

EN BANC

[G.R. No. 142861, December 19, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO OMBRESO Y MUTIA ALIAS "ROWING," ACCUSED-
APPELLANT.**

D E C I S I O N

PER CURIAM:

This case comes to us for review from the Regional Trial Court, Branch 8, Malaybalay City, Bukidnon, which found accused-appellant Rogelio Ombreso guilty of rape and accordingly sentenced him to death and to pay complainant Lorlyn Dimalata moral damages in the amount of P50,000.00 and indemnity in the amount of P75,000.00.

[1]

The information against accused-appellant alleged:

"That on or about the 17th day of March 1998, in the morning at barangay Cayaga, municipality of San Fernando, province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, prompted by lewd design by means of force and intimidation on the person of LORLYN N. DIMALATA, a six (6) year-old-minor, did then and there willfully, unlawfully and criminally remove the panty of the latter who was asleep, insert his penis into the vagina of LORLYN N. DIMALATA and have sexual intercourse with LORLYN N. DIMALATA, against her will, to the damage and prejudice of the victim in such amount as maybe allowed by law."

[2]

Accused-appellant pleaded not guilty to the charge, whereupon he was tried.

The evidence for the prosecution established the following: Complainant Lorlyn Dimalata, the fourth of the five children of Angelito and Lucita Dimalata, was born on January 29, 1992. [3] At the time material to this case, she was only six years old. Accused-appellant Rogelio Ombreso, whom Lorlyn calls "Uncle Rowing," is the husband of her father's elder sister, Angelita Dimalata. [4]

On March 16, 1998, Lorlyn and her older sister Honeybee were left to the care of their paternal grandmother, Candelaria Dimalata, in Purok 2, Cayaga, San Fernando, Bukidnon by their mother, Lucita, as the latter had to stay for a few days in Malaybalay. [5] The next morning, March 17, 1998, while Lorlyn was still asleep and alone in the house as her sister Honeybee had to go to the bathroom, accused-appellant arrived. What transpired afterward is narrated by Lorlyn in court:

"Q While you were sleeping, can you recall if you were awakened from your sleep?

A Yes.

Q Why were you awoken from your sleep?

A (Witness no answer)

Q Now, on that morning of March 17, 1998, where was your Uncle Rowing?

A First he was in his house because according to him there is much noise in their house he transferred to the house of my Lola.

Q When your Uncle Rowing transferred to the house of your Lola Cande, what happened if any?

A He took off my panty.

Q What else did he do if any?

A He also removed his brief and his short pants.

Q Now, after he removed your panty and also removed his short pants and brief, what happened next if any?

A He placed himself on top of me.

Q Were you able to see his penis?

A No, because I was still asleep.

Q Was the penis of your uncle entered into your vagina?

A No, just here, (witness pointing to her vagina)

Q Lorlyn, if this is your vagina, where was the penis of your uncle?

A Just here. (witness pointing to the upper part of the vagina opening)

Q Where particularly, can you clearly demonstrate to the court where was the penis of your uncle in relation to your vagina?

A Here. (witness pointing to the same spot).

ASST. PROS. TORIBIO:

Your Honor, I demonstrate the diagram of the vagina.

INTERPRETER:

The prosecuting Fiscal demonstrated to the witness her right hand with her thumb and index finger that oval shape of the vagina and witness pointed to the place of the two fingers to demonstrate the position of the penis of his uncle with respect to her vagina.

COURT: (to the witness)

Q The penis of your uncle was it hard?

A Yes.

ASST. PROS. TORIBIO: (to the witness)

Q Did it take so long for the penis of your uncle to touch your vagina?

A Yes.

COURT: (to the witness)

Q Did you feel something coming out of the penis?

A No, Your Honor.

Q No fluid?

A None, Your Honor.

ASST. PROS. TORIBIO:

Q When the penis of your uncle was touching your vagina, what did you feel?

A I felt pain.

