

THIRD DIVISION

[G.R. No. 117217, December 02, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GENER DE GUZMAN Y SICO, ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE, JR., J.:

On 1 April 1992, complainant Gilda Ambray filed with the Municipal Trial Court (MTC) of Bacoor, Cavite, a complaint^[1] charging accused Gener de Guzman y Sico with the crime of rape allegedly committed at 9:00 p.m. of 31 March 1992 in Meadow Wood, Executive Village, Barangay Panapaan, Bacoor, Cavite. On even date, Gener de Guzman was arrested and detained at the Municipal Jail of Bacoor, Cavite, but was released on 14 April 1992 upon the filing and approval of his bail bond.^[2]

Gener de Guzman did not submit any counter-affidavit as required in the *subpoena*^[3] issued by the MTC on 14 April 1992. Finding a *prima facie* case against him on the basis of the evidence for the prosecution, the MTC forwarded the record of the case to the Office of the Provincial Prosecutor for the filing of the necessary information with the appropriate court.^[4]

On 14 July 1992, the Office of the Provincial Prosecutor of Cavite filed with the Regional Trial Court (RTC) of Bacoor, Cavite, Branch 19, an information^[5] charging accused Gener de Guzman with the crime of rape, allegedly committed as follows:

That on or about the 31st day of March 1992 at around 9:00 o'clock in the evening at Meadow Wood Subd., Executive Village, Barangay Panapaan, Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, violence and intimidation, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of one Gilda B. Ambray, against her will and consent, to the damage and prejudice of said Gilda B. Ambray.

Contrary to law.

The case was docketed as Criminal Case No. B-92-216.

Upon arraignment on 10 August 1992, accused Gener de Guzman entered a plea of not guilty.^[6] Trial on the merits thereafter ensued and the prosecution moved for the cancellation of the bail bond.

On 9 December 1992, after complainant Gilda Ambray, Police Officer Efren Bautista, and Dr. Valentin Bernales of the National Bureau of Investigation (NBI), completed their testimony as witnesses for the prosecution, the trial court cancelled the bail

bond of Gener de Guzman on the ground that the evidence of his guilt was strong.^[7] He was re-arrested, and on 22 January 1993, his motion for reconsideration^[8] of the order cancelling his bail bond was denied by the trial court for lack of merit as he was charged with a capital offense punishable by *reclusion perpetua* and the evidence of his guilt was strong.^[9]

Two other witnesses were presented by the prosecution, namely: Resurreccion Talub Quiocho, a *kumadre* of the accused, and Aquilino Flores Ambray, the husband of the complainant.

The testimonies of the witnesses for the prosecution established the following facts:

Homeward bound on 31 March 1992 from Anson Department Store where she worked as a sales clerk, complainant Gilda Ambray, the 32-year old wife of Aquilino Flores Ambray and a mother of two children, was at the gate of Meadow Wood Subdivision, Panapaan, Bacoor, Cavite, at about 8:45 p.m. waiting for a tricycle ride toward her residence. She waited for about ten minutes. When she noticed the accused, then wearing army pants, sitting at the guardhouse, she approached him and asked him some questions. He answered in a stammering manner. The complainant recognized the accused very well because it was summertime and the gate of the subdivision was well-lit.^[10]

After Gilda started to walk, the accused mounted his tricycle, followed her and offered her a ride, to which she agreed. While on board the tricycle, Gilda noticed that the accused took a different route. She got scared but managed not to show it. The accused would once in a while stop the tricycle and tell her that it was not in good condition.^[11] When they reached Phase II of the same subdivision near an unfinished house, the accused stopped and told Gilda to push the tricycle. She alighted from the tricycle and paid him P5.00, which he did not accept. Gilda then walked away, but after she had taken about ten steps, the accused embraced her from behind, covered her mouth and held her neck tightly. She tried to shout but the accused threatened her. The accused then dragged her to a vacant lot ten meters away from the unfinished house. She attempted to shout again, but he threatened to kill her if she made noise. She fought to free herself from his hold, but the accused pushed and slapped her. He tried to raise her T-shirt while holding her neck tightly. He shouted and commanded her to raise her T-shirt, which she obligingly followed because of fear. He removed her bra and kissed her breast. She shouted "*Saklolo! Tulungan ninyo ako,*" but the accused covered her mouth and again held her neck that she could hardly breathe. He held her hand tightly and positioned himself on top of her. He unzipped her pants and pulled it down her knees. She struggled to liberate herself, but to no avail. The accused then tried to insert his penis into her, but failed to do so because she struggled and fought back, then slapped him while covering her vagina with her hand. When she tried to stand, he pushed her down and, in the process, was able to completely pull down her pants and underwear. She pleaded to him to have mercy on her and told him that she had two children. He warned her: "*Huwag kang sisigaw, papatayin kita.*" The accused again tried to insert his penis into her, but she prevented him from doing so. The accused took her hand and let her hold his penis to make it stiff. As Gilda became too weak to struggle against the accused's sexual advances, the accused was able to finally consummate his dastardly desire. He then pulled out his penis and "fingered" her private organ for a short while. The accused then warned Gilda not to tell

anybody, otherwise, he would kill her and all members of her family.^[12] He told her that she was his third victim but the two did not complain. He then dressed up. Gilda picked up her pants and underwear and hurriedly ran toward her home, without looking back.^[13]

When Gilda arrived home, she told her mother and her husband, Aquilino Flores Ambray, that she was raped by the accused. Aquilino got angry and wanted to retaliate but was prevailed upon not to by Gilda's mother.^[14]

At almost midnight of 31 March 1992, Gilda and her mother reported the incident to one Tony Antonio, the President of the Homeowners' Association and President of the National Press Club. Antonio radioed the Bacoar Police Station to send an investigator. PO3 Efren Bautista and Sgt. Saguisame responded to the alarm immediately. Upon their arrival at the house of Antonio, PO3 Bautista saw Gilda with her mother. Gilda, who was crying, related to PO3 Bautista that she was raped and described to him her assailant as a tricycle driver, tall, strong, with curly hair and in army cut.^[15] Gilda also gave PO3 Bautista a vivid description of the accused's tricycle, viz., blue in color with the name "Dimple" at the back.^[16] The policemen left and went to the house of the accused. PO3 Bautista invited the accused to go with him because the Mayor wanted to talk to him. The accused, together with PO3 Bautista, went to the residence of Antonio. When the accused entered the house of Antonio, Gilda Ambray cried hysterically while pointing to the accused as her rapist. The accused was then brought to the municipal jail.^[17]

Gilda Ambray was medically examined at the Las Piñas Hospital and issued a medical certificate.^[18] She then proceeded to the NBI for a medico-legal examination. Dr. Valentin Bernales, a medico-legal officer of the NBI, conducted the examination on Gilda. His findings, contained in his medico-legal report,^[19] were as follows:

I. Physical Injuries:

Abrasion, brownish; lips, upper, left side, mucosal, 2.0 x 1.5 cm.; elbow, right, postero-lateral aspect, 2.0 x 1.5 cm. and postero-medial aspect, multi-linear, with brown scab formation, 3.0 x 1.0 cm. Contusion, reddish; back, right, scapular area, 7.0 x 5.0 cm. and left, 15.0 x 8.0 cm. Contused abrasion, reddish black, scapular area, left, medial aspect, 3.0 x 2.0 cm.

II. Genital Examination:

Pubic hair, fully grown, moderate. Labia majora, gaping. Labia minora, coaptated. Fourchette, lax. Vestibulae, pinkish, smooth. Hymen, reduced to carunculae myrtiformis. Vaginal orifice, admits a tube, 3.0 cm. in diameter. Vaginal wall, lax. Rugosities, obliterated.

III. Conclusions:

1. The above physical injuries were noted on the body of the subject at the time of the examination.

2. Medical evidence indicative of recent sexual intercourse with man on or about the alleged date of examination.

IV. Remarks:

Laboratory Report S-92-94^[20] shows positive result for the presence of human spermatozoa.

Dr. Bernales opined that the physical injuries sustained by Gilda Ambray resulted from force applied to her,^[21] while the presence of human spermatozoa in Gilda's genitals indicated recent sexual intercourse.^[22]

On 3 April 1992, "Bebey" and Linda de Guzman, the parents of the accused, asked the help of Resurreccion Talub Quiocho, the accused's kumadre, to beg for Gilda's forgiveness for the accused's sake. The following day, Resurreccion accompanied the accused's parents, wife, children and sister-in-law to Gilda's house.^[23] Gilda met them, but to their plea for forgiveness, she told them "that should not be tolerated."^[24]

Gilda further testified that she suffered moral damages, had to resign from her job due to shame, and had spent P28,500.00 for attorney's fees.^[25]

Gener de Guzman interposed the defense of alibi and presented Alfredo Fernandez and Teotimo Camagong as his witnesses.

According to Gener de Guzman, on 31 March 1992 at around 9:00 p.m., he was about to go home and was at the corner of Meadow Wood Subdivision coming from Justineville Subdivision. On his way home on his tricycle, he saw Gilda Ambray, who flagged him down and boarded his tricycle. After traveling about half a kilometer, his tricycle malfunctioned. He told her that she better walk home because her house was already near. He pushed his tricycle home, and on his way, one Alfredo Fernandez approached him and inquired what was wrong with his tricycle. Alfredo helped him push the tricycle towards his (accused's) home, and upon arrival thereat, he told Alfredo not to leave at once. At around 9:10 p.m., they started to drink liquor until 11:00 p.m., and after their drinking spree, he cleaned their mess and slept. Then at around 12:50 a.m. of 1 April 1992, PO3 Efren Bautista fetched and apprised him that he was accused of rape by a certain Gilda Ambray. Thereafter, an investigation was conducted and he was brought to the Bacoor Police Station.

Alfredo L. Fernandez, 37 years old, jobless, and a resident of Justineville Subdivision, corroborated Gener's story about the malfunctioning tricycle and the drinking session.^[26]

Teotimo Camagong testified that he was present when the accused was investigated at the residence of Tony Antonio and that the complainant did not pinpoint and identify the accused as her alleged molester.^[27]

In its Decision^[28] dated 30 June 1994 and promulgated on 25 July 1994, the trial

court found the accused guilty beyond reasonable doubt of the crime of rape as charged, and rendered judgment as follows:

WHEREFORE, premises considered herein accused GENER SICO DE GUZMAN is hereby found GUILTY beyond reasonable doubt of the crime of rape punishable by Art. 335 of the Revised Penal Code. He should suffer the prison term of reclusion perpetua and indemnify herein private complainant Gilda Ambray the following: actual damages representing her lost monthly salary when she resigned from her office due to shame for being a rape victim, in the sum of P30,000.00, moral damages in the sum of P30,000.00, exemplary damages of P10,000.00, litigation expenses of P5,000.00, and attorney's fee[s] including appearance fees for the private prosecutor in the sum of P28,500.00.

It gave full weight to the testimony of Gilda Ambray because "[w]ithout doubt, the complainant had endured the rigors of recalling her harrowing ordeal and had vividly, credibly and candidly portrayed in detail how she was raped by the accused." [29]

As to whether sexual intercourse was consummated against the will or consent of the offended party, the trial court said:

No less than NBI Medico Legal Officer Dr. Valentin Bernales had corroborated the stance of herein private complainant that she was raped by the accused. The victim had sustained contusions and abrasions at her body that indicated that she struggled against the sexual advances of the accused. As a result of the doctor's examination on the victim, he confirmed the occurrence of a recent sexual intercourse and presence in her private part of human spermatozoa as denoted in his Medico Legal Report (Exh. F) and Laboratory Report (Exh. D). [30]

Likewise it ruled that since the accused was drunk, he was more aggressive and sexually capable. [31] Finally, it considered as evidence of the accused's guilt the plea of his parents, wife and relatives for forgiveness and compromise. [32]

The accused seasonably appealed from the trial court's judgment of conviction, and in urging us to acquit him, interposes the following assignment of errors in his Appellant's Brief:

1. THE COURT ERRED IN FINDING THAT ACCUSED HAS INDUBITABLY EMPLOYED FORCE AND INTIMIDATION IN THE RAPE OF THE VICTIM.
2. THE COURT ERRED IN FINDING THAT ACCUSED WAS POSITIVELY IDENTIFIED BY THE VICTIM.
3. THE COURT ERRED IN STRESSING THAT THE ACCUSED WAS DRUNK AT THE TIME OF THE COMMISSION OF RAPE.

In the Brief for the Appellee, the Office of the Solicitor General disagrees with the accused and prays that we affirm *in toto* the appealed decision.

The first and second assigned errors may be taken up together. The upshot of the accused's stance in these alleged errors is that he was not positively identified and