

SECOND DIVISION

[G.R. No. 133857, March 31, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY AMIGABLE, ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

JOEY AMIGABLE appeals from the decision of the court *a quo* finding him guilty of rape, sentencing him to *reclusion perpetua* and ordering him to indemnify his victim the amount of P50,000.00.^[1]

In an Information dated 23 April 1997 accused-appellant was charged with rape by thirteen (13)-year old Olivia Gallo with the aggravating circumstance of taking advantage of superior strength.

The evidence shows that Olivia resided in Barangay San Andres, Tanay, Rizal, in a house a portion of which was a store selling bread and liquor owned by her grandmother. Adjoining the store was a room occupied by Olivia together with a younger brother aged ten (10), younger sisters aged five (5) and seven (7), and a fifteen (15)-year old cousin Maricel. Some twenty-five (25) meters away was a separate structure where her mother Melencia Dino and her husband, Olivia's stepfather, lived.

On 26 January 1997 at around 8:30 in the evening while Olivia was reading a book after closing the store, accused-appellant Joey Amigable arrived with *Allan Ga* and *Kuya Badong*. They prevailed upon Olivia to open the store as they wanted to buy gin. Olivia acceded. Joey and his companions then started to drink at the *pahulog* or extension of the house outside the store.

After consuming five (5) bottles of gin at around midnight, the "guests" stopped drinking but continued to converse until 2:00 in the morning. Thinking that they had already left, Olivia went out of the house to answer the call of nature. It turned out that she was mistaken as accused-appellant stayed behind and stood near the door. When Olivia passed by he pulled her by the hand and told her that his brother *Boboy*, who was courting her, wanted to talk to her. Olivia did not oblige him because, according to her, it was already late in the night. Accused-appellant then pulled Olivia again and covered her mouth with his hand. Olivia struggled and fought back to free herself from Joey's grasp, but he forcibly dragged her to a small half-finished unoccupied house belonging to a certain Joseph situated about twenty (20) meters from the store.

As they entered the house Joey threw Olivia down the concrete floor and told her not to move otherwise he would kill her. Then he started removing her dress. She resisted and fought hard but Joey told her not to shout and threatened to kill her

and her family should she disobey. He impressed Olivia that he was pulling a weapon from his pocket to keep her in check. He then removed her shorts and panty, kissed her on the cheeks and breasts until he was able to insert his penis into her vagina. Olivia continued to push Joey away but her efforts proved futile.

Meanwhile, Olivia's mother was awakened by Maricel who told her that Olivia was missing. Melencia and her husband instinctively proceeded to the house of Olivia's grandmother but did not find her there. They searched the neighborhood and when they saw the unfinished house they decided to look for Olivia inside. As they pushed the door open they saw Olivia lying on the floor half naked while Joey was already wearing his shorts. Olivia ran to her mother crying and embraced her. When confronted by Melencia, Joey replied that he was terribly embarrassed for what he did, and Melencia could only curse him.

Olivia revealed on the witness stand that even before the incident on 27 January 1997 she had already been raped twice by Joey, first at the back of the school house when she was only ten (10) and was a fourth grader, and the second rape took place at the same unfinished house before the wedding of Olivia's older sister on 20 January 1997.

On the same day Olivia was raped for the third time, for which Joey now stands charged, Melencia went to the Tanay Police Station to file a complaint against him. The following day, Olivia was brought to Camp Crame for medical examination where the Medico Legal Officer and Police Senior Inspector Emmanuel M. Reyes found Olivia's hymen with "deep healed lacerations at 4 and 11 o'clock." Dr. Reyes further observed that Olivia had menstruation at the time she was raped on 27 January 1997.

Accused Joey Amigable denied the charge and invoked alibi. He testified that between 8:00 and 11:00 in the evening of 26 January 1997 he was in front of Olivia's store together with *Allan Ga* and *Badong Arayat* waiting for the bulldozer that would repair Samlay road; while waiting, they ordered and drank three (3) bottles of beer; at 11:00 in the evening Joey Amigable and his companions left for home; after his companions left, he and his wife went to sleep. This story of Joey was corroborated by his wife Lolita Amigable.

Assailing his conviction, accused-appellant Joey Amigable contends in his Brief that no rape was committed on 27 January 1997 in view of the finding of the medico-legal officer that (a) he found healed, not fresh, lacerations on the victim one day after the incident; (b) if there was any sexual intercourse, it must have occurred more than a week prior to the medical examination; and, (c) it is very remote that there was sexual intercourse on 27 January 1997. He argued that complaining witness was at the time of the incident barely thirteen (13) years old; the absence of fresh lacerations in her sex organ despite her declaration that she was hurt when appellant abused her for half an hour makes her story incredible and not in accord with human experience and the natural course of things.

We cannot sustain accused-appellant Amigable, as we affirm the finding of the court *a quo* that his guilt has been established beyond reasonable doubt. Indeed, there exists no cogent legal basis to disturb the finding of the trial court upholding the credibility of Olivia Gallo whose demeanor when she testified was carefully observed by the trial court and found to be sincere, honest and worthy of belief. Our own

perusal of the records yields no reason to disturb the factual findings of the court *a quo* which by well-established precedents are given weight and accorded high respect by the appellate court which cannot be in a better position, by simply reading the cold transcripts, to decide the question of credibility.^[2]

Complaining witness Olivia Gallo gave a thorough narrative of what transpired and so found to be credible by the trial court and this Court, thus -

Q: When this Joey Amigable was pulling you you did not try to shout?

A: He covered my mouth.

Q: And after he covered your mouth what else did he do?

A: He brought me to a house near our house where there is no one living.

Q: How did he bring you (to) that place?

A: He covered my mouth and pulled me.

Q: How far is that house, uninhabited house from your store?

A: Around 20 meters, sir x x x x

Q: After he brought you inside that room, what else happened?

A: That is where "ginalaw niya ako."

Q: What do you mean by "ginalaw?"

A: He raped me x x x x

Q: What happened to your dress when you were brought (to) the room.

A: He removed it.

Q: What did you do if any while Joey Amigable was removing your dress?

A: I was struggling x x x x

Q: And when you said rape, what do you mean by that?

A: He kissed me.

Q: Where did he kiss you.

A: In the lips, sir.