

## THIRD DIVISION

[ G.R. No. 118314, April 15, 1998 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ERNESTO AUXTERO @ TOYTOY, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

In Criminal Case No. 8251 of the Regional Trial Court, Branch 2, City of Tagbilaran, Bohol, Ernesto Auxtero, alias Toytoy was charged with rape under an information which reads:

That on or about the 28<sup>TH</sup> day of November 1992, in the municipality of Talibon, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, with lewd design and against the will and without the consent of the offended party, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Ruth Tutor, a 14-year old girl; to the damage and prejudice of the said Ruth Tutor.

Acts committed contrary to the provisions of Art. 335 of the Revised Penal Code as amended by Republic Act No. 2632 and 4111.<sup>[1]</sup>

The accused entered the plea of not guilty of the offense charged when arraigned on 9 June 1993.<sup>[2]</sup> After trial, the court *a quo* rendered judgment on 2 September 1994, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused ERNESTO AUXTERO guilty beyond reasonable doubt of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, as amended. There being neither mitigating nor aggravating circumstances, the accused is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*, to indemnify the offended party Ruth Tutor the sum of Fifty Thousand (P50,000.00) Pesos without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.<sup>[3]</sup>

Hence, this appeal from the lower court's decision with the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF COMPLAINANT RUTH TUTOR WHOSE TESTIMONY IS TAINTED WITH DOUBTS AND CONTRADICTIONS.

II

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND THAT RAPED (sic) WAS NOT COMMITTED.<sup>[4]</sup>

The facts as established by the evidence for the prosecution are as follows:

Private complainant, Ruth Tutor, at the time of the incident complained of, was a 14 year old freshman at Blessed Trinity High School, Bohol.<sup>[5]</sup> Accused-appellant Ernesto Auxtero alias Toytoy was a tricycle driver plying his trade in Talibon, Bohol.

On 28 November 1992, the day of the alleged rape, Ruth was on her way home from school where she had just finished her drum and bugle corps practice. She rode on the tricycle of the accused Auxtero, to bring her home in Barangay San Jose, which was approximately a kilometer away. Auxtero was known to her as she had ridden on his tricycle before. She seated herself at the back of the motorcycle. Seated in the side car, was another passenger, an old woman who was drunk.<sup>[6]</sup>

Upon reaching her house, Ruth asked the accused to stop. However, to her stupefaction, instead of stopping, the accused increased his speed. Ruth cried out for help but no one responded.<sup>[7]</sup>

At Barangay Balintawak, the old woman alighted. At this time, the accused held Ruth's hand to prevent her from escaping. The accused then transferred her to the side car and drove towards Barangay San Carlos. While driving, the accused kept on holding Ruth with his right hand.<sup>[8]</sup>

When they reached Garcia Park, the accused carried Ruth up a hill. All this time, Ruth was shouting for help, but the park was secluded. The accused then kneeled on the thighs of Ruth. He removed his pants and Ruth's underwear. He then tried to insert his penis into her vagina. All the while, she kept struggling to free herself. Thereafter, she felt his penis penetrate her vagina which caused her much pain. This continued for about thirty minutes.<sup>[9]</sup>

Afterwards, the accused invited Ruth to smoke. She refused. Instead, she tried to run away in the dark. After traversing a distance of approximately fifty meters, the accused caught up with her and offered her a ride home with a warning that should she recount the incident to her mother, he would kill her. She agreed to ride with him as it was already dark and she did not know her way home.<sup>[10]</sup>

She arrived home at around 7:30 p.m. Upon disembarking from the tricycle, Ruth immediately shouted to her parents to catch Auxtero who then sped away. Ruth narrated to her parents her harrowing experience. At this point, Ruth noticed that her black Seiko wristwatch was missing and her belt buckle was broken.<sup>[11]</sup>

Ruth's parents then accompanied their daughter for medical examination to Garcia Memorial Hospital. From the hospital, they then proceeded to the Talibon police station to report the incident.<sup>[12]</sup>

The following morning, the Talibon police, including prosecution witness SPO3 Desiderio Garcia, went to Barangay San Jose to arrest the accused. Together with the accused, they then proceeded to Garcia Park. At the spot pointed to by Ruth where she was raped, they observed the bushes were in disarray. There they found the black Seiko wristwatch belonging to the complainant.<sup>[13]</sup>

The medical Examination conducted by Fatima L. Buhay revealed that:

x x x RUTH TUTOR, 14 years of age, female, single of San Jose, Talibon, Bohol, has been examined this 28th day November 1992 at 9:25 p.m. and found to have sustained the following:

Findings:

= Introitus abrasion lateral to vaginal opening both sides with no bleeding points.

= Hymen intact.

= Admits tip of small finger with pain.

= Discharges meconoid (sic), scanty

= Test for presence of spermatozoa = negative<sup>[14]</sup>

For his defense, appellant denied the charges of rape against him. While he admitted that the complainant was his passenger in the late afternoon of 28 November 1992, he asserted that Ruth insisted on staying on board the tricycle even after they had passed the latter's home.<sup>[15]</sup> This fact was corroborated by witness Consorcio Questo, who claimed to be a passenger in the said trip.<sup>[16]</sup>

Further, appellant disclosed that he knew Ruth even before the alleged rape as the girl was his passenger on different occasions.<sup>[17]</sup> He, however, did not like her as a passenger as at times, she would not pay her fare and simply gets off the tricycle.

Another defense witness Primiliano Cutura, a fellow tricycle driver of the accused, testified that around 7:00 p.m. of the 28th of November 1992, he chanced upon the accused and Ruth at the junction of Garcia Park. The accused was at that time fixing a flat tire, and he (Cutura) offered Ruth a ride home. She, however, declined.<sup>[18]</sup>

There are three settled principles to guide an appellate court in reviewing evidence in rape cases:

1. An accusation for rape can be made with facility; it is difficult for the person of the accused, though innocent to disprove it.
2. In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the victim must be scrutinized with extreme caution.
3. The evidence for the prosecution must stand or fall on its merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[19]</sup>

On the basis of the aforementioned guidelines, this Court will decide the merits of the appellant's assignment of errors of the lower court's decision.

Settled is the rule that the findings of the judge who tried the case and heard the witnesses are not to be disturbed on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case. This is due to the fact that the trial judge had the opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grilling examination.<sup>[20]</sup>

The lower court relied heavily on the testimony of the victim. It found that the testimony of the offended party was straightforward and candid, unshaken even after a grilling