

FIRST DIVISION

[G.R. Nos. 135552-53, June 21, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABEL ABACIA AND DANILO "BOYET" ALVAREZ, ACCUSED, DANILO "BOYET" ALVAREZ, ACCUSED-APPELLANT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant Danilo Alvarez alias Boyet and Abel Abacia were both charged with two counts of rape before the Regional Trial Court of Surigao City.

Only accused-appellant Danilo Alvarez was apprehended. Upon being arraigned, he pleaded "not guilty."

At around four o'clock in the afternoon of January 5, 1996, private complainant Rosalinda Caday went to the house of appellant Danilo Alvarez to visit Nenita Cortes, the daughter of appellant's wife with another man. While she was there, appellant Danilo Alvarez and Abel Abacia, an itinerant vendor who sells shirts and pants on credit, arrived at the house. Abacia held her arm and asked her if she knew one Wendy Casio, who bought some shirts from him on credit. Appellant and Abacia were able to persuade Rosalinda to accompany them to Casio's house, located on P. Reyes Street, Surigao City. At the junction of Peñaranda and Navarro Streets, appellant and Abacia suddenly put their arms around Rosalinda and dragged her towards the grounds of the Surigao del Norte National High School. Rosalinda's effort to free herself were in vain because there was no one around. It was already past five o'clock in the afternoon and it was raining.

Appellant and Abacia pushed Rosalinda through an opening in the wall of the school building and brought her to a nearby toilet. Abacia went inside the toilet with Rosalinda in tow while appellant stood guard outside. Inside one of the cubicles, Abacia forcibly removed her blouse, shorts, bra and panties. After undressing her, Abacia embraced and kissed her and touched her private parts. He then knelt down and licked her vagina. When she struggled and shouted for help, Abacia threatened to kill her. Though she did not see a weapon, she felt very scared.

Having successfully cowed private complainant, Abacia spread her legs and had sexual intercourse with her in a standing position. When he ejaculated, Rosalinda cried and shouted. He held her tightly and ordered her to shut up. Abacia then went out of the toilet, bringing with him her clothing.

Crouching in fear on the toilet floor, Rosalinda tried to cover her naked breasts with her hands. She was in that position when appellant entered the toilet and forced her to stand up. She pleaded for mercy, saying, "Uncle, have pity on me." Appellant just told her to keep quiet. He then undressed himself and proceeded to have

sexual intercourse with her while they were both standing, with Rosalinda's back against the wall. He lifted her left leg with his right hand to facilitate the entry of his erect penis into her vagina. A few minutes later, he ejaculated inside her. He then laughed and left her inside the toilet crying in anguish.

Shortly, Abel Abacia entered the toilet and wanted to have sexual intercourse again with her. She pleaded with him, so Abacia relented and gave back her clothing. Appellant and Abacia waited outside the toilet while she dressed up. When she went out of the toilet, Abacia touched private complainant's private parts. She hurriedly walked away while appellant and Abacia walked in the opposite direction laughing.

Disoriented and befuddled, private complainant kept walking until she reached the city park known as Luneta. She went to a public toilet and washed herself. After that, she sat on a park bench not knowing what to do. At 7:00 o'clock in the evening, she went home and told her mother about her ordeal.

Rosalinda was accompanied by her mother to the police station where she reported the incident. However, it was only on January 8, 1996 when she was able to undergo a physical examination. Dr. Ma. Ligaya G. Bernadez issued a medical certificate^[1] with the following findings:

Hymen - Healed lacerations at 5:00 and 9:00 position;
Vaginal Smear - Fresh, negative for spermatozoa;
Gram Staining - Positive for N. Gonorrhea.

Dr. Bernardez also testified that the lacerations were about three days old and were probably inflicted by a blunt object such as an erect male organ. She likewise testified that complainant was suffering from gonorrhea possibly as a result of the rape, inasmuch as the incubation period of gonorrhea is from two to eight days after sexual intercourse.

Appellant, on the other hand, denied the charge against him and interposed the defense of alibi. He claimed that he was a butcher by occupation and that at three o'clock in the afternoon of January 5, 1996, he was at the city abattoir slaughtering a pig. He was able to finish his work at five o'clock in the afternoon. He then went home, took a bath and changed his clothes. At five-thirty in the afternoon, he arrived at the public market after a ten-minute tricycle ride. He proceeded to the stall of his employer named Lolong Escandor and stayed there until eight o'clock in the evening. Then, he went home to Sabang in a tricycle.

On his way home, he met Rosalinda's mother, who asked him if he saw Rosalinda. He told her he had not seen her. Thus, he was surprised when, on the following day, Rosalinda accused him of rape. As a result, he and his wife quarreled. He denied the charge of rape, and so on January 11, 1996, he and his wife went to the police station to verify the report about the accusation against him. However, he was detained by the police.

Appellant submits that complainant's family made up the charge of rape against him because they wanted him to pay a monthly rent of P50.00 for the use of the land where he lives. Complainant's family claimed ownership of the land, but he refused

to pay rent to them because he believed that the land was public land. According to him, although his wife is related to complainant's family, they are not on speaking terms.

Appellant further claims that he was not with Abel Abacia and Rosalinda in the afternoon of January 5, 1996; that he was at the abattoir and at the public market. He also claims that though he knows Abel Abacia, he was only an acquaintance.

Appellant also presented the testimony of Dr. Emmanuel Plandano, who physically examined him and found him negative for gonorrhea or any sexually transmitted disease.^[2] Dr. Plandano based his conclusion on the observation that there was no discharge from appellant's penis, hence, there was no need to take a specimen for laboratory examination.

Appellant also presented Rodrigo Cayasa, a watchman at the Surigao del Norte National High School, who testified that he did not notice anything unusual either in the classrooms or in the school toilets.

After the trial on the merits, the trial court rendered a Joint Judgment,^[3] the dispositive portion of which reads:

WHEREFORE, the Court finds the accused, Danilo Alvarez, guilty beyond reasonable doubt in both cases as a principal of the crime of rape under Article 335, paragraph 1, of the Revised Penal Code, and there being no aggravating circumstance to consider, hereby sentences him to suffer the penalty of *reclusion perpetua* in each of the above-entitled cases; and to pay the costs.

Danilo Alvarez is ordered to indemnify the victim, Rosalinda Caday, in the sum of P50,000.00 for each count of rape, or a total of P100,000.00.

The case with respect to the other accused, Abel Abacia, who is at large, shall be archived and revived or reinstated when he is finally apprehended.

In his appeal, the appellant raised the lone assigned error:

THE REGIONAL TRIAL COURT IN SURIGAO CITY HAS COMMITTED AN ERROR IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED IN THE CRIMINAL COMPLAINTS FILED HEREIN.

Accused-appellant asserts that his guilt has not been proven beyond reasonable doubt. First, he denies having raped complainant and in fact manifested his innocence by entering a negative plea and filing a notice of appeal. He claims that unlike his co-accused, he did not flee. Second, he was at the slaughterhouse and later at the public market when the alleged crime was committed. He claims that his presence at the slaughterhouse and at the public market was never rebutted nor contradicted by the prosecution. Third, while complainant was afflicted with gonorrhea as a result of the alleged rape, he was medically certified to have no such