

EN BANC

[G.R. No. 136737, May 23, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BEN LIBO-ON, ACCUSED-APPELLANT.

DECISION

GONZAGA-REYES, J.:

This is an automatic review of the decision^[1] of the Regional Trial Court, Branch 17, Davao City convicting accused-appellant Ben Libo-on of the crime of rape committed against Analyn Caballes, his fourteen year old niece, and imposing on him the supreme penalty of death.

The Information dated 4 November 1997 charging accused-appellant of the crime of rape reads, as follows:

"The undersigned at the instance of complainant, Analyn Caballes, whose affidavit is hereto attached and made an integral part hereto, accuses the above-named accused of the crime of RAPE under Article 335 of the Revised Penal Code in relation to Republic Act No. 7659 and Republic Act 8353, committed as follows:

That on or about November 2, 1997, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above named accused, an Uncle of the complainant, by force, violence and intimidation, willfully, unlawfully and feloniously had sexual intercourse with the said Analyn Caballes, a 14 year old minor, with a mind of child, against her will.

CONTRARY TO LAW."^[2]

After the information had been filed in court but before arraignment, the prosecution submitted an affidavit of desistance^[3] purportedly signed by complainant and with the conformity of her mother, Erlinda Caballes. The prosecution did not file a motion to dismiss the case but instead, it manifested that it would abide with the disposition of the court on the matter.

The incident was then set for clarificatory hearing on 27 January 1998 where the complainant and her parents were summoned to shed light on the voluntariness of the execution of the affidavit of desistance.

During the clarificatory hearing, the mother of the complainant, Erlinda Caballes, affirmed the voluntariness of the execution of the affidavit of desistance by her and her daughter^[4]. She claimed that the reason she agreed to the same was because

she pitied the children of the accused-appellant. She denied being paid any amount in consideration for their desistance. When asked by the court, she admitted that her husband didn't know about the execution of said affidavit and that her husband still has not forgiven accused-appellant for what has been done to their daughter.^[5]

The father of the complainant, Ananias Caballes, was also questioned by the Court with respect to the affidavit of desistance executed by his daughter. He stated that if he had his way, he would not agree to the desistance and would continue the prosecution of the accused^[6]. He admitted that there was a settlement of the case between his wife and the accused but he did not agree to the same.^[7] He likewise stated that he had no hand in the preparation of the affidavit of desistance signed by his wife and daughter. When asked by the court what his final decision on the matter was, he stated that he would continue with the case and that he will support and encourage his daughter to tell the truth about the incident^[8]

In view of the manifestation of the father of the complainant that he wanted to pursue the case, the Court declared, in an Order dated January 27, 1998^[9], that the affidavit of desistance executed by the complainant and her mother was not binding on the court. Pending the resolution of the case, custody of the complainant was given to the "Bahay Dangupan" of the Ministry of Social Welfare and Development Davao City.

The case was set for arraignment on February 5, 1998; accused-appellant pleaded not guilty to the charge.

The prosecution presented evidence tending to prove the following facts:

At the time of the alleged rape incident, complainant Analyn Caballes, then a fourteen-year-old minor, lived with her parents, Ananias and Erlinda Caballes, at their home in Sasa, Davao City^[10]

On November 2, 1997, complainant was at the residence of her grandmother, a certain Victoria Lopez, to help in the birthday celebration of her aunt, a certain Susan Lopez. Accused-appellant, together with his wife, was also at that small party. She knew accused-appellant as he was the husband of her Aunt Mary.^[11]

At around 9:00 in the evening, the grandmother of complainant asked her to buy beer from a nearby sari-sari store. Complainant dutifully obeyed and proceeded to the sari-sari store which was about a kilometer away from her grandmother's house.^[12]

While passing through an unlighted street, accused-appellant suddenly appeared and took hold of complainant's back and hands. She struggled to release herself but she failed to do so. Accused-appellant then took her to an abandoned house near Km. 11 and brought her inside. According to complainant, the place was dark and deserted. At the house, she again struggled to break free of accused-appellant's grasp but again she failed^[13]

She was then made to lie down on a wooden bed inside the abandoned house. Accused-appellant then unzipped his pants and removed complainant's skirt.

Accused-appellant then spread the legs of complainant and proceeded to lie down on top of her. He then succeeded in inserting his penis into her vagina and proceeded to make a push-and-pull movement. During this whole incident, complainant kept on crying. She could not estimate how long accused-appellant had carnal knowledge with her as all she can remember was that she experienced excruciating pain during the act^[14]

After her uncle succeeded in raping her, accused-appellant left her alone to cry in one corner of the house. After a while, complainant went home and she immediately told her father about the incident. Her father accompanied her to the police station where she executed an affidavit. She also went to the Davao Medical Center where she was examined by Dr. Marivic Mosqueda, who issued a corresponding medical certificate on the result of her examination of complainant^[15]

The prosecution likewise presented anew the mother of complainant, Mrs. Erlinda Caballes. She testified that she now supports the decision of the complainant to proceed with the case against the accused. She declared that the accused is the husband of her sister and, as such, the accused is the uncle of the complainant.^[16] She testified that on the date of the commission of the crime, complainant was 14 years, 7 months, and 21 days of age, as evidenced by her birth certificate.^[17]

She claimed that at around 10:00 p.m. of November 2, 1997, complainant came home from the house of her mother where she reported to her father that she was raped by the accused. They then immediately brought her to the house of accused-appellant where they confronted him about the accusation of complainant. The accused allegedly stated that they better submit complainant to a medical examination to determine the truth of the incident.^[18]

Dr. Marivic Mosqueda, a resident physician at the Davao Medical Center was likewise presented by the prosecution. She declared that she examined the complainant on November 3, 1997. Complainant reported to her that she was raped by her uncle on November 2, 1997 at around 9:00 p.m.^[19] Physically, she found complainant to be untidy and incoherent. She found no injury on her private organ and neither was there any laceration or hematoma on the body of complainant. She examined complainant's hymen where she noted the presence of old and healed lacerations. Inside the vagina of complainant, she found the presence of discharged spermatozoa, which she indorsed to the laboratory for examination.^[20]

A social worker assigned to the case of complainant was likewise presented where she testified on the results of the case study^[21] conducted on the complainant.

The prosecution also presented SPO3 Conrado Sinsona, Jr. who testified that on November 2, 1997, he was the policeman on duty at the Sasa Police Station. He stated that at around 10:30 p.m. the parents of the victim went to the police station and reported the alleged incident of rape. After the incident was reported, he immediately went to the house of the accused and invited him to the police station for questioning. The incident was then properly blotted.^[22]

For its part, the defense presented four (4) witnesses, namely, accused-appellant Ben Libo-on, Wilfredo Ongco, Carlito Ugat, and Cesar Aquino.

Accused-appellant Ben Libo-on denied that he committed the rape against complainant. He claimed that prior to the incident, the mother of the complainant Erlinda Caballes approached him to borrow money in the amount of P5,000.00, which he accommodated. Afterwards, she again went back to him to borrow an additional amount of P5,000.00 but this time he refused as he had no more money.
[23]

On the day of the alleged incident of rape, he arrived in Davao City from Sto. Tomas, Davao and he met with Erlinda Caballes and her husband in the house of her mother-in-law. He demanded from Erlinda Caballes the payment of the P5,000.00. Instead of paying, Erlinda Caballes allegedly got mad at him. Accused then left the house of his mother-in-law and proceeded to the house of his friend, Tata Ongco.
[24]

He then proceeded to have a drinking session with his friends and he stayed at the house of Ongco until 10:00 p.m. His wife then fetched him and they proceeded to the house of his mother-in-law where they would spend the night.
[25]

At around 10:15 p.m., he was awakened from his sleep by some policemen who demanded to see him. He was told to come with them to the police station although the policemen did not tell him what the problem was. When he arrived at the police station, he was immediately put inside a jail cell.
[26]

The following morning, Erlinda Caballes arrived and told the accused that he was in jail because he molested her daughter. She allegedly demanded P50,000.00 from him so that the case may be settled. He told her that he could not possibly agree to any settlement of the case as he had done nothing wrong. In fact, he reminded her that she still owes him P5,000.00
[27]

