

## FIRST DIVISION

[ G.R. No. 130669, March 27, 2000 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WILSON MITRA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

Once again, a man's bestiality is up for judgment by the Court. The case at bar involves the traumatic experience of a young girl robbed of her innocence by a man who admitted defeat in the face of his lust. The appellant Wilson Mitra was convicted of the crime of rape committed against the 14-year old provincial lass, Marites B. Eliang, and was sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the victim in the amount of P100,000.00 for moral damages and P50,000.00 for exemplary damages and to pay the costs.<sup>[1]</sup> The Information charging the appellant of the said crime reads:

"That on or about the 23rd day of May, 1996, in Barangay Bayaoas, municipality of Urbiztondo, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force or intimidation, did then and there, willfully, unlawfully, and feloniously have sexual intercourse with Marites B. Eliang against her will and consent, to her damage and prejudice.

Contrary to Article 335 of the Revised Penal Code."<sup>[2]</sup>

When arraigned, the accused pleaded not guilty of the crime charged.

The prosecution's evidence shows that on May 23, 1996, at about 4:00 in the afternoon, Marites was cooking her family's supper in the kitchen of their house in Barangay Bayaoas, Urbiztondo, Pangasinan.<sup>[3]</sup> Thereupon, the appellant knocked and borrowed a *bolo* from her. Without fear nor hesitation as the appellant was her neighbor, Marites told the appellant to just get the *bolo* at the back of the door. Once in possession of the *bolo*, the appellant approached Marites, seized her left wrist, pointed the *bolo* at her and threatened her not to shout or else he would pierce her with the *bolo*.<sup>[4]</sup> Marites struggled to break free from the appellant's hold, but to no avail because the latter proved to be much stronger than her.<sup>[5]</sup> The appellant then forcibly brought Marites to their bedroom where she was laid on a bed.<sup>[6]</sup> She continued to struggle, but was quelled by the appellant's reiteration of his threat that she would be pierced with the *bolo* if she shouted.<sup>[7]</sup> The appellant then started kissing her on the lips and embracing her.<sup>[8]</sup> Thereafter, the appellant removed her shirt, *sando*, shorts, and panty, and likewise removed his shorts and

brief.<sup>[9]</sup> He then straddled the victim and forced an intercourse.<sup>[10]</sup> During the entire sexual assault, the appellant pointed the *bolo* at Marites. He also covered Marites' mouth with his other hand to keep her from shouting.<sup>[11]</sup>

Having satisfied his lustful desires, the appellant then ordered Marites to sit down and threatened her not to tell her parents about the incident lest her whole family would be killed.<sup>[12]</sup> Marites then dressed herself up, and the appellant also put on his clothes and left the Eliang residence.

On June 26, 1996, approximately one month after that fateful day in May, Marites mustered enough courage to tell her parents about the May 23 incident because she learned that the appellant had already left for Manila the previous day.<sup>[13]</sup> On June 27, 1996, Marites' father, Manuel Eliang, accompanied her to the Urbiztondo Police Station to report the rape incident.<sup>[14]</sup> The report was entered in the police blotter<sup>[15]</sup> by one SPO1 Teofilo Garcia. Thereafter, SPO1 Garcia along with another police officer accompanied Marites and her father to the San Carlos General Hospital in Pangasinan<sup>[16]</sup> where one Dr. Araceli Callao examined Marites and subsequently issued a medical certificate dated June 27, 1996 with the following findings:

"PERINEUM: No sign of external injuries noted  
HYMEN: With old incomplete lacerations at 5, 6, & 8 o'clock positions  
VAGINA: Admits 1 finger with ease  
CERVIX: Soft, close"<sup>[17]</sup>

Dr. Callao testified that the above findings indicate that the victim may have experienced sexual intercourse at least a month previous to the examination.<sup>[18]</sup>

After being physically examined, Marites went back to the Urbiztondo Police Station and gave a sworn statement narrating the incident of May 23, 1996.<sup>[19]</sup> Thereafter, on July 10, 1996, Marites filed a criminal complaint against the appellant.<sup>[20]</sup>

