

EN BANC

[G.R. No. 134802, October 26, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RENATO Z. DIZON, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

Before us on automatic review is the Decision^[1] of the Regional Trial Court of Quezon City, Branch 219, in Crim. Case No. Q-97-71910, finding Renato Dizon y Zuela guilty of Robbery with Rape, attended by two aggravating circumstances, imposing upon him the penalty of Death and ordering him to pay complainant Arlie Rosalin P9,500.00 for actual damages, P200,000.00 as moral damages and to pay the costs.

Culled principally from the testimony of private complainant, the facts of the case are as follows:

On July 7, 1997, around 9:30 p.m., private complainant Arlie Rosalin, then a 21-year old engineering student from Dinalupihan, Bataan, alighted from a bus as it stopped by a small bridge along EDSA just before Roosevelt Avenue, Quezon City.^[2] Seconds later, she heard someone call out "Miss!" and when she turned her head around, she found appellant behind her.^[3] Appellant suddenly seized her, pointing a fan knife to the side of her neck, and announced a holdup. He then told her to face the railing of the bridge and asked for her wallet and jewelry. Terrified, private complainant complied. Still not content, though, appellant got her backpack, warning her that should he find another wallet inside, he would kill her and throw her over the bridge as he had done to his other victims.^[4]

After appellant stripped her of her valuables, appellant instructed private complainant to walk with him along EDSA and pretend that they were a couple.^[5] They crossed Roosevelt Avenue, passed the Munoz market, then headed for Project 7. Private complainant could not ask for anyone's help because, all the while, appellant had his arm around her and a knife pressed to her side.^[6] Appellant further frightened her by telling her that he had already killed many people.^[7] Scared as she was, however, private complainant would furtively look at appellant's face whenever they passed a lighted place, vowing to herself that should she ever be able to escape, she would remember him and have him arrested.^[8]

After walking for some time, they finally reached a dark and empty basketball court.^[9] There, appellant ordered private complainant to remove her pants and underwear. Private complainant could not do anything but follow appellant's orders since he was holding her at knifepoint. Besides, even if she screamed, nobody would

hear her.^[10]

Appellant kissed private complainant on the lips, neck, and breasts, which he also mashed.^[11] He likewise bit her nipple at least three times, as well as the right side of her back and vagina.^[12] Unable to control his lustful urges any longer, he forced her to bend forward over the hood of a taxi and, in this position, forcefully penetrated her vagina with his organ.^[13]

After satisfying himself in this fashion, appellant ordered private complainant to hold and massage his penis which, he boastfully informed the latter, carried *bolitas*.^[14] He then forced her to put his foul-smelling penis into her mouth, which sickened her to the pit of her stomach.^[15]

Still not done with her, appellant forced private complainant to lie on the ground.^[16] Private complainant could not fight off any of appellant's demands, because whenever she tried to resist, and whenever she failed to answer any of his questions, he would bang her head on the hood of the taxi, slam her head on the wall, or slap her hard in the face.^[17]

After appellant pushed private complainant to the ground, he went down on her and proceeded to ravish her all over again.^[18]

Though admittedly spent by now, appellant still refused to let go of private complainant. Instead, he made her sit astride over him, and to make sure she would not be able to escape, held her tightly by the hair with both hands.^[19] When private complainant balked at inserting his organ inside of hers, appellant removed one hand from her hair and groped in the dark.^[20] Sensing that he was reaching for his knife and would finally kill her, private complainant struggled with all her might and broke free from appellant's hold. She scampered to her feet, grabbed her pants, and ran as fast as she could away from appellant.^[21]

Soon, private complainant found a store that was about to close. She barged in, informing the people that she had been raped, and pleaded for their help. However, the owner of the store did not want to get involved. Instead, he reminded her to wear her pants, then referred her to the barangay.^[22]

When a barangay officer arrived, he accompanied her back to the basketball court, where they were able to recover her shoes, underwear, and appellant's black cap.^[23] Since appellant was no longer around, private complainant just gave a description of him: he was dark, 5'3" to 5'4" in height, and with a body covered with tattoos from the waist down.^[24] Private complainant was then brought to the police station where her statement was taken.^[25]

About three days later, the barangay informed private complainant that they already had a suspect who matched appellant's description. Accompanied by policemen, among others, she went to the vicinity of the Munoz market, where appellant was reportedly working as a tricycle dispatcher.^[26] After some anxious moments of searching in the crowd, private complainant finally caught sight of appellant and

pointed him out to her companions.^[27] One of the police officers accosted appellant and asked him if he knew private complainant.^[28] Upon seeing her, appellant pulled out the same fan knife he had earlier used on her.^[29] He was not quick enough, however, because the police officers were able to disarm him. Appellant was then handcuffed and brought to the police station.^[30]

In an Information^[31] dated July 14, 1997, Assistant City Prosecutor Mercedes D. Penamora charged appellant as follows:

