

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABNER MALUNES, ACCUSED-APPELLANT.

*G.R. No. 114692. August 14, 1995*

Ponente: DAVIDE, JR., J.

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### DAVIDE, JR., J.:

In her criminal complaint[1] for rape filed on 13 January 1992 in the 2nd Municipal Circuit Trial Court (MCTC) of Mandaon-Balud, Masbate, Eva del Rosario, a 12-year old lass of Poblacion, Mandaon, Masbate, charged the accused-appellant with the crime of rape allegedly committed sometime in October 1991 and on 11 January 1992. After appropriate preliminary investigation and finding that probable cause existed, the MCTC of Mandaon-Balud forwarded the records of the case to the Office of the Provincial Prosecutor for the filing of the corresponding information in the proper court.

On 12 March 1992, the Office of the Provincial Prosecutor of Masbate filed the corresponding information[2] with Branch 47 of the Regional Trial Court (RTC) of Masbate which was docketed as Criminal Case No. 6596. The accused-appellant was charged with the crime of rape allegedly committed as follows:

That on or about the January 11, 1992 and dates prior thereto, at Poblacion, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this court, the said accused by means of violence, force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourses of one Eva del Rosario against the latter's will and consent.

The accused-appellant having entered a plea of not guilty upon arraignment,[3] trial on the merits ensued. On 9 February 1994, the trial court promulgated its decision[4] finding the accused-appellant guilty of two counts of rape and sentencing him in each to suffer the penalty of reclusion perpetua. The dispositive portion thereof reads:

WHEREFORE, the Court finds the guilt of the accused beyond reasonable doubt of the crime of rape as charged, and as the crime of rape was committed once on October 9, 1991 and once on January 11, 1992 which under the law and jurisprudence considered as two separate and distinct acts, accused Abner Malunes convicted of the crime of rape on two counts and as a consequence is hereby sentenced to suffer the penalty of reclusion perpetua for each of the two distinct crimes of rape as charged in the information, to suffer the accessory penalties therefor and to pay the costs.

The prosecution's evidence upon which the judgment of conviction is based is summarized by the trial court as follows:

Born on February 21, 1979 Eva del Rosario was less than 13 years old when she was sexually abused by Abner Malunes sometime in October, 1991. Both of them were living with Tomas Malunes because the latter was Eva's grandfather and the first cousin of Abner.

About 8 o'clock in the morning of a Saturday in October, 1991 Abner and Eva were the ones inside the house of Tomas Malunes in Poblacion, Mandaon, this province, because the latter was on his farm and a younger brother

and sister of Eva were instructed to play on the yard by Abner.

Abner brought Eva to a room by pulling her by the hand but she did not shout because he had a scythe tucked on his waist and he threatened to kill all of them if she made a shout. Once inside, he undressed her but she resisted while being undressed by kicking and even biting him. She was then made to lay on a mat, after which Abner undressed himself, locked the door, inserted a piece of cloth in her mouth, placed himself on top of her and succeeded in letting his penis enter the vagina. Painful, she kicked and beat him, but he continued doing the act. He warned her he would kill all of them in the house if she divulged to anyone what he did.

Again, at about 8 o'clock on the morning of January 11, 1992 Abner sexually abused her. This took place at the time when her brother and sister were playing in the yard and Tomas was attending a mass at Iglesia ni Cristo chapel. From the yard, Abner forcibly pulled her by the arm to the house. As she was brought inside, she could not shout because she was afraid of the scythe tucked on his waist and was threatened with death together with her grandfather, brother and sister.

The two of them naked at the instance of Abner, the latter made sex with her. This he did by holding her thigh while his penis was being penetrated to the vagina. She struggled to free herself by kicking him but her effort was to no avail. After he was through, he told her that together with her brother and sister he would kill them if she revealed to others what happened.

