

SECOND DIVISION

[G.R. No. 139470, November 29, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO2
ANTONIO B. BENOZA, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

SPO2 ANTONIO B. BENOZA was charged before the Regional Trial Court of Quezon City with the complex crime of Forcible Abduction with Rape. He was found guilty, sentenced to *reclusion perpetua* and ordered to indemnify the complaining witness P50,000.00 as moral damages and P50,000.00 as compensatory damages.^[1]

As narrated by Marife Buta, private complainant, on 22 June 1997, at around 8:30 in the evening, she was having supper in her house at No. 44 Lumot Cabalata Street, Tatalon, Quezon City, with her mother Procesa Buta and two (2) younger siblings when accused SPO2 Antonio B. Benozza suddenly barged into their house and poked a gun at them. He then pulled Marife from the dining table and uttered in a loud voice the words "*bastusan kung bastusan*" to her mother.^[2] Procesa Buta was stunned; she was not able to help her daughter. SPO2 Benozza then dragged at gunpoint a "surprised and shocked"^[3] Marife out of the house through a pathway to the street and forced her to board his owner-type jeep which he earlier parked in front of the barangay hall. He drove her to a beer house somewhere in Araneta Avenue where he ate and drank for three (3) hours with three (3) other male companions who arrived there ahead of them.

From the beer house, Benozza brought Marife to the *Town and Country Motel* in Sta. Mesa, Manila, where after entering the garage they alighted from the jeep and took a flight of stairs leading to the room assigned to them. The accused then removed his clothes and forced her to lie down on the bed by threatening her with his gun and saying "*P - - tang ina mo humiga ka na.*"^[4] He succeeded in removing her clothes despite her efforts to resist him by kicking him and pushing him away. He went on top of her. When she shouted for help, he held his shirt against her mouth. He tried to insert his private organ into her vagina but failed to do so completely because of her continued resistance. He kissed the different parts of her body and then went to the comfort room, presumably to relieve himself. Marife seized this opportunity to escape. She hurriedly put on her clothes and attempted to escape, but as she tried to, he placed a piece of jewelry and money on the bed and told her that should she escape he would tell the guard that she tried to rob him. Subsequently, he brought her home by dropping her off at the market near her house. She waited for her mother who had gone to Camp Crame to report her abduction, but after thirty (30) minutes a neighbor who was also a friend of the accused, arrived and forced her to go to the barangay hall where the accused called her inside where nobody was around and forced her to sign in the barangay logbook, afterwhich, she went home.

At dawn of the following day, 23 June 1997, her mother arrived. Marife was then brought by her mother to the Galas Police Station where Marife gave her written account of what happened to her and filed the corresponding complaint.^[5] In the afternoon of the same day, they went to the NBI where mother and daughter also executed written statements.^[6] Marife was examined by the medico-legal officer of the NBI. The findings of the physical examination revealed "no evident sign of extragenital physical injuries" on the body of Marife and her hymen was "intact and its orifice small (1.0 cm. in diameter) as to preclude complete penetration by an average-sized adult Filipino male organ in full erection without producing genital injury."^[7]

The accused admitted taking Marife out on the night of 22 June 1997 but denied having abducted, much less raped, her. He maintained that Marife was his "asset."^[8] As a police officer assigned and detailed at the Caloocan City Narcotics Division, he claimed he met Marife for the first time sometime in March 1997. She knew that he was also a resident of Barangay Tatalon and volunteered to give him information regarding drug activities in the area. Antonio then gave her his beeper and cell phone number so she could get in touch with him. Marife was able to give him information related to drug activities in Tatalon twice since their first meeting.

He testified that in the morning of that day, Marife phoned him and asked him to pick her up at her house as she had some information on a certain drug pusher. When he fetched her, she went willingly and her mother did not object to her going with him. He was not in uniform then and he did not have his gun with him because it was the day for registration of voters in the barangay and a gun ban was in effect. They rode his jeep and proceeded to Rhea Disco Restaurant along Araneta Avenue in Quezon City where they met some of his friends among whom were officials of Barangay Tatalon, Kagawad Benedict Bañega and Rolando Suico, a member of the *Lupon Tagapamayapa*. The meeting was pre-arranged by him and the barangay officials so that they could discuss the drug activities in the vicinity of Barangay Tatalon. He and Marife left the restaurant three (3) hours later and headed for Chow King Restaurant along Banawe Street in Quezon City where they ate and talked. Afterwards, he brought her home.

