

THIRD DIVISION

[G.R. No. 136137, December 11, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CALIXTO "ALEX" BIONG (AT LARGE), ANTONIO DIOLA, ENRIQUE
"DODOY" MORALES (AT LARGE), ORLANDO "KOLOT" LEYSON
(AT LARGE), JOHN DOE (AT LARGE), RICHARD DOE (AT LARGE)
AND PETER DOE (AT LARGE), ACCUSED.**

ANTONIO DIOLA, ACCUSED-APPELLANT.

D E C I S I O N

VITUG, J.:

On 01 June 1996, fourteen-year old Carol Epis was in her grandparents' house in barrio Tuburan, Upper Ichon, Macrohon, Southern Leyte, when, about three o'clock in the afternoon, Rowena Leyson and Gemma "Jekjek" Morales invited her to go with them to barrio Sindangan, about five kilometers from Tuburan, to get the pair of pants of Rowena from her father-in-law Emong Leyson. A benefit dance, sponsored by the Kabataang Barangay, was scheduled at Sindangan that same evening but Carol Epis had no intention of attending the affair. Carol considered the two women as her friends as both frequently would pass time in the place of her *Tia* Egia, although Rowena, at 20, and Gemma, at 19, were way older than she was. After asking permission from her grandparents, Carol decided to go. As the girl would soon learn, it was a decision that would change her young life.

The three girls initially traversed the distance to Sindangan by foot but, after reaching a particular juncture in Ilihan, they took a tricycle ride for the remaining stretch of their journey. Arriving at Sindangan at five o'clock that afternoon, they directly went to the store of Inday Lim, where they sat on the store's adjoining wooden benches, staying there for the next two hours. Carol repeatedly told Rowena that they should now go and get her pair of pants but Rowena prevailed upon her to wait awhile. At eight o'clock that evening, the benefit dance started. Again, Carol tried to convince Rowena that they should now go but the latter insisted that they dance first. Rowena and Gemma headed for the dance floor while Carol, not being appropriately dressed for the occasion, remained seated at the store with Inday Lim and the latter's daughter, Elviza, for company. Meanwhile, a man, who later introduced himself to be Mario Maraon, approached her and asked her to dance but soon left when she begged off. Later, Antonio Diola also asked her to dance and when she again declined, he went back to his companions who were seated on a table. Moments later, Mario Maraon returned and quietly sat beside her. Silence engulfed both Carol and Maraon who obviously had nothing to say to each other. Momentarily, their silence was interrupted when Carol asked Maraon the name of the person who had just asked her to dance. Maraon answered that it was "Antonio Diola, alias `Mocoy.'" The persistent Diola convinced her to dance three more times, but she repeatedly refused him. Carol, who at eleven o'clock in the evening had still

not eaten dinner, decided to look for her erstwhile companions Rowena and Gemma but failing to find them at the dance hall or anywhere else, she returned to her seat at the store. She would have wanted to return to her grandparents' house in Tuburan but for lack of fare money and her fear of a dark and solitary journey home, the girl thought it best to just wait for her friends. After a while, she decided to proceed to the house of Emong, which was about 150 meters from Inday Lim's store, to look for them there. Not finding anyone in the house, Carol went back to the store where she inquired whether Rowena and Gemma had by then returned. She was told that they had not. She was sitting on the store's wooden bench when she met Dominga "Minggay" Cortina. After telling Cortina of her plight, the latter volunteered to accompany Carol to Emong Leyson's house. Finding nobody at the house of Emong Leyson, the two girls decided to return to the store. It was approximately three o'clock in the early morning of 02 June 1996 when they trudged back to Inday Lim's store.

Along the way, at a point near a school, they noticed seven men. Among the seven, Carol first recognized Antonio Diola, who was just wearing a "sando." She also recognized Enrique Morales alias "Dodoy," Calixto "Alex" Biong, and Orlando Leyson alias "Kolot." She did not know the names of the three others. After seeing the seven men, "Minggay" Cortina ran away, leaving Carol behind. Desperate, she yelled, "Minggay," but the latter did not respond. Left alone with their quarry, the seven men surrounded Carol and dragged her towards a secluded area behind the school building. Calixto Biong took hold of her, Orlando Leyson pulled her T-shirt while Enrique Morales held her by the neck. Pointing his hunting knife at her, Antonio Diola warned her not to make a sound. Orlando Leyson released her T-shirt and pulled down her short pants and her underwear. Calixto Biong began to touch her all over. Morales then held her feet, Leyson her hands and Diola kept her at bay with his knife. It was Calixto Biong who first ravaged her, followed by Orlando Leyson, Enrique Morales and the three others whom she could not identify. She tried to shout but they quelled her cries by covering her mouth with a cloth.