Later, in the morning, however, Tomas Malunes came to know about the incident upon being informed by a certain Chabing Bernal what she saw earlier. Eva was crying when confronted and confided to him what Abner Malunes did to her. Abner was no longer in the house at the time because he left the house earlier and never returned thereafter.

Tomas Malunes and Jose Magalang did not lose time. They brought Eva to the PNP Station of Mandaon to report the incident. And Eva was examined by Dr. Napoleon Villasis of Mandaon Medicare Community Hospital on January 13, 1992. A medical certificate (Exh. "B") shows these findings: "1. Hymenal tear at 6 o'clock position; 2. Vaginal canal could easily admit the index finger of the examiner with minimal resistance." The hymenal tear, the doctor said, may be caused by a penis, bicycle riding, horse-back riding, or swimming. It was already healed and was an old wound.[5]

Set over against this is the accused-appellant's denial of rape and his claim that Eva del Rosario consented to their sexual liaison. The trial court summarized his version as follows:

Abner Malunes was already 32 years old at the time he first came to live with Tomas Malunes and his granddaughter Eva del Rosario about 4 years before the year 1991. Abner Malunes and Eva del Rosario were good to each other since the beginning. Came October 1, 1991. Alone in the kitchen about 10 o'clock on the morning thereof, Abner told her about his feeling towards her and when she did not get mad at him he kissed her and fondled her breast.

On October 9, 1991 the two had sexual intercourse. Entering the room, Abner woke her up and she embraced him first before raping her. That sexual contact did not end just there. They repeated it on several occasions from October, 1991 to January, 1992, at times it was she who made the first move to have sex with him. And when she had a menstruation, he just let her hold his penis.

Abner Malunes stated that she had sex with her on January 7, 1992 and not on January 11, 1992 because he worked for a certain Mesa for 5 days, returning only on January 12, 1992. And it was only when he was already home he came to know that Eva del Rosario was punished by her grandfather upon learning from Chabing Bernal what happened on January 7, 1992 to the two of them. In the municipal jail of Mandaon, Eva del Rosario visited

him once and gave him cigarettes.[6]

In giving full credence to the version of the offended party, the trial court made the following observations:

To have sexual intercourse between two close relatives, as between the accused and the victim, who are to each other grandfather and granddaughter in this case is revolting. This is specially true to civilized society and our culture as a Filipino which frown at it terribly. Reared in the rural setting, the victim was well aware of this together with the impact that might be caused upon her honor in the community and her love and marriage life in the future if the people, through her revelation, would know she was no longer virgin or chaste. But she appeared to be ready to face the consequences. Thus, it is unthinkable that she, a girl just a little over 12 years old, would expose herself to public ridicule if not the shame of having to testify in a court of justice, if indeed, she was not truly raped. (People vs. Alcantara, 126 SCRA 425; People vs. Sacabin, 57 SCRA 707; People vs. Sambangan, 125 SCRA 725).

"The crime of rape is easy to concoct but hard to prove" since ordinarily only the offended and the offender know about what transpired between them. But this Court, upon thorough scrutiny of the testimony of the victim, finds that the latter's testimony inspires belief. The victim, a country girl, was only a grade four pupil at the time (p.11, tsn, July 15, 1992). And yet her testimony was straightforward. She narrated her harrowing experience without any inhibition or reservation. ...

The Court is not inclined to believe, as claimed by the defense, that the intercourse was with the consent of the victim. True, there was silence for about two months on the part of the victim to make known to her grandfather or any person about the wrong done to her on October 9, 1991 as the date mentioned by the accused. The delay or silence could not, however, be interpreted to mean as one of consent on her part to have sex with him. She was still young and fragile at the time, barely 13 years old. Normally, a girl like her would be so morally weak as to withstand against influence, pressure or bodily threat to her life and that of her close relatives. ...