They met again on November 5, 1997 where she again asked him about the possible settlement of the case. He insisted however that he had not done anything wrong and he could not possibly pay such a large amount. Erlinda Caballes then intimated that she was amenable to a reduced amount. He was not able to follow-up the matter however as he was then detained. It was his mother and his friend, a certain Cesar Aquino, who proceeded to meet with Erlinda Caballes regarding the possible settlement of the case.
[28]

With respect to the rape incident, accused denied the accusation of complainant. He stated that the road from the house of his friend, Tata Ongco, to the house of his mother-in-law is well-lighted. Likewise, the street going to the Sasa Galera or cockpit, where the alleged rape was committed, was well-lighted. He estimated that the distance between the house of his friend and the cockpit was about one kilometer.
[29]

On the date of the alleged incident, he claimed that he could not have committed the crime as he was drinking with his friends at the house of Tata Ongco from 6:00 p.m. to 10:00 p.m. According to him, he didn't leave the house of his friend until his wife fetched him at around 10:00 p.m. Moreover, at the time of the alleged incident, the place where the rape allegedly happened was already padlocked and nobody could enter the said cockpit.
[30]

The testimony of accused-appellant was supported by his friend, Wilfredo Ongco. He affirmed that on November 2, 1997, accused-appellant was in his house as he was his close friend and "barkada." He claimed that on that date, accused-appellant was in his house at Km. 11 Davao City having a drinking session with him and some friends. He stated that from 6:00 p.m. to 10:00 p.m. accused stayed at his house and there was no time that he left the place.^[31] He testified further that the road from the house of accused-appellant's mother-in-law and Sasa Galera, where the alleged rape was committed, was quite heavily populated and people would easily notice if there was any unusual incident.^[32]

The defense likewise presented Carlito Ugat, another friend of accused-appellant. He testified that on November 2, 1997, at around 9:00 p.m., he went to the house of Wilfredo Ongco to borrow a screwdriver. He saw accused-appellant at the said house drinking Tanduay rum with Ongco. He then joined the drinking session until 10:00 p.m. after which they called it the night.^[33]

Ugat also identified several pictures showing the cockpit or Gallera where the alleged raped happened. He likewise testified that he personally inspected the place after the incident and he saw that the cockpit was abandoned and padlocked. He also claimed to be familiar with the road to the cockpit and he stated that the said road was well-lit with electric posts along the side of the road.^[34]

Finally, the prosecution presented Cesar Aquino, a close friend of accused-appellant. He testified that when accused was already detained by the authorities, he visited accused-appellant at the police station where the latter asked him to help out in the case by inspecting the cockpit where the rape allegedly happened.^[35] He then went to the Gallera where he saw that nobody could have possibly gone out or in of the premises as the gate thereof was securely padlocked. He likewise saw that the Gallera was fenced in by a twelve-foot tall wooden fence. He confirmed further that the road from the house of accused's mother-in-law was well lit by electric lampposts. He estimated that the distance between the two places was more than one kilometer.^[36]

He testified further that the mother of the accused requested him to contact Erlinda Caballes to follow-up her offer of settlement. He was able to speak with Erlinda Caballes who demanded the amount of P35,000.00 for the settlement of the case. He relayed the matter to the mother of the accused but she said that she couldn't afford the amount. He went back to Erlinda Caballes who said to him that she was willing to reduce the amount to P25,000.00. The amount was further reduced to P15,000.00 but the mother of the accused said that she could only afford P8,000.00.^[37] Erlinda Caballes finally agreed to the said amount as she allegedly pitied the children of accused-appellant. After receiving the amount, Erlinda Caballes then executed an affidavit of desistance which was also signed by the complainant.^[38] Later on, the father of complainant objected to the settlement as allegedly, he also wanted to demand for himself the additional amount of P10,000.00. When the mother of the accused was informed of the demand of the father of complainant, she lost consciousness.^[39]

After the presentation of these four witnesses, the defense rested its case.