

## FIRST DIVISION

[ G.R. No. 136337, October 23, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NELSON CABUNTOG, ACCUSED-APPELLANT.**

### D E C I S I O N

**KAPUNAN, J.:**

Nelson Cabuntog was charged for multiple rape in an Information that read:

That on or about the 6<sup>th</sup> day of May, 1995 in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping with another, by means of force and intimidation, did then and there willfully, unlawfully and feloniously take turns in having carnal knowledge of the undersigned against her will and without her consent, to the damage and prejudice of the undersigned in such amount as maybe allowed by law.

Contrary to law.<sup>[1]</sup>

Cabuntog entered a plea of Not Guilty and trial proceeded against him.

The evidence for the prosecution would show that Edna Durero was the househelper of Vevencia Pareja.<sup>[2]</sup> Durero was deaf-mute.<sup>[3]</sup>

Pareja testified that in the evening of 05 May 1995, she was tending her 24-hour *sari-sari* store and barbeque grill located at Luneta Park, Borromeo St., Surigao City.<sup>[4]</sup> She was being helped by her granddaughter Gingging Uyan and Durero.<sup>[5]</sup> At dawn of 06 May 1995, Nelson Cabuntog and his three companions arrived. They proceeded to order some drinks and barbeque.<sup>[6]</sup> Pareja prepared the "*puso*" and asked Durero to rekindle the charcoal for the grill.<sup>[7]</sup> She noticed that Cabuntog went near Durero and brushed his body against hers.<sup>[8]</sup>

After a while, Pareja decided to check on Durero but the latter could not be found.<sup>[9]</sup> Cabuntog and one of his companions, known as Bobbit, were also missing.<sup>[10]</sup> The charcoal was not rekindled at all.<sup>[11]</sup> Pareja requested Gingging to look for Durero but her granddaughter returned unsuccessful on her errand.<sup>[12]</sup> Pareja instructed Gingging to look at the Arnoldus Pastoral Office.<sup>[13]</sup> Again, Gingging returned without finding Durero or Cabuntog. However, she reported that the gate to the pastoral office was open.<sup>[14]</sup>

Pareja again instructed Gingging to return. This time, Gingging reported that she saw Durero, Cabuntog and Bobbit getting out of the pastoral office.<sup>[15]</sup>

When Durero, Cabuntog and Bobbit returned to the store, Pareja immediately asked her where she went.<sup>[16]</sup> Through signs, Durero was able to convey that she was pulled by Cabuntog and taken to the pastoral office.<sup>[17]</sup> There, she was pushed against the wall and molested by Cabuntog.<sup>[18]</sup>

Durero testified in court using signs.<sup>[19]</sup> In sum, her "testimony" disclosed that on 06 May 1995, between three and four o'clock in the morning, the accused dragged and pulled her, pushed her against the wall, touched her private parts and succeeded in having sexual intercourse with her.<sup>[20]</sup>

Dr. Desiree Chong<sup>[21]</sup> testified that when examined Durero, she did not find any signs of abrasion or contusion on Durero's body.<sup>[22]</sup> However, the smear of vaginal fluid taken from Durero was tested positive for the presence of spermatozoa.<sup>[23]</sup>

In defense, Cabuntog testified that on 06 May 1995, at about four o'clock in the morning, he was in his house at Barangay Guadas, Dinagat, Surigao del Norte, preparing the *pukot* (fish net) he would use for fishing.<sup>[24]</sup> He even saw their *Barangay* Captain, Samson Camposano, who was going to the seashore to buy fish.<sup>[25]</sup> Cabuntog maintained that he went fishing that morning and in fact, during the whole month of May.<sup>[26]</sup> He stated that he needed money as his wife just gave birth to their child.<sup>[27]</sup>

Samson Camposano corroborated the testimony of the accused. He declared that at around four o'clock in the morning of 06 May 1995, he saw Cabuntog, first, while the accused was preparing his fishnet,<sup>[28]</sup> and later, as the accused was about to leave for the sea.<sup>[29]</sup> Camposano was about five (5) meters away from Cabuntog's house.<sup>[30]</sup> He was sure it was the accused because the house was illuminated by a wick lamp.<sup>[31]</sup>

After trial, Cabuntog was found guilty as charged and judgment was rendered against him in this wise:

WHEREFORE, for all the foregoing, this Court hereby finds the accused, NELSON CABUNTOG, GUILTY beyond reasonable doubt of the crime of RAPE, as defined and penalized under Section 11, Republic Act No. 7659; without any modifying circumstance for consideration, he is sentenced to suffer and INDETERMINATE PENALTY of Seventeen (17) Years, Four (4) Months and One (1) Day of Reclusion Perpetua maximum as maximum (People vs. Muñoz, 170 SCRA 107); and to pay victim, Edna B. Durero, moral damage in the amount of Forty Thousand Pesos (P40,000.00) and exemplary damage in the amount of Twenty-Five Thousand Pesos (P25,000.00) (People vs. Cristobal, supra) but without subsidiary imprisonment in case of insolvency; to suffer the accessory penalties imposed by law; and, to pay the costs.

His preventive detention on June 6, 1995, up to the present, or a span/period of one (1) year, three (3) months and seven (7) days, shall be deductible, in full, from the penalty imposed herein.

SO ORDERED.<sup>[32]</sup>

Cabuntog appealed his conviction to the Court of Appeals.

