mother to a brood of nine, the youngest of whom was only a month old by the time AAA took the witness stand, claimed to have been the victim of rape. The night of 12 December 1995 appeared to be a typical evening for AAA's family. AAA was left alone with her children, as husband BBB, an abaca stripper had to spend days in the mountains to gather and strip abaca. By seven o'clock that evening, AAA's household had already retired for the night. Save from the light of a lone lamp, the house was virtually dark and quiet. AAA was sleeping in one room and her three children - CCC, DDD and EEE - in another. Accounts on the whereabouts of the other children remained unclear. The two rooms in the family dwelling were separated by bamboo walls and an opening connected one room to the next. At approximately eleven o'clock, AAA was suddenly roused from slumber when she felt somebody hugging and kissing her lips. Aided by the light of a flickering lamp, she recognized her attacker to be Alberto "Abie" Painitan, then slightly drunk and wearing only an undershirt. Surprised, she tried to ward off his advances but he proved to be too strong for her. To restrain her, Alberto boxed both her shoulders and upper thighs. Pained by the blows, AAA slid into unconsciousness. Strangely, despite being unconscious, AAA could remember Alberto undressing her, removing her pair of shorts and panties, placing himself on top of her, inserting his penis into her vagina and making push and pull movements. When asked how long it took, private complainant stated that she could not tell because she was unconscious and that when she came to Alberto was no longer around. Instead, she said, she saw her two children CCC and DDD crying by her bedside.

The following days, AAA remained quiet, deciding to report the matter only upon her husband's arrival. It was five days after the alleged molestation when BBB came home. After AAA recounted to her husband what had happened to her, the couple decided to go to the barangay captain of xxx to lodge a complaint against Alberto. The physical examination of AAA at the hospital showed the presence of confluent hematoma which, according to examining physician Freddie Letigio, was probably caused by a hard object, like a closed fist. No physical examination was conducted on private complainant's private parts as several days had already elapsed since the alleged rape.

On 22 February 1996, the information against Alberto Painitan was filed. Thus -

"INFORMATION"

"The undersigned hereby accuses ALBERTO PAINITAN, alias `Abie', who is said to be found atxxx, of the crime of Rape based upon a complaint signed by the offended party herself, and committed by above-named accused as follows:

"That on or about the 12th day of December, 1995, at around 11:00 o'clock in the evening, more or less, in xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lustful intent and lewd design, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously, had sexual intercourse with AAA, who is a married woman, against her will, to the damage and prejudice of the said victim and her family." [1]

The warrant for his arrest was returned unserved with a notation that Painitan had already transferred residence to Barangay Mainet, Nabontoran, Davao del Norte. It was a year later when Alberto surrendered to the authorities of xxx, and submitted himself to trial following his plea of "not guilty."

Taking the witness stand, AAA testified that she knew well Alberto "Abie" Painitan who had been a neighbor for nine years with only a rice field separating their houses. She did not know how Alberto was able to gain ingress to their dwelling that fateful night nor did it occur to her to ask him, confusion, fear and shock having gotten the better of her. On cross-examination, private complainant admitted that the door to their house was not bolted that night.

CCC, Victoria's fifteen-year old daughter, testified that she had known Alberto "Abie" Painitan even prior to the alleged rape, and that she would often see Abie and her mother conversing with each other but added that she and her siblings were invariably present on such occasions. On the night of the incident, CCC was sleeping with her brother EEE and her sister DDD when she heard a commotion. Curious, she rushed to the other room and there she saw "Abie" on top of her mother, hitting her on different parts of her body and rendering her weak and speechless. While atop her mother, CCC saw Alberto make pumping motions, his bare buttocks in plain view to the terrified child. Unable to do anything, CCC and her sister DDD, who just then had followed her to their mother's room, were helplessly crying. Shortly afterwards, Alberto stood up, put on his pair of pants and went downstairs. With Abie gone, she and her sister DDD went to their still speechless mother, embraced her and cried. AAA did not discuss with her children what had happened. The first time CCC openly talked about the incident was when BBB, their father, finally came home. It was she, however, not her mother, who narrated the incident to her father. After listening to her story, CCC could sense her father's rage. He confronted her mother, and it was then when her mother told him the truth. Stunned, Daniel yelled before breaking into tears.

The defense presented two witnesses -- Simeon Tagnipez, uncle of the accused, and Proceso Samo.

