

## THIRD DIVISION

[ G.R. No. 131518, October 17, 2000 ]

**PEOPLE OF THE PHILIPINES, PLAINTIFF-APPELLEE, VS.  
FERNANDO ARELLANO Y ROBLES, ACCUSED-APPELLANT.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

Fernando Arellano appeals from the decision<sup>[1]</sup> dated October 16, 1996 of the Regional Trial Court of Makati, Branch 135, finding him guilty of the crime of rape.

Accused was charged with the crime of rape under the following information:<sup>[2]</sup>

"That on or about the 28th day of August, 1992, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation with the use of a bladed weapon, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant, DAISY D. TEREZ against her will.

CONTRARY TO LAW."

Upon arraignment on September 29, 1993, accused duly assisted by counsel entered a plea of not guilty.<sup>[3]</sup> Trial thereafter ensued.

The facts established by the prosecution's evidence are summarized in the People's brief as follows:<sup>[4]</sup>

On August 28, 1992, between 2:00 and 3:00 o'clock in the morning, Daisy D. Terez, Maribel Madeja and Erlinda Mendez, all household helpers, were suddenly awakened when appellant gained entrance inside their room (maid's quarter) which adjoins the house of Mrs. Margie Santiago, their employer, at No. 26 Texas Street Better Living Subdivision, Parañaque, Metro Manila, (TSN, November 8, 1993, pp. 3-5), Upon noticing the presence of the intruder, Maribel Madeja screamed, which roused Terez and Mendez from sleep. (Ibid, 5; TSN, May 30, 1994, p. 3). They saw the appellant wearing short pants and polo shirt and holding a knife (TSN, November 8, 1993, 5-6 & 16). At that instance, the fluorescent lamp inside the room was lighted (Ibid., 7 & 14). Appellant stood beside Terez who shared the lower deck with Mendez, as he looked at Madeja who was occupying the upper deck of the double deck bed (Ibid., 15-16). He commanded Madeja to get down from the upper deck and join Terez and Mendez at the lower deck. He said that if they move, he will kill them. For fear that they would be killed, Madeja complied and went down beside her companions at the lower deck (Ibid., 16-17).

Appellant, pretending that he had companions, peeped outside the door and said: "Pare akyatin mo na" and told the girls that he had many armed companions who are more fearless than he, adding that if they (the girls) moved they would be killed. The thought that appellant had several other armed companions made them more afraid (Ibid., pp. 18-20). Appellant sat beside them while holding the bladed weapon and asked them if they were married and their ages. When they did not answer, he peeped out of the door again (Ibid., 21). Then, appellant removed his short pants (Ibid., 21-22). He sat beside Terez and placed his left hand on her legs while his right hand held the knife (December 8, 1993, p. 27). She pushed him away and shouted (TSN, November 15, 1993, p. 6). That made appellant angry. He went back to Terez and embraced her. Then she pushed him. Appellant became furious and punched her on the chin, stomach and legs (Ibid., 7; December 8, 1993, p. 28). Despite Terez' plea not to hurt her, appellant lay on top of her (November 15, 1993, 7-8). She pushed him away again and she was boxed again. Then, he raised his hand while holding the knife and pointed the knife at her chest and told her that he was going to kill her. At that juncture, her companions were lying beside her, their bodies covered by appellant with a blanket up to their necks (Ibid., 8-9). He pretended talking to his companions, saying: "Pare ang tigas ng ulo" (Ibid., 11). Appellant continued to forcibly lay on top of her. He tried to open her legs. She fought back, but to no avail due to his superior weight and strength (TSN, November 15, 1993, p. 11). He cursed her and repeatedly boxed her on the stomach. With her beaten and hurt, appellant lay on top of her and embraced her (Ibid., 11). He tore her shorts and panty with his knife (TSN, December 8, 1993, p. 29). He succeeded in opening her legs and, having an erection, told her "magpaparaos lang ako" (TSN, December 8, 1993, p. 28). He inserted his organ ("ari") into her vagina (ari), and she felt pain (mahapdi) (TSN, November 15, 1993, p. 12 & 14). The sexual intercourse lasted for about one (minute) (Ibid., 14).

Terez' two companions who were lying beside her were not able to do anything to help her; they could not move as appellant threatened to kill them if they did (Ibid., 15). Appellant stood up, put on his short pants and peeped out of the door. He warned them not to fight back, otherwise, his companions who were more fearless would harm them, including their employer whom he claimed to have been hog-tied upstairs by his companions (Ibid., 15-17). He told them to close their doors so that his companions would not be able to molest them, then he left the room (Ibid, 17).

At about 5:00 o'clock in the morning, observing that there was silence in the premises, Terez and her companions came out from their quarters and sought the help of their neighbors, namely: Atty. Carbonnel, Mr. Sison, a barangay tanod and others. They found out that the main door of the Santiago house was locked so they woke her through the back door. Mrs. Santiago, who was not harmed or robbed as claimed by appellant, was surprised for she had been completely unaware of the incident as the three helpers relayed the story to her (Ibid., 17-18).

The policemen from Station 5 Bicutan arrived after their neighbors

reported the crime. The police examined her (Terez) shorts and torn underwear. The barangay tanod talked with her employer (December 8, 1993, p. 5).

On the same day, accompanied by Mrs. Santiago, Terez reported the incident to the National Bureau of Investigation (NBI). At about 2:20 in the afternoon, Dr. Alberto M. Reyes, (NBI) Medical Specialist III conducted a medico-legal examination on Terez. The medico-legal expert declared that the Terez suffered from contusions on the chest and chin caused by a hard-blunt object (Living Case No. MG-92-72, Exhibit "D"; TSN, May 11, 1994, pp. 3-7). The medical report further indicated that upon genital examination, Terez suffered "abrasion at the posterior commissure" and that there was "recent genital injury". The vestibule was congested and the hymenal orifice admitted a tube 2.5 cm. in diameter. Dr. Reyes testified that the cause of the abrasion at the "posterior commissure" was a forcible attempt to introduce a male organ to the private part of the victim. The hymen of private complainant was distensible, meaning, elastic that is why even with the opening of 2.5 there was no laceration (TSN, May 11, 1994, pp. 3-8). The microscopic examination made on the vaginal smears or specimen from the victim's private part revealed that it was positive of human spermatozoa, indicating that there was recent sexual intercourse, i.e., within 24 hours (NBI Laboratory Report No. S-92-217; TSN, May 11, 1994, p. 11).

The National Bureau of Investigation (NBI) Special Operations Group (SOG) headed by Executive Officer Atty. Lauro Reyes took the sworn statement of Terez, wherein she narrated the circumstances of her rape and gave a full description of appellant (TSN, June 6, 1994, p. 4). She requested that a cartographic sketch be drawn based on her description (Exhibit "H"; TSN, January 31, 1994, p. 7). Whereupon, the NBI artist drew a complete sketch of appellant, a copy of which was given to the NBI investigator concerned (TSN, June 6, 1994, pp. 4-5; Exhibit "H").

NBI agents were dispatched to undertake close surveillance at Better Living Subdivision. Copies of the cartographic sketch of the suspect (Exhibit "H") were distributed at the tricycle terminal thereat for possible leads. Evidence was gathered from the Santiago residence. During the surveillance operations there were times when Daisy Terez accompanied the NBI agents (June 6, 1994, pp. 7-8).

On September 13, 1992, at about 7:00 o'clock in the evening, while Erlinda Mendez was buying softdrinks at a nearby store, she saw appellant drinking beer thereat about 14 feet away from her. She relayed this to Mrs. Santiago and other companions and Mrs. Santiago reported the matter to the NBI (May 25, 1994, pp. 10-11; May 27, 1994, p. 2).

In the morning of September 14, 1992, Mrs. Santiago called the NBI and informed Atty. Lauro Reyes that the suspect had been seen at the vicinity. At about 4:30 in the afternoon, NBI agents headed by Atty. Reyes proceeded to the Santiago residence. Between 5:00 and 5:30 o'clock in the afternoon, the NBI agents were accompanied by Mendez and Mrs. Santiago, since Terez was in school. They positioned themselves

at the sari-sari store where the suspect had been seen. They waited for a while, after which Mendez pointed to appellant, who was then walking along the street, as Terez' rapist. Appellant was accosted and brought to the NBI office for questioning. At about 8:00 o'clock in the evening, Terez, Mendez, the Santiagos and other companions went to the NBI headquarters. There, appellant was positively identified by Terez as the man who raped her (TSN, September 19, 1994, pp. 19-21; June 6, 1994, p. 9-13; May 29, 1994, pp. 2-4; December 8, 1993, pp. 32-33 & 41; Jan. 31, 1994, p. 8). NBI personnel then took the statements of Terez and Mendez (TSN, May 27, 1994, p. 4). The NBI agents executed a joint affidavit of arrest regarding the investigation and surveillance conducted in the case (Exhibit I, TSN, June 16, 1994, pp. 13-15). On September 15, 1992, the case was referred to the Fiscal's office for inquest and three other victims namely, Estrella Gobris, Avelina Andrade and Francisca Magdangal, appeared at the Fiscal's office and identified appellant as the person who raped them (TSN, June 6, 1992, p. 15). Atty. Reyes interviewed and took the statements of the three other victims who positively identified the appellant as their rapist. The NBI recommended in their letter transmittal addressed to the Inquest Fiscal (Exhibit "J") the filing of multiple rape charges against appellant (TSN, June 6, 1992, pp. 16-18). Finally, Atty. Reyes prepared an investigation report relative to this case (Exhibit "K", TSN, pp. 19-20).

