

SECOND DIVISION

[G.R. No. 140229, August 30, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY BALMOJA ALIAS AYAT, ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

HENRY BALMOJA alias *Ayat* was found guilty of rape by the RTC-Br. 272, Marikina City, and sentenced to *reclusion perpetua* and to pay his victim P50,000.00 for moral damages.^[1] He now appeals his conviction.

The Decision of the court *a quo* is anchored on the following factual findings: on 24 July 1997, at the behest of her teacher, a certain Mrs. Cillo, fourteen (14) year old Cynthia Lea Dapoc, private complainant, set out in search for the house of an absentee student so she could deliver a *notice* coming from her teacher. While trying to locate the place, accused Henry Balmoja pointed Lea towards the direction of Ma. Cristina Village. As she started to proceed on her way, the accused volunteered to accompany her but led her instead towards San Isidro Village. While there, Balmoja persuaded Lea to enter a vacant grassy area with a factory-like structure adjacent to it alleging that a certain lieutenant was tracking him down on account of a missing girl. Once in the grassy portion, Balmoja locked her in an embrace and made her sit on his lap. As she struggled, he removed her shirt, pants and panty, leaving her with only her *sando* on. Lea pleaded for Balmoja to stop but every time she did the latter strangled her into silence. Her fear was further exacerbated by the sight of a pair of long-nose pliers in the pocket of the accused. Balmoja then inserted his penis into her vagina. She cried in pain and begged him to stop. It was over in a few minutes. Seemingly satisfied, Balmoja told Lea to dress up and told her not to tell anybody, otherwise he would "bomb" her house. Thereafter, she was released.

Despite her ordeal, Lea managed to deliver the *notice* and to prepare herself for school. She did not reveal her tragic experience to the attendant at the beauty parlor from whom she asked for directions; neither did she tell her relatives at home, as she was ashamed, but decided to divulge it to her teacher instead. In school, Lea broke down before Mrs. Cillo who immediately summoned Lea's mother to the Guidance Counselor's Office where she was apprised of her daughter's misfortune.

Assisted by her mother, Mrs. Cillo, and another personnel from her school, Lea went to the police station where she filed a complaint against now accused Henry Balmoja whom she described as her rapist. Subsequently, Lea underwent medico-legal examination where it was discovered that she had two (2) abrasions on the posterior aspect of her right forearm which could have been caused by a hard, rough and sharp object, and fresh bleeding lacerations on the hymen at 3 o'clock, 6

o'clock, and 8 o'clock positions that could have been inflicted within twenty-four (24) hours.

The court *a quo* did not give credence to Henry Balmoja's claim that at the time of the incident he was sleeping in his house in Tumana, Concepcion, Marikina City; that earlier at 6:30 in the morning he was awakened by his brother-in-law Sonny Dalusong to deliver a swing in Cavite but that he opted to sleep it out instead as he had stayed up late the night before as he watched a mahjong game; and that he woke up only at 1:30 in the afternoon. The lower court declared that the defense of alibi by the accused could not prosper over the positive testimony of private complainant Cynthia Lea Dapoc that he was the one who raped her.

Accused-appellant now contends that the trial court erred in convicting him of rape when his guilt had not been proved beyond reasonable doubt. He argues that Lea's claim that it was out of fear that she entered the vacant grassy area does not deserve credence since, first, Lea admitted that she did not believe his tale of a lieutenant looking for him in connection with a missing woman; second, she did not know the woman on the picture; and third, she had no reason to hide from the "lieutenant."

Accused-appellant disputes further the finding of force or intimidation by the lower court as there was no physical evidence that Lea was strangled and the only physical injuries noted on her body, apart from those in her genitalia, were the abrasions on the posterior aspect of her right forearm. He avers that it was hard to believe that the presence of a pair of long-nose pliers in his pocket would instill fear in the victim sufficient enough for her not to even put up a token resistance. He contends that Lea herself admitted that she did not shout nor resist when he undressed her.

Accused-appellant likewise contends that private complainant's testimony is not credible as it was inconsistent. He notes that during private complainant's direct testimony she stated that he laid her on the ground, undressed her, placed himself on top of her, and tried to insert his penis into her vagina. However, during cross-examination, she narrated that accused-appellant did not tell her to lie down but instead placed her on his lap, with her back against him, and while accused-appellant held her, he undressed both of them.

Moreover, accused-appellant observes that the conduct of private complainant immediately after the incident was not the natural reaction of a woman who had just been sexually abused since she still looked for the address of the absentee student on the *notice* and even asked directions from a parlor attendant. He also finds it unbelievable that private complainant did not immediately inform any member of her family considering that she went home and could immediately phone her mother.

Accused-appellant thus maintains his innocence and avers that the trial court should not have been hasty in ruling out his defense of alibi. Contrary to the trial court's finding, he contends that his home was not a fifteen (15) minute walk from the *locus criminis* but a fifteen (15) or twenty (20) minute ride away which makes it physically impossible for him to have been at the scene of the crime at the time it was committed had he been awake.

We find the arguments unmeritorious. Prior to its amendment,^[2] Art. 335 of *The Revised Penal Code* (RPC) provides that rape is committed when the malefactor has carnal knowledge of a woman under any of the following circumstances: (a) by using force or intimidation; (b) when the woman is deprived of reason or is otherwise rendered unconscious; or (c) when the woman is under twelve (12) years of age, even when neither of the preceding circumstances is present. What is vital is that the act of copulation be proven under any of the conditions enumerated.

Here, Lea was unwavering in her narration that accused-appellant was the one who sexually abused her by employing deceit, intimidation and force upon her. Accused-appellant lured her into a trap by promising her that he would accompany her to the address indicated on the *notice* and later tried to deceive her into believing that a lieutenant was about to apprehend him. Lea admitted being skeptical of Balmoja's tale but she likewise declared that every time she tried to leave, Balmoja would prevent her by holding on to her hands and letting her sit down.^[3]

On cross-examination, she acknowledged that they were near the exit, where on one side was a grassy area full of branches while on the other side was a narrow pathway which rendered escape possible, but she was held back by accused-appellant who locked her arms in an embrace and pushed her down on the ground.^[4] Indeed, as accused-appellant asserted, private complainant Lea did not shout, but not for want of trying. She pleaded for him to spare her but he strangled her.^[5] Lea was further held immobile by the sight of the pliers of accused-appellant which she feared would be used against her if she continued struggling.^[6] Contrary therefore to accused-appellant's assertion, it was more than token resistance that was exhibited by Lea but foresight and prudence in the midst of adversity.

We likewise find that private complainant was able to adequately establish the act of rape as she was consistent in her narration. The statements she uttered should be viewed in the context in which they were expressed and not compartmentalized. Thus, when Lea stated that accused-appellant laid her on the ground, undressed her, placed himself on top of her, and tried to insert his penis into her vagina, it was in answer to the question of how the felon raped her.^[7] However, private complainant's statement that she was not lying down but was instead on top of accused-appellant with her back against him while he undressed her and himself was made in answer to the query on why she was not able to put up any resistance against the advances of accused-appellant and escape his clutches.^[8] In this declaration private complainant was therefore not referring to the execution of the rape itself as she clarified that it happened only after accused-appellant had undressed her. Thus -

ATTY. VALEZA: After he undressed you, what happened next?

A: He laid on top of me and he was trying to...?

Q: What do you mean by "ano?"

A: He tried to insert his penis into my vagina?^[9]

All other considerations and alleged factual discrepancies fade in the light of this averment. For a discrepancy to serve as basis for acquittal, such must refer to