Tagnipez testified that BBB and AAA had earlier confided to him their decision to withdraw the case for lack of money and ill-health. According to Tagnipez, financial hardships, coupled with BBB's swollen toes that made regular attendance in court hearings difficult, impelled the spouses to execute an affidavit of desistance. When shown the affidavit, however, witness Simeon Tagnipez admitted that he did not know how to read. The second witness, Processo Samo, corroborated Tagnipez' testimony and testified that he, too, was present when the affidavit of desistance was executed. Reportedly, AAA and BBB were given P500.00 when they affixed their thumbmarks on the affidavit of desistance although no receipt was issued for the amount.

The defense rested its case, without the accused taking the witness stand.

The court *a quo*, after assessing the evidence found Alberto "Abie" Painitan guilty of the crime of rape and imposed upon him the penalty of *reclusion perpetua*; thus:

"WHEREFORE, premises considered, the court finds accused Alberto Painitan alias `Abie' GUILTY beyond reasonable doubt of the crime of RAPE and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the victim of the amount of P50,000.00 as damages." [2]

In the instant appeal, accused-appellant contends that the sexual congress between him and private complainant on the night of 12 December 1995, given the testimony of AAA and her daughter, could not have been anything else but an act of two consenting adults.

Verily, for the charge of rape to prosper, proof beyond reasonable doubt should show (1) that there has been carnal knowledge of the victim by the accused; and (2) that the accused achieves the act through force and intimidation upon the victim or because the latter is deprived of reason or is otherwise unconscious.

AAA testified that accused-appellant, to subdue and succeed in taking her, had boxed both her left and right shoulders and her upper thighs, causing her to lose consciousness.

"Q. While you were sleeping on or about 11:00 p.m. of December 12, 1995, do you recall of any unusual incident that occurred?

"A. Yes, sir.

"Q. What was the unusual incident that occurred, if any?

"A. That incident, when he climbed our house.

"Q. You mentioned the word `he' to whom are you referring when you said `he climbed into your house?'

"A. Alberto Painitan, alias `Abie' entered our house.

"Q. After Alberto Painitan entered your house, do you recall through which opening of your house did he enter?

"A. Because I was sleeping, I could not recall where he passed by when he entered our house

"Q. Nevertheless, after he entered your house, what happened next if any?

"A. He hugged and kissed me, sir.

"Q. What were you doing at that time?

"A. I tried to overcome his force, sir.

"Q. Since it was nighttime, how did you recognize that it was Alberto Painitan who entered your house; hugged and kissed you?

"A. At that time there was a lighted lamp.

"Q. You said you were kissed by Alberto Painitan, where were you kissed?

"A. On my cheeks, sir.

"Q. Left or right?

"A. Both cheeks, sir.

"Q. After Alberto Painitan kissed your left and right cheeks, what happened next if any?

"A. He boxed my both shoulders and my laps, sir.

"Q. When Alberto Painitan boxed your left and right shoulders and your laps what did you feel?

"A. I felt pain, sir.

"Q. After your shoulders and your laps were boxed, what happened next, if any; what did Alberto Painitan do next?

"A. He undressed me, sir.

"Q. What was undressed from you?

"A. He removed my shirt and panty, sir.

"Q. After Alberto Painitan removed your short and panty, what happened next, if any?

"A. He had sexual intercourse.

"Q. When you said sexual intercourse, what did he particularly do to you?

"A. He placed himself on top of me.

"Q. What did he do with his organ?

"A. He inserted his penis to my vagina.

"Q. After he inserted his penis to your vagina, what did he do next, if any?

"A. He kept on pumping while his penis was inside my vagina.

"Q. For how long did Alberto Painitan pump while inserting his penis to your vagina?

"A. Since I was unconscious, sir, I could not remember for how long did he keep on pumping, sir.

"Q. After he inserted his penis into your vagina and started pumping, what did you feel?

"A. I felt pain in my vagina.

"Q. What did you observe on his person, was he drunk?

"A. He was slightly drunk.

"Q. Why do you say that Alberto Painitan was slightly drunk?

"A. I could say that he was slightly drunk because if he was not so drunk, he could not locate my house.

"Q. While this sexual intercourse was occurring, where were these two (2) children, then?

"A. My children were at the other room.

"Q. You said you were boxed on your laps; what portion of your laps were boxed by Alberto Painitan?

"A. I was boxed on my both front portion of my laps, sir.

"Q. When you were boxed on your upper legs, what did you feel?

A. "I felt pain, sir.

"Q. You said you were unable to estimate the time Alberto Painitan kept on pumping you; after he had sexual intercourse with you, what did he do next, if any?

"A. Because I was unconscious, I could no longer remember what did he do next. After I regained consciousness, he was no longer around.

"Q. When you regained consciousness where were your two (2) children then?