The fear that seized her after the first intercourse was apparently still in control of her until January 11, 1992 when she was again made to submit to his carnal lust. So that she came to open the story about her sexual experience only when confronted by her grandfather of what he had already known. The influence of her grandfather over her was so great, having lived with him since she was yet a child, that she naturally had without power to hide something which her grandfather came to know earlier.

The accused claimed that the victim came to him and gave him cigarette to smoke when he was still incarcerated at Mandaon Municipal Jail. That was an opportune time for him to talk to her, even plead to her to convince her grandfather to forget everything which she could probably care to listen and do accordingly inasmuch as the offense charged was very grave, assuming that what happened between them was with their mutual agreement. This he did not do. Even when the case reached the court, no effort on his part or through his counsel was made to settle it. All these only tend to engender some doubts on the credibility of the claim for the defense that the element of consent was present when the victim had sexual intercourse with the accused on two separate occasions.

The logical deduction would, therefore, be that the act of rape was committed by the accused against the will of the victim which was done by means of force. The victim treated the accused as her real grandfather, even calling him in open court as Lolo Abner. Thus, it is unthinkable that she would give in to his carnal desire without showing some sign of protest.[7]

The accused-appellant seasonably filed his notice of appeal. In his Appellant's Brief,[8] he submits this lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT ABNER MALUNES GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE EVIDENCE TO THE CONTRARY.

He argues in support thereof that the offended party "is a minor who reached only 4th grade in elementary school and claiming to be a victim of rape she may not be telling the truth," and that "the charge of rape against [him] may not be true [because he has been] courting the victim who had been receiving money from him." Moreover, he further asserts, she was "acting normally" after the incident.

The pivotal issue presented in this case is one of credibility. Conclusions as to the credibility of witnesses in rape cases lie heavily on the sound judgment of the trial court. Time and again, this Court has said that we will not interfere with the judgment of the trial court in determining the credibility of witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted. The reason for this is that the trial judge enjoys the peculiar advantage of observing directly and at first-hand the witness's deportment and manner of testifying and is, therefore, in a better position to form accurate impressions and conclusions on the basis thereof.[9] This Court more eloquently stated this rule in *People vs. De Guzman*,[10] thus:

In the resolution of the factual issues, the Court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.

Our own meticulous reading of the transcripts of the stenographic notes of the testimonies of the witnesses discloses no ground or reason to set aside the trial court's assessment of the credibility of the witnesses. The accused-appellant's thesis that the offended party may not be telling the truth because of her tender age and her low social standing and educational qualification is absolutely baseless and is an insult not only to her but to all others, men and women alike who are similarly disadvantaged. The virtue of truthfulness is not a monopoly of the old, the rich, and the learned. *Veritas simplex oratio est*. The language of truth is simple. It can come from the mouths of a child and the lips of the poor, simple, and unlettered.

Although the offended party in this case, Eva del Rosario, was a few months shy of her thirteenth birthday and had reached only the 4th grade when she was raped, her disclosure of rape must not be taken lightly. As we said in *People vs. Grefiel*,[11]

[i]t has been repeatedly held by this Court that when a woman admits that she has been raped, she says in effect all that is necessary to show that rape has been committed; if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. We have likewise ruled that a complainant would not make public the offense, undergo the troubles and humiliation of a public trial, and endure the ordeal of testifying to all its gory details if she had not in fact been raped, for no decent Filipina would publicly admit that she had been raped unless it is the truth. Considering the inbred modesty and antipathy of a Filipina to the airing in public things that affect her honor, it is hard to conceive that the complainant would assume and admit the ignominy she had

undergone if it were indeed not true.