The defense had a different story to tell. The appellant testified that on May 23, 1996, from 7:00 a.m. to 5:00 p.m., he was in his house which was then under construction. He was with a carpenter named Eddie, a certain Mama Pering, his wife, and his grandmother.<sup>[21]</sup> On that day, he also went back home to his parents-in-law's house where he was then staying and which was located next to the Eliang residence.<sup>[22]</sup> The house of the appellant's parents-in-law stood between appellant's house which was then being constructed and the Eliang residence.<sup>[23]</sup>

The appellant also testified that he had known Marites for eight years and had treated her like a younger sister.<sup>[24]</sup> Marites, however, was very sweet to him and even wrote to him a letter in June 1996 and also told him in person that she had special feelings for him.<sup>[25]</sup> He returned the letter to Marites for fear that it might cause a quarrel between his wife and himself.<sup>[26]</sup> Thereafter, he saw and even talked to Marites almost everyday because she would watch television at the house of the appellant's parents-in-law where the appellant was staying. In one of their conversations, appellant told Marites to treat him like an older brother.<sup>[27]</sup>

Nonetheless, he claims that Marites remained sweet to him, until one day, she cried professing her unrelenting love for him.<sup>[28]</sup> The appellant then tried to avoid Marites, but she pursued him. Finally, on June 23, 1996, he told her that he and his family were moving to Manila. The appellant's family then stayed in Manila until the appellant was offered a driving job in Batangas.<sup>[29]</sup> On August 16, 1996, the appellant learned of the instant case when he was arrested by virtue of a warrant of arrest issued on August 6, 1996.<sup>[30]</sup>

To corroborate the appellant's story, the defense presented 10-year old Corazon Lomboy, appellant's niece-in-law who lived with appellant in the house of his parents-in-law. Corazon testified that Marites was a flirt.<sup>[31]</sup> She cited one instance when she saw Marites putting *camote* into the mouth of the appellant<sup>[32]</sup> and another instance when Marites followed the appellant inside the bathroom.<sup>[33]</sup> She also testified that Marites asked her to give appellant her (Marites') letter to him which said "I love you" at the bottom.<sup>[34]</sup> Consistent with the testimony of the appellant, Corazon further testified that Marites would watch television in the house of appellant's parents-in-law because there was no television and electricity in Marites' house.<sup>[35]</sup> Virginia Olieca, an employee of the sole electric company supplying electricity to Urbiztondo, Pangasinan, confirmed that Manuel Eliang, the father of Marites, was not a subscriber of electricity.<sup>[36]</sup>

A certain Zaldy Ramos was also presented as a witness by the defense. Claiming to be a photographer by profession, he took photographs of the residence of the Eliang's and noted that the distance from their house to an artesian well, which the defense claimed to be a public well,<sup>[37]</sup> was only about ten (10) meters,<sup>[38]</sup> as opposed to the testimony of Marites that the distance was about one hundred (100) meters.

The trial court sustained the prosecution's version of the rape incident. It found that the appellant intimidated Marites with bodily injury using the *bolo* he borrowed from the latter and sexually abused her in her house on May 23, 1996. It thus convicted the appellant of the crime of rape and imposed upon him the penalty above-stated. Hence, this appeal by the accused with the following assignment of errors:

- I. The trial court erred in disregarding certain facts of substance and value which if considered would affect the result of the case.
- II. The trial court erred in convicting the accused-appellant despite the fact that his guilt has not been proved beyond reasonable doubt.
- III. The trial court erred in awarding exemplary and moral damages. "

The law applicable to the present case is Art. 335 of the Revised Penal Code, as amended by R.A. 7659, which states that:

"Art. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation;

x x x

The crime of rape shall be punished by *reclusion perpetua*.

Whenever the crime of rape is committed with the use of a deadly weapon . . . the penalty shall be *reclusion perpetua* to death."

In reviewing the present case, the Court adheres to the well-settled rule that the trial judge is best suited to assess the probity and trustworthiness of witnesses because he has the opportunity to observe directly their behavior and manner of testifying.<sup>[39]</sup> As eloquently stated by the Court in *People v. Agbayani*:<sup>[40]</sup>

"The trial judge is in a better position to decide the question of credibility, since he personally heard the witnesses and observed their deportment and manner of testifying.<sup>[41]</sup> He had before him the essential aids to determine whether a witness was telling the truth or lying. Truth does not always stalk boldly forth naked; she often hides in nooks and crannies visible only to the mind's eye of the judge who tried the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien."

In the first assignment of error, in relation to the second one, the defense attempts to place the present case under the mantle of the exception to the above doctrine. That is, the rule does not apply when the trial court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.<sup>[42]</sup>

Among the substantial facts claimed by the defense to have been overlooked by the trial court was the lack of tenacious resistance on the part of the complaining witness during the entire sexual assault. In the absence of such resistance, the appellant suggests that no rape can be inferred.<sup>[43]</sup> This claim, however, is not borne out by the records of the case. In fact, several parts of Marites' testimony manifest that she persistently offered resistance but was quelled by the strength and threats of the appellant. She testified to wit:

"Q. When he lay (sic) you on the bed, what did you do?  
A. I was struggling to be freed but he was stronger than me, and aside from that he told me that if I will shout he will prick me with the bolo, sir. He was pointing to me the bolo sir.<sup>[44]</sup>

x x x

Q. While doing that act to you, what did you do?

- A. I was struggling but he was stronger than me sir, and his other hand was covering my mouth while the other hand was holding the bolo pointed at me, sir.<sup>[45]</sup>

x x x

Q. And so it is not true Madam Witness that you struggled?

- A. I struggled hard and in the process of my struggle, he again threatened me that if I continue to do so he would going to (sic) stab me with the bolo he was holding and so out of fear I lost my strength."<sup>[46]</sup>

Besides, even assuming *arguendo* that the defense is correct that Marites did not show resistance towards her molester, it is well-settled that "physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety."<sup>[47]</sup> It is sufficient that the intimidation produces fear in the mind of the victim that if she did not submit to the bestial demands of the accused, something far worse would befall her at the time she was being molested. As pronounced by the Court, "(i)f resistance would nevertheless be futile because of intimidation, then **offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary.**"

<sup>[48]</sup> In several rape cases, the Court has held that threatening the victim with bodily injury while holding a knife or a *bolo* constitutes intimidation sufficient to bring a woman to submission to the lustful desires of the molester.<sup>[49]</sup> The appellant's threat of bodily injury to Marites while holding the *bolo* he borrowed from her sufficed to intimidate Marites into submission to appellant's bestial act. As a corollary, it is not necessary for a finding of rape that the victim should have marks of physical violence on her body<sup>[50]</sup> as in the present case.<sup>[51]</sup> Likewise, contrary to the appellant's insinuation, it is not beyond the realm of possibilities that the appellant was holding the *bolo* during the entire sexual congress, similar to the finding of the Court in the recently decided case of *People of the Philippines v. Flores*, G.R. No. 123599, December 13, 1999.

To bolster its claim that Marites was not raped because the prosecution failed to show Marites' resistance towards her molester, the defense would have the Court believe that Marites was a flirt and that it was in fact Marites who had amorous intentions towards the appellant. This claim, however, does not lend support to the theory of the defense and deserves minimal attention because even if such flirtatiousness were pushed to the extreme, the Court has not just once held that even prostitutes can be victims of rape.<sup>[52]</sup> Besides, if the defense's purpose for this claim is to suggest consent on Marites' part, this position is incongruent with and does not strengthen the appellant's defense of alibi.

The defense also observed that the testimony of Marites was fraught with inconsistencies. For instance, during the preliminary investigation, Marites stated that the appellant stopped inserting his penis into her vagina when he noticed that her parents were about to arrive; while on cross-examination, she testified that she did not know why the appellant stopped his despicable act.<sup>[53]</sup> Another inconsistency pointed out by the defense is that in Marites' sworn statement dated