

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORETO AMBAN Y TROBILLAS, ACCUSED-APPELLANT.

G.R. No. 134286. March 01, 2000

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PER CURIAM:

This is an automatic appeal from the decision [1] of the Regional Trial Court, Branch 50, Bacolod City in Criminal Case No. 97-18527 finding accused-appellant Loreto Amban y Trobillas guilty of raping his 12-year old daughter and sentencing him to death. No damages were awarded in view of the trial court's finding that complainant had waived accused-appellant's civil liability by recanting her claim that he had raped her.

Complainant Madelyn Amban is one of the three children of accused-appellant by his common-law wife Retania Amban. Her father, herein accused-appellant, is a carpenter by occupation, while her mother, Retania, is a laundrywoman who, at the time material to this case, worked for the Longno family whose house is walking distance (200 to 500 meters away) from where the Ambans live.

Madelyn's siblings are married and live in Canlaon City. Madelyn, the youngest, lived in a one-room shanty with her parents at Hacienda Helvetia, Purok Talungon, Barangay Villamonte in Bacolod City. [2]

On June 30, 1997, Madelyn filed a complaint [3] for rape against her father. Her complaint reads:

"The undersigned Complainant hereby accuses LORETO AMBAN y TROBILLAS of the crime of RAPE (Under Art. 335, Revised Penal Code), as amended by R.A. 7659 (Heinous Crimes), committed as follows: That on or about the 21st day of October, 1995, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of violence and intimidation, and with lewd design, did, then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge of the undersigned complainant, Madelyn Amban y Oton, a child 12 years of age and a daughter of said accused, against the will and consent of the said complainant.

Act contrary to law.

Bacolod City, Philippines, June 30, 1997.

"[Sgd.]

MADELYN AMBAN y OTON
(Complainant)

"Assisted by:

"[Sgd.]

PRISCELA N. JARMONILLA
(Social Worker, DSWD)

"SUBSCRIBED AND SWORN to before me this 30th of June, 1997, in Bacolod City, Philippines.

"[Sgd.]

RAFAEL M. GUANCO

Prosecutor I

"APPROVED:

"[Sgd.]

ALEXANDER N. MIRANO

City Prosecutor"

Accused-appellant pleaded not guilty to the charge [4] whereupon trial was held. Madelyn testified in support of her complaint. The substance of her testimony is as follows:

On October 21, 1995, at around 5:00 a.m., Madelyn woke up and found herself without her shorts and panties, while her father, herein accused-appellant, had only his briefs on. Accused-appellant then covered her mouth with his hand as he went on top of her. He spread her legs apart, inserted his penis in her vagina, and commenced a push-and-pull motion. Madelyn cried as she felt pain. She said that her father "was so forceful that I could not do anything." She was afterwards told to keep quiet and not tell anyone what had happened. Accused-appellant tried to pacify her by promising he would take her to her mother, Retania, who slept that night at the Longnos' house. When her mother came home, Madelyn told her what accused-appellant had done to her, but she was told to forget the incident ("Indi-i lang") and pretend "as if nothing had happened." [5]

But accused-appellant kept molesting complainant. In the morning of April 23, 1996, Madelyn, who was then sleeping beside her parents, woke up and found accused-appellant touching her private parts. As she complained, accused-appellant removed his hand. [6]

On January 25, 1997, while Madelyn and accused-appellant were on their way home at around 6 p.m., accused-appellant pulled her towards a sugarcane field and tried to pull down her short pants. Madelyn, however, resisted and succeeded in running away. [7]

On February 9, 1997; accused-appellant again attempted to molest Madelyn. Earlier that day, accused-appellant had insisted that Madelyn accompany him in collecting his salary. While they were passing by Villa Angela in Bangga Cubay at around noon, accused-appellant pulled Madelyn towards a sugarcane field. He tried to remove Madelyn's pants, but the latter was able to free herself and run away. Accused-appellant managed though to touch her private parts. [8]

The incident which finally led to accused-appellant's arrest occurred on April 23, 1997 at around 8 p.m. Accused-appellant and his wife, Retania, left to gather firewood, leaving Madelyn in their house. Accused-appellant then returned alone and asked Madelyn to accompany him in looking for her mother. Wary of his intentions, Madelyn refused. This angered accused-appellant who boxed Madelyn, thrust a finger inside her mouth, pulled her hair, and threatened her with a scythe. Fortunately for Madelyn, her mother arrived and called the police. [9] When the police arrived, they saw Madelyn jump from the top of the stairway while fleeing from her father. [10] They then arrested accused-appellant.

On April 24, 1997, Dr. Joy Ann C. Jocson of the Bacolod City Health Department examined Madelyn. Her findings (Exh. "A") [11] are set forth in her report:

- "1. Abrasion, about 0.5. cm. long at right buccal mucosa.
2. Abrasion, about 0.5. cm. long at the left submandibular area, below left ear.
3. Abrasion with contusion hematoma, about 4.5. cm. long at the right anterior neck.
4. Abrasion about 2 cm. long at the right upper arm.

5. Abrasion with contusion hematoma, about 10x4 cm. size at the right forearm.
6. Abrasion with laceration, about 1x0.5. cm. size at palm of right hand.
7. Multiple abrasion, about 0.5. to 1 cm. size at the right lower extremity.
8. Multiple abrasions, about 2 to 3 cm. size with contusion and swelling, at the left lower extremity.
9. Pelvic Exam
 - = Sparse pubic hair
 - = Healed hymenal laceration, at the 6 o Clock & 7 o Clock position .
 - = Vaginal introitus admits 1 finger with ease
 - = Cervix small closed, uterus small

"In my opinion the patient would need Medical Attention for about 7 to 10 days. She would also need Psychological evaluation & management."

Madelyn told Dr. Jocson that she suffered the injuries on her jaw; neck, and hands because her father struck and dragged her. [12] As to the healed hymenal lacerations, Dr. Jocson believed that they were evidence that Madelyn "had already experienced either sexual intercourse or probably sexual molestation, like a finger inserted in her vagina." [13]

Madelyn's school record (Exh. "E" of the prosecution and Exh. "1" of the defense) [14] indicates that she was born April 1, 1983, so that when she was allegedly raped by accused-appellant on October 21, 1995, she was 12 years of age.

It appears that shortly after filing the complaint, Madelyn was placed in the custody of the Holy Family Home, Bacolod Foundation, Inc., an institution run by religious sisters, upon the indorsement of the Department of Social Work and Development (DSWD). On December 3, 1997, Retania was granted custody of Madelyn on the condition that she would return Madelyn on December 7. However, once in custody of her daughter, Retania refused to return her to the DSWD. [15]

For her part, after testifying for the prosecution on October 2, 1997, Madelyn testified as a witness for the defense on January 7, 1998. [16] She claimed that she accused her father of rape in order to teach him a lesson for slapping her on April 23, 1997. She, however, denied that her father sexually molested her. She said that the lacerations revealed in the medical examination were caused by the pinching of her genital organ by her mother when she was small.

Accused-appellant testified in his defense. [17] Corroborating his daughter's claim, accused-appellant said that on April 23, 1997, he asked her to get the firewood he had earlier gathered and left on the roadside, but Madelyn refused. Accused-appellant and his wife then left to get the firewood themselves. When they returned, they found Madelyn gone. When she returned, accused-appellant scolded her. When Madelyn answered back and said she was already old enough to take care of herself, accused-appellant slapped her. Accused-appellant said that his wife and daughter then left the house, and 15 minutes later, the police arrived and arrested him.

With respect to the incident on October 21, 1995, accused-appellant claimed that early that morning, he mistook Madelyn for his wife with whom he wanted to have sex. He said that when he realized it was his daughter whose shorts he was removing, he stopped and said to her, "Keep quiet, Inday, I thought you were your mother. Where is your mother?" When Retania returned to his side after going outside the house to make coffee, he told her, "I

wanted to have sexual intercourse with you, but you were not around. You left without telling me where you were going."

On February 26, 1998, the RTC rendered its decision. It rejected Madelyn's recantation and gave credence to her previous testimony. The dispositive portion of its decision reads: [18]

"The evidence ineluctably show that the accused committed the offense for which he is charged. His guilt was proved beyond reasonable doubt. The Court, therefore, sentences him to suffer the penalty of DEATH. The recantation of Madelyn is equivalent to a waiver of her claim for damages against the accused, her father. Accordingly, the Court makes no pronouncement with respect to the civil liability of the accused."

Hence, this appeal. Accused-appellant raises the following issue [19] -

"WHETHER OR NOT, THE RECATANTION TESTIMONY OF THE PRIVATE COMPLAINANT WHEN PRESENTED IN COURT AS A WITNESS FOR THE DEFENSE SHOULD BE TAKEN INTO CONSIDERATION CLAIMING THAT SHE WAS NOT RAPED, HOWEVER, THE CASE WAS FILED DUE TO HER RESENTMENT AGAINST HER FATHER FOR INFLICTING PHYSICAL HARM ON HER, SO THAT ACCUSED, HAS NOT COMMITTED THE CRIME OF RAPE."

He contends that on the basis of Madelyn's recantation, he is entitled to an acquittal.

The contention is without merit. Mere retraction by a prosecution witness does not necessarily vitiate his original testimony. As this Court held in *People vs. Ubina*: [20]

" x x x Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement [now Rule 132, section 11]; not that a previous statement is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e., that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. (U.S. vs. Magtibay, 17 Phil. 417; U.S. vs. Briones, 28 Phil. 362; U.S. vs. Dasiip, 26 Phil. 503; U.S. vs. Lazaro, 34 Phil. 871). We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one (U.S. vs. Acasio, 37 Phil. 70). Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind [s] for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous, witnesses. x x x The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized-in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth."

In this case, the trial court, in giving credence to Madelyn's testimony for the prosecution rather than to her testimony for the defense, noted: [21]

"Madelyn was full of hesitation when she testified as a recanting witness. In fact when she was made to swear to an oath before the start of her testimony, she was asked three (3) times before she could say yes. (Unfortunately, this is not reflected in the transcript). Her recanting testimony was halting, half-hearted and vague."

In contrast, the trial court found Madelyn's testimony for the prosecution to be "candid and straightforward." [22]

Her testimony clearly shows accused-appellant's use of his moral ascendancy as well as his physical superiority (the trial court describes accused-appellant as a "big and hardy man" [23]) to gain carnal knowledge of his daughter who is a minor. The trial court's appreciation of the evidence, leading it to prefer Madelyn's testimony for the prosecution to that given for the defense, deserves respect. The trial court had the opportunity to observe firsthand Madelyn's contradictory testimonies. In the absence of any reason to indicate that it erred, its findings and conclusions should be respected.

Madelyn's claim that she had been raped by her father is consistent with the findings of Dr. Joy Ann C. Jocson that Madelyn had healed hymenal lacerations. Madelyn's belated claim that the lacerations were caused, by the pinching of her organ by her mother when she was small is improbable, considering that the lacerations were in her hymen.

The testimony of SPO3 Ruben Dato-on, one of the policemen who apprehended accused-appellant, also supports Madelyn's claim that she had been raped. Dato-on testified that in the evening of April 23, 1997, Retania Amban went to the police station for help because she was afraid accused-appellant might kill their daughter Madelyn. When he arrived at the Ambans' residence, Dato-on said Madelyn was shouting, "Help me; he is going to rape me." [24] That could only be because the child had previously been sexually abused by her father. Dato-on had no motive to testify falsely. He and the other policemen came in response to Retania Amban's call for help.

On the other hand, Retania's testimony that it was the Women's Desk of the police who induced Madelyn to file a complaint against her father is doubtful. [25] The criminal complaint [26] shows that Madelyn was assisted by Priscela N. Jarmonilla, a social worker of the DSWD, and not by her mother. [27] Priscela Jarmonilla testified that she assisted Madelyn because Retania was not interested in filing the complaint, although Madelyn was. [28] SPO2 Eva Mirasol Cenar of the Women's and Children's Desk, Bacolod City Police Office testified that Retania wanted to protect accused-appellant and that, when Madelyn insisted on filing the case against accused-appellant, Retania slapped Madelyn in front of all of them in the police station. [29]

Indeed, it appears that Madelyn recanted because of pressure from her mother. It is noteworthy that it was only after her mother took custody of her from the religious sisters on December 3, 1997 that Madelyn changed her testimony.

That Retania was trying to protect her common-law husband is obvious from the incredible claims she made. Aside from asserting that Madelyn's hymenal lacerations were caused by her pinching Madelyn's private parts when her daughter was small, [30] Retania also tried to explain the other injuries on Madelyn found by Dr. Jocson as having been caused by stalks when Madelyn passed through the sugarcane fields in going to the police station and by her (Retania's) attempt to remove a fishbone which got stuck in Madelyn's throat. [31] But Retania's attempt to cover up her husband's misdeeds cannot overcome the prosecution's evidence of accused-appellant's guilt which shows beyond reasonable doubt that the latter committed the crime for which he stands charged.

Art. 335 of the Revised Penal Code, as amended by R.A. No. 7659, provides in pertinent part:

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

"1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim."

The concurrence of both the minority of the victim and her filial relationship to the accused-appellant and the allegation of these circumstances in the complaint in this case justify the trial court's imposition of the death penalty on accused-appellant. Four members of the Court, although maintaining their adherence to the separate

opinions expressed in *People vs. Echegaray*, [32] that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

As already stated, the trial court did not make an award of damages on the basis of its opinion that by retracting her previous testimony against accused-appellant, Madelyn waived the civil liability of accused-appellant. In *People vs. Amaca*, [33] the Court sustained a similar action by the trial court but that was because the victim's mother voluntarily desisted from recovering the civil liability arising from the crime (homicide) because of the financial help extended to her family by the accused-appellant. In this case, however, the trial court found that Madelyn had been pressured by her mother, Retania, to retract her previous testimony against her father. What governs this case is the decision in *People vs. Davatos* [34] in which the private complainant was granted indemnity despite her subsequent retraction of her testimony that the accused in that case raped her.

Since the rape in this case is qualified by circumstances which warrant the imposition of the death penalty, the complainant should be indemnified P75,000.00 for the rape. [35] In addition, P50,000.00 in moral damages should be awarded even without proof for it is assumed that the private complainant has suffered moral injuries entitling her to such an award. [36]

WHEREFORE the decision of the Regional Trial Court, Branch 50, Bacolod City is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay P75,000.00 indemnity and P50,000.00 moral damages to complainant Madelyn Amban.

In accordance with Section 25 of R.A. No. 7659, amending Art. 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President in case he decides to exercise his prerogative of mercy.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Per Judge Roberto S. Chiongson. Rollo, pp. 18-41.

[2] At present, she lives with her mother at the Longno residence as the shanty has since then been demolished.

[3] Records, p. 1.

[4] Per Order, dated August 14, 1997; Id., p. 16.

[5] TSN, pp. 30-35, Oct. 2, 1997.

[6] Id., pp. 35-36, 66-67.

[7] Id., pp. 37, 67.

[8] Id., pp. 38-39, 67-68.

[9] Id., pp. 39-41.

[10] TSN (SPO3 Ruben Dato-on), p. 48, Oct. 16, 1997.

[11] Records, p. 37.

[12] TSN (Dr. Joy Ann C. Jocson), pp. 12-14, Sept. 18, 1997.

[13] Id., p. 15.

[14] Records, p. 49.

[15] TSN (DSWD Social Worker Priscela Jarmonilla), pp. 9-13, Jan. 29, 1998.

[16]

- [17] Id., pp. 19-46.
- [18] RTC Decision, pp. 23-24; Rollo, pp. 40-41.
- [19] Appellant's Brief, p. 9; id., p. 59.
- [20] 97 Phil. 515, 525-526 (1955). Reiterated in *People vs. Panida*, G.R. Nos. 127125 & 138952, July 6, 1999.
- [21] Decisions, p. 20; Rollo, p. 37.
- [22] Id., p. 17; id., p. 34.
- [23] Id., p. 21; id., p. 30.
- [24] TSN, p. 47, Oct. 16, 1997.
- [25] TSN, p. 12, Dec. 11, 1997.
- [26] Records, p. 1.
- [27] In any case, Madelyn, even if she is a minor, has the right to institute the prosecution per Rule 110, Section 5 of the Rules on Criminal Procedure.
- [28] TSN, p. 44, Sept. 18, 1997.
- [29] TSN, p. 18, Oct. 2, 1997.
- [30] TSN, p. 30, Dec. 11, 1997.
- [31] Id., pp. 9 & 28.
- [32] 267 SCRA 682 (1997)
- [33] 277 SCRA 215 (1997)
- [34] 229 SCRA 647 (1994)
- [35] *People vs. Sancha*, G.R. Nos. 131818-19, Feb. 3, 2000; *People vs. Victor*, 292 SCRA 186 (1998)
- [36] *People vs. Prades*, 293 SCRA 411 (1998)

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