

FIRST DIVISION

[G.R. No. 127494, February 18, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO MARABILLAS Y CAÑEDA, ACCUSED-APPELLANT.

D E C I S I O N

PARDO, J.:

The case before the Court is an appeal taken by the accused Mario Marabillas y Cañeda from a decision^[1] of the Regional Trial Court (RTC) Branch 34, Balaoan, La Union, convicting him of rape and sentencing him to *reclusion perpetua* and the accessory penalties provided for by law; and to indemnify the complainant, a grade six pupil, who stopped schooling because of the incident, the amount of P50,000.00 as moral damages, without subsidiary imprisonment in case of insolvency.

On March 17, 1992, an Assistant Provincial Prosecutor of La Union, upon complaint under oath of Lourdes L. Arroyo, filed with the Regional Trial Court, Branch 34, Balaoan, La Union, an information charging Mario Marabillas y Cañeda with rape, committed as follows:

"That on or about the 12th day of January, 1992 in the Municipality of Bangar, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have sexual intercourse with Lourdes L. Arroyo, a virgin over 12 but under 18 years of age, against her will by inserting his penis into said victim's vagina, thereby causing great pain to her, to the damage and prejudice of herein offended party.

CONTRARY TO LAW."^[2]

Upon arraignment^[3], the accused, assisted by counsel, pleaded not guilty to the crime charged.

After due trial, on April 13, 1994, the trial court rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the Court hereby renders judgment declaring the accused MARIO MARABILLAS y CAÑEDA guilty beyond reasonable doubt of the crime of RAPE as defined and penalized in Article 335 of the Revised Penal Code and thereby sentences him to suffer the penalty of *Reclusion Perpetua* and the accessory penalties provided for by law; and to indemnify the complainant, a grade six pupil, who stopped schooling because of the incident, the amount of P50,000.00 as moral damages, without subsidiary imprisonment in case of insolvency.

"The preventive imprisonment suffered by the accused by reason of this case is counted in his favor.

IT IS ORDERED."^[4]

Hence, this appeal.

In his brief, the accused raises questions on the credibility of prosecution witnesses and the absence of force or intimidation in having sexual intercourse with the victim.

Upon review of the record, on writ of error, the Court affirms the judgment of the lower court.

The facts are as follows:

At around 6:00 in the evening of January 12, 1992, Lourdes Arroyo, a grade six, fourteen-year old girl, was cooking dinner in her house located at General Prim West, Bangar, La Union.^[5] She was with a younger sister while their parents went to the river to see their fishing gadgets.^[6] At that moment, a cow strayed into their house and Lourdes drove it outside where their other cows were grazing. After Lourdes tied the cows' rope to the ground, the accused appeared and dragged Lourdes by the hand to the side of the nearby river.

Upon reaching a stony part of the river, the accused pushed Lourdes to the ground and tried to remove her garter short-pants and panty. Although Lourdes fought off the accused and tried to free herself by shaking her body, she could not do anything for she was pressed and pinned down by the strong hands of the accused. Ultimately, when Lourdes was already lying on the ground, accused succeeded in taking off her short-pants and panty. He removed his own pants and went on top of her. He started kissing her and fondling her breasts, even as she tried to free herself from his clutches. Lourdes tried to scream but the accused threatened to kill her if she would scream for help. He forcibly parted Lourdes' legs and inserted his penis into her vagina. After consummating his carnal lust, accused released his hold on her and she was able to free herself. Lourdes put back her panty and short pants, and ran away from him.^[7]

Upon reaching her house, Lourdes discovered that her parents had been looking for her. She told her mother that she had been raped.

The next day, Lourdes executed a statement to the police. She also submitted herself to a medical examination at Bungol Emergency Hospital.^[8]

The results of the medical examination revealed the following:

"x x x On the Chest/lung: There is a contusion seen infrascapular area, right. On pelvic examination - it revealed a pubertal. -external female genitalia; with pubic hair noted at the symphysis; the labia majora are coapted covering completely hyperimic labia minora; hymen noted with laceration fresh at 7:00 o'clock position with minimal bleeding. Vaginal smear revealed a negative sperm cell."^[9]

According to the medico-legal expert, there was a contusion on the back part of the right shoulder of the complainant. Also, sexual intercourse was apparent from the findings of fresh laceration of the hymen and the bleeding.^[10]

As a result of the rape, Lourdes got pregnant and gave birth to a baby girl.^[11]

The accused does not deny that he had sexual intercourse with complainant. He asserts, however, that the complainant was his sweetheart and that it was even the complainant who initiated the act.

He testified that he knew Lourdes before the incident because he had visited her in her school about five times and that they were sweethearts.^[12] He had visited her even at her house about eight times and had gone to the house of her aunt to get firewood.^[13] He gave her a fancy ring and she gave him a letter. He, however, lost the letter.

He testified further that on January 12, 1992, he visited complainant in her house and talked to her for about fifteen minutes, after which they went behind the house to continue their conversation. He invited her to go to the river and the latter went voluntarily with him. They first sat alongside the river. Then they started embracing each other while the complainant was saying, "I love you very much."^[14] The complainant suggested that they have sexual intercourse and that "they will do the thing now".^[15] The complainant went about four meters from the accused. The accused watched as the complainant removed her panty. After removing her panty, she called for the accused so that they would have sexual intercourse. The accused removed his pants, went on top of her, spread her legs and performed the sexual congress.

Other than his assertion, however, there was no evidence to show that they were sweethearts. Complainant denied any relationship between them, although she admitted that she knew him as a frequent visitor of her aunt. No corroborating witnesses supported the self-serving assertions of the accused. No love letter, memento, or pictures were presented by accused to prove that such romantic relationship existed.

Accused also claimed that the complainant Lourdes did not put up any resistance when she was being led to the river. The accused argued that he did not have any weapon with him at the time and the complainant had several opportunities to escape if indeed she had been forcibly taken.

It is an established rule that failure to shout or offer tenacious resistance does not necessarily make voluntary complainant's submission to the criminal acts of the accused.^[16] Although Lourdes was not able to shout or repel the accused, it did not mean that she acquiesced to the sexual act. Accused had threatened to kill her if she would scream for help. He was strong enough to drag her to the nearby river. He was also so strong as to forcibly push her to the ground. Lourdes, under the circumstances, was overwhelmed with fear that all she could do was to push the accused and resist his advances. She fought back but he was stronger.^[17]

Furthermore, the medical findings showed that Lourdes suffered an abrasion at the