"That on or about the 7th day of July, 1997 in Quezon City, Philippines, the above-named accused, with intent to gain, by means of force and violence against and/or intimidation upon person did, then and there wilfully, unlawfully and feloniously rob the person of one ARLIE ROSALIN Y NICDAO In the following manner, to wit: on the date and place aforementioned while said complainant was walking along the sidewalk of EDSA, Munoz, this city after alighting from a passenger bus, said accused suddenly appeared and embraced complainant and at knife point announced a hold-up and then and there rob, took and carted away the following items, to wit:

One necklace w/pendant	P 300.00
-	
Two (2) gold rings	5,000.00
One bag pack containing Assorted clothes	2,000.00
One(1) paper bag (bench) Containing stuff toys	200.00
Perfume	1,000.00
Cash	1,000.00

all in the total amount of p9,500.00, Philippine Currency, all belonging to said ARLIE ROSALIN y NICDAO, to her damage and prejudice and on the occasion of the robbery, accused with lewd designs and with force and intimidation and with use of a knife undressed said complainant and put himself on top of her and have carnal knowledge with said ARLIE ROSALIN y NICDAO against her will and without her consent, to the damage and prejudice of the said ARLIE ROSALIN Y NICDAO.

"Contrary to law."

Appellant entered a plea of not guilty when arraigned on August 7, 1997, with the assistance of Atty. Donato A. Mallabo.^[32] Trial proceeded in due course. The prosecution presented as witnesses the victim herself, Arlie Rosalin; SPOI Cristopher Hael, a police officer assigned at the Baler Police Station who testified on the circumstances leading to the arrest of the accused; PO1 Emelito de La Cruz, the police investigator; and Dr. Emmanuel Reyes, the PNP medico-legal officer who

conducted the examination on Arlie Rosalin.

The appellant put up the defense of denial and alibi. Appellant's testimony was not corroborated by any other witness. His testimony consisted mainly of denials of his involvement in the crime being imputed against him. He averred that as a tricycle dispatcher, he used to work from 7:00 o'clock to 11:00 o'clock in the morning and from 2:00 o'clock to 5:00 o'clock in the afternoon; that on the evening of July 7, 1997, he was just at home resting; that he was at work when he was arrested and when he was brought to the police station, he was beaten up; that he told the police that he had nothing to do with what happened to the complainant and that he saw her for the first time only when he was arrested; that he did not know of any reason why she singled him out and filed a case against him; and that when he was brought to the fiscal, he again denied the charges against him.

On July 13, 1998, the trial court promulgated its decision, the dispositive portion of which reads:

"WHEREFORE, finding that the prosecution was able to prove the guilt of the accused beyond reasonable doubt for the crime of Robbery with rape under paragraph one, Article 294 of the Revised Penal Code, as amended by R.A. 7659, attended by two aggravating circumstances, the Court hereby sentences him (1) to suffer the penalty of Death; (2) to indemnify complainant Arlie Rosalin in the amount of P9,500.00 as actual damages; (3) to pay her P200,000.00 as moral damages; and (4) to pay the costs.

"Let the records of the case be transmitted to the Supreme Court for automatic review.

"SO ORDERED."

Appellant impugns the decision of the trial court on the following grounds:

"1. The lower court erred in convicting the accused when in truth and in fact he was not positively identified by the victim.

"2. The lower court erred in appreciating the aggravating circumstances of cruelty and uninhabited place against the accused.

"3. The lower court erred in finding the accused guilty beyond reasonable doubt of the crime of robbery with rape in violation of Art. 294, Par. 1 (should be par. 2) of the Revised Penal Code."

We affirm the trial court's decision.

Being interrelated, appellant's first and third assigned errors, which boil down to a question of credibility of the private complainant, will be discussed jointly.

In assailing the credibility of the private complainant, appellant puts the following in issue:

First, appellant states that he has only two hands; hence, it was impossible for him to remove his pants, restrain private complainant, and hold a fan knife all at the same time.

Second, appellant points out an alleged inconsistency between private complainant's account of rape and her alleged refusal to escape her rapist despite opportunity to do so.

Third, appellant argues that he was not positively identified by private complainant because somebody had to tell her where he was when she and the police went out to look for him at the market place in Munoz.

We find appellant's arguments to be untenable.

On the first point, it is not impossible for appellant to undress while holding his victim and a fan knife at the same time. On direct examination, the private complainant testified thus:

"Q When he raped you did he remove his pants?

"A Yes, ma'am he removed his pants.

"Q When he removed his pants, did you run?

"A No, Ma'am because he was holding me and the knife was pointed at me,

"Q When he was holding you and the gun (sic) was pointing (sic) at you how did he remove his pants?

"A Like this, ma'am . . .

"COURT INTERPRETER

Witness holding the right wrist of the Interpreter using the left hand. The witness demonstrating that the accused was using his right hand holding the knife while unbuttoning his pants and every time she would resist the accused would point the knife at her."^[33]

Countless cases of rape have been committed in a similar fashion. We quote the pertinent portions of two such cases:

"xxx When she saw her father naked, she got scared and did not move. Because of her refusal, her father poked a three-cantos knife at her neck and he undressed her by pulling down her skirt and her panty until they were removed from her body. Her father then told her to sit up and when she did, he pulled her t-shirt off her head. She cried and her father