

## EN BANC

**[ G.R. No. 136164-65, April 20, 2001 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EDGAR LEGASPI Y LIBAO, ACCUSED-APPELLANT.**

### DECISION

**MELO, J.:**

On February 17, 1997, accused-appellant Edgar Legaspi y Libao was charged with the crimes of rape and robbery in two separate Informations filed with Branch 170 of the Regional Trial Court National Capital Judicial Region stationed in Malabon. The Informations respectively read as follows:

Criminal Case No. 17640-MN

That on or about the 11<sup>th</sup> day of February, 1997, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused while armed with a bladed weapon, with lewd design and by means of force and intimidation, did, then and there, wilfully, unlawfully and feloniously have sexual intercourse with HONORATA ONG Y GUEVARRRA, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 17641-MN

That on or about the 11<sup>th</sup> day of February, 1997, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused while armed with bladed weapon, with intent to gain and by means of force, violation and intimidation, did, then and there, wilfully, unlawfully and feloniously take, rob and divest cash money in the amount of P500.00 to the damage and prejudice of the said HONORATA ONG Y GUEVARRRA in the aforementioned amount of P500.00.

CONTRARY TO LAW.

(Rollo, pp. 4-5.)

Since the charges were related, the prosecution's motion that the two cases be jointly tried was granted. For its part, the defense pointed out that accused-appellant had been previously treated at the National Center for Mental Health from

February 28 to March 2, 1996. It moved that the arraignment of accused-appellant be deferred pending determination by the Center as to whether accused-appellant was mentally fit to stand the rigors of trial. This motion was likewise granted.

Accused-appellant was finally arraigned on November 18, 1997, following submission of the report dated September 1, 1997 of the National Center for Mental Health stating that accused-appellant could stand trial. Upon his arraignment, accused-appellant pleaded not guilty and trial thereafter ensued, with the prosecution presenting three witnesses, namely, the complainant Honorata Ong, NBI Medico-Legal officer Dr. Ronaldo Mendez, and barangay tanod Gerardo Ocampo. The defense, on the other hand, presented accused-appellant and SPO4 Salvador Ibo.

On November 6, 1998, the trial court rendered a decision, disposing:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 17640-MN, the Court finds accused Edgar Legaspi y Libao guilty beyond reasonable doubt of the crime of RAPE, and considering the presence of the aggravating circumstance of dwelling and nighttime, hereby sentences him to suffer the penalty of DEATH, and to pay Honorata Ong the sum of P50,000.00 as moral damages and P30,000.00 as exemplary damages plus cost of the suit;

2. In Criminal Case No. 17641-MN, the Court finds accused Edgar Legaspi y Libao guilty beyond reasonable doubt of the crime of ROBBERY and there being the presence of the aggravating circumstance of dwelling, hereby sentences him to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to nine (9) years of *prision mayor*, as maximum and to pay Honorata Ong the sum of P500.00 plus cost of suit;

SO ORDERED.

(Rollo, p. 18.)

The supreme penalty of death having been imposed for the rape, the case is now before this Court on automatic review. As for accused-appellant's conviction for robbery, accused-appellant did not appeal therefrom, thus, as to that portion of the judgment against him, the same has become final and executory (Section 3[c], Rule 122).

The facts, as shown by the records, are as follows:

At around 2:00 in the morning of February 11, 1997, complainant Honorata Ong, who was then sleeping inside her house with her three daughters, was awakened by the sound of their door opening. She initially thought that it was her husband coming home from work. When Honorata opened her eyes, however, she saw a man armed with a knife standing by her feet. More terrifying, the man already had his pants and briefs down on his knees and he was pointing to her eldest daughter.

Alarmed, Honorata told the man not to touch her daughter. The man poked his knife at her and told her to stand up and then was made to lie down on the adjacent sofa. Thereafter, the man removed Honorata's panties and had sex with her. All this time, he had his knife at Honorata's neck. Honorata noticed that the man reeked of alcohol. After slaking his lust, Honorata's assailant stood up then asked for money. Since the man still had his knife pointed at her, Honorata could do nothing but comply. She gave him the only money she had, several bills amounting to P500.00.

After threatening Honorata and her daughters with death if she reports the incident, the man left. Honorata, out of fear, could do nothing but close the door. Later that day, however, Honorata mustered enough courage to narrate her defilement to her sister-in-law and upon describing him, Honorata's sister-in-law exclaimed that she knew a person living in Manapat Street fitting the description.

That afternoon, Honorata, together with her husband, reported the incident to the barangay captain. Thereafter, the captain, along with two tanods patrolled the area and, on the next day, they managed to nab a person who fits the description given by Honorata of her assailant. When the suspect was brought to the barangay hall for confrontation, he was positively identified by Honorata as the rapist. This person, later identified as accused-appellant Edgar Legaspi y Libao, was thus detained by the police.

The next day, Honorata had herself medically examined at the NBI but no evident signs of extragenital physical injuries were found on her body.

On the other hand, all that accused-appellant could interpose as defenses were denial and alibi, stating that at the time of the alleged incident, he was at his home in Manapat Street sleeping. Accused-appellant also testified that he had been previously convicted of homicide and Roberto Eugenio, the victim therein, was a resident of the exact same address where complainant Honorata was living. Accused-appellant hinted at the possibility that relatives of Roberto Eugenio had conspired with complainant Honorata to get rid of him.