On his way home from Marife's residence, he met a man who informed him that the mother of Marife claimed that he (SPO2 Benozza) abducted her daughter. He requested that person to fetch Marife from her house to meet him in front of the barangay hall. When Marife arrived, she and accused went to the house of the barangay captain and there Marife belied her mother's claims. SPO2 Benozza and Marife were advised to have her statement blotted at the barangay hall. After they did what they were told, they both went home.

At 7:00 o'clock the following morning, SPO2 Benozza was invited to the Galas Police Station and told that he was being accused of rape. He immediately fetched Kagawad Bañega and they proceeded to the police station. At about 9:00 o'clock, they were joined by Marife and her mother. Upon the intercession of Kagawad Bañega, Marife executed a statement of desistance in the presence of her mother and Kagawad Bañega on the alleged promise of Benozza to marry her, to wit: *"Ako si Marife Buta, complainant sa abduction laban kay SPO2 Antonio Benozza, ay pansamantalang iurong ang demanda dahil sa pangako niya na ako ay kanyang*

pakakasalan sa lalong (ma)daling panahon."^[9] The statement was signed by Marife and Kagawad Bañega. SPO2 Benozza however, denied that he ever agreed to marry Marife because he never touched her and he was already married.

The defense presented Rene Mengote, the *barangay tanod* of Barangay Tatalon who was on duty the morning of 23 June 1997. He testified that at 1:30 a.m. he received a call from the barangay captain through his two (2)-way radio instructing him to take down the statement of Marife and place it in the barangay logbook. He prepared the blotter report dictated by Marife which refuted any accusation of abduction or mistreatment by SPO2 Benozza, especially by her mother.^[10] Barangay Kagawad Benedict Bañega also took the witness stand and confirmed SPO2 Benozza's account of their meeting at the Rhea restaurant.

The trial court, in convicting the accused, relied heavily on the testimony of Marife which it found credible and believable,^[11] while it was entirely unconvinced with SPO2 Benozza's version of the events relevant to this case.

Accused-appellant now insists that the court *a quo* erred in convicting him of forcible abduction with rape when his guilt had not been proved beyond reasonable doubt. He claims that the evidence of the prosecution is weak and insufficient to overcome the constitutional presumption of innocence. He primarily assails the credibility of Marife's story. He argues that Marife's testimony was awash with inconsistencies and incongruities. He contends that the evidence of the prosecution for the charges of forcible abduction is inconsistent and inherently improbable. Accused-appellant also claims that he should be acquitted of rape. He argues that Marife's "conduct immediately after was not consistent with human experience"^[12] and the manner by which the rape took place as narrated by her "defies imagination."^[13] Moreover, he claims that Marife was ill-motivated in filing the case against him, theorizing that it was her mother who pushed her into doing it.

We have repeatedly held that the evaluation of testimonies of witnesses by the trial court is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain circumstances of substance or value which, if considered, might affect the result of the case.^[14] Verily, a thorough review of the records and transcripts of this case discloses certain circumstances which to our minds render doubtful the commission of the crime charged.

First. While the private complainant insists that she went with Antonio against her will, the Court notes that no one other than private complainant's mother corroborated the claim of abduction. It is hard to believe that none of her neighbors noticed a man armed with a gun dragging Marife along the pathway leading out into the street where his owner-type jeep was parked when the pathway was less than a meter wide and they had to pass by clusters of houses.^[15] The vehicle of accused-appellant was also parked along the main road before the barangay hall which Marife also admitted was open twenty-four (24) hours a day.^[16]

It was quite odd that no one among the neighbors heard the commotion when accused-appellant supposedly uttered "*bastusan kung bastusan*" to Marife's mother in a loud voice and Marife also shouted "*Mama*" to Procesa as she was being

dragged out of her house by accused-appellant.^[17] More so when they were not the only occupants of the house but were actually just renting a room and the same was separated by light materials from the adjoining room occupied by the owner of the house and a child.^[18]

Marife also insists that she was taken without her consent to a beer house where she and accused tarried for three (3) hours. The story indeed sounds absurd. It runs counter to human nature and experience for a person who just abducted a woman with the intention of raping her to first enjoy a few rounds of drinks with several friends and openly expose his victim to public view. It is even more foolish and foolhardy that she be taken to a public place such as a beer house where she could be seen with her abductor and thus increase the possibility of his being seen and apprehended for his criminal act.

