

FIRST DIVISION

[G.R. No. 132053, March 31, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANILO TAYAG Y LUCIANO, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

Accused- appellant Danilo Tayag appeals his conviction for forcible abduction with rape committed against the 9 year old^[1] Lazel Tan. The information^[2] alleges:

"That on or about February 23, 1991, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously abduct, take and carry away said LAZEL TAN Y CARABEDO, a minor, 10 years of age, by means of force and violence, to wit: by then and there covering her mouth with a towel and bringing her under the coconut tree, against her will and consent and with lewd designs, and once there, said accused, by means of force and intimidation, by then and there inserting the towel in her mouth, tying her in a tree, kissing and biting her lips, slashing her neck and left leg, boxing her twice in the belly, threatening to kill her should she resist and had carnal knowledge of her against her will."

Prosecution evidence show that on February 3, 1991 at about 9 P.M., while Lazel was watching a dance at Brgy. 656, Zone 69, Maestranza Compound, Intramuros, Manila, the accused seized her hands from behind. He gagged her mouth with a towel and pushed her toward his house. With a bolo, he drew her to a nearby coconut tree. He tied a towel on her head, raised her hands and bound them to the trunk. He also secured her feet at the trunk, pressed the bolo against her legs then kissed and bit her lips. Next, he hit her on the stomach and she lost consciousness.^[3]

When Lazel recovered consciousness, she felt pain all over her body. The accused approached her and dealt her another blow. Again, she fainted. When she revived, the accused sliced her left leg with his bolo. At this point, Lazel realized that her panty had been taken off. Her private part ached.

The accused threatened to put her in a sack and throw her at the river. He left, purportedly to get the sack while Lazel remained tied to the tree. Frightened by his threat, Lazel began tugging her hands. She succeeded freeing both hands. She put on her panty and ran home. She went straight to bed. Her sister asked her where she had been. Lazel did not answer afraid that the accused might execute his threat to kill her if she told anyone about the incident.^[4]

Lazel prepared to go to school the following morning despite her ordeal that evening. She changed her clothes and saw blood on the underwear she wore.^[5] She walked with her mother, Jovita, to school. Jovita saw the wound on her leg. She asked Lazel how she was wounded. Lazel replied that she slipped on the aisles at school. She lied distressed by the threat of the accused.

At school, her classmate named Mary Grace, likewise noticed her wound. She asked Lazel about it and this time, Lazel revealed everything to her. Mary Grace informed their teacher that Lazel was molested. Their teacher in turn passed the information to their principal. Lazel and her mother were called for a meeting. Lazel recounted to them the hideous episode. After discussing what should be done, Lazel and her mother reported to the police. Lazel executed a statement^[6] and underwent a medical examination.^[7]

Dr. Marcial Cenido found a superficial laceration on Lazel's tongue, abrasions at the lower labial region of the lower lip, left and right side of the neck, upper middle third left anterior thigh and lower third left anterior thigh. Her hymen, although still intact, bore a slight reddening at 3 o' clock position.^[8]

The police launched a manhunt against the accused. They did not find him. In the meantime, Lazel went to their province to forget the incident. Court

In February 1994, the accused's common-law wife, Amelia Yumang, visited Lazel's mother and disclosed that the accused had raped his daughter. She revealed the whereabouts of the accused which they reported to the police. Accompanied by policemen, they proceeded to the vicinity of Jade Vine Restaurant where the accused was arrested. Jovita then brought Lazel to the police station to identify the accused. Lazel executed another statement.^[9]

The accused, a former neighbor of Lazel, denied the charges against him. He claimed that he is not Mang Boy whom Lazel referred to in her statement. Lazel knew him as Mang Danny. Other people call him Danny Buko because he sells coconuts. He alleged that at the time of the incident, he was with his children waiting for his common-law wife in front of Alemar's. They spent the night there on cardboard boxes.

The accused added that he did not hide from the police. All the while, he sold coconuts in front of Jade Vine Restaurant until he was arrested. In 1991, he lived at Maestranza compound. In 1992, he met his second live-in partner, Mercy Anza, and cohabited with her at Balut, Tondo, Manila. He parted with Amelia because of a serious quarrel about her drinking. Amelia went to Lubao, Pampanga where she married another man. She brought with her their children.

The accused alleged that the charges originated from Amelia's hatred against him. Once, Amelia and Mercy had a squabble. He sided with Mercy and slapped Amelia. Amelia asked him to leave Mercy and live with her again, or else, she would put him in jail. He refused and challenged Amelia to do anything she wants.

The next day, four (4) policemen arrested him. They took him to the General Assignment Division, Western Police District Command (WPDC) where they forced

him to admit that he was Mang Boy. He denied he was Mang Boy and insisted he was Mang Danny. He was kicked, boxed and thrown down the stairs. They forced him to sign the Booking and Information Sheet.^[10]

The son of the accused, Dennis Tayag,^[11] corroborated his defense. Dennis declared that they were selling coconuts at Ermita at the time of the incident. After selling coconuts, Dennis went with his mother at Casino where they sold Sweepstakes tickets up to 12 P.M. His other siblings remained with his father in front of Alemar's.

He was with the accused when the latter was arrested on February 1994. Dennis read the news reports about his father's arrest and the alleged rape of his sister. He asked his sister and mother about them. His sister cried and denounced them as lies. His mother answered that somebody induced her to cause the arrest of the accused. Nonetheless, his mother and uncle prevented him from making statements in favor of his father.^[12]

The trial court convicted the accused. It did not believe his defense and branded it an exercise in futility. It did not give any weight to the testimony of Dennis because of his filial relationship and held that his testimony contradicted that of the accused's. It observed that Lazel was straightforward, positive and convincing on the witness stand. It appreciated her lack of motive to falsely testify against the accused.^[13]

The dispositive portion of the Decision reads:

"WHEREFORE, PREMISES CONSIDERED, the prosecution having fully established the guilt of the accused beyond reasonable doubt, this Court finds him, DANILO TAYAG Y LUCIANO, GUILTY beyond reasonable doubt of the complex crime of Forcible Abduction with Rape under Article 48 in relation to Article 335 and 342 of the Revised Penal Code of the Philippines as charged in the information, and hereby sentences him to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law; to indemnify the private complaint the sum of Fifty Thousand (P50,000.00) Pesos by way of moral damages; and to pay the cost of this suit."^[14]

In this appeal, accused-appellant assigned a single error committed by the trial court, *viz.*:

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

Accused-appellant contends that if Lazel's story was true, other people should have witnessed her abduction. In addition, he could not have raped Lazel while she was tied around the coconut tree as she claimed that her feet were tied together. He argues that in this position, coitus is impossible. He stressed that Lazel did not even see him naked nor insert his private part in her sex organ. Even the medico-legal