Q Why did you feel pain Lorlyn?

A Because he repeatedly pushed his penis (*bangga-bangga*)."^[6]

Lorlyn's testimony was corroborated by her elder sister, Honeybee Dimalata, who told the court that on March 16, 1998, she and Lorlyn slept in the house of their paternal grandmother Candelaria Dimalata and that in the morning of the next day, March 17, 1998, she saw, through a hole in the door, accused-appellant remove Lorlyn's clothes, place himself on top of her sister (*gihapaan*), and then cover themselves with a blanket. She said accused-appellant threatened to dump Lorlyn in a hole if she squealed.^[7]

On cross-examination, Honeybee said that only she and Lorlyn slept in the sala of their grandmother's house on the night of March 16, 1998 and that the next morning, March 17, 1998, their grandmother went over to accused-appellant's house, which was nearby.^[8]

The last prosecution witness was Lucita Dimalata. She testified that she arrived from Malaybalay at 4:00 in the afternoon of March 21, 1998 at the same time that Honeybee and Lorlyn came from the Seventh Day Adventist church. According to Lucita, she learned about the incident because Lorlyn told her that she was not going to get near her Uncle Rowing again, because he had removed her underwear and placed himself on top of her and "made a pump of his private parts." Honeybee confirmed what Lorlyn had said, because she saw the incident. Lucita asked Lorlyn whether she had told her grandmother about the incident. Lorlyn said she had not because accused-appellant had warned her that he would throw her into a hole if she did.^[9]

Lucita testified that she did not confront accused-appellant at once out of fear considering that he was the chairman of the Civilian Volunteers Organization (CVO) in their barangay. But, shortly afterward, accused-appellant came to wash the motorcycle which he operated for hire in a water faucet near her house. Upon seeing her, Lucita claimed, accused-appellant was surprised and hurriedly left without cleaning his motorcycle. As her suspicion was confirmed, Lucita took Lorlyn to the Bukidnon Provincial Hospital in Malaybalay on March 23, 1998 for an examination. The following day, she and her daughters, Lorlyn and Honeybee, executed affidavits in Camp Onahon, Malaybalay, Bukidnon, on the basis of which a complaint for rape against accused-appellant was filed on March 30, 1998.^[10] Lucita said the affidavits were executed in Camp Onahon in Malaybalay City rather than in San Fernando because accused-appellant had friends in the police force.^[11]

On cross-examination, Lucita admitted that she had a dispute with her husband's siblings over inheritance. She also admitted she did not immediately tell her husband about the incident, but she claimed that she kept quiet to ensure that accused-appellant would not be able to flee. She claimed that in 1987 her husband's nephew, Jovy Alabado, had raped her other daughter Hazel Faith but Alabado was able to escape, because Candelaria Dimalata helped him.^[12]

Accused-appellant, 43, testified in his behalf. He denied the allegations against him. A part-time motorcycle driver plying the Calangan-San Fernando route, he claimed that at around 6:00 in the morning of March 17, 1998, he left his house in Cayaga, San Fernando, Bukidnon and drove his motorcycle towards Calangan, two kilometers away, to pick up passengers bound for poblacion San Fernando. On that day, he said he twice plied his route, stopping only for lunch at San Fernando and going home to Cayaga at 4:00 in the afternoon. According to him, at no time on that day did he ever see Lorlyn.^[13]

Accused-appellant claimed that the rape charge against him was instigated by Lorlyn's mother, Lucita, whose claim concerning a piece of land he had opposed. He said that his wife and Lucita owned adjoining lots, but Lucita wanted to extend her landholding beyond the creek, which served as the boundary between the two lands. For opposing her claim, accused-appellant said, Lucita vowed to take revenge against him.^[14]