We find Procesa Buta's testimony of little help either. In fact, her recollection of what transpired differed significantly from that of her daughter. While Marife claims her mother was not able to come to her rescue because the latter was shocked (*natulala*),^[19] her mother claims that she immediately lost consciousness.^[20]

Whether a gun was used by the accused in intimidating Marife into submission is crucial to the prosecution's cause as it is essential to show that Marife was taken against her will. But there is sufficient reason to doubt its veracity. Again, other than the testimony of Marife, its existence was not corroborated by other witnesses, not even by her mother. Procesa never mentioned that the accused had a gun when he entered their house uninvited.^[21] This bolsters the belief that he had no gun at all as it would be unlikely that one would forget to mention such a thing since it is not an everyday experience that a man would barge into one's residence and snatch a family member without being armed.

We note with interest one peculiar incident immediately after the alleged abduction. Upon reporting the misdeed of the accused to the barangay captain at around 9:00 o'clock in the evening, Procesa was only advised to wait for her daughter at home because her daughter and the accused just went to a motel (*Ah ganoon ba ho Misis, hayaan mo Misis ibabalik naman yong anak mo ng buo pumunta lang yon sa motel hintayin mo na lang sa bahay niyo*).^[22]

Procesa testified that she did as she was told and did not demand an explanation for the barangay official's snide remark nor insist that he give her assistance.^[23] Such a reaction appears irreconcilable with a mother supposedly distressed with the abduction of her daughter. Nor can we understand why she waited for three (3) hours before going to Camp Crame to report the abduction after failing to get any help from the barangay captain. In fact, she went to Camp Crame only at 12:00 o'clock midnight.^[24] It was highly unusual, if not unnatural, that a mother would wait for several hours before taking any positive action to look for her daughter who was supposedly taken against her will and whose very life was already in imminent danger.

Second. There were material contradictions in the complaining witness' testimony which greatly diminished her credibility. She gave varying accounts of how she was

forcibly undressed and the location of the gun during the process. Thus, on direct examination, she said -

ATTY. SIBAL (to the witness): *While you were lying down, what happened next after that?*

A: *He first laid the gun beside and forcibly removed my pants and my shirt, sir x x x x*

Q: *While he was removing your pants and shirt, what were you doing?*

A: *I was still resisting and I was able to crawl and he was able to remove my pants and panty, sir.*

COURT (to the witness): *So he was able to remove your pants and panty at the same time?*

A: *Yes, Your Honor.*

ATTY. SIBAL (to the witness): *What happened next after that?*

A: *He again told me to lie on the bed, sir.*

Q: *Did you lie down?*

A: *When I was crawling, he was able to remove my shirt, pants and panty. I was crawling with my face down. But he held my body in order that I could face him and when I was already facing him, he went on top of me, sir.*^[25]

But on cross-examination less than a month later -

Q: *At that time that he was removing your panty, were you lying down on the bed?*

A: *Yes, ma'am.*

Q: *You were lying on the bed and where was the accused. Was he at the end of the bed or beside you in the bed?*

A: *He was in front of me and he was sitting on my knees while he was pulling down my panty.*

Q: *You are impressing this Honorable Court that he was sitted (sic) on your knees while removing your panty?*

A: *Yes, ma'am.*

Q: *On top of your knees.*

A: *Yes, ma'am.*

Q: *How could you have kicked him if he was sitted (sic) on top of your knees?*

A: *At first I was pushing him and if there was a chance to extricate myself from him a little bit at that time I kicked him.*

Q: *Were you using both your hands when you were resisting?*

A: *Yes, ma'am.*

Q: *And one of his hand is (sic) still holding his gun, is that correct?*

A: *Yes, ma'am.*