

THIRD DIVISION

[G.R. No. 108613, April 18, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANASTACIO MALABAGO Y MAQUINTO, ACCUSED- APPELLANT.
D E C I S I O N**

PANGANIBAN, J.:

In a prosecution for rape, the complainant's credibility is the single most important consideration. Her straightforward, clear and positive testimony, coupled with the absence of any motive to fabricate or to falsely implicate the accused, may be enough to convict the appellant. In the absence of credible supporting evidence such as love notes, mementos, pictures, etc., appellant's bare assertion that complainant was his sweetheart is not enough to overturn such testimony.

In a Complaint-Information docketed as Criminal Case No. CBU-20531 and dated December 28, 1990, Private Complainant Alice Llanto y Boyles charged Accused-Appellant Anastacio Malabago y Maquinto with the crime of rape before the Regional Trial Court, Branch XIV of Cebu City.^[1] The pertinent text of the Complaint-Information reads:^[2]

"That on or about the 21st day of December 1990, at about 3:00 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of violence and intimidation, with deliberate intent, did then and there unlawfully and feloniously have carnal knowledge of the undersigned against her will."

During the arraignment on April 5, 1991, appellant, assisted by counsel, pleaded not guilty.^[3] Afterwards, trial on the merits ensued. In a Decision dated April 13, 1992, the trial court found the accused guilty beyond reasonable doubt of the crime of rape, thus:^[4]

"WHEREFORE, premises considered, the accused Anastacio Malabago y Maquinto is hereby found guilty beyond reasonable doubt of having criminally raped Alice Llanto y Boyles. He is accordingly sentenced to reclusion perpetua, to suffer the accessory penalties prescribed by law and to pay unto his victim the amount of P30,000.00 by way of civil indemnity, without subsidiary imprisonment in case of insolvency in view of the principal penalty imposed upon the accused.

The costs of this instance shall also be taxed against the accused.

SO ORDERED."

The Facts

The allegations of both the prosecution and the defense were narrated by the trial court as follows: ^[5]

"The complainant in this case is a frail, unsophisticated, neither comely nor unattractive country girl. She grew up in the neighboring province of Bohol, and had come to Cebu City to pursue her secondary education while helping her elder half-brother Armin Llanto and his wife Lilia eke out a living as scavengers at the Dumping Site, Whiteroad, Inayawan, Pardo, Cebu City. At the time she took the witness stand, she was 17 years old. The punishing economic straits through which she must have been is suggested by the fact that at her age when most girls should have already entered college, she was still a sophomore at the Pardo High School in Cebu City.

The complainant asserted that she was raped by the accused.

She testified that at about 3:00 o'clock in the morning of December 21, 1990 she went out of her brother Armin's house at Dumping Site, Whiteroad, Inayawan Pardo, Cebu City to answer a call of nature. On her way to the toilet beside the bodega she stumbled on a tin plate and she picked it up. She was putting the plate on the table when she heard someone call her 'Day' (Inday). As she turned toward the direction of the voice, the accused Anastacio Malabago, alias 'Julio,' embraced her from behind. Unable to free herself from his hold, she asked him what he was doing to her. The accused replied that if she so much as shouted, he would break her head and his own, so that they would die together. She shouted, and the accused promptly strangled her and pointed a knife on her neck. What happened after that the complainant narrated when she took the witness stand on May 27, 1991, thus --

ATTY. MONTESCLAROS:

Q What else did Anastacio Malabago do to you aside from strangling your neck and pointing a knife on your neck?

A He made me lie down on the table and he sat on my legs and he did what he wanted to do.

Q Please explain to the Honorable Court what you mean when you said that Anastacio Malabago did what he wanted to do to you?

A Maybe he wanted to insert his into mine so he could accomplish what he wanted to do.

COURT: Please tell your witness to speak plainly and clearly. Are you ashamed to these people inside this courtroom who are listening to your testimony?

WITNESS: No.

COURT: Speak plainly and clearly.

ATTY. MONTESCLAROS:

- Q** Please explain clearly to the Honorable Court what do you mean when you said that Anastacio Malabago wanted to accomplish something?
- A** I mean that he wanted to insert his penis into my vagina.
- Q** Kindly tell the Honorable Court if Anastacio Malabago succeeded in his desire to have carnal knowledge of you?
- A** Yes, Ma'am.
- Q** By the way, what was the physical appearance or condition of Anastacio Malabago when you noticed his presence for the first time?
- A** At that time he was wearing a sleeveless shirt but I did not notice the trousers.
- Q** Why did you say that you did not notice the trousers of Anastacio Malabago?
- A** Because when I tried to pull up my skirt because I don't want him to damage me I noticed that and I felt with my bare hands his thighs without any cover.
- Q** You said that Anastacio Malabago inserted his penis into your vagina or that he succeeded in raping you, after that what happened to you?
- A** And I stood up then he said 'that will show you who is Anastacio Malabago.
- Q** Then, what did you say after you were told by Anastacio Malabago that 'now you know who is Anastacio Malabago'?
- A** So I told him that I will take my revenge on you and I will have you arrested and I will put you in jail.
- Q** And what did Anastacio Malabago say if any?
- A** So he told me to just do what I wanted to do if I ever wanted him to put in (sic) jail, but he cannot do anything because he said that it is his fault.
- Q** After Anastacio Malabago told you that, what did you do?
- A** I went upstairs and cried on (sic) what he had done on (sic) me and why he raped me.' (T.S.N. of May 27, 1991, pp. 5-7).