The other defense witness was Candelaria Dimalata, Lorlyn's grandmother, who was presented to corroborate accused-appellant's alibi. Candelaria testified that Lorlyn, Honeybee, and her five other grandchildren slept in her house in Cayaga, San Fernando, Bukidnon on the night of March 16, 1998. They had breakfast at 6:30 the next morning, after which the children went out to play. She denied ever leaving her house or having seen accused-appellant that morning. She admitted, however, that the distance of her house to the house of accused-appellant was only about 20 meters.^[15]

Like accused-appellant, Candelaria Dimalata said that Lucita filed the case against accused-appellant because they had a dispute concerning lands owned by Lucita and accused-appellant's wife.^[16]

The defense presented in evidence the medical certificate (Exh. "1") issued by Dr. Joselyn Baeyens of the Bukidnon Provincial Hospital, the authenticity of which was admitted by the prosecution.^[17] The certificate stated that Lorlyn was examined on March 23, 1998 and that no laceration or abrasion was found in her hymen and that she tested negative for spermatozoa.^[18]

On February 7, 2000, the trial court rendered judgment as follows:

"WHEREFORE, judgment is rendered finding accused Rogelio Ombreso y Mutia GUILTY beyond reasonable doubt of the crime of rape defined and penalized under Republic Act 8353 and hereby sentenced to suffer the penalty of death. In line with recent jurisprudence accused is further

ordered to indemnify his victim Lorlyn Dimalata the sum of P75,000.00 and moral damages of P50,000.00."^[19]

In this appeal, accused-appellant alleges:

"I. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND INCONSISTENT STATEMENTS OF THE PROSECUTION WITNESSES.

II. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF RAPE WHEN THE GUILT OF THE ACCUSED WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III. THE TRIAL COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH CONSIDERING THAT THERE WAS NO ACTUAL SEXUAL INTERCOURSE BETWEEN THE ACCUSED-APPELLANT AND THE ALLEGED RAPE VICTIM PURSUANT TO THE RULING OF THE SUPREME COURT IN THE CASE OF PEOPLE VERSUS PRIMO CAMPUHAN Y BELLO."^[20]

FIRST. Accused-appellant cites certain portions of the testimonies of Lorlyn, Honeybee, and Lucita Dimalata which he claims are incredible, to wit: (1) Lorlyn's testimony that her mother Lucita arrived from Malaybalay, Bukidnon on March 17, 1998 is inconsistent with Lucita's testimony that she came back from Malaybalay on March 21, 1998; (2) Lorlyn's statement that accused-appellant did not penetrate her allegedly contradicts her subsequent testimony that she felt pain in her sex organ as accused-appellant kept pushing his penis into her vagina; (3) Honeybee's claim that she did not call for help despite the fact that she allegedly saw her sister being molested by accused-appellant is contrary to human nature; and (4) the claim of Lucita that she did not confront accused-appellant after learning of her daughter's misfortune, nor even tell her husband about it, is likewise contrary to human experience.^[21]

These contentions relate to the evaluation of the testimonies of prosecution witnesses. We have time and again said that the evaluation of the testimonies of witnesses must be left to the trial court as the agency in the best position to observe the witnesses' demeanor on the stand.^[22] Unless shown that the trial court overlooked or misunderstood some facts or circumstances of weight and substance that could affect the result of the case, its findings on questions of facts will not be disturbed on appeal.^[23] In this case, we have reviewed the record and found nothing which would warrant a reversal of the trial court's findings.

The discrepancy in the testimonies of Lorlyn and Lucita as to the date when Lucita returned to Cayaga from Malaybalay has no bearing on the principal question whether accused-appellant had carnal knowledge of Lorlyn. Lorlyn, who was only 6 years old, could have been mistaken as to the date her mother came back from Malaybalay. It is more probable her mother arrived on March 21, 1998, as testified by the latter, since complainant was not examined until March 23, 1998. At all events what is noteworthy is that, immediately after her mother arrived, Lorlyn told her about the incident.

Nor do we find it inconsistent for Lorlyn to say that she felt pain in her sex organ