

## SECOND DIVISION

[ G.R. No. 122732, September 07, 1999 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EDGAR BAYRON Y MANTILLA, ACCUSED-APPELLANT.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review of the decision<sup>[1]</sup> of the Regional Trial Court of Butuan City (Branch 1), finding accused-appellant guilty of rape and sentencing him to *reclusion perpetua* and to pay complainant P50,000.00 as moral damages.

The information against accused-appellant alleged:<sup>[2]</sup>

That [at] or about 12:30 o'clock in the early morning of January 16, 1994, at Tabu-an Section, Langihan, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Susan Agcol y Duamadera against her will.

The prosecution's evidence shows the following: Complainant was, at the time material to this case, 37 years of age, married and had three children. She sold fruits and vegetables from a stall which she rented at the Langihan public market in Butuan City. Every Saturday night she slept in her stall so that she could open her store early Sunday morning, which is market day. In the evening of January 15, 1994, which was a Saturday, complainant was in her stall, lying on a bamboo bench which also served as her bed. The stall had a door which was closed by a rope at the top. To open it, the door only had to be pushed as it had no lock. On the two preceding Saturdays, complainant did not sleep in her stall. Apparently, accused-appellant used the stall as his sleeping quarters during complainant's absence. On the night in question, he went to the stall and was surprised to find complainant there. He said "*Oy, naa man diay natulog, kinsay mong kauban?*" ("Oh, somebody is sleeping here, who is your companion?"). Complainant, who was still awake, was herself startled. She asked accused-appellant what he wanted. Without a word, accused-appellant left. Complainant followed outside to see that accused-appellant was gone. Then she went back to her store and lay on the bench again. After about 30 minutes, accused-appellant came back, armed with a knife. He ordered complainant, "*Higda, ayaw paglihok, ayaw pagbanha*" ("Lie down, don't move and keep quiet"). Complainant immediately recognized accused-appellant. To parry the knife, she held accused-appellant's wrists. Accused-appellant tried to free himself from complainant's hold by suddenly moving the knife downwards and, as a result, cut the little finger of complainant's left hand. Complainant became frightened and she started to tremble.<sup>[3]</sup>

Accused-appellant knelt on the bench at complainant's feet and, at knife point, ordered her to unbutton her pants. As she stalled, accused-appellant pulled down her loose trousers and underwear with his left hand.

Accused-appellant then got off the bench, pulled his pants and underwear all the way down and told complainant to lie down or he would kill her. Accused-appellant went on top of complainant and proceeded to have sexual intercourse with her. While accused-appellant was still doing the sex act, complainant told him that she wanted to go to the toilet on the pretext that she had an upset stomach. Accused-appellant told her, "Not yet, you respond first." After a while, complainant again told accused-appellant that she wanted to go to the toilet. This time, accused-appellant agreed to let her go but not until he had left first.<sup>[4]</sup>

As soon as accused-appellant had left, complainant ran out into the street, still fastening her pants, and asked for help. Some people responded. They got a pedicab and told its driver to take complainant to the nearby Langihan police sub-station. There she filed a complaint for rape against accused-appellant. The police took complainant along to the Langihan public market, but accused-appellant was no longer around when they arrived. At around 9:00 of the same morning, complainant went to the Butuan City General Hospital where she was examined by the physician on duty Dr. Carmelita T. Arante.<sup>[5]</sup>

Dr. Arante issued a medical certificate stating the following:<sup>[6]</sup>

- = Introitus parous, lab. findings: vaginal smear (+) for spermatozoa.
- = Hematoma right lat. neck.
- = Lacerated wound, small finger, left.

On the witness stand, Dr. Arante stated that the positive finding of spermatozoa in private complainant's vaginal canal indicated that sexual contact preceded the examination. Upon request of the defense, Dr. Arante sketched the location of the wound in the small finger of complainant's left hand which she indicated to be at the side of the middle joint, almost horizontal in direction.<sup>[7]</sup>

Accused-appellant admitted having sex with complainant on January 16, 1994, but he claimed it was with the consent of complainant. His story is that, at around 12:30 in the early morning of that day, he went to his stall in the public market of Langihan, Butuan City; that upon entering, he was surprised to find complainant sleeping there; that although he did not know her personally, he knew her to be one of the fruit and vegetable vendors in the market. According to accused-appellant, in the early morning in question, he went near complainant and touched her feet and she laughed; that he asked her why she was there, to which she allegedly answered, "I just sleep here." Accused-appellant said he then went out and, after about two minutes, he went back inside the stall. He then took off his clothes even as complainant did the same. They then engaged in sexual intercourse which lasted for about two minutes during which he reached climax and ejaculated. He could not tell whether complainant had an orgasm as she did not make any reaction during their coitus.<sup>[8]</sup>

Accused-appellant said he afterwards left to have snacks, but, on his way back to the stall, he met the president of their labor group who warned him that policemen

wer looking for him. For this reason, he went to the house of his brother Renato Bayron in Obrero, Butuan City and, after three days, he surrendered to the Langihan police sub-station.

He was later detained at the city jail in Libertad, Butuan City, where it appears complainant paid him a visit. Complainant admitted during her cross-examination that she saw accused-appellant at the Langihan police station, and again at the city jail to which he was later transferred. But, in those instances, complainant said she went to these places to check whether accused-appellant was kept in jail. This is because although he had surrendered, the Langihan policemen allowed accused-appellant to move about freely. They also told complainant that they needed accused-appellant there to cook meals for them.

Accused-appellant claimed, on the other hand, that complainant saw him to ask for money for her support and that of her children because her husband had left them. Accused-appellant said he agreed on condition complainant dropped this case. Accused-appellant presented Herculio Bustillo, an inmate of the city jail, who testified that sometime during the first week of April 1994, while he was in the visitor's room of the city jail, he saw complainant talking with accused-appellant on a tricycle parked beside the jail warden's office. Complainant allegedly looked happy as she often laughed and even gave accused-appellant a pack of cigarettes.<sup>[9]</sup>

On cross-examination, Bustillo said he was about 20-30 meters away from accused-appellant and complainant, and thus he did not hear what they were talking about. He claimed that accused-appellant was a "live-out prisoner," who ran errands for other inmates in the prison compound.<sup>[10]</sup>

On August 29, 1995, the lower court rendered its decision the dispositive portion of which states:<sup>[11]</sup>

WHEREFORE, beyond reasonable doubt, the Court is completely convinced from the evidence adduced by the prosecution of the guilt of the accused. The penalty of RECLUSION PERPETUA is therefore imposed upon EDGAR BAYRON y MANTILLA, the same to be served by him entirely at the Davao Prison and Penal Farm, Panabo, Davao del Norte. He is entitled to the full benefit of his preventive imprisonment, conformably to Article 29 of the Revised Penal Code, as amended. Accused is ordered to indemnify the offended party, Susan D. Agcol, the sum of P50,000.00 representing moral damages.

IT IS SO ORDERED.

*First.* In this appeal, accused-appellant insists that complainant consented, if not encouraged him, to have sexual intercourse with her.

It is true the Court has sustained the defense of consensual sex in a number of rape cases.<sup>[12]</sup> But, in those cases, evidence was presented, consisting of letters and the testimonies of witnesses, to corroborate the claim of the accused that the alleged rape was actually a sexual intercourse between consenting adults. Here, not only is there no evidence of this nature presented but, on the contrary, the evidence shows that the parties did not know each other before the alleged tryst on January 16, 1994. If accused-appellant's claim were to be believed, within minutes of their