

## SECOND DIVISION

[ G.R. No. 115079, February 19, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FRANCISCO ALBIOR Y GEBAO, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUISUMBING, J.:**

On appeal is the decision<sup>[1]</sup>, Quezon City, finding appellant, Francisco Albior, guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim, Lorena Tolentino, moral damages in the amount of P50,000.00, and to pay the costs.

Appellant was charged under an Information<sup>[2]</sup> which reads as follows:

That, on or about the 7th day of April, 1993 in Quezon City, Philippines, the above-named accused, with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned LORENA TOLENTINO y BACATANO, a minor, 11 years of age, without her consent and against her will, to the damage and prejudice of said offended party.

CONTRARY TO LAW.

On arraignment, appellant pleaded "not guilty." Thereafter, trial commenced.

Complainant Lorena Tolentino, who said she was born on November 29, 1981, testified that, at around noontime of April 7, 1993, appellant, the live-in partner of her mother, raped her in their house at Sitio Militar, Bahay Toro, Quezon City. He inserted his penis inside her vagina while poking a knife on her neck and threatening to kill her if she would shout. She said appellant previously abused her at least five times. However, each time she told her mother, the latter just dismissed it as a sign of appellant's affection. She eventually told her Ate Malou.<sup>[3]</sup> With their brother and Malou, they reported the incident to the barangay captain.<sup>[4]</sup>

According to Malou, whose full name is Marilou Avillano, she went to the house of her mother in the morning of February 5, 1993 and saw appellant on top of her half-sister, Lorena. Both were naked. She told her mother about it but the latter merely instructed Malou to let Lorena sleep in Malou's house. On April 8, 1993, at about 6:00 P.M., Malou said she saw appellant kicking Lorena in front of her house. When Malou confronted him, appellant pulled out a bladed weapon and chased her away.

<sup>[5]</sup>

The prosecution offered the testimony of Dr. Jesusa Q. Nieves, the medico-legal officer who examined complainant, but her testimony was dispensed with since

appellant already admitted the contents of Dr. Nieves' medico-legal report to the effect that Lorena was no longer a virgin at the time she was brought to the Crime Laboratory Service, PNP GHQ, Camp Crame, Quezon City on April 10, 1993.<sup>[6]</sup>

Appellant denied he raped Lorena. He testified that he was at home on April 7, 1993 with his common-law-wife, Lorena, his other children, namely, Alex, Jimmy and Viola and their respective spouses. He said he was being falsely accused by Marilou because he once slapped Lorena whom he referred to as "Baby."<sup>[7]</sup>

Erselina Bacatano, the mother of Lorena, testified for appellant. She said on April 7, 1993 she was at home with her husband because she was not feeling well. She claimed Lorena's complaint was false and fabricated upon the insistence of Malou who had an ax to grind against appellant.<sup>[8]</sup>

Shirley Cordero, a neighbor of appellant corroborated the testimony of Bacatano that the latter was sick and stayed at home on April 7, 1993. Cordero said she was in the house of appellant from 12:00 noon until 3:00 P.M. of the said day.<sup>[9]</sup>

On March 15, 1994, the trial court rendered a decision finding the appellant guilty. The dispositive portion of the said decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Francisco Albior y Gebao GUILTY beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*, to pay Lorena Tolentino the sum of P50,000.00 as moral damages and to pay the costs of the suit.

SO ORDERED.<sup>[10]</sup>

Appellant interposed this appeal alleging that the trial court committed the error of:

I. . . . FINDING THE ACCUSED GUILTY OF THE OFFENSE CHARGED  
DESPITE UTTER LACK OF CLEAR FACTUAL EVIDENCE TO SUPPORT  
THE CONVICTION

In gist, appellant raises the issue of the credibility of the complainant-witness. He argues that the charge of the victim that she was raped is hard to believe, considering the alleged numerous inconsistencies in her testimony as well as the contradictions between her and Malou's testimonies. Allegedly among them:

(1) Complainant declared that she was advised to stay with her *Ate* Malou, after the fifth rape. However, during her previous answer, she said that after the second rape when she told her mother, she was already advised to sleep with her sister. The court even asked her where she stays during daytime and she answered she stayed in the house of her sister.

(2) Complainant said she was raped in a one-room house of her *Tita* Nita on April 7, 1993. However during the cross-examination, she admitted that the offense was committed at the residence of her mother and as testified by witnesses, said house has four rooms wherein the accused, his wife and Lorena occupied one of the two rooms of the ground floor.

(3) Complainant avers that she lived with her Ate Malou when she was grade III when in fact she admitted before the court in her previous declaration that she start[ed] living with her Ate Malou sometime in June, 1993.

(4) Likewise the statement given by the complainant that everytime she was raped by her stepfather, her mother would answer "*Lambing lang iyon sa iyo*" is highly improbable and unbelievable because no mother in this world would allow her daughter to be sexually assaulted for 5 times by her own husband without even lifting a finger to protect her child and for that matter to testify in court against her.

(5) The statement by the complainant that blood spots came out from her private part during the fifth rape and not during the first rape is inherently impossible....

(6) Complainant admitted before the court that she lived with her mother and stepfather only for the duration of 1992 when in fact the crime being imputed to the herein accused happened on April 7, 1993.<sup>[11]</sup>

Appellant also stresses that no physical evidence of rape was presented by the prosecution. As shown by the medical reports, he claims there are no signs of violence inflicted on complainant nor any indication of the presence of spermatozoa in her genitalia. He likewise argues that if there was penetration of her genitalia, then complainant's hymen and vagina would have been severely lacerated. This was not so in Lorena's case, he adds, based on the medical-legal report. In effect, the appellant is assailing the sufficiency of the prosecution's evidence<sup>[12]</sup> and asserts that it is not enough to warrant his conviction.<sup>[13]</sup>

The Office of the Solicitor General (OSG), for the State, argues that alleged inconsistencies and contradictions in complainant's testimony pertains only to minor and collateral matters and not upon the basic aspect of the crime charged. Hence they do not justify reversal of his conviction and sentence.

In reviewing rape cases, we are guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[14]</sup>

In support of his argument, appellant quotes the transcript of stenographic notes regarding Lorena's testimony, thus:

Court: Now, you said your mother told you to sleep with your elder sister. Did you do it as you were told?

L. Tolentino: Yes, your Honor.

Court: What do you mean? You just slept there at night or you stayed

with your sister the whole day?

L. Tolentino: In the evening I sleep there every night but I only sleep in our house if *Tio* Fransing is not there.

Court: How about in the daytime, where do you stay?

L. Tolentino: At my elder sister's house.

Court: So, in other words, you are living already with your sister?

L. Tolentino: Yes, your Honor.

Court: That has been when?

L. Tolentino: From the time I told my sister about it.

Court: Can you recall more or less the date? When was the first time you lived with your sister?

L. Tolentino: I cannot remember anymore, your Honor.

Court: So that after April 7, 1993 or before April 7 when you started living with your sister?

L. Tolentino: 1993

Court: What month in 1993? Was that before or after April, 1993?

L. Tolentino: June, your Honor.

Atty. Bayani: June 1993?

L. Tolentino: Yes, your Honor.

Court: Alright, proceed.

Atty. Bayani: When you were first raped in Grade II, your mother asked you to stay with your *Tita* Malou?

Court: After?

Atty. Bayani: After the first rape, you told your mother about. . . did you not stay to sleep with your *Tita* Malou?

Court: *Ate*.

L. Tolentino: Not yet, sir.

Atty. Bayani: When were you asked to sleep with your *Ate* Malou?

L. Tolentino: When I told her about it again.