

EN BANC

[G.R. No. 129693, January 24, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY CORTES Y CABALLERO, ACCUSED-APPELLANT.

D E C I S I O N

PURISIMA, J.:

Before the Court for automatic review is the Decision^[1] of the Regional Trial Court of Masbate, Branch 46, in Criminal Case No. 7978, convicting the accused-appellant, Rudy Cortes y Caballero, of the crime of rape committed against Analiza Germina y Banculo, sentencing him to suffer the supreme penalty of death, and disposing thus:

"WHEREFORE, the Court finds the accused Rudy Cortes y Caballero guilty beyond reasonable doubt of the crime of rape defined under Art. 335 of the Revised Penal Code with three (3) attendant aggravating circumstances a crime penalized under R.A. No. 2632 and R.A. No. 411, and hereby imposes to the accused the supreme penalty of DEATH and to indemnify the victim, Analiza Germina, the sum of P50,000.00 as moral damages, and to pay the costs.

SO ORDERED."^[2]

Filed on January 16, 1996, the Information charging the accused-appellant with the crime of rape, alleges:

"That on or about September 29, 1995, at about 12:00 o'clock midnight, at Sitio Balik-Balik [sic], Barangay Poblacion, Municipality of Baleno, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, by means of violence and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge with Analiza Germina y Banculo against her will and consent.

CONTRARY TO LAW."^[3]

The inculpatory facts and circumstances complained of can be culled as follows:

The private Complainant, Analiza Germina y Banculo, seventeen years old (17), was the lone occupant of her parents' house at Sitio Balik-Balik [sic], Poblacion, Baleno, Masbate, as she was studying in the nearby Baleno High School. Her parents were then staying in another house at Barangay Batuila, Baleno, Masbate.^[4]

At around midnight of September 22, 1995, Analiza was suddenly awakened by a heavy weight pressing down upon her.^[5] Since the house was lighted, she

recognized her attacker, Rudy Cortes y Caballero, who is her brother-in-law. Accused-appellant pointed a knife at her throat and covered her mouth with a handkerchief.^[6]

Despite Analiza's struggle to free herself, the accused-appellant succeeded in removing her underpants.^[7] With his one hand poking a knife near her throat, and the other holding her hand, he positioned his legs on top of the legs of Analiza and forcibly inserted his penis into her vagina even as the latter felt a strange onslaught of pain.^[8] After consummating his crime, accused-appellant warned Analiza to keep the incident to herself or he would kill her; wielding his knife to signify the threat.^[9]

On November 12, 1995, Analiza had gathered enough courage to report the incident to her mother such that on November 17, 1995, she was brought to Dra. Marilou A. Hernandez for medical examination.^[10] The pertinent portion of the medical report dated November 11, 1995, stated:

"hymenal healed laceration at 6:00 o'clock position Vaginal os admits two fingers with ease."^[11]

Accused-appellant interposed alibi as a defense. He declared that in the night of September 29, 1995, he was inside his house in Sog-ong, Baleno, Masbate. According to him, the victim had a misunderstanding with her older sister, Elsa Cortes, (his wife) because they advised the victim not to allow her boyfriend to sleep in their parents' house in Balic-Balic.^[12] This version of accused-appellant was corroborated by his wife Elsa Cortes, who testified that from 6:00 o'clock in the evening of September 29, 1995 until the following morning, accused-appellant was in their house. Elsa likewise confirmed the alleged misunderstanding between her and Analiza.^[13]

On April 28, 1997, the trial court came out with the judgment of conviction under automatic review. The defense contends that:

I

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

II

THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO INDEMNIFY THE VICTIM IN THE AMOUNT OF P50,000.00 AS MORAL DAMAGES AND TO PAY THE COSTS.^[14]

It is doctrinal that the evaluation by the trial court of the testimony of a witness is accorded with highest respect because the trial court had the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying and therefore, competent to determine whether or not the witness is telling the truth.^[15] In the case under scrutiny, the trial court gave credence to the testimony of the rape victim, ratiocinating thus:

"The victim in testifying how the crime of rape was committed against her was straightforward and direct on the material facts which has all the earmarks of truthfulness"^[16]

Indeed, the victim's truthfulness can be gleaned unerringly from her testimony, to wit:

"xxx

Q While you were sleeping on that date September 29, 1995 at about 12 midnight inside your house, will you tell us if something unusual happened?

A I was awakened when somebody was on top of my stomach and he was pointing a knife at my throat and he covered my mouth with a handkerchief ... and he removed already my shorts and panty.

Q What did you do when you realized that somebody was on was already removing your shorts?

A I struggled.

Q How did you struggle?

A I tried to wiggle.

Q Did you shout for help?

A I could not shout because my mouth was covered with a handkerchief.

Q Were you able to recognize that person?

A Yes, sir.

Q Who is that person?

A That one (witness pointed to somebody inside the courtroom)

Q You pointed to somebody inside the courtroom, will you tell us the name of that person you have just pointed, if you know?

A Rudy Cortes.

xxx

Q Alright, going back to the sexual assault against you, what happened next after you said you struggled when you realized that he was sexually molesting you?

A I cannot do anything because he was stronger.

Q What happened when you failed in your struggle to resist the sexual assault of Rudy Cortes?

A His sexual organ penetrated in (sic) my sexual organ.

Q How many times?

A Only once.

Q After Rudy Cortes succeeded in molesting you sexually,

what happened next?
A *He walked away and he told me that if I will tell my parents of what he did to me he will kill me.*

Q *He was still holding that knife?*
A *Yes, sir.*

Q *What kind of bladed weapon was that?*
A *It was a knife, I don't know how long is it (sic).*

Q *Did you sustain injury on your throat when a knife was poked at you by Rudy Cortes?*
A *None, sir.*

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Q *What did you feel when the sex organ of Rudy Cortes penetrated your sex organ?*
A *I felt pain.*

Q *Was it the first time that you experienced that?*
A *Yes, sir.*

xxx xxx xxx"^[17]

Even on cross examination, the probings of the defense failed to disturb the firm and straightforward testimony of the victim:

"xxx xxx xxx

Q *When you woke up you were still in your evening wear or with your clothes on?*
A *Yes, sir.*

Q *These were not taken away by the alleged assailant?*
A *He was not able to take off my t-shirt.*

Q *How about your shorts?*
A *He took off my shorts.*

Q *Did you try to assist him in taking out your shorts?*
A *No, sir.*

Q *How did he take off your shorts without your assistance?*
A *While he was pointing the knife at me that was the time he took off my shorts.*

Q *Where was the knife pointed at?*
A *At my throat.*

Q *Was your throat lacerated at all?*
A *No, sir.*

Q *So the knife was not placed so near your throat, it was at a distance?*

A *Very near.*

Q *How about your hands, where were your hands situated all along?*

A *While I was asleep, (sic) my hands were on my chest and when I woke up I pushed him.*

Q *Did you push him hard?*

A *Yes, sir.*

Q *So because you pushed him hard you were able to stand up?*

A *No, sir.*

Q *Why not?*

A *Because I cannot overcome because he is stronger as a man.*

Q *Because you cannot push him by the use of your hands, what did you do with your hands while he was raping you?*

A *I used my hands by pushing him.*

Q *You continued to push him until after the incident?*

A *Yes, sir.*

Q *How were you able to know that the sex organ of the assailant entered your sex organ?*

A *Because it was painful.*

Q *It was only painful so you presumed that the sex organ of the assailant entered your sex organ?*

A *Yes, sir.*

Q *Are you sure it was not the fingers of the assailant which entered your sex organ?*

A *No, sir.*

Q *How could you be so sure?*

A *Because his one hand was pointing a knife at me and I was very sure that his sex organ was the one that penetrated my sex organ.*

Q *What was he doing with his free hand?*

A *He was holding my other hand.*

Q *How did he open your legs when he was preoccupied with his hands?*

A *His two legs were at the top of my legs.*

Q *How many minutes was the assailant on top of you?*

A *One hour.*

Q *From 12 midnight to 1:00 o'clock in the morning?*