It was a harsh initiation for Carol into the carnal world, and the pain was unbearable. Antonio Diola, who continued to point the knife at her, himself did not sexually molest her. After having sated their beastly appetites, the group left her. Blood stained her pants. Not knowing what to do, the young girl went back to the house of Emong to look for Gemma and Rowena but, failing to find them there, she returned to the school, where, unable to sleep, she sat on a bench at an inconspicuous corner of the building and stayed there up until morning. It was five o'clock in the morning when she decided to take the one-hour hike homeward to Tuburan.

Carol did not immediately tell her grandparents about the incident for fear of their anger. It was only four days later when she found the courage to narrate her ordeal to Lucing Neri, a paternal aunt, who promptly relayed her sad tale to her grandfather. Her relatives accompanied her to the Macrohon police station and thereafter to the municipal health office for medical examination. According to Dr. Archimedes Demetrio, the vagina of private complainant proved negative of spermatozoa. But, to the examining doctor, it was only to be expected because the physical examination was made five days after the alleged rape. Medical findings further revealed the hymen to be no longer intact, and without any recent lacerations. Dr. Demetrio found old and healed lacerations, which, he opined, could not have been made just within the last five days.

Preliminary investigation yielded the names of four of the malefactors, while three remained unidentified. All but Antonio Diola had fled Sindangan, their whereabouts still unknown. Antonio Diola was the only one arrested and, on 04 March 1997, an accusatory Information was filed against him. Thus -

"The undersigned Prosecutor, acting upon a sworn complaint originally signed and filed by the offended party, hereby accuses CALIXTO BIONG alias `Alex', ENRIQUE MORALES, alias `Dodoy', ORLANDO LEYSON alias `Kolot', JOHN DOE, RICHARD DOE and PETER DOE, who are all at large, and ANTONIO DIOLA, who is presently detained in the Provincial Jail, Maasin, Southern Leyte, of the crime of Rape committed by them as follows -

"That on or about the second day of June 1996, at around 3:00 a.m., in barangay Sindangan, municipality of Macrohon, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with lustful intent and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously take turns in ravishing one Carol F. Epis, and successfully had carnal intercourse with said offended party without her consent and against her will, to the damage and prejudice of said Carol F. Epis and of social order."^[1]

Antonio Diola advanced the defense of *alibi* and introduced a succession of witnesses in an attempt to destroy the credibility of private complainant.

Witness Rowena Leyson denied having been a personal friend of Carol Epis and disclaimed having gone to the latter's house in Tuburan on 01 June 1996. She testified that, on 31 May 1996, three days before the alleged rape she was on her way to Sindangan with Gemma Morales to get a pair of trousers from her mother-in-law "Toning" Leyson. It was then when she first met private complainant on the road. She described the meeting as being brief and uneventful. Upon reaching Sindangan, Toning Leyson told her and Gemma that the pair of trousers were not yet finished. Since it was already late, she and Gemma decided to spend the night at Ilihan in the house of Belen Leyson, a relative, and there stayed until the afternoon of the next day. On cross-examination, the witness acknowledged as being the sister-in-law of accused Orlando "Kolot" Leyson and admitted personally knowing accused Antonio Diola and Calixto Biong and that it was the father of Diola himself who convinced her to take the witness stand.

A repudiation of the account of private complainant was also echoed in the testimony of defense witness Dominga "Minggay" Cortina. According to Cortina, she first met private complainant Carol Epis on 01 June 1996. At between 6:30 to 7:00 p.m., she had gone to the store of Inday Lim to buy something to eat when she saw Carol sitting on the bench. Obviously recognizing her as a newcomer in the area, she introduced herself and asked the other girl her name to which the latter replied, "I am Carol." Cortina said that after that fleeting encounter, she proceeded home to prepare herself for the benefit dance. The dance started at 10:30 p.m. When she returned later, she saw Carol still sitting on the bench. She stayed at the dance hall for only thirty minutes and thereafter went home with her cousin Sarah Jane Tenio.

It was eleven o'clock in the evening when she arrived home and never left the house after that. She denied having accompanied private complainant to the house of Emong Leyson, let alone being with her when the seven accused supposedly accosted them. Upon cross-examination, Cortina also disowned any acquaintance with Gemma Morales and Rowena Leyson.

Luzviminda Tiempo Lim, also known in the Sindangan neighborhood as "Inday Lim" admitted having personally known private complainant as the girlfriend of her trusted errand boy, Jonathan Biong, alias "Do." According to Lim, she first met Carol Epis when she and her family were swimming at a beach in Sindangan. There, she saw Jonathan Biong approach Epis and bring her food. Sometime in March or April of 1996, Carol, in the company of an unidentified girl, came to barangay Sumayod at Sitio Amparo in Macrohon. Again, in May that year, Carol stayed at Sindangan for three days in the company of Jonathan Biong. The witness was on board a motorcycle, driven by Jonathan Biong, on her way home from Maasin and Lumbag when she saw Carol standing by the roadside. Biong momentarily stopped and Carol hopped in. On 21 May 1996, Carol and Biong spent the night at the house of Aniceto Biong, the uncle of Jonathan. The following day, Carol and Biong spent the night at the house of Jonathan's aunt. The witness did not bother to ask Jonathan Biong about it because she knew he and private complainant were sweethearts and she respected their privacy. The witness said that she was certain that on the evening of 01 June 1996, Jonathan Biong was not in Sindangan because he was in Cebu. That night, Lim saw Carol Epis sitting on a store bench together with Minggay Cortina. When asked by the witness, the young girl replied that she was going to spend the night at Rowena's place.