In a decision, promulgated on 21 October 1998, the appellate court ruled:

WHEREFORE, the decision finding appellant guilty of rape is hereby AFFIRMED, subject to the modification that appellant is hereby sentenced to suffer the penalty of *reclusion perpetua*. The amount of P40,000.00 awarded to Edna Durero is hereby increased to P50,000.00. (People vs. Bondoy, 222 SCRA 216 [1993]).

In view of the penalty of *reclusion perpetua* imposed on appellant Nelson Cabuntog, the Division Clerk of Court is hereby ORDERED to refrain from entering judgment and to elevate the record to the Supreme Court for review, pursuant to Section 13, Rule 124 of the Rules of Court and in conformity with the ruling in People vs. Traya, 89 SCRA 274 (1979).<sup>[33]</sup>

Appellant now avers before this Court that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT HAD CARNAL KNOWLEDGE WITH THE COMPLAINT BY MEANS OF FORCE AND AGAINST THE LATTER'S WILL AND CONSENT.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.<sup>[34]</sup>

We sustain the conviction of the accused.

Prefatorily, the capacity of a deaf-mute witness to testify has long been recognized. In *People vs. Sasota*,<sup>[35]</sup> the Court stated:

Formerly deaf and dumb persons were considered incompetent witnesses. That theory, however, has been entirely dispelled. Experience and observation have shown conclusively that the mere fact that a person is deaf and dumb is not sufficient to justify the finding that he is incompetent as a witness.

x x x. When such a witness is produced, the court may ascertain whether he has the requisite intelligence; and the judge will allow the witness to adopt such mode of communicating his ideas, whether by

signs or writing, as, under the circumstances, may be deemed most satisfactory. The mode of taking the examination is a matter for the exercise of the sound discretion of the court, which must determine, in the first place, the necessity for an interpreter, and in the next place, the best method of arriving at a knowledge of the witness and of imparting that knowledge to the jury x x x.

x x x

No doubt it may sometimes be wise to examine into the capacity of such persons; but ordinarily, the only question will be as to the possibility of communicating with them by some certain system of signs. x x x.<sup>[36]</sup>

In this case, the victim does not seem to be mentally deficient. Her capacity to testify was only diminished by her inability to communicate like a normal person. Although almost unschooled,<sup>[37]</sup> she could write her name and she knew her age.<sup>[38]</sup> By using signs and signals, she was able to recount her ordeal before the court. Hence:

ATTY. MOLETA: (propounding questions)

Q Please tell the Court: Do you know this person seated i0n the accused's bench, this one?

A (Witness is standing [at] the witness stand pointing to the accused and then after pointing to the accused, raising her left hand in open palm and using her right forefinger and push making a sign to her palm in a through and through direction in a hard manner; and then the witness also has shown her fact in an [angry] mood and push her two palms to the witness stand and there was a sound and the witness is sobbing expressing her apparent anger while looking [at] the accused).

Q Tell the Court what happen(ed) to you on May 6, 1995 early morning between 3:00 t 4:00 o'clock?

A Witness pointing to her calendar on May 6 and then at the same time pointing to the accused. And witness again indicating her answer by raising her three middle fingers, small finger, ring finger and middle finger, as if they were drinking and pointing to the accused by holding her hand and dragging and then pushing her.

ATTY. VILLACES:

I request your Honor, that the Official Interpreter will interpret, your Honor.

OFFICIAL INTERPRETER:

She was dragged and pulled and brought towards and pushed to a wall and then she felt dizzy and then her private parts were being touched and then she was undressed and there were two persons. She demonstrated that both her hands were pulled to the left and right; then her breast(s) were touched and her pants were pulled down.

ATTY. MOLETA:

The witness demonstrating that her hands, your Honor, were held and then the two were signalling towards her private part.

COURT:

Q What is that two?

A The two took turns then pointing her vagina by using her forefinger and pointing to her private part; and then the other one which has a mole below the right eye; and then after abusing her the two laughed. (Witness indicating her answer by opening her mouth and at the same time pointing to the accused).

ATTY. MOLETA:

We would like to request the Interpreter, your Honor, to make into the record the fact that the witness has pointed to the accused, that was not entered into the record, your Honor, especially the name of the accused.

COURT:

That was indicated already.

ATTY. MOLETA:

What I mean, your Honor, is the Interpreter, will name the person pointed to.

Q Here is a signature above the typewritten name Edna B. Durero, complainant, found on page 1 of the record, is this signature your signature?

ATTY. VILLACES:

No basis, your Honor.

COURT:

Witness may answer.

A (Witness indicating her answer by nodding her head in a positive way up and down and then signalling as if writing her name).

ATTY. MOLETA:

We pray, your Honor, that this complaint be marked as Exhibit "C".

COURT:

Mark it.

ATTY. MOLETA:

And the signature of the complainant, your Honor, as Exhibit "C-1".

COURT:

Mark it.

Q In this Medical Certificate already marked EXH. "A", there is a signature above the typewritten name Edna B. Durero, is this signature your signature?

A Witness indicating her answer that this is her signature and in a positive nod, when she was examined by a Doctor. (Witness indicating again her answer by pointing to the instrument inserted both of her ears that a Doctor examined her and then signalling her private part that there was something taken and placed on the blade or an instrument and writing something or describing the examination conducted on her by the Doctor).

ATTY. MOLETA:

We pray, your Honor, that the signature of the witness as