

## SECOND DIVISION

[ G.R. No. 104312, July 09, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO CABALLERO, ACCUSED-APPELLANT.**

### D E C I S I O N

**TORRES, JR., J.:**

When the issue is *auctoritas*, credibility or that which wears the appearance of truth in a criminal proceeding is normally the allotted precinct of trial courts. Unless there are compelling reasons to deny this to the inquest magistrate, justice and common sense would be better served by a reliance on this precept of evidence.

The issue of credibility of witnesses is one alleged error assigned by accused-appellant in this appeal.

Assailed in this appeal is the decision of the Regional Trial Court, Branch 16, Cebu City, dated Oct. 18, 1991, the dispositive portion of which reads:

"WHEREFORE, premises considered, the court finds the accused Mario Caballero guilty beyond reasonable doubt of the crime of rape for which he is hereby sentenced to suffer the penalty of reclusion perpetua, and to further indemnify the complainant Charina Alpuerto in the sum of P30,000.00.

SO ORDERED."<sup>[1]</sup>

The records reveal the following facts:

Sometime in the last week of September, 1988, at about 11:00 o'clock in the morning, Charina Alpuerto, then 14 years old, went to the Mountainside to get their cow and transfer it to another grassy place. While Charina was tethering the cow to a coconut tree, Mario Caballero appeared from behind, embraced Charina and covered her eyes with his shirt. He tied her hands at her back and then pushed her to the ground. Then he undressed her and raped her.<sup>[2]</sup> After the rape, Mario Caballero, using a knife, threatened to kill Charina if she would tell her parents about what happened.<sup>[3]</sup> Hence, Charina did not disclose to anybody that she was raped by Caballero. In February 1989, Pelagia Alpuerto, Charina's mother, found out that Charina was pregnant.<sup>[4]</sup> Later, in July of the same year, Charina gave birth at the Sacred Heart Hospital.

Mario Caballero, a 53 year old fisherman, denied raping Charina Alpuerto and alleged that they were lovers. According to him, it was Charina who professed her love to him and she often went to his house to borrow money from him.<sup>[5]</sup> He alleged that he did not force Charina to have sex with him. In fact, in September

1988, at about 6:00 in the morning, it was Charina who went to his house and lay beside him. She touched and embraced him<sup>[6]</sup> and they had sexual intercourse. Thereafter, they had engaged in sexual intercourse several times.<sup>[7]</sup> Their relationship continued and in October 1988, Charina told him that she was pregnant. He promised to support her.<sup>[8]</sup> On Feb. 14, 1989, the parents of Charina discovered their affair, as well as her pregnancy, and they confronted him at his house in Camboang. After the incident, he decided to end their relationship.<sup>[9]</sup>

Mario Caballero was charged with the crime of rape. When arraigned, he pleaded not guilty to the charge. Trial on the merits ensued and thereafter, the trial court convicted Caballero of rape.

Hence, this appeal with the following assignment of errors:

## I

The trial court erred in giving credence to the testimony of Charina Alpuerto which is replete with material inconsistencies and improbabilities.

## II

The trial court erred in not acquitting the accused-appellant Mario Caballero when the evidence adduced by the prosecution failed to overcome with moral certainty the presumption of innocence mandated by the constitution by clear and convincing evidence of guilt beyond reasonable doubt.

The appeal is devoid of merit.

Accused appellant assails the credibility of complainant Charina Alpuerto. He contends that her testimony was inconsistent and contrary to common knowledge and experience. He argues that it was unthinkable for Charina not to shout for help nor make an attempt to escape from his embrace when her house was just a kilometer away. It was likewise incredible that Charina did not sustain any injury or even bruises on her body when she claimed to have been tied, pushed to the ground and punched by accused-appellant. Then, after the supposed rape, Charina never reported the incident to her parents. Finally, accused appellant opined that since Charina gave birth on July 9, 1989, there could not have been any rape sometime in the last week of September 1988. If the alleged rape happened in the last week of September, Charina should have delivered her baby between the second and third week of June, 1989 and not on July 9, 1989.

All these arguments are puerile.

Charina Alpuerto failed to shout for help because appellant covered her mouth with his strong hand. She was not able to escape because her hands were tied and her eyes were covered by a shirt, and she felt weak. Charina narrated her ordeal in her testimony:

**"Q** And then what happened?

**A** And he covered my mouth with his hand.

**Q** After Mario Caballero covered your eyes and your mouth, what did he do?

**A** He pushed me to the ground.

**Q** And what happened to you when Mario Caballero pushed you to the ground?

**A** I fell face upward and my head hit a trunk of the coconut tree.

**Q** After you fell down to the ground, what did Mario Caballero do to you?

**A** He pulled my short and my panty.

**Q** Before he pulled your short and your panty, what did he do to you?

**A** He boxed my legs,

**Q** What did you feel when he boxed your legs?

**A** It was painful.

**Q** After Mario Caballero removed your short and your panty, what did he do to you?

**A** He laid (sic) on top of me."<sup>[10]</sup>

After the incident, Charina did not report what happened to her. She kept silent because she was threatened by the appellant:

**Q** After Mario Caballero raped you, what did he do to you?

**A** He threatened to kill me if I revealed to my parents.

**Q** Mario Caballero, what did he use in threatening you?

**A** A knife.

**Q** He was holding a knife at that time?

**A** Yes, Sir.

**Q** And were you afraid when he threatened you?

**A** Yes, I was afraid.

**Q** And did you report the incident to your parents as to what