Incidentally, Rivera Street where the alleged crime occurred is only two streets away from Manapat. Moreover, aside from Honorata's address, accused-appellant did not present proof that the relatives of Roberto Eugenio knew complainant Honorata.

Given the above circumstances, the trial court, as earlier mentioned, found accused-appellant guilty of rape aggravated by dwelling and nighttime, and of robbery aggravated by dwelling; and thereupon, imposed upon him the supreme penalty of death for the rape, and an indeterminate penalty of six months to nine years for the robbery.

Accused-appellant's plea for reversal is founded on the arguments that his guilt was not shown beyond reasonable doubt, and that complainant Honorata's testimony is replete with inconsistencies. He also insists on his alibi and alleged insanity.

We have carefully reviewed the record and we find the above contentions devoid of merit.

In support of his first, second, and third assigned errors, which accused-appellant discussed jointly, he points to the discrepancies between Honorata's testimony in

open court and the entry in the police blotter. Accused-appellant harps on the fact that as described in the blotter, the alleged rapist had an "ala *Babalu* face" (having an attenuated chin similar to that of the late comedian *Babalu*) and a mole on the upper left part of his lips, while accused-appellant is not "*Babalu*" and his mole is located not on the left but on the right side of his face.

That the facial features of accused-appellant differ from the description of Honorata's assailant as found in the police blotter detracts not a whit from the credibility of Honorata's testimony. It must be kept in mind that Honorata positively identified accused-appellant as her rapist, not only during the investigation conducted by the police on the morning of January 15, but also during the trial. At the Malabon Police Station, Honorata identified accused-appellant thus:

T: *Bakit naman po kayo nandito ngayon sa aming himpilan at nagbigay ng malaya at kusang loob na salaysay?*

S: *Para po ipagharap ng reklamo ang taong ito* (affiant pointing/identifying person of EDGAR LEGASPI y LIBAO, @ EGAY, 29 years old, single, jobless, and residing at No. 86 Manapat Street, Barangay Tañong, Malabon, MM who is presently inside this room).

T: *Ito po bang taong ito ay dati na ninyong kilala?*

S: *Hindi po.*

T: *Bakit naman po ninyo gustong ipagharap ng reklamo ang taong ito?*

S: *Ni rape niya ako.*

(Original Record, p. 80.)

During the trial, Honorata likewise identified accused-appellant as the person who sexually violated her. She testified that she was able to recognize accused-appellant because the fluorescent lamp inside her house was lit at the time of the incident.

Q: It was dark. Why were you able to see that person?

A: Because the light inside the house is on, sir.

Q: And you saw that person?

A: Yes, sir.

(tsn, August 18, 1998, p. 3.)

Likewise, we have heretofore held that a man and a woman cannot be physically closer to each other than during the sexual act (*People vs. Fuertes*, 296 SCRA 602 [1998]). We thus have on record Honorata's positive identification of accused-appellant as her assailant. Coupled with the oft-quoted doctrine that entries in police blotters, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth stated in such entries since they are usually

incomplete and inaccurate (*People vs. Padlan*, 290 SCRA 388 [1998]), we hold that any discrepancy in the police blotter entry and the open court testimony of Honorata does not affect her credibility.

It must also be remembered that the entry in the police blotter was made at 6:30 on the morning of February 12, 1997, only a few hours after the rape and robbery. At that time, Honorata may not have yet fully recovered from the traumatic ordeal she had gone through, resulting in an inaccurate entry in the police blotter. Besides, minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall (*People vs. Sta. Ana*, 291 SCRA 188 [1998]).

On the other hand, accused-appellant claims that if Honorata were indeed raped on the sofa of her one-room house, the creaking of the sofa and her moans would have awakened her three sleeping daughters. He asserts that, strangely, this did not happen.

That Honorata's daughters, aged 3, 6, and 9 years, did not wake up during the assault is not as incredible as accused-appellant would make it out. The failure of the three children to wake up during the commission of the rape was probably due to the fact that they were sound asleep. It is not unusual for children of tender ages to be moved from their sleeping mats and transferred to another bed without eliciting the least protest from them, much less, awakening them (*People vs. Mustacisa*, 159 SCRA 227 [1988]). It is also to be noted that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. One may also suppose that growing children sleep more soundly than grown-ups and are not easily awakened by adult exertions and suspirations in the night (*People vs. Ignacio*, 233 SCRA 1 [1994]).

As to accused-appellant's submission that the absence of spermatozoa in Honorata's organ negates the commission of rape, the same rings hollow, the presence or absence of spermatozoa being immaterial in the prosecution of a rape case, as it is well-settled that it is penetration, however slight, and not ejaculation, that constitutes rape (*People vs. dela Paz, Jr.*, 299 SCRA 86 [1998]). That there was penetration is shown by Honorata's testimony, thus:

Q: When he removed your panty what did he do next?

A: He inserted his organ in mine, sir.

Q: How did you come to know it was his penis that entered your private part?

A: I felt pain, sir.

(tsn, August 18, 1998, p. 5.)

Finally, accused-appellant contends that Honorata lied when she claimed not having known accused-appellant or his family prior to the incident. Accused-appellant takes this to be indicative that Honorata plotted with the family of Roberto Eugenio to get rid of him. As proof of Honorata's alleged prevarication, accused-appellant presented the voter's registration record of a certain Roberto Eugenio, allegedly accused-