

FIRST DIVISION

[G.R. No. 124737, June 26, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RIZALINO FUNDANO, ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., J.:

Accused-appellant Rizalino Fundano (hereafter RIZALINO) seeks to reverse the 26 February 1996 decision^[1] of the Regional Trial Court (RTC) of Makati City, Branch 150, in Criminal Cases Nos. 94-4887, 94-4888 and 94-4889, which found him guilty beyond reasonable doubt of three counts of rape. The complaints in those cases were signed by the complainant Melody Fundano and her mother and filed with the court below on 4 July 1994.

In Criminal Case No. 94-4887, RIZALINO was charged with rape committed as follows:

That on or about the 10th day of September, 1993, in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned MELODY G. FUNDANO, a 15-year old girl, without her consent and against her will.^[2]

The complaints in Criminal Cases Nos. 94-4888 and 94-4889 were similarly worded, except as to the dates the crimes were committed, *i.e.*, 11 September 1993^[3] and 12 September 1993,^[4] respectively.

The National Bureau of Investigation (hereafter NBI), after initial investigation, transmitted the results of its investigation to the Provincial Prosecutor of Rizal on 26 November 1993.^[5] Attached to the report was the affidavit of NBI agent Atty. Carlo Magno Uminga,^[6] dated 26 November 1993, stating that RIZALINO had a "Standing Warrant of Arrest for Homicide" issued by the Regional Trial Court of Makati, Branch 134, on 26 November 1985, and that efforts to locate RIZALINO had failed as he was "in hiding at Bulan, Sorsogon."

On 6 July 1994, the court below issued a warrant^[7] for the arrest of RIZALINO at his address at 7123 Langka St., Comembo, Makati, Metro Manila. No bail was recommended for his provisional liberty. He was subsequently apprehended and detained at the NBI Detention Center, Manila.^[8]

At his arraignment on 14 July 1994, RIZALINO refused to be represented by Atty. Gesiree Abong of the Public Attorney's Office (PAO) as he wanted to have counsel *de parte* assist him and file a motion for reinvestigation. Thus, the court reset

arraignment to 26 July 1994.^[9] On the latter date, RIZALINO, assisted by Atty. Gesiree Abong nonetheless, entered a plea of not guilty to each of the three counts of rape charged against him.^[10] After pre-trial was declared terminated on 25 August 1994, trial on the merits was scheduled to commence on 30 August 1994.^[11]

The prosecution presented complainant Melody Fundano (hereafter MELODY) and NBI Medico-Legal Officer Dr. Rolando Victoria for its evidence in chief; and Ma. Luz Goña and Orlando Oseo, as rebuttal witnesses. The defense presented RIZALINO, Oscar Quelas and Luzviminda Gregana for its evidence in chief; and RIZALINO and Vida Fundano, as surrebuttal witnesses.

The prosecution established the following facts:

MELODY was the seventh of nine children of RIZALINO with his common-law wife, Maria Fundano. The family resided at 7123 Langka St., Comembo, Makati, although RIZALINO seldom stayed there. In 1974, RIZALINO married one Flora Granada with whom he begot two children. While he maintained a relationship with her since 1960, he claimed he had separated from Flora in 1980.^[12]

RIZALINO left his family with Maria in 1985 and moved to Bicol in 1986. In 1991, in Bicol, he started cohabiting with one Vida Joya, with whom he had no issue. Nevertheless, he would return to Comembo and stay there for one to three months at a time. When he was not in Comembo, he was usually with "his other wife" in Bicol and, according to MELODY, he was in Bicol in August and October 1993, and in Comembo in September 1993.^[13]

The Fundano residence at Comembo, Makati, was a one-room house partitioned into two sections by a curtain. One of the sections served as the sleeping quarters, which had a bed on one side and a *papag*, or makeshift wooden bed, beside it. From the beds one could hear whatever was happening in the other section.^[14]

Five of MELODY's siblings used to live in Comembo, but later moved to their sister-in-law's house at Fembo, Makati. For some time, MELODY stayed with her siblings at Fembo but, before she was raped, RIZALINO fetched her and her youngest sister, Rosemarie, from Fembo and took them to Comembo.^[15]

On the night of 10 September 1993, only RIZALINO and his daughters MELODY and Rosemarie, were in the Comembo house. RIZALINO and Rosemarie slept on the floor while MELODY slept on the *papag*. At around midnight, MELODY stirred from her sleep and found herself lying beside RIZALINO on the floor. RIZALINO, who was already naked, removed MELODY's panty and went "on top of her." He forced her and boxed her even as she pleaded, "*Tay, huwag*" [Father, don't]. After removing MELODY's panty, RIZALINO boxed her three times on the stomach, thereby preventing her from asking for help. He then inserted his penis into MELODY's vagina and kept it there for a long time. MELODY kept crying, but she could not move as RIZALINO held both her hands. After the act, he warned her not to tell anyone, not even her mother, about the incident, as it would "only be [her] shame." That rape was her first sexual experience.^[16]

The next day, after school, MELODY went to the house of Lucita Fundano, her sister-in-law, at Fembo. She told Lucita that she would be sleeping there and asked the latter to tell her father RIZALINO of her intention. But RIZALINO fetched MELODY

from Lucita's house, and because she was afraid that he would harm her if she disobeyed, MELODY went with him back to Comembo. That night, Rosemarie slept in a different part of the house. However, at around midnight, MELODY again found herself "being there in the *papag* already or lying on the floor" beside RIZALINO. The latter, who was naked, removed MELODY's panty and "place[d] himself on top of" her. He appeared to her to be drunk, which he was every night. RIZALINO then inserted his penis into MELODY's vagina and kissed her on the cheeks. After he finished, he warned her that if she told anyone about the incident, he would kill her and her relatives. Out of fear and confusion, MELODY did not reveal her ordeal to anyone.^[17]

The following morning, MELODY attended class and went home to Comembo at around 3:00 p.m. In the evening, she slept on the *papag*, while her younger sister slept elsewhere. Again RIZALINO carried MELODY from the bed to the floor and removed her panty. She begged him to stop, but he did not heed her plea. He held both her hands to keep her from breaking away, then mounted her and inserted his penis into her vagina. After his misdeed, he simply went to sleep. MELODY then put on her undergarment and cried herself to sleep.^[18]

From school the next day, MELODY went to Lucita's house, where she stayed until the end of September 1993. During that entire period, MELODY kept silent about her ordeal.^[19]

On 26 October 1993, while she was at Lucita's house, MELODY learned that her father was no longer at the Comembo house. That night, as MELODY thought about why her father abused her, she started crying. Awakened, Lucita asked MELODY why she was crying. MELODY finally revealed what RIZALINO did to her.^[20] Lucita then asked MELODY why she kept this matter to herself all this time. MELODY answered that she was afraid and ashamed, and that RIZALINO had told her he would bring her to Bicol so that, MELODY believed, "he may continue what he had done to" her. She could not even tell her eighteen-year old brother about her nightmares because he was equally afraid of RIZALINO.^[21]

The next morning, Lucita went to Maria, MELODY's mother, in Manila and told her about MELODY's complaint, while MELODY went to Cavite to see her friends. MELODY did not return to Comembo, and on 7 November, she went to her mother in Manila. Four days later, or on 11 November 1993, MELODY, accompanied by Maria and Lucita, went to the NBI and accomplished a complaint sheet,^[22] executed a sworn statement,^[23] and submitted herself to a medical examination, with the findings summarized in Living Case No. MG-93-1053.^[24] After the examination, MELODY, Lucita and Maria went to the house of Abe and Sandoy Fundano, RIZALINO's brothers, who agreed that the case against RIZALINO should be pursued.^[25]

Dr. Rolando Victoria, who examined MELODY, found no extra-genital physical injuries nor hymenal lacerations, and while her hymen was intact, it admitted a 2.8-centimeter diameter tube without producing any injury. Dr. Victoria thus concluded that MELODY's hymenal orifice could admit an adult male organ in full erection without suffering injury, and that it was possible she engaged in sexual intercourse.^[26]

On the other hand, RIZALINO testified that he left Manila for Bicol in 1986 and had stayed there ever since, although he would visit Manila once in a while and stay at his children's residence in Kakarong, Makati. Sometimes he dropped by the house of his common-law wife and mother of MELODY, Maria Gerola,^[27] at Langka Street, Fort Bonifacio, Makati. After he moved to Bicol, he gave financial support to Maria only once, when she went to Bicol to get the money. RIZALINO declared that days before the dates he allegedly raped MELODY, he was bedridden as his legs were wounded and swollen; in fact, he was under medical treatment by an *arbularyo* (herbal doctor) named Oscar Buelas.^[28] The treatments were administered at RIZALINO's house in Iraya, Bulan, Sorsogon, on Saturdays and Sundays beginning 11 September 1993 until October 1993. RIZALINO was able to walk only on or about 15 October 1993 and was completely healed sometime in November 1993. He never went to Manila while he was bedridden and undergoing treatment, even until he was healed. He knew nothing about the rapes for which he was indicted nor of any reason why MELODY accused him of committing them.

RIZALINO's witnesses, Oscar Quelas and Luzviminda Gregana, corroborated his alibi.

Oscar Quelas, a farmer who doubled as an *arbularyo* and lived in Barangay Lagong, Bulan, Sorsogon, declared that RIZALINO became Oscar's patient sometime in September 1993. On 11 and 12 September 1993, Oscar treated RIZALINO for rheumatism, which immobilized the latter. The treatment was administered three times a day from 7:00 a.m. to 7:00 p.m. at RIZALINO's house in Iraya, Zone 7, Bulan, Sorsogon. Since RIZALINO did not heal well, Oscar made crutches for RIZALINO a week after 12 September. Oscar still treated RIZALINO after 12 September 1993, but could not remember the exact dates.^[29]

Luzviminda Gregana, RIZALINO's neighbor in Bulan, Sorsogon, averred that sometime during the last week of August 1993, and in September and November 1993, she would see RIZALINO either seated or on crutches outside his house. Although she would see him whenever she went to market, it was only in September 1993 when she saw him sick. According to Luzviminda, two "quack" doctors, one of them Oscar Quelas, treated RIZALINO every Saturday and Sunday of September 1993.^[30]

Rebuttal witness Ma. Luz Goña claimed that she was a neighbor of RIZALINO in Comembo, Makati, and he mortgaged his house at Comembo to her on 14 September 1993, as security for a P10,000.00 loan. The transaction was reduced to writing, and on 14 September 1993, RIZALINO and Maria Fundano signed the document in front of Goña at 3123 Langka St., Comembo, Makati. Orlando Oseo, Antonio Oseo, Josie Castillo and Teofilo Maghanoy signed the document as witnesses. Goña had been in possession of the document since 1993. Goña further declared that she disbelieved RIZALINO's claim that he was in Bicol during the entire month of September of 1993 as they discussed the mortgage on 12 September 1993 and she gave the money to him on 14 September 1993, both in Comembo.^[31]

Rebuttal witness Orlando Oseo, a neighbor and cousin of RIZALINO, testified that he had been seeing RIZALINO at Langka Street, Makati, during the entire month of September 1993. In fact, Orlando was even one of the witnesses to the mortgage document earlier mentioned. While he admitted that he and RIZALINO had a

misunderstanding in 1978, which lasted for two months, they reconciled thereafter.
[32]

On surrebuttal, RIZALINO asserted that he signed the mortgage contract in his house in Sorsogon on 14 September 1993. MELODY's mother, Maria Gerona, brought the document to Sorsogon as she knew he was sick. To explain the transaction, RIZALINO declared that Maria had asked P10,000.00 from him for the expenses of their eldest son who was to leave for abroad, but since he could not produce the money, Maria asked him to mortgage the house in Makati. After acceding to the request, Maria presented the document for his signature. There were no witnesses to the signing, and although he knew all the witnesses who signed the document, their signatures were not on the document when he signed it. Finally, RIZALINO claimed that the transaction was between Goña and Maria and that the document was brought to him only for his conformity.^[33]

Surrebuttal witness Vida Joya presented herself in court as Vida Fundano, the current common-law wife of RIZALINO. She testified that on 14 September 1993, Maria Gerona went to the Fundano residence in Sorsogon. Vida read the mortgage document and explained it to RIZALINO who could not read it because of his poor vision and his eyeglasses were not available then. Vida confirmed that the document was not signed by any witness.^[34]

In its decision of 26 February 1996,^[35] the trial court found RIZALINO guilty of rape as charged in Criminal Cases Nos. 94-4887, 94-4888 and 94-4889, and taking into account "the alternative circumstance of relationship, which is aggravating in crimes against chastity such as rape," sentenced him "to suffer the penalty of RECLUSION PERPETUA in each of the three (3) cases against him" and "to pay P50,000.00 as moral damages in each of these cases and P25,000.00 as exemplary damages in each case."

The court *a quo* found that the threat RIZALINO made against MELODY and her family was sufficient to produce a reasonable fear, thereby compelling her to submit to his bestial demands. Moreover, his moral ascendancy and influence over his daughter MELODY substituted for violence or intimidation.

The trial court gave full faith and credit to MELODY's testimony who declared in court, "in a straight forward (sic) and categorical manner," and exhibited no ulterior motive which "could have removed the sense of modesty and shame in a 15-year old girl and impelled her to concoct a story that would certainly bring ignominy, dishonor and humiliation to her and her family." The RCT thus concluded:

If she had not in fact been raped, [MELODY] could not have narrated the details of her horrifying experience to the NBI authorities, submitted herself to genital examination and signed a criminal complaint for rape against the accused. Certainly, it was only to vindicate her honor that gave her the courage to face the ordeal of a public trial in making a narration of rape perpetrated by her own father.

Finally, the trial court found unworthy of credence RIZALINO's defense of alibi, which was belied by the witnesses for the prosecution, including his first cousin, Orlando Oseo.

In this appeal, RIZALINO assigns this lone error: