

SECOND DIVISION**[G.R. No. 132470, April 27, 2000]****PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO SULTAN Y LATO, ACCUSED-APPELLANT.****D E C I S I O N****BELLOSILLO, J.:**

FERNANDO SULTAN y LATO appeals from the Decision of the trial court finding him guilty of the special complex crime of robbery with rape, sentencing him to *reclusion perpetua* and ordering him to return to his victim one (1) wrist watch, one (1) ring, one (1) pair of earrings, and one (1) necklace valued at P1,600.00, P850.00, P500.00, and P2,100.00, respectively, and cash of P130.00; otherwise, to pay P5,180.00 if restitution be no longer feasible. He was further ordered to pay P50,000.00 for moral damages.^[1]

The evidence for the prosecution was based principally on the testimony of complaining witness Juditha M. Bautista. According to her, on 2 June 1997 at 9:00 o'clock in the evening she was on her way home from a visit to her cousin Cristina Mansilongan in Novaliches, Quezon City; when she passed the dark alley in her cousin's compound she was accosted by someone, later identified as accused-appellant Fernando L. Sultan, who pointed a sharp instrument at her neck and announcing it was a "hold-up." He grabbed her and brought her to a house along the alley which turned out to be his. Once inside the house, he made her sit down. He offered her a drink; she refused it. Then he started divesting her of her watch, ring, earrings, and necklace the values of which are now reflected in the Decision of the court a quo, and her cash of P130.00. After taking her valuables, he started kissing her on the lips and cheeks. As if to discourage him from making further sexual advances, she told him that she was married with two (2) children but accused-appellant was not dissuaded from pursuing his intentions. While pointing an ice pick at her he ordered her to undress. She acceded for fear that he would kill her as she was under constant threat. After she had completely undressed, accused-appellant ordered her to lie down on the floor. He then kissed her again from head down. Still she could not resist him because of fear. He went on top of her, held her two (2) hands on the level of her head, spread her thighs and inserted his penis into her vagina. The coital encounter lasted for ten (10) to fifteen (15) minutes.^[2]

After satisfying his lust, he ordered her to put on her bra and panty, tied her hands and went out of the room to smoke. After ten (10) to fifteen (15) minutes, he came back, untied her, and once again with threat and intimidation sexually abused her. Thereafter, he tied her hands to a protruding piece of wood in the room and held her in his arms. She cried. He told her that he loved her and that he would answer for what he had done to her. They talked until noon the following day without sleeping.

^[3]

In her effort to release herself from his clutches she "agreed" to elope with him. Perhaps convinced that she was going to run away with him, he allowed her to go home at noon to get her things. She was then staying with her cousin Nita del Rosario, at No. 9 Sta. Eleuteria Street, Gulod, Novaliches, Quezon City. He even accompanied her to the highway to get a ride home.^[4]

When Juditha arrived home she saw her sister Antonette in the house. She was not actually residing there but went there only that day. Juditha lost no time in narrating her harrowing experience to her sister. Immediately Antonette called her brother SPO1 Fernando M. Bautista who resides in Bulacan.^[5] SPO1 Bautista arrived at around 3:00 or 4:00 o'clock in the afternoon and was told about what happened.^[6] He then advised Juditha to go back to the house of accused-appellant for the "planned elopement" so that he and his two (2) companions^[7] could stage an arrest.^[8]

On their way to the house of accused-appellant, Juditha rode in a passenger jeep with her sister Antonette and cousin Nita while her brother and his two (2) companions followed them on board an XLT Van. Juditha alighted near the house of accused-appellant while her companions waited for her and accused-appellant along the highway. When she arrived at accused-appellant's place, he was already waiting for her outside the store nearby. They went inside his house and came out twenty (20) minutes later. They boarded a passenger bus while SPO1 Bautista and his companions trailed them. When the bus reached the corner of Forest Hill Subdivision, Gulod, Novaliches, it slowed down because of the traffic thus making it easier for SPO1 Bautista and his companions to board the bus. Upon seeing her brother and his companions, Juditha motioned to them. They immediately approached accused-appellant and boxed him before they could arrest him. The other passengers of the bus joined in hitting accused-appellant. This caused a commotion in the bus. Some policemen who were in the barangay hall across the street saw the disturbance. They boarded the bus to find out what happened. Then they assisted in facilitating the arrest of accused-appellant and brought him to the barangay hall. He was later on transferred to the police headquarters for further interrogation.

At the police station the authorities investigated Juditha who readily identified accused-appellant as her robber and rapist. The police then requested for physical examination to find signs of sexual abuse. Medico-Legal Inspector Dr. Dennis G. Bellin found no external signs of violence although there was a deep fresh laceration at 5 o'clock position in Juditha's hymen. He also discovered other lacerations, deep healed, at 3, 7 and 9 o'clock positions. Dr. Bellin also observed that Juditha's external vaginal orifice offered moderate resistance to his examining index finger and virgin-sized vaginal speculum. She was no longer a virgin when the alleged rape transpired.^[9]

On 5 June 1997 an Information^[10] for the special complex crime of robbery with rape was filed against accused-appellant Fernando Sultan y Lato, docketed as Crim. Case No. Q-97-71353. But accused-appellant brushed aside the charge and claimed that it was simply a sexual congress of consenting adults.

Finding the complaining witness' version more credible, the trial court, on 5 June

1998, found accused-appellant guilty as charged and sentenced him to reclusion perpetua. He was ordered to return to Juditha Bautista one (1) wrist watch valued at P1,600.00, one (1) ring worth P850.00, one (1) pair of earrings worth P500.00, one (1) necklace worth P2,100.00 and cash in the amount of P130.00, or the payment of P5,180.00 if return was not possible. Accused-appellant was further directed to pay his victim P50,000.00 for moral damages.^[11]

In this appeal, accused-appellant submits that there is no convincing proof that he is guilty of the crime charged.

As to the robbery, he contends that the testimony of complainant that she was robbed of her personal valuables should not be given weight and credence as (a) no evidence was presented in court to prove her claim and that (b) if he had really robbed her, why did she not ask him for restitution of her valuables after the alleged threat had ceased, i.e., when there was already an agreement between them to elope?

These arguments fail to persuade us. The testimony of complainant as to the taking of her cash and valuables is evidence enough to sustain a conviction for robbery considering that we find no fault in the pronouncement of the trial court that her testimony is credible. The persuasive value of the declaration of credibility is bolstered by our own scrutiny of the testimony of complainant showing her answers to the incisive questions propounded to her to be firm and straightforward.

While there may have been no effort on the part of complainant to retrieve her personal belongings from accused-appellant even after all threats had ceased, her failure to do so does not under the circumstances necessarily dispute the commission of robbery. Article 293 of the Revised Penal Code provides that "*[a]ny person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of person, or using force upon anything, shall be guilty of robbery.*" When accused-appellant divested complaining witness of her personal belongings he committed the crime of robbery. All the elements necessary for its execution and accomplishment were present, i.e., (a) personal property belonging to another, (b) unlawful taking, (c) intent to gain, and (d) violence or intimidation. It is therefore immaterial that she failed to ask for the return of her personal things. Moreover, her actuation could only be fairly interpreted to mean that she did not want accused-appellant to be suspicious of her moves.

As for the charge of rape, accused-appellant maintains that the requisite force or intimidation was not proved by the prosecution beyond reasonable doubt; that there was some form of consent to the sexual intercourse as complainant did not put up tenacious resistance despite lack of threat on her life during the alleged rape; and, that complainant on cross-examination was not certain whether accused-appellant was armed at the commencement of the rape.

We likewise find these contentions of accused-appellant unconvincing. The prosecution for rape in the instant case is based solely on the testimony of complaining witness. Thus, the basic issue that must be addressed is her credibility. Doctrinally, the trial court's assessment of the credibility of witnesses is accorded the highest respect and weight by the appellate courts. It is normally sustained unless material facts and circumstances have been overlooked, misunderstood or