Aniceto Biong declared that when he entered his house in Sindangan on 01 June 1995, he saw Carol Epis lying on the bed. He asked who she was and she remarked, "Do. Do and I are sweethearts," referring to Jonathan Biong, his nephew and the son of his brother Arcadio. After changing his clothes, Aniceto left for his farm. When he returned at five o'clock that afternoon, he saw Carol still there. She told him she was going to take her supper at the house of Boy Lim. Aniceto Biong took his dinner and spent the night at the residence of his sister, Maria Cortina, the mother of "Minggay" Cortina. The next morning of 02 June 1995, when he returned to his house to change into work clothes, he saw Carol inside but he noticed that his nephew was not around. After advising her to go home, he gave her some food to eat. He did not observe any change in her appearance nor any indication that she might have been subjected to a violent rape the previous night. It was the last time he ever saw her. When he later chided Jonathan about it, his nephew simply smiled.

Accused Antonio Diola testified that on the evening of 01 June 1996, at seven o'clock in the evening, he was preparing the sound system owned by his older brother, Matranillo Diola, at the dance hall, which was just a few meters away from his house. He admitted having seen Carol and Minggay at the store of Inday Lim. It was the first time that he saw Carol and only came to know her name during the preliminary investigation of the rape case. Diola said that the benefit dance ended at about two o'clock in the early morning. He brought the sound system, including the amplifier, home where he spent the night. He learned of the alleged crime only when three police officers accosted him on 01 July 1996. Accused admitted having known his co-accused Enrique Morales, who was a little older in years, as well as Calixto Biong, and Orlando Leyson who, at 14 to 15 years old, were relatively younger, than he was.

Witness Antonio Maturan corroborated the testimony of Antonio Diola. He stated that on the night of 01 June 1996, he was at the dance hall of Barangay Sindangan. When the affair came to an end at about two o'clock in the morning, he helped Diola return the equipment to the latter's house, which was about 15 meters from the hall. His own residence being a distant away, and it was already late, Diola invited him, and he acceded, to spend the night at Diola's house. The next day, he and Diola woke up at six o'clock in the morning.

The succession of its witnesses notwithstanding, the defense failed to convince the trial court of the innocence of accused Antonio Diola; it adjudged:

"WHEREFORE, judgment is rendered finding accused ANTONIO DIOLA alias `Mokoy' GUILTY beyond reasonable doubt of six (6) counts of Rape and sentencing him to six (6) determinate, indivisible penalties of RECLUSION PERPETUA subject to Article 70 of the Revised Penal Code, and to pay the costs.

"Accused Diola is also liable for civil indemnity for moral damages at P50,000.00 per rape or a total of 300,000.00 to the private complainant Carol Epis in line with current jurisprudence.

"The accused is entitled to the full period of his preventive imprisonment to be deducted from the period of his original sentence."

Accused Antonio Diola has appealed his conviction. Appellant has raised nine assignments of error, which, in sum, assail the reliance made by the court *a quo* solely on the account of private complainant in utter disregard of the testimony of the defense witnesses. He argues that the dismissal of his defense of *alibi* by the trial court in the face of overwhelming corroborative testimony is unjustified.

The Court is not prepared to accept appellant's plea and to disregard the assessment made by the trial court. The test of credibility is not necessarily a question of numbers nor a function of an appellate court more than that of the trial court. Repeatedly, the Court has called attention to the fact that it is the trial court which can be afforded the unique opportunity to observe the witnesses on the stand. The manner witnesses testify - the hesitant pause, the nervous voice, the undertone, the befuddled look, the honest gaze, the modest blush, or the guilty blanch - is a significant *indicum* in aptly assigning value to testimonial evidence. The evaluation made by the trial court on the credibility of witnesses is rightly accorded respect and it is not interfered with except only, as so often held, when any circumstance would indeed appear to have been patently overlooked or misconstrued that the appellate court could be constrained to do otherwise.^[2]

In the case at bar, the Court is not justified to ascribe to the trial court any such error.

The narrative of private complainant was clear and unwavering in placing appellant at the scene of the crime. She convincingly detailed his exact participation when she was waylaid and subjected to a most horrifying ordeal. She testified thusly:

"Q.Since nobody responded from the house of Emong Leyson, where did you go?