

## THIRD DIVISION

[ G.R. No. 119957, September 23, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODOLFO BAWAR Y LABOG, ACCUSED-APPELLANT.**

### DE C I S I O N

**MELO, J.:**

Accused-appellant Rodolfo Bawar y Labog seeks reversal of the decision dated March 2, 1995 of the Regional Trial Court of the Fourth Judicial Region (Branch 38, Boac, Marinduque) in its Criminal Case No. 27-94 finding him guilty of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and the accessory penalties thereof.

The Information dated June 7, 1994 charged:

That on or about the 15th day of August 1985, at around 12 o'clock in the evening, in barangay Canat, municipality of Boac, province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, said accused entered the house of the mother-in-law of complainant Librada Opis-Montiano, where the latter was sound asleep, and once inside, did then and there, wilfully, unlawfully and feloniously lie on top of complainant and succeeded in having carnal knowledge of the complainant against her will, and to her damage and prejudice.

**CONTRARY TO LAW.**

(p. 9, Rollo.)

The prosecution's version of the commission of the crime charged was ventilated through its witnesses, complainant Librada Opis-Montiano and her sister-in-law, Leticia Montiano, and would tend to show the following incidents:

At about 5 o'clock in the afternoon of August 15, 1985, complainant Librada Opis-Montiano and her husband were at their residence in Can-at, Boac, Marinduque. Sometime later, Constancia Monreal, complainant's would-be "Kumadre" and her husband Rufino Mandia arrived together with complainant's father Mariano Opis, her brother Fortunato Opis, and aunt Pureto Lasac to offer her a gift (magadulot) as was the tradition for being the godmother or sponsor in the baptism of Monreal's son.

The abovenamed persons then started drinking tuba. Later in the evening, accused-appellant Rodolfo Bawar and his wife Rosalinda arrived and joined the merrymaking group. After drinking four glasses of tuba, complainant allegedly felt dizzy and fell asleep on a "papag". As complainant's house was small and filled with guests, complainant was brought by her brother Fortunato Opis and sister-in-law Leticia

Montiano to the house of complainant's parents-in-law some 30 to 35 meters away.

At about 12 o'clock midnight, complainant said that she was awakened by the weight of a man on top of her and having sexual intercourse with her. Thinking that it was her husband, complainant held the man's hands. At about this time, complainant's 7-month old son, who was lying beside her awoke and began crying. Leticia Montiano, complainant's sister-in-law who was sleeping on the other side of the wall separating her and complainant was also awakened. Fearing that the child might have been pressed by complainant, Leticia stood up and lit a kerosene lamp and by its light, which illumined the room, complainant then discovered and realized that the man who was having sexual intercourse with her was not her husband but her neighbor, herein accused-appellant Rudy Bawar. She reproached him saying, "Bakit ako pa ang iyong inaglahi wala naman akong masamang inagawa sa iyo" as she tightened her hold on his hands and refused to release him. Accused-appellant, however, poked a small bolo at her neck and threatened to kill her if she will not let go his hands. Fearing for her life, complainant released accused-appellant's hands, who then in haste, ran out of the house naked, carrying along his shorts.

Leticia, complainant's sister-in-law, by the rays of the kerosene lamp she had lighted, saw accused-appellant on top of complainant naked and having sexual intercourse with her, as complainant lay face up, skirt pulled up, without panties, and holding accused-appellant's hands, uttering at the same time some words.

When accused-appellant left, Leticia approached complainant, and the latter tearfully told her, "Ate, bakit ako pa ang inaglahi in Pareng Rudy, wala naman akong ipinakitang masama sa kanya." Leticia did not answer but cried. Complainant then told Leticia, "Ate, hindi ko kagustuhan yoon - Hindi ko pinagtataksilan ang kapatid Mo".

The next morning, complainant went home. On her arrival, her husband was there but she did not tell him about what accused-appellant had done to her, It was not until three days after the incident that she told him about the same, allegedly because she was afraid he will hurt her. Neither did Leticia reveal the incident to her brother for the same reason.

True enough, after complainant's husband learned of the incident, he got mad and quarreled with complainant,, suspecting that she and Bawar were in fact lovers.

Seven days after the incident, complainant lodged a complaint against accused-appellant before the police authorities of Boac to prove to her husband that what happened was not of her own liking. After the case was filed, accused-appellant and his family left Marinduque for Cavite.

Accused-appellant, on the other hand, presented a different version. The sexual congress between him and complainant on the date and time alleged in the information is not denied, rather it is said that the act was free and voluntary on their part because they were lovers. He narrated that at around 6 o'clock in the evening of August 15, 1985 he was in the house of complainant together with his wife and other persons on the occasion of the gift offering to complainant as the baptismal sponsor of Monreal's son. He and the other guests, including complainant, were drinking tuba. As complainant was going around the house entertaining the guests, accused appellant had a chance to talk with her

clandestinely. During their short conversation, they agreed that complainant would feign drunkenness and she would then be taken to the house of her father-in-law some 30 to 35 meters away. He would then follow her at 12 o'clock that night and there they would enjoy each other's body. He would make his presence known by pricking her from under the floor and when complainant is awakened, accused-appellant would go up the house.

At about 10 P.M. or thereafter, accused-appellant left complainant's house and at midnight proceeded to the house of complainant's father-in-law, Marciano Opis, to see the victim, as agreed upon. Upon reaching the place, he went under the house, pricked complainant, who, acknowledging his arrival, told him to go up the house. Accused-appellant went up and finding complainant had no underwear, laid down beside her and they then started their sexual congress.

In the midst thereof, complainant's son woke up crying, prompting complainant's sister-in-law, Leticia, who was awakened, to light a kerosene lamp. Afraid that the sister-in-law would catch them, he pleaded for complainant to release his hands from her tight hold and then he carried his pants and went home.

Accused-appellant is now before us praying for reversal on the ground that the evidence of the prosecution does warrant or support the judgment of conviction.

A reading of the trial court's decision reveals that the pronouncement of guilt is entirely based on the testimony of complainant Librada Opis-Montiano that she was raped, that she and accused-appellant were not lovers, and that she did not voluntarily agree to perform the sexual act with him. Relying upon and giving full credence to her testimony, the trial court concluded that the guilt of the accused-appellant had thereupon been established by proof beyond reasonable doubt. We cannot sit easy with such pronouncement.

Settled is the rule that an appellate court will generally not disturb the assessment of the trial court on matters of credibility, considering that the latter was in a better position to appreciate the same, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial, unless the trial court has plainly overlooked certain facts of substance and value, which if considered may affect the result of the case (People vs. Bantisil, 249 SCRA 367 [1995]), or in instances where the evidence of record fails to support or substantiate the lower court's findings of fact and conclusions, or where the disputed decision is based on a misapprehension of facts (People vs. Godoy, 250 SCRA 676 [1995]).

In the case at bar, we feel that we may depart from the general rule.

Since coition is admitted, the only real issue is whether the victim gave her consent thereto, the determination of which rests on the credibility of complainant's testimony as the only witness to the alleged occurrence.

It is a well-settled doctrine that in crimes against chastity the testimony of the offended party should not be received with precipitate credulity (People vs. Graza, 196 SCRA 512 [1991]; People vs. Dulay, 217 SCRA 132 [1993]). It behooves the court to exercise the greatest degree of care and caution in the consideration and analysis of a complainant's testimony.

We have carefully analyzed the testimony of complainant Librada which the trial court adjudged to be credible, and find that her version of the rape incident appears to be implausible, if not fabricated, preposterous on crucial points, obviously contrived, unnatural and not in accordance with the ordinary course of nature and the ordinary habits of life, to such a degree that we can not but reject her testimony.

Librada, when asked how the alleged sexual assault transpired, testified on direct examination as follows:

- Q.** While you were drinking, what happened next?
- A.** After I consumed 4 glasses of tuba, I felt dizzy and I slept at the "papag".
- Q.** While you were sleeping at the "papag" what happened next?
- A.** I fell asleep there, sir.
- Q.** What happened next after you fell asleep?
- A.** When I regained consciousness I felt that somebody was on top of me and his organ was inserted in my organ and he was jerking on me, sir.
- Court** - to the witness:
- Q.** What time was that?
- A.** 12 Midnight, your honor.
- A.** Lomarda - continuing:
- Q.** While that person was jerking his body, what did you do?
- A.** I held his hand because I thought that he was my husband,sir.
- Q.** What happened next?
- A.** When my son beside me woke up, somebody lighted a gas lamp.
- Q.** Did you know who lighted the gas lamp?
- A.** Leticia Montiano, sir. My sister-in-law.
- Q.** What happened next when Leticia lighted the gas lamp?
- A.** After Leticia Montiano lighted the gas lamp, I recognized that the person on top of me was Rodolfo Bawar.
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- Q.** When you recognized that it was not your husband who was on top of you but Rudy or Rodolfo Bawar, what did you do, if any?
- A.** I did not release his hand from my hold but he poked a small bolo on my neck and threatened me that he will kill me.
- Q.** What did you do when Bawar poked a small bolo on your neck and threatened to kill you.
- A.** Out of fear, I released his hand from my hold, sir.
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- Q.** When you let go off the accused Bawar, what happened next?
- A.** He ran outside the house carrying with his hand his shorts