

SECOND DIVISION

[G.R. No. 128158, September 07, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMANDO JUAREZ, TONELO SABAL, "JOHN DOE", "PAUL DOE",
"PETER DOE" AND "ROBERT DOE", ACCUSED,
TONELO SABAL, ACCUSED-APPELLANT.**

DECISION

DE LEON, JR., J.:

Before us is an appeal from the Decision^[1] dated August 14, 1996 of the Regional Trial Court of Toledo City, Branch 29, in Criminal Case No. TCS-1376 convicting herein accused-appellant Tonelo W. Sabal and his co-accused, Armando M. Juarez, of the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code.

The antecedent facts are the following:

In the evening of September 14, 1990, private complainant Suzette Basalo, a sophomore high school student at the Toledo National Vocational High School, attended the disco at Cambang-ug, Magdugo, Toledo City on the eve of the town fiesta.^[2] She was invited by her cousin, Yvonne Selma, as former beauty queen of Cambang-ug, who was going to turn over her crown to the newly selected beauty queen. Yvonne asked permission from Suzette's parents, who granted her request. As agreed upon, they were going to spend the night at the house of Yvonne's grandmother which is near the disco hall.

Suzette and Yvonne arrived at Cambang-ug at around 7:00 o'clock in the evening. They ate supper in one of their friend's house and proceeded to the disco at past 8:00 o'clock in the evening. Suzette danced with Yvonne and Rodolfo Coronel, her boyfriend, up to 2:30 o'clock in the morning of the following day. Rodolfo Coronel is a senior high school student and schoolmate of Suzette.

At around 2:30 o'clock in the morning of September 15, 1990, Rodolfo and Suzette, along with Yvonne and a certain friend, went outside the disco hall to buy ice water. After the group bought ice water, Yvonne and her friend went back inside the disco hall while Rodolfo and Suzette walked to a place about 50 meters away from the disco hall to rest and have a little talk. The place which leads to a group of pine trees was illuminated by disco lights so that a person could readily be recognized from a distance of two and a half (2½) meters.^[3] In front of the disco hall was a white electric bulb and inside were different colored lights.

While they were conversing, Rodolfo lay down on her thigh, his head atop her lap. Shortly thereafter, two (2) men, with their T-shirts covering their faces as mask,

appeared from behind and asked *"Why? What are you doing there? You are very close to each other."* These two (2) men were naked from waist up and wore long maong pants. One of them held a handgun while the other carried a flashlight. Rodolfo replied that they were just sitting there.^[4] Unexpectedly, the two (2) men separately grabbed them. The man with a handgun held Rodolfo by the arm and brought him to the river, while the man with a flashlight took Suzette to the opposite direction. While Suzette was being brought to the place about 20 meters away from Rodolfo, the man placed his hand holding a firearm, on her neck and started to unfasten the zipper of her pants. Suzette cried, *"Noy, what are you doing to me..."* and shouted for help, but the man immediately covered her mouth. Then, the man uttered *"Do I have to kill you or I have to make sexual intercourse with you?"*. Feeling helpless, Suzette whimpered *"do not kill me"*.^[5] Suzette was forced to lie down; she struggled, kicked and gave the man a fist blow, but to no avail. Each time she shouted for help, the man covered her mouth. The man was able to pull off her pants and panty and after which he pulled down his own pants until his knees. The man placed his body on top of Suzette and she felt great pain when the man inserted his penis inside her private organ. After the man was through with his lustful act, he put back on her panty and pants. She was crying all that time. The man continuously pointed his firearm at her until the second man arrived.^[6]

The second man had no clothes on the upper part of his body. His face was covered with a T-shirt; only his eyes were exposed. The firearm held by the first man was then handed to the second man. The second man while pointing a gun, brought Suzette to a place about 5 meters away from where the first man had sexual intercourse with her. She was forced to lie down and, once again, her pants and panty were pulled off her. She struggled and shouted for help. The second man placed his body on top of her and inserted his penis into her sexual organ. All this time, the first man was just about 3 meters away, watching them. After the second man had sexual intercourse with Suzette, a third man arrived and the first man left immediately. The second and the third man helped Suzette put on her panty and pants.^[7]

The third man was not wearing a mask. He was wearing a green striped T-shirt with collar and a maong pants. Suzette was brought by the third man to a place about five meters away but towards the direction of the disco hall. The third man was facing the direction of the disco hall. With the illumination of the lights coming from the disco hall, Suzette noticed that the man had a mustache and a beard on the chin and was a little bit taller than her. The man told her that she would be killed if she would shout. Suzette then kept silent but continued crying. The third man forced her to lie down and he pulled his pants and placed his body on top of her. The third man also pulled down her panty and pants. While the third man was on top of her, a gun was also pointed at her. After having sexual intercourse, the third man handed his gun to Suzette. Suzette then tried to click the trigger toward the third man but it did not fire. The third man just laughed at her. Suzette did not dare escape as the second man was watching them and also had a gun.^[8] Suzette was able to identify the third man as Armando Juarez. When the incident happened, Suzette did not know his name; she came to know of his name after she was brought to the police headquarters.

After the third man put back Suzette's panty and pants, the fourth man arrived. The fourth man's face was covered with his T-shirt; he was naked from the waist up and

the rest was covered by long pants. Suzette was forced to lie down and the fourth man succeeded in raping her at gunpoint. After having sexual intercourse, the fourth man who was facing the disco hall took off the T-shirt from his face and slung it over his shoulder. Suzette noticed that he also had a mustache and beard.^[9] Suzette was able to identify him as Tonelo Sabal. It was only at the police station that Suzette came to know of his name.^[10]

After Tonelo Sabal, two more persons, one after another, had sexual intercourse with Suzette through force and at gunpoint. She was not able to identify the last two (2) men who molested her. The two (2) men wore masks using their T-shirts. At the time the fifth and the sixth man had sexual intercourse with Suzette, Tonelo Sabal was present, watching them. Then, when someone with a flashlight was coming toward their direction, the sixth man ordered her to run. Suzette did not run toward the direction of the person with the flashlight, afraid that he was a companion of the molesters. Suzette then ran toward the nearest house and met Mary Ann Panogan, the daughter of Epifanio Panogan, the Cambang-ug Barangay Captain, to whom she disclosed her harrowing ordeal.^[11] Mary Ann brought Suzette to her father and Suzette told him that she was raped by six (6) men. Several persons curious about the same started milling around her. Dionisio Juarez, a CAFGU member assigned to guard the disco hall, spoke up and informed them that he found two (2) persons under the trees who could be suspects. He then requested the "tanods" to summon Tonelo and Armando, and to bring them to Barangay Captain. Suzette was narrating her ordeal to the Barangay Captain when Armando Juarez and Tonelo Sabal arrived. At first Suzette was hesitant to identify them but later on she told the Barangay Captain that they were the ones who molested her. Suzette recognized Armando through the green T-shirt he was wearing and Tonelo by his height and built, as well as his mustache and beard, which she saw when Tonelo removed his mask after the sexual act.^[12] After identifying the two suspects, Suzette, together with the two (2) suspects, were brought to the Police Station of Toledo City. The two (2) suspects were put behind bars. Thereafter, Suzette was examined by Dr. Hermes Labrador at the Toledo City Hospital.

On October 4, 1990, private complainant Suzette B. Basalo filed with the Regional Trial Court (RTC) of Toledo City a complaint charging Armando M. Juarez, Tonelo W. Sabal and four (4) other unknown accused, of the crime of rape, committed as follows:

That on or about the 15th day of September, 1990, at around 2:30 o'clock dawn, more or less, in Cambang-ug, Toledo City, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating together and mutually helping each other, armed with handguns, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will in the nighttime and in an uninhabited place.

All contrary to law and with the aggravating circumstance of nighttime and that the said offense was committed in an uninhabited place, with such circumstances facilitating the commission of the offense.^[13]

Of the six (6) charged in the information, only accused-appellant Tonelo Sabal and co-accused Armando Juarez were arrested and identified. The four other malefactors remained unidentified and at large. Duly arraigned on November 21, 1990^[14], both accused Juarez and accused-appellant Sabal pleaded "Not guilty" to the charge.

Prosecution witness Rodolfo Coronel corroborated the testimony of Suzette. In addition, he declared that the person carrying a gun brought him towards the river while the other person held Suzette. Upon reaching the river, the man told him to turn his back and kneel down. Rodolfo did not obey his instruction, and instead asked the person to allow him to go home. He was allowed to do so but was warned not to tell anyone. When he noticed that the person was nowhere in sight, Rodolfo went back to the place where he came from and met a man, Dionisio Juarez, from whom he sought assistance. Dionisio and Rodolfo rushed to the crime scene, and thereat found Armando and Tonelo who were then in the act of pulling down their pants. Dionisio focused his flashlight at the two men and asked what they were doing. Armando answered that he was going to defecate. Dionisio also focused his flashlight on the ground to see if there was any human waste, but saw nothing.^[15] Rodolfo was able to recognize the two men as Armando Juarez and Tonelo Sabal.

Thereafter, Rodolfo was instructed by Dionisio to go back to the disco hall and verify if Suzette was there. Rodolfo saw Suzette at the chapel surrounded by many people. Suzette was then crying; her hair disheveled and her clothes not orderly buttoned. He did not approach Suzette, frightened that the men who detained them were in that place. Rodolfo, accompanied by his friends, proceeded to the house where Suzette was brought. He noticed that Armando and Tonelo were also in the said house. Rodolfo asked Suzette if she was raped. Suzette answered that she was indeed raped by six men. Suzette and Rodolfo then proceeded to the police precinct at Toledo City together with the two (2) suspects. The person who brought him to the river is similar in appearance to that of Armando.

Prosecution witness Dionisio Juarez testified that while on guard and watching the dance, he heard Tonelo Sabal saying that "we will go around and watch persons who are having sex and we will take over and have sex". Dionisio advised a certain Lod not to do it as it is bad. Then Tonelo and Armando disappeared.^[16] At around 2:30 o'clock in the morning of September 15, Rodolfo approached and asked him for assistance. He accompanied Rodolfo to the place where the latter left Suzette and there they saw Tonelo and Armando. When asked what they were doing, Tonelo and Armando replied that they were defecating.

Prosecution witness Hermogenes de los Reyes is a Senior Police Officer 3 (SPO3) of the Philippine National Police (PNP), assigned in the Investigation Section. He conducted an investigation of the alleged rape that happened in the early morning of September 15, 1990. During the investigation, Reyes requested the two suspects to show their underwear. Tonelo was not wearing his underwear, thus, Reyes decided to go to the crime scene with another police officer, the Barangay Captain of Cambang-ug, Epifanio Panogan and Dionisio Juarez. During their inspection, they found a handkerchief, later identified by Suzette as hers. Still, not satisfied with their investigation, the group proceeded to the house of Tonelo, which is just near the place. Fedilita Sabal, wife of Tonelo, told the group that her husband was wearing a yellow brief when he went out on the night of September 14, 1990. Her husband came back at past 2:00 o'clock in the morning of the following day and changed his

underwear and maong pants. Reyes asked Mrs. Sabal if he could possibly see Tonelo's underwear and pants. Mrs. Sabal voluntarily gave Reyes her husband's pants and underwear. The pants were very dirty and the underwear had a red stain on it. Reyes also declared that Suzette identified Tonelo and Armando as among those who raped her.^[17]

Prosecution witness Dr. Hermes Labrador was the Medico Legal Officer of Toledo City. On September 15, 1990, he conducted an examination on the alleged victim, Suzette, and observed that her underwear was soiled with bloodstain. He found multiple lacerations and semen in the sex organ of the victim, indicating that there was penetration in her private part.^[18]

The defense put up by appellant Tonelo Sabal is one of denial and alibi.

Tonelo Sabal testified that in the evening of September 14, 1990, he was at the house of his uncle, Doro Sabal, to help prepare the food to be served the following day, being their barrio fiesta. At about 10:00 o'clock in the evening, he together with co-accused Armando left the place. They proceeded to a place not far from the disco hall and played card games up to 1:00 o'clock early morning. At about 2:00 o'clock, they entered the disco hall and danced together until 3:00 o'clock in the morning when Armando told him that he was going to defecate. Tonelo told Armando that he too felt like defecating. The two went to the place where pine trees abound. They were not able to pull off their pants as Dionisio along with 4 to 5 persons approached them. Minutes later, they went back to the disco hall and found out that there was a lady in the chapel who was raped. Armando and Tonelo were fetched by some "tanods" for interrogation and brought to the chapel where Barangay Chairman Panogan was. Barangay Captain Panogan asked Suzette if Tonelo Sabal and Armando Juarez were among those who raped her, but Suzette did not answer. They were later brought to the house of the Barangay Treasurer where the rape victim was being investigated. They were again interrogated about their participation in the rape. After that Suzette was brought to the Police Headquarters of Toledo City. Dionisio claims that he and Armando only volunteered to go to the police headquarters but while thereat and following the departure of their Barangay Chairman, they were immediately placed in jail.

Armando Juarez corroborated the testimony of appellant Tonelo. As admitted, both accused were together from 10:00 o'clock in the evening of September 14, 1990 up to the time they were put behind bars the following day. However, their testimonies do not coincide with each other despite the fact that Tonelo was inside the courtroom when Armando testified on August 2, 1995.^[19] Armando testified that when a group of 5 to 6 persons approached them, they were among the pine trees to defecate, Tonelo was already squatting on the ground while he (Armando) was just standing near Tonelo.^[20] On the other hand Tonelo testified that both of them were just standing as there were many people near them.^[21] Armando likewise testified that they arrived in the disco hall at around 10:00 o'clock in the evening of September 14, 1990.^[22] Tonelo declared that they arrived at the disco hall at around 1:00 o'clock early morning of the following day and entered the disco hall at about 2:00 o'clock in the morning of the same day.^[23]