

FIFTEENTH DIVISION

[CA-G.R. CR.-H.C. NO. 00291, August 18, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MICHAEL TAROCAN, ACCUSED-APPELLANT.**

D E C I S I O N

REYES, JR., J., J.:

Before Us is an appeal from the Judgment of the Regional Trial Court of Makati City, Branch 140, dated August 12, 2004, in Criminal Cases Nos. 01-1461 and 01-2050 (*Rollo, pp. 18-22; 48-52; Records, pp. 224-228*), entitled "*People of the Philippines vs. Michael Tarocan, Accused,*" the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in Criminal Case Nos. 01-1461 and 01-2050 finding accused MICHAEL TAROCAN GUILTY BEYOND REASONABLE DOUBT of the crime of RAPE. He is hereby sentenced to suffer the penalty of reclusion perpetua for each count of rape, and to pay ERLINDA AGUINALDO y JALWAGUE the amount of ONE HUNDRED FIFTY THOUSAND PESOS (PHP150,000.00) for moral damages and FIFTY THOUSAND PESOS (PHP50,000.00) for exemplary damages for each count of rape.

SO ORDERED."

The facts are as follows:

Accused-appellant stands charged in two (2) separate Informations for the alleged rape of a minor named Erlinda Aguinaldo. The accusatory portions of the said Informations state:

Criminal Case No. 01-1461

That on or about the 16th day of June, 2001, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the complainant ERLINDA AGUINALDO y JALWAGUE, 13 years old, against her will and consent.

CONTRARY TO LAW.

Makati City, June 27, 2001." (*Records, p. 1*)

Criminal Case No. 01-2050

That on or and sometime during the month of May, 2001, in the City of

Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the complainant ERLINDA AGUINALDO y JALWAGUE, 13 years old, against her will and consent.

CONTRARY TO LAW.

Makati City, August 31, 2001." (*Records, p. 31*)

Upon arraignment, accused-appellant pleaded not guilty to the crimes charged. Thereafter, trial ensued.

As culled from the findings of facts by the trial court, the following transpired during the trial:

"Erlinda Aguinaldo, minor complainant, testified she is 14 years old (Exhibit 'A', Birth Certificate; Birth date, Exhibit 'A-1'). Her mother, Evelyn works in General Pio del Pilar Elementary School at Facundo St., Brgy. Pio del Pilar, Makati City. Accused, whom she identified in open court as having repeatedly raped her, also worked as painter in the said school.

Sometime in May, 2001, she was with her mother in school. While her mother was cleaning the comfort rooms and she (her mother) asked her to water the plants in room 206. Around 9:00 in the morning, she went to room 206 and while she was watering the plants Michael Tarocan, herein accused, asked her name but she did not reply. After two days, her mother again brought her to the school and she asked her to sweep the floor and water the plants. While she was working, Michael Tarocan covered her mouth and pulled her towards a vacant room. She was so afraid she could not resist. Michael removed her maong pants and panty and forced his penis into her vagina. She could not shout because she was afraid that her mother would know this incident and she might drive her out of their home. Michael threatened her that if she tells her mother about the incident she will kill her. She was only 13 years old then. Michael raped her about 7 times at the average of 2 times a week. She could not resist because her left leg is weaker than the right leg for she had polio when she was 3 months old, and her left hand is also weak. He raped her on the floor. The last time he raped her was on June 16, 2001. On June 16, 2001, her mother was working with the other workers scrapping bamboo ('nagkakayas ng kawayan'). She told her mother she was going to urinate and then went to see a small fish pond near the Science room. Michael approached her and pulled her into a vacant room. He undressed her and inserted his penis into her vagina. She was crying all the time. After the sexual intercourse, Michael slept and she left the room and went downstairs. She met the lady guard who told her that her mother was looking for her. She replied she came from the comfort room. She told the principal that Michael raped her. The principal informed her mother of the rape.

Evelyn Aguinaldo, mother of complainant, testified she is the mother of

minor complainant Erlinda and she works as janitress in Makati Elementary School. On several occasions, she would take her daughter Erlinda to school in the summer of 2001. Sometimes Erlinda would beg off but she would force her to come with her to school to assist her in her work. Her hips were painful and she would force Erlinda to go with her even if she (Erlinda) dared her to kill her just so she would not go to the school with her. She noticed she would wipe alcohol on her body. When the principal told her Erlinda was raped, she cried in anger.

On July 2, 2003, parties stipulated on the existence of the Medico Legal Report conducted by Dr. Voltaire Nulod and the Investigation Report conducted by P01 Celia S. Domingo. In view of the stipulation, the testimonies of these witnesses were dispensed with.

The defense presented a lone witness, Michael Tarocan, herein accused. His testimony is summarized as follows:

He worked as painter in Pio del Pilar Elementary School where he stayed for a month starting the 2nd week of May before the election. He met Erlinda Aguinaldo in the 2nd floor of the school building where he was painting the ceiling and she was loitering there. Three (3) of the workers were painting the ceiling. He saw her again the following week when he was watching TV with the other workers, including Erlinda's father. While he was lying down, Erlinda came to him and caressed his head. He elbowed her because her father was inside the room, drunk and he might have some thoughts on him and Erlinda, so she left him. He saw her again while he was bathing in the bathroom together with one of the guards and Erlinda suddenly entered the bathroom, so they told her to leave. Erlinda left but he told the guard to tell Erlinda's mother about the peeping incident. It was not the first time Erlinda came to see him while he was bathing. There was also a time when he was sleeping at around 12:00 noon in one of the rooms in the 2nd floor along the hallway when he was awakened by a noise. He saw Erlinda going through the teacher's cabinet. He told her to stop what she was doing because he might be blamed if anything from the teacher's cabinet would be missing.

On June 16, 200(1), he was outside the school waiting for a buyer of the left over paints, cement, bamboos and sand. He was selling these items because he had not been receiving his salary for 2 weeks. When he sold the sand and cement, Evelyn, Erlinda's mother, was angered and they had a quarrel over the sale he made on said properties which she said do not belong to him. He just ignored her.

On June 18, 200(1) at around 10:00 in the morning, he was arrested by the police on account of the complaint for rape filed by Erlinda against him." (Rollo, pp. 19-20)

After trial, the court *a quo* rendered the assailed Judgment on August 12, 2004 (Rollo, pp. 18-22; 48-52; Records, pp. 224-228) finding herein accused-appellant guilty beyond reasonable doubt, and sentencing him to suffer the penalty of reclusion perpetua for each count of rape.

Hence, the instant appeal raising herein the lone assigned error, to wit: "whether or not the trial court erred in convicting the accused-appellant when the latter's guilt was not proven beyond reasonable doubt" (*Rollo*, p. 5).

The instant appeal is devoid of merit.

The issue raised herein primarily deals with the credibility of the prosecution witnesses and the appreciation of facts by the trial court.

Settled is the rule that factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal (*People v. Abella*, 339 SCRA 129 [2000]). This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood (*People v. Bulan*, 459 SCRA 550 [2005]), such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous matter of a reluctant answer, or the forthright tone of a ready reply; of the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien (*People v. Bertulfo*, 381 SCRA 762 [2002]).

This opportunity however is not equally available to appellate courts (*People v. Caraang*, 418 SCRA 321 [2003]). Thus, the findings of the trial court on credibility of witnesses and their testimonies must stand unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and which, if properly considered will alter the results of the case (*People v. Suarez*, 456 SCRA 333 [2005]).

By the very nature of the crime of rape, conviction or acquittal depends entirely on the credibility of the complainant's testimony (*People v. Andales*, 422 SCRA 253 [2004]). In the instant case, the victim, Erlinda Aguinaldo described how, with force and intimidation, accused-appellant succeeded in having carnal knowledge of her. She testified in a spontaneous and straightforward manner, and there was nothing in her testimony that detracts from her claim that she was indeed raped by accused-appellant.

Accused-appellant contends that the trial court erred in convicting him of the crimes charged because it is highly incredible that he raped Erlinda in a public place, i.e, within the school premises, especially since there were several persons present at that place when the alleged incidents took place. We cannot sustain such contention.

Jurisprudence has it that lust is no respecter of time or place (*People v. Sambrano*, 398 SCRA 106 [2003]; *People v. Estomaca*, 373 SCRA 197 [2002]). The Supreme Court has already taken judicial notice, and it can be considered of public knowledge, that the scene of the crime of rape is not always or necessarily isolated or secluded (*People v. Daganio*, 374 SCRA 365 [2002]; *People v. Nicolas*, 387 SCRA 638 [2002]). In fact, the presence of people nearby does not always deter rapists from committing their odious act (*People v. Almanzor*, 384 SCRA 311 [2002]).

In a long line of cases, the Supreme Court has convicted the accused even if rape was committed in the most unlikely places. Thus, in *People v. Besmonte* [397 SCRA 513 (2003)], where the crime was committed against the victim who allegedly