

SECOND DIVISION

[G.R. No. 118458, July 24, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY DELA CRUZ, ACCUSED-APPELLANT.

DECISION

PUNO, J.:

Accused-appellant RICKY DELA CRUZ challenges the Decision of the Regional Trial Court of Surigao City finding him guilty beyond reasonable doubt of the crime of RAPE, allegedly committed as follows:

"That on July 26, 1993, at about 5:30 o'clock in the morning, in Sitio Eviota, Barangay Matingbe, San Jose, Surigao del Norte and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force and intimidation, by pointing a sharp-pointed bolo on the victim, under full freedom, intelligence and voluntariness and against the will and consent of the victim, did then and there wilfully, unlawfully and feloniously have sexual intercourse with EDELYN GEDUCOS (sic), to the damage and prejudice (actual, moral and exemplary) to (sic) the said victim in an amount to be proven in court.

"ACT CONTRARY to Article 335 of the Revised Penal Code."^[1]

The fifteen-year old victim, EDELYN GIDUCOS, recounted her sad fate in the hands of appellant, thus: On July 26, 1993, at about 5:30 a.m., she was alone in their house in Sitio Eviota, Matingbe, San Jose, Surigao del Norte. Her parents had left earlier that day to go fishing. Her elder sister was at the pier practicing for Citizens Army Training (CAT), while her brother was playing outside their house.^[2]

While she was in the bedroom fixing the beddings, she sensed a movement behind her. She turned around and found appellant RICKY DELA CRUZ, a 20-year old fisherman, standing behind her and holding a knife. Appellant pulled her arm and poked the knife at her stomach. Edelyn trembled with fear. Appellant then ordered: "Do not move. Lie down." When she lay on the bed, appellant ordered her to remove her undies. She refused. Appellant threatened to kill her and kept poking her stomach with the knife. Appellant himself removed her skirt and undies and knelt on her thighs. Edelyn could not shout for she was terrified of appellant and was continuously weeping. She kept twisting from side to side to prevent appellant from satisfying his lustful desires, but her efforts were in vain. Appellant succeeded in having carnal knowledge of her.^[3] He threatened Edelyn and her family with death should the latter reveal the incident to anyone.

Thereafter, appellant left Edelyn in the room crying. She dressed up and went to the kitchen to check on the food she was cooking. At about 7:00 a.m., Lina, Edelyn's

mother, arrived and found Edelyn crying in her room. When Lina asked her why she was crying, Edelyn prevaricated and said she just missed her aunt in Cebu. Edelyn did not reveal the grim fate she suffered in the hands of appellant for she feared appellant's threats and was ashamed of what happened to her.^[4]

On the days following the incident, appellant would pass by Edelyn's house, brandishing his knife, without saying a word. At one time, appellant attempted to enter Edelyn's house but retreated when he saw Edelyn's younger brother inside.^[5]

On August 11, 1993, at about 7:30 a.m., Edelyn was again left alone in their house. She was in the sala when appellant entered their house and tried to molest her again. Fortunately, appellant was not able to carry out his lecherous designs for he saw Edelyn's uncle out in the street, approaching the house. Appellant then hurriedly left.^[6]

Edelyn was badly shaken by fear of appellant's repeated threats and attempt to molest her. The next day, August 12, Edelyn finally decided to tell her parents about her unfortunate experience. They immediately reported the rape to the police. The next day, Edelyn was subjected to a physical examination.^[7] DR. PONCIANO GRIÑO, JR., Municipal Health Officer of San Jose, Surigao del Norte, found a rupture in her hymen due to sexual intercourse.^[8]

Edelyn had known appellant prior to the incident. Appellant had courted her but she declined his proposal. Appellant would usually approach and talk to Edelyn while the latter fetched water outside the house. During his courtship, Edelyn never invited appellant to her house.^[9]

The defense advanced the "sweetheart theory" and the defense of alibi. Appellant claimed that he and Edelyn were lovers. He also alleged he could not have molested Edelyn on July 26, 1993 because from July 24, 1993 to August 11, 1993, he was fishing in Layagon with his friends. Before they left Sitio Eviota, he personally secured a barangay clearance (Exhibit "6")^[10] from their barangay captain PERLITO ABIS. He obtained the clearance for identification purposes since he would be fishing in another locale. Thereafter, appellant and his seven (7) friends left Sitio Eviota at 10 a.m. of July 24, 1993. They reached Layagon five (5) hours later, at 3 p.m. and they immediately went fishing. After an hour, they returned to their camp at Layagon and rested. The next day, July 25, they again went fishing from 3 a.m. to 6 a.m. They recorded their activities on a notebook, indicating the names of the men who went out fishing and the quantity of fish catch for each day.^[11]

During the period July 24 to August 11, 1993, appellant never left Layagon. When he returned to Sitio Eviota on August 11, 1993, he was immediately arrested by the police and charged with the rape of Edelyn Giducos.^[12]

To corroborate his presence at the fishing trip, appellant presented two of his fishing companions RUBEN GERANCE^[13] and JUPITER EVIOTA.^[14] Barangay captain PERLITO ABIS also confirmed that he issued a barangay clearance to appellant prior to their fishing venture.^[15]

Appellant alleged he was falsely accused of the crime for two (2) reasons: first, he

and Edelyn were lovers. Edelyn's family was against him and did not want him to marry Edelyn; second, he ruined the fishing net he borrowed from Edelyn's father and refused to pay for it.^[16]

To rebut appellant's evidence, the prosecution recalled the rape victim, Edelyn Giducos, to the stand. She reiterated that she knew appellant, that he courted her but she did not accept his proposal, and that they never became lovers.^[17] LINA GIDUCOS, Edelyn's mother, also testified to rebut the testimony of the barangay captain Perlito Abis. Lina asserted that when Edelyn revealed to her about appellant's sexual assault, she accompanied Edelyn to barangay captain Abis to report the rape incident that same afternoon. However, barangay captain Abis did not make a written report of their complaint. Hence, they went to the police and the municipal health officer for medical examination.^[18]

On October 25, 1994, the trial court rendered a Decision finding appellant guilty of the crime charged. The dispositive portion reads:

x x x

"Wherefore, premises considered, the Court finds the accused, Ricky dela Cruz, guilty beyond reasonable doubt as a principal of the crime of rape under Article 335, No. 1, of the Revised Penal Code, and there being no modifying circumstance to consider, hereby sentences him to reclusion perpetua and its accessory penalties; and to pay the costs.

"The accused is ordered to indemnify the minor victim, Edelyn Giducos, represented by her parents, Wanner Giducos and Lina P. Giducos, in the amount of 50,000.00, conformably to (sic) recent jurisprudence.

"SO ORDERED."^[19]

Hence this appeal.

Appellant essentially assails the credibility of victim EDELYN GIDUCOS. He points out that the defense proved that it was physically impossible for him to have committed the crime. Appellant likewise contends that in other cases,^[20] this Court has expressed grave suspicion where the complainant failed to denounce the assailant at once. He specifically cites the case of *People v. Jervoso*^[21] where this Court held that in waiting for 15 days before reporting the crime, complainant's credibility was eroded. In the case at bar, there was a delay of 17 days before complainant reported the rape. Appellant urges that the failure of Giducos to do anything during and after the alleged rape negates its commission.

We affirm appellant's conviction.

It is trite to state that the matter of evaluating the credibility of witnesses depends largely on the assessment of the trial court. Appellate courts rely heavily on the weight given by the trial court on the credibility of a witness as it had a first-hand opportunity to hear and see the witness testify. Nonetheless, the trial court's assessment of credibility is not conclusive on appellate courts as to deprive the