On the afternoon of the same day, Armin Llanto (who had just arrived from Bohol that afternoon with his step-mother, who is Alice's mother) and his wife Lilia brought the complainant to the Cebu City Medical Center for physical examination. There, the complainant was examined by Dr. Joy Tuesday Ramas Engracia, who found among other things, that she was in a non-virgin state physically as her genital orifice admitted two fingers easily, and that her vaginal smear was positive for spermatozoa. Dr. Engracia's detailed findings are reflected in Exhibit 'A', to wit:

'TO WHOM IT MAY CONCERN:

This is to certify that as per record of this hospital, Mr/Mrs./Miss ALICE LLANTO, (age) 17 yrs. old, (status) SINGLE, (nat'l.) FILIPINO, of INAYAWAN WHITE ROAD, PARDO has been treated/consulted in the Out Patient/Emergency Room Department on December 2 (sic), 1990 at 5:46 P.M. because of the following:

Genitalia -- no hematoma, no laceration

-- admits 2 fingers w/ ease

-- scanty bleeding (6th day menstruation)

Vaginal Smear for Detection of Spermatozoa

-- positive

(SGD.) DR. JOY TUESDAY RAMAS-ENGRACIA

Attending Physician on Duty

This certification is issued upon request of the Patient/immediate relative whose signature is shown below.

(SGD.) ALICE LLANTO

Patient/Relative'

Dr. Engracia stressed that when she examined Alice Llanto, the latter told her that she was raped at 3:00 o' clock that morning of December 21, 1990.

From the Cebu City Medical Center, Armin and Lilia brought Alice to the Taboan Police Station in Cebu City, where they lodged a complaint for rape against the accused Anastacio Malabago. In that station, that same afternoon, the complainant had a confrontation with the accused.

The accused denied that he violated the complainant. He claimed that Alice Llanto was his sweetheart; that the sexual congress he had with her that early morning of December 21, 1990 was their mutual agreement; that in fact it was the complaining witness herself who came to him inside the bodega where he was asleep in a make-shift bed, awakened him from his sleep, and even suggested that they perform the sexual act in his make-shift bed atop the table in the bodega because the table was wider and more comfortable (sic) than his make-shift bed.

The accused's mother, Soila Malabago and a neighbor, Eglerina Caballero, sought to corroborate the accused's claim that he was Alice's sweetheart."

The Issues

Appellant imputes to the trial court the following alleged errors:^[6]

“I

The lower court erred in convicting the Accused-Appellant of the crime of rape defined and penalized under Art. 335 of the Revised Penal Code, despite the insufficiency of the evidence for the prosecution to establish his guilt beyond a reasonable doubt.

II

The lower court likewise erred in giving full faith and credence to the testimony of complainant, Alice Llanto, despite its contradictions and implausibilities.”

First Issue: Use of Force and Intimidation

Appellant assails his conviction by the trial court claiming that the complainant “failed to allege the basic element of force” in the purported commission of rape.^[7]

We do not agree.

It is clear from the testimony of private complainant that after appellant had forcibly embraced her, he threatened to break her head if she shouted; thereafter, he strangled her and pointed a knife at her neck. She testified:^[8]

ATTY. MONTESCLAROS:

Q You said that in the morning of December 21, 1990 at about 3:00 o’ clock in the morning you were in the house of your brother Armin Llanto whose house is located at the dumping area of White Road, Inayawan, Pardo, Cebu City, could you tell us what were you doing?

A I went down the house to deficate (sic).

Q Where did you go then in order to relieve yourself?

A To the toilet located beside the bodega.

Q While on your way towards the toilet which is located at the side of the bodega, tell us if anything unusual happened?

A On my way I stumbled upon a tin plate and so I picked it up and put it on the table.

Q In effect, were you able to place that plate on the table?

A Yes, Sir.

Q While you were placing that plate on the table, could you tell us what happened?

A In the process while I was placing the plate on the table somebody called me ‘day,’ and when I turned he already embraced me from my back and I cannot free myself, so I asked what he was doing to me and he said if I shout he will break my head and afterwards he will also break his head so that we will go together.