

THIRD DIVISION

[G.R. No. 120894, October 03, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SGT.
MORENO BAYANI, ACCUSED-APPELLANT.**

DECISION

DAVIDE, JR., J.:

Sgt. Moreno Bayani, a member of the Philippine National Police (PNP), seeks the reversal of the 28 April 1995 decision^[1] of the Regional Trial Court (RTC) of Laoag City, Branch 11, in Criminal Case No. 6433, finding him guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*, with all the accessory penalties provided by law; to indemnify complainant Maria Elena Nieto in the amount of Fifty Thousand (P50,000.00) Pesos, without subsidiary imprisonment in case of insolvency; and to pay the costs.

In her sworn complaint dated 22 February 1993 and filed on 24 February 1993 with the court below, the complainant charged the accused with the crime of rape allegedly committed in the following manner:

That on or about the 28th day of June, 1992, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Moreno Bayani, by means of force and intimidation with the point [sic] of a gun, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant Maria Elena Nieto, against her will.

CONTRARY TO LAW.^[2]

The complaint was duly certified by OIC-City Prosecutor Marilyn Ro. Campomanes. No bail was recommended for the temporary liberty of the accused, and a warrant for his arrest was issued on 4 March 1993.^[3]

On 12 April 1993, the trial court denied^[4] the motion of the accused for bail^[5] and the motion of Romeo Maganto, PNP Provincial Director of Ilocos Norte, asking that the accused, who allegedly voluntarily surrendered to Maganto on 24 March 1993,^[6] be detained at the PNP Detention Center instead of the Provincial Jail. The trial Court further ordered Maganto to Immediately bring the accused to court.

On 14 June 1993, the accused filed another motion for bail contending that "while the charge -- is [for] a capital offense -- the evidence of guilt -- is not strong."^[7] Primarily, the accused assaulted the complainant's credibility based on her affidavit submitted during the preliminary investigation,^[8] upon which a resolution^[9] was issued finding a *prima facie* case against him and recommending that the

information be filed in court.

The prosecution, in opposing the motion for bail, presented Dr. Eden Baraoidan, a Medical Specialist II of the Provincial health Office who conducted the medico-legal examination of the complainant on 6 January 1993, and the complainant herself.

The medico-legal report prepared by Dr. Baraoidan contained the following pertinent findings:

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II. Internal Examination:

- Pubic hair -- scanty
- Labia majora -- coapted at its entire length
- Labia minora -- coapted at its entire length
- Vaginal rugosities -- no prominent
- Vagina -- admits two (2) fingers with ease
- Hymen -- lax, with old lacerations at 3, 5 and 7 corresponding to face of clock.
- Cervix -- enlarged, soft, bluish
- Uterus -- enlarged to about 7-8 months size.
- Adnexae -- negative for masses and tenderness.

III. Laboratory Examination

1. Pregnancy Test -- Positive
2. Sperm Determination -- Negative for Spermatozoa^[10]

Dr. Baraoidan declared that she found several healed abrasions below and at the sides of the complainant's navel and that the complainant's enlarged cervix connoted pregnancy; further, the complainant's uterus was enlarged to about 7-8 months size and the fetal heartbeat was located at the right lower quadrant. As regards the non-prominence of the vaginal rugosities, the passage of two fingers into the vagina, and the presence of hymenal lacerations, it was possible these were due to sexual intercourse.^[11]

The complainant's testimony was faithfully summarized by the People in the Appelle's Brief, which we adopt and quote below:

In 1992, Maria Elena Nieto was a fourth-year high school student of St. Lawrence Academy, a Catholic School of Bangui, Ilocos Norte. She was then fifteen (15) years old. At that time both her parents were abroad as overseas contract workers (TSN, August 29, 1993, pp. 26, 45 and 51-52).

She was born in San Juan, Ilocos Sur. However, on July 19, 1989, Maria Elena together with her brother and an older sister moved to Barangay Manayon, Bangui, Ilocos Norte, to live with her paternal grandmother Rosalina B. Nieto, her uncle Eugenio Nieto and his family. There, she met appellant.

Appellant was a neighbor. He was close to her paternal uncles, Eugenio and Rudy Nieto. One of her uncles is appellant's "kumpadre." Maria Elena called him "uncle" and the latter's wife "auntie." Appellant often went to her grandmother's house. She was considered a relative. (TSN, August 29, 1993, pp. 25-29, including preceding paragraph).

At about 6:00 in the morning of June 28, 1992, appellant went to their residence. He asked her if she could accompany him to visit a friend in Laoag City. She told appellant to ask permission from her grandmother who consented (TSN, August 29, 1993, pp. 29-30).

At 9:30 of that same morning, appellant fetched her. At about 11:30 a.m., they reached Laoag City. They proceeded to a boarding house near the Northern Christian College (NCC). There appellant visited a woman. While Maria Elena was taking her "merienda" in the kitchen, appellant and the woman were outside the house talking. She noticed by their actions that they were quarreling. After about thirty (30) minutes, appellant called for her and they left. She was made to understand by the appellant that the woman he intended to visit was not around (TSN, August 29, 1993, pp. 30-34).

Appellant brought her to a restaurant, the City Lunch and Snack Bar. At that time, Maria Elena did not know the name of the restaurant. Neither did she know then that the second floor of the restaurant was a hotel. It was her first time to be in such place. Appellant invited her for lunch there. She declined as she was still full and suggested that they go home. Appellant, however, called for a tricycle and told her "[w]e will first go to a friend of mine before going home" (TSN, August 29, 1993, p. 35).

He brought her to the "third floor of a certain building" (TSN, August 29, 1993, p. 35). While there, Maria Elena was made to wait outside and "he went to talk with somebody" (Ibid. p. 36). Upon returning, appellant told her that "it was in the second floor where the person he wanted to talk with was" (Ibid). They proceeded to the second floor of the building (TSN, August 29, 1993, p. 36).

Upon reaching the door of a room at the second floor of the building, appellant took hold of her wrist. She tried to free herself, but all the more appellant took hold of her wrist and he "opened the door" (ibid) with a key (TSN, August 29, 1993, p. 36).

After opening the door, appellant pushed Maria Elena inside. She wanted to run away but was prevented by appellant, who pulled her hair. Appellant then locked the door. Appellant pushed her hard making her kneel down on the floor beside the bed, her stomach was against the edge of the bed. All that time, appellant was holding her hair, pressing her head against the bed (TSN, August 29, 1993, pp. 37-38).

Maria Elena struggled to free herself. This prompted appellant to tighten his hold on her hair and he poked a gun against her right temple. Appellant then told her "[y]ou remove your pants, otherwise, I will shoot

you." (Ibid, p. 39). Maria Elena became so nervous and felt she was becoming unconscious. Out of fear, she complied with appellant's order (TSN, August 29, 1993, pp. 38-39).

While Maria Elena was removing her pants, appellant removed his pants, too. Thereafter, appellant pushed Maria Elena to the bed and forced her to lie down. He ordered her to open her thighs and then he went on top of her. She struggled but felt weak. Appellant successfully had sexual intercourse with her. While doing this, appellant was holding his gun in his right hand (TSN, August 29, 1993, pp. 39-40).

Thereafter, Maria Elena wanted to leave. However, appellant pointed his gun at her and threatened to kill her if she revealed the rape incident to anybody (TSN, August 29, 1993, p. 40). After a while, appellant repeated the sexual intercourse for two more times. All the while, appellant was uttering indecent words at her, among them, "This is something very delicious. You will be longing for this" (TSN, ibid, p. 41). Appellant repeated his threat to kill her as well as members of her family, if she related the rape incident to anybody (ibid).

They left the room at about 3:00 in the afternoon. Appellant brought her to the Five sisters Emporium, where she was made to board a tricycle. She went home alone (TSN, October 20, 1993, pp. 72-74).

In view of the threats of appellant, Maria Elena did not immediately relate the incident to her family. She was forced to divulge the rape committed by appellant against her, when her family noticed her tummy was bloating (TSN, August 29, 1993, p. 42).

At that time, Maria Elena and Ambrosio Malapit, Jr., were sweethearts. They started their relationship on June 12, 1992. On her suspected pregnancy, Ambrosio was confronted by her sister Maria Elizabeth. In turn, her boyfriend confronted her. She related to him the rape incident (TSN, August 29, 1993, pp. 42-43).

The incident was reported by Ambrosio to the principal of St. Lawrence Academy, who went to Maria Elena's house in order to verify. She related to the principal what appellant did to her including his threats to kill her and her family (TSN, August 29, 1993, p. 43).

The school took the initiative of hiding her. She stayed for one (1) week in the house of a teacher of Divine Word College, Laoag City. Thereafter, she was transferred to Madre Nazarena in Laoag City, an institution run by nuns. She stayed there for less than a month (TSN, August 29, 1993, pp. 43-45).

The rape incident was reported to the NBI. Accompanied by NBI agents, she went back to the scene of the crime. It was only at that time that she learned that the building where appellant brought her was a motel, Dragon Inn (TSN, August 29, 1993, p. 41).

On March 21, 1993, Maria Elena gave birth (Exhibit "B"; TSN, August 29, 1993, p. 46).^[12]

After the complainant underwent a lengthy cross-examination, the hearings on the motion for bail ended on 20 October 1993.^[13] On 18 November 1993, the trial court issued an order denying the motion for bail.^[14] The prosecution presented no additional testimonial evidence for trial on the merits,^[15] but submitted its documentary exhibits^[16] which were admitted by the trial court.^[17]

The defense presented the accused and Bernard Javier, the information officer of the Dragon Inn.

The accused not only admitted having sexual intercourse with the complainant on the 28th day of June 1992; he asserted, in the main, that the complainant was his mistress and that the further acts of sexual intercourse after the said date were with her consent. His detailed testimony brought out the following salient facts:

He first came to know the complainant in August 1989 at her grandmother's house which he frequented -- at least thrice a week -- for drinking sprees with her uncles. At that time, his wife was in Singapore and returned only in November 1991. He would pay for the drinks and at times, the complainant would buy them for him. On occasion, she requested that she keep the change, which he always granted knowing she was a student. In December 1991, the complainant asked him for P500.00 for a trip to Ilocos Sur, and then to Manila where her aunt lived. He would see her at home when she was alone and sometimes kiss her. At the end of her classes in March 1991, she asked him for P100.00 as she was going to Manila for vacation.^[18]

On 27 June 1992, at around 4:00 p.m., while he was riding on his motorcycle, the complainant who was then carrying a child flagged him down and asked that they go to Laoag City to buy things she needed for her school project and visit her friend. He agreed.^[19]

The following day, they left for Laoag City at about 9:30 a.m. They took a minibus and sat beside each other on the second from the last seat. Upon arrival at Laoag City at around 11:30 a.m., the accused suggested that they first eat lunch at City Lunch before buying the things she needed at the nearby "Five Sisters." While eating, the complainant told him that she had a boyfriend, and he remarked that he was not surprised as he would see her boyfriend at her house. She then told him that she did not know how to thank him for all the help he extended to her and her grandmother. From that, he gathered that she was amenable to "checking-in" or going to bed with him, so he replied that she was very dear to him and intimated that if she really cared for him they would go to a room upstairs and "check in." She responded, however, that the place was *magulo* (noisy); so he suggested that they go to Dragon Inn. She agreed, and they left by tricycle.^[20]

At Dragon Inn, the accused approached the man at the information counter (Javier) and told the latter that he would check in with his wife. Javier then took the registry book and asked the accused what name to write down. The accused answered: "Mr. And Mrs. Moreno Bayani," with address at Badoc, Ilocos Norte. Javier then told the