For his part, accused denied the commission of the crime and put up the defense of alibi claiming that at the time the alleged rape incident took place, he was sleeping with his wife in their house at Airport Village, Parañaque.<sup>[5]</sup> The alibi offered by the accused was corroborated by spouses Clemente and Nilda Socorro who were living in the house of the accused since March 1992 who both testified that the accused was inside his room at the time of the alleged incident since they could have easily noticed if accused left the house at that time considering that they were sleeping near the entrance door of the house.

The trial Court convicted the accused of the crime of rape giving full faith and credit to the testimonies of complainant Daisy Terez and her witness, Erlinda Mendez, who were found to be truthful witnesses without any ill motive to falsely testify against the accused. It ruled that appellant's alibi cannot prevail over the positive identification made by these two witnesses and that accused failed to show impossibility to have been at the crime scene at the time of its commission. It also found the corroboration from spouses Clemente and Nilda Socorro as unavailing since they could not have possibly known the departure of the accused from his house. The dispositive portion of the decision reads:<sup>[6]</sup>

"WHEREFORE, in view of the foregoing, the accused FERNANDO ARELLANO y ROBLES is found guilty of rape as defined and penalized under Article 335 of the Revised Penal Code, proven beyond reasonable doubt, and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA or life imprisonment; and such accessory penalties as may be provided by law; and to pay the victim DAISY D. TEREZ compensatory and moral damages of P100,000.00; and litigation expenses of P20,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs of the proceedings.

The crime committed by the accused is not yet within the purview of the law on "Heinous Crime" approved on December 13, 1993 otherwise known as Republic Act No. 7659.

The accused is however fully credited to a deduction of the period of his preventive imprisonment during the pendency of the case unless he has been legally ordered detained for another or separate crimes.

SO ORDERED."

Hence, accused-appellant files this appeal raising five (5) assignment of errors which can be condensed into whether or not (a) accused appellant was positively identified by Daisy Terez as her rapist; (b) fatal irregularities attended the arrest and identification of the accused; and (c) defense of alibi was sufficiently established by the appellant.

Appellant assails the credibility of the testimony of complainant Daisy Terez claiming that she was uncertain as to the identity of her rapist as shown by the following instances: (a) Terez testified that she saw a man standing in front of the lower deck bed then looking at Madeja who was situated at the upper double deck bed, thus accused claims that Daisy's line of sight to the man's face was blocked by the upper deck of the bed, so that even with the lights on, Terez could have only seen the man's torso and legs; b) she described her rapist as six (6) feet tall, but appellant was only five feet four (5'4)inches tall; (c) the relative positions of victim Terez and her companions, Mendez and Madeja, in the lower double deck bed made it highly improbable for them to see the face of the man; that Madeja was made to face the wall while Mendez' face was covered with a blanket.

The appeal has no merit.

We have gone over the records and we find no reversible error committed by the trial court in giving credence to the testimony of victim Daisy Terez and her witness, Erlinda Mendez, pointing to accused-appellant as the person who committed the crime. We entertain no doubt as to the positive identifications made by these two prosecution witnesses since Terez was the victim and Mendez was present when accused-appellant committed the crime.

Complainant Daisy Terez had the opportunity to vividly see the physical features of the accused-appellant before, during and after the rape incident. She narrated that at about 2:00 to 3:00 o'clock in the morning of August 28, 1992, when she was awakened by the scream of Maribel Madeja, who was lying at the upper double deck bed, the light in their room was on, thus, she saw the accused-appellant who was standing about one foot away from the lower double deck bed where she and Erlinda Mendez were lying.<sup>[7]</sup> Assuming arguendo that her vision was blocked by the upper deck bed, as claimed by the appellant, and she could not have seen the face of the accused at the first instance, the subsequent circumstances showed that appellant's identity was sufficiently established. Daisy Terez declared that appellant asked Madeja to come down and join her (Daisy) and Erlinda Mendez at the lower double deck bed and after a while, accused went to the door and peeped uttering "pare, akyatin mo na" to pretend that he had companions; Terez and her two lady companions were watching appellant.<sup>[8]</sup> Accused, holding a knife in his hand, sat