

EN BANC

[G.R. No. 125292, April 12, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANDY ROJAS Y DE DIOS, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This case is here on automatic appeal from the decision^[1] of the Regional Trial Court, Branch 224, Quezon City finding accused-appellant, Andy Rojas, guilty of rape and sentencing him to suffer the penalty of death and to pay the victim the amount of P50,000.00 as indemnity.

The complaint against accused-appellant reads:

The undersigned accuses ANDY ROJAS Y DE DIOS of the crime of RAPE, committed as follows:

That on or about the 19th day of July, 1994 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously undressed the undersigned, thereafter kissed her lips and neck and forced her to put his organ inside her mouth, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.

Quezon City, Philippines, July 21, 1994
(Sgd.) ROWENA AGUSTIN Y COLOMA
Complainant^[2]

The above complaint was treated as an information after the Assistant City Prosecutor approved and certified it.

The facts are as follows:

On July 19, 1994, at around 5:00 a.m., Rowena Agustin, complainant herein, was walking back to the house of her employer, Aurora Sales Duque, in Lagro, Novaliches, Quezon City, after buying bread from a nearby bakery store. As there was a slight drizzle Rowena carried an umbrella. Suddenly, someone from behind her pulled her hair and poked a gun at her right temple. By the light coming from an

electric post in front of them, Rowena saw the face of her attacker whom she later identified to be accused-appellant.^[3]

Rowena fought off accused-appellant, but he fired his gun hitting her umbrella. Because of this, Rowena got scared.^[4]

Accused-appellant dragged Rowena to a grassy area nearby and made her undress and lie down, threatening to kill her if she refused.^[5]

Thereafter, accused-appellant went on top of Rowena and forced his organ into her mouth. Rowena got hold of her umbrella and tried to hit accused-appellant, but the latter snatched the umbrella and threw it away.^[6]

As accused-appellant was inserting his penis into her vagina, Rowena kicked him. This made accused-appellant angry and he slapped her. Accused-appellant succeeded in having sexual intercourse with Rowena.^[7]

About five minutes later, accused-appellant got up. He warned Rowena not to tell anyone what happened otherwise he would kill her. After the incident, Rowena dressed up and ran home.^[8]

Upon reaching the house of her employer, Rowena recounted between sobs what she had gone through. She was drenched and had grasses clinging to her skin. When asked by her employer, she described his attacker as tall, thin, with mustache, and with long hair.^[9]

Aurora Sales Duque then went to the house of her brother, Valiente Sales, to seek assistance. They went to the area where the incident took place looking for the assailant and, not finding him, they fetched Rowena from the house of Aurora and went to the barangay captain to report the incident.^[10]

The barangay captain of Lagro accompanied Rowena, Aurora, and Valiente to the police station where their statements were taken. When asked if they had a suspect, Valiente answered in the affirmative. Based on Rowena's description of her attacker, Valiente thought of accused-appellant who was renting a room in his house. Hence, with two police officers and the barangay captain, Valiente went to the place where accused-appellant was staying to invite the latter for questioning. However, accused-appellant was not there. They therefore proceeded to the place where accused-appellant was working. Although other construction workers denied that accused-appellant was there, he was later found in the vicinity and taken for questioning.^[11]

At 8:00 a.m. on the same day, accused-appellant was brought to the barangay hall and Rowena was summoned from the police precinct to identify her attacker from among a number of men. As Rowena surveyed the faces of the men before her, her gaze fell on accused-appellant who asked her "*Bakit nawawala ka ba?*", Rowena cried and asked that she be allowed to return to the police station.^[12]

In the police station, Rowena told her employer and the investigator that the person who said "*Bakit nawawala ka ba?*" was her attacker and that she was certain he was

the one.

Rowena was later taken to Camp Crame where Dr. Florante F. Baltazar conducted a medical examination on her. His report showed the following:

FINDINGS:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with dark brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and tight. The following injuries are noted at the lower extremity:

- 1) Abrasion, anterior middle 3rd right thigh, measuring 6 by 1 cm, 4 cm. medial to its anterior midline.
- 2) Abrasion, anterior middle 3rd right thigh, measuring 3 by 1 cm, 5 cm. medial to its anterior midline.
- 3) Abrasion, anterior distal 3rd right thigh, measuring 4 by 6 cm, 6 cm lateral to its anterior midline.

GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and coaptated with the dark brown labia minora presenting in between. On separating the same are disclosed a fresh laceration at the posterior commissure and an elastic, fleshy type hymen with deep fresh lacerations at 4 and 9 and shallow, fresh laceration at 10 o'clock. External vaginal orifice offers strong resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency with moderate amount of whitish secretion.

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

CONCLUSION

Subject is in non-virgin state physically.

Barring unforeseen complications it is estimated that the above injuries will resolve in 4 to 7 days.^[13]

At around 9:40 that night, Rowena identified accused-appellant in a line-up of seven male persons at Station 5 of the Central Police District.^[14]

During trial, accused-appellant denied raping Rowena and presented an alibi as his defense. According to him, on July 19, 1994, he was in the room he was renting

from Valiente Sales which adjoined the house of the latter and which was around two blocks away from the house of Aurora Sales Duque where Rowena was staying.
[15]

Accused-appellant testified he woke up at 8 in the morning on that day and went to work at 8:30. He claimed he was surprised when Valiente Sales poked a gun at him. He was then told to proceed to the barangay hall where Rowena identified him as her attacker. Accused-appellant claims Rowena had been made to accuse him of rape by her employer, Aurora Sales Duque, because he refused to construct the latter's house for free.^[16]

The trial court found accused-appellant guilty of rape. The dispositive portion of its decision reads:

Accordingly, therefore, the Court finds accused ANDY ROJAS GUILTY of the crime of Rape beyond reasonable doubt and hereby sentences the accused to suffer the penalty of DEATH and to indemnify the complainant, Rowena Agustin, the amount of P50,000.00.

It is also ordered that the accused Andy Rojas be committed to the National Penitentiary immediately upon promulgation of this Decision.

IT IS SO ORDERED.^[17]

Accused-appellant assigns two errors as having been allegedly committed by the trial court:

- I. THE TRIAL COURT ERRED IN FINDING THAT THE COMPLAINANT VICTIM ROWENA AGUSTIN HAD POSITIVELY IDENTIFIED THE ACCUSED AS HER RAPIST.
- II. ASSUMING ARGUENDO THAT THE ACCUSED IS GUILTY, THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY.^[18]

We find the first assignment of error untenable.

Rowena clearly saw the face of accused-appellant during the attack. The place where the incident took place was lighted by a nearby lamp post. She gave an accurate description of accused-appellant. She testified:

