

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RESTITUTO CAPILI Y SEBASTIAN, ACCUSED-APPELLANT.***G.R. No. 142747. March 12, 2002*

Ponente: VITUG, J.

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According to Melissa Manuel, on the 25[th] of April 1997, about 2:30 p.m., she was in their residence at No. 147 Pitong Gatang, Sipac, Navotas, Metro Manila, when Restituto Capili y Sebastian called her to come up to the second floor of the house. Obediently, she went up. Capili was alone. To her astonishment, she was told to take his penis into her mouth. When she refused, he undressed her, placed himself on top of her and inserted his organ into her vagina. His lust sated, Capili told her to return downstairs before leaving for his nearby house. What made the incident appalling was that Melissa Manuel was but ten years old at the time and Restituto Capili was her uncle. The event that afternoon would just be the beginning of what the girl, like before, would suffer in silence, punctuated by threats that would cow the child into hopeless, numbing despair. The private torture ceased only when Melissa, on 05 May 1997, finally lodged a complaint against her uncle. Capili was charged thusly:

"That on or about the 25[th] day of April, 1997 in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being an uncle by affinity within the third civil degree of Melissa Manuel y Zeta, a minor of then 10 years (old) of age, with lewd design, and exercising ascendancy over said Melissa Manuel y Zeta, and by means of force, violence and intimidation, willfully, unlawfully and feloniously did, then and there, have sexual intercourse with Melissa Manuel y Zeta against her will and without her consent." [1]

Melissa recalled that during the first incident, her mother was at home doing some cooking. Separated from her husband, she had to single-handedly raise her brood. She came to know of the molestation only on 25 April 1997 when she asked Melissa why she was acting so strangely. It was then that Melissa told her mother everything. Mary Rose, the older sister of Melissa, having learned of the beastly act committed against her younger sister, immediately accompanied the latter to the doctor for medical examination. The next day, they proceeded to Camp Crame to report the matter.

Examining physician Anthony Joselito R. Llamas confirmed the non-virgin state of Melissa, although he opined that it was probably not the penis of a male adult that penetrated the organ of complainant but, more likely, a smaller object such as a finger. According to the doctor, a penis would have caused a deeper injury.

The accused interposed the defense of alibi and denial. He narrated that five days prior to the incident, a Sunday, he had a shouting match with Maryjane Manuel, another sister of Melissa, who had accused him of taking her gold bracelet. The confrontation made him shout invectives at the Manuel family. Later, his son found the missing piece of jewelry and returned it to Maryjane. The accused surmised that it was bad blood that led Melissa's family to file the rape charge against him. He insisted that he could not have raped the young girl on the date and time testified to by her because he was, starting at about nine or ten o'clock that morning, playing "pusoy" with buddies Tony Peñaranda and a certain Rogel. On cross-examination, the accused admitted that his wife had

approached Herminia Manuel, his sister-in-law and mother of Melissa, asking the latter's forgiveness, although he added that it was only on account of the previous misunderstanding he had with Maryjane.

Catherine Capili, a daughter of the accused, corroborated her father's testimony and claimed that on 25 April 1997, at about 2:30 that afternoon, her father was playing "pusoy" with "Mang" Tony and "Mang" Ruben.

On 25 January 2000, the Regional Trial Court of Malabon, Metro Manila, rendered judgment, finding the accused guilty beyond reasonable doubt of the crime of statutory rape and sentencing him to suffer the extreme penalty of death. The trial court held:

"WHEREFORE, premises considered, the Court finds accused RESTITUTO CAPILI Y SEBASTIAN guilty beyond reasonable doubt of the crime of Statutory Rape, attended by the circumstance of relationship within the third civil degree of affinity, and hereby sentences him the penalty of DEATH.

"The accused is likewise ordered to pay the victim Melissa Manuel the sum of P75,000.00 as indemnity, P50,000.00 as moral damages, P50,000.00 as exemplary damages and costs of the suit."[2]

In this automatic review of his conviction, appellant Restituto Capili would insist that -

"THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE VICTIM, MELISSA MANUEL.

"THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE DEFENSE OF DENIAL AND ALIBI INTERPOSED BY THE APPELLANT, WHICH IS MORE CREDIBLE."[3]

The young Melissa Manuel gave a brief but sufficiently elaborate and convincing account of how she was sexually abused by appellant. She testified:

"Q.

In [your] complaint, you said that you were raped by Restituto Capili on April 25, 1997 at Navotas, Metro Manila, will you please tell us how did it happen?

"A.

He ordered me to swallow his penis, sir.

"Q.

Did you swallow his penis as ordered by Restituto Capili?

"A.

No, sir.

"COURT:

"Q.

What time did this happen?

"A.

2:30 in the afternoon, sir.

"Q.

Where?

"A.

In our house, sir.

"Q.

Where is your house?

"A.

In Navotas, sir.

"Q.

Where in Navotas?

"A.

No. 147 Pitong Gatang, Sipac, Navotas, Metro Manila, sir.

"Q.

In what part of the house did this happen?

"A.

Upstairs, sir.

"Q.

By the way, what is your relation with the accused?

"A.

He is an uncle, sir.

"Q.

Were there other persons present in the second floor of your house when your uncle ordered you to swallow his penis?

"A.

None, sir.

"Q.

After he ordered you to swallow his penis and you refused to do so, what happened next?

"A.

He first undressed me and then he undressed himself, sir.

"Q.

After you and the accused were already undressed, what happened then?

"A.

He went on top of me or pinned me then he inserted his organ into mine, sir.

"x x x x x x x x

"