The alleged "normal" behavior of the offended party after the sexual encounter does not prove consent. She testified that the accused-appellant would kill her, along with her brother, sister, and grandfather, if she should tell anyone about the incident.[12] It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threats on their lives.[13] We have also stated before that the workings of a human mind placed under emotional stress are unpredictable and people react differently -- some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion.[14] Furthermore, one cannot expect a 12-year old girl to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat to her life and complain immediately that she had been forcibly sexually assaulted.[15]

The offended party's subsequent actions of reporting the rape, filing the criminal complaint against the accused-appellant, submitting herself to a medical examination, and suffering the ordeal of a trial overwhelmingly negates the accused-appellant's claim of consent and instead manifests her honest desire to seek justice[16] and to have the culprit apprehended and punished.[17] Such acts also belie the presence of any ill-motive on her part in testifying against the accused-appellant.

Neither are we impressed by the accused-appellant's contention that the finding in the medical examination that the hymenal tear was a healed wound supports his version that there was already an existing amorous relationship between him and the victim and that they regularly engaged in sexual intercourse. He is charged with two counts of rape, with the first committed on October 1991 and the second on January 1992. Surely, the wound in question could have been inflicted during the first rape and had already healed at the time the victim was examined.

The accused-appellant's claim of ill-motive on the part of Tomas Malunes, his cousin and the offended party's grandfather, is not supported by evidence. It is a settled rule that where there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[18]

The tale woven by the accused-appellant is simply incredible. This Court cannot believe that a 12-year old girl would willingly have sex with a man more than twenty years her senior and whom she treated as her grandfather because he is her grandfather's cousin.[19] She even calls him Lolo Abner.[20] There is no evidence at all that she is a sexual pervert, a sex maniac, or a prostitute. She could not have acted the way the accused-appellant has pictured her to be.

We are thus satisfied that the findings and conclusions of the trial court on the criminal liability of the accused-appellant are fully supported by the facts and the law. However, the trial court failed to award civil indemnity to the offended party. We award to her civil indemnity in the amount of P50,000.00.

WHEREFORE, the instant appeal is DISMISSED, and the challenged decision of Branch 47 of the Regional Trial Court of Masbate in Criminal Case No. 6596 finding accused-appellant ABNER MALUNES guilty beyond reasonable doubt of two counts of rape is hereby AFFIRMED, with the modification that he is further ordered to pay the offended party, Eva del Rosario, the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity.

Costs against the accused-appellant.

### **SO ORDERED.**

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Original Records (OR), 3.

[2] Id., 1.

**[3] OR, 17, 18.**

[4] Id., 90-96; Rollo, 9-15. Per Judge Manuel S. Pecson.

[5] OR, 90-91; Rollo, 9-10.

[6] Id., 92; Id., 11.

[7] OR, 93-96; Rollo, 11-15.

[8] Rollo, 34-44.

[9] See *People vs. Bravo*, 180 SCRA 694 [1989]; *People vs. Umali*, 193 SCRA 493 [1991]; *People vs. Pascual*, 208 SCRA 393 [1992]; *People vs. Matrimonio*, 215 SCRA 613 [1992]; *People vs. De Paz*, 224 SCRA 468 [1993]; *People vs. Gornes*, 230 SCRA 270 [1994]; *People vs. Maguikay*, 237 SCRA 587 [1994].

[10] 188 SCRA 407 [1990]. See also *People vs. De Leon*, G.R. No. 110558, 3 July 1995.

**[11] 215 SCRA 596 [1992].**

[12] TSN, 15 July 1992, 7.

[13] *People vs. Alib*, 222 SCRA 517 [1993]; *People vs. Abordo*, 224 SCRA 725 [1993]; *People vs. Lagrosa, Jr.*, 230 SCRA 298 [1994].

[14] *People vs. Cabradilla*, 133 SCRA 413 [1984]; *People vs. Matrimonio*, supra note 9.

[15] *People vs. Olivar*, 215 SCRA 759 [1992].

[16] See *People vs. de la Cruz*, 224 SCRA 506 [1993].

[17] See *People vs. Magpayo*, 226 SCRA 13 [1993].

[18] *People vs. Simon*, 209 SCRA 148 [1992].

[19] TSN, 15 July 1992, 3.

[20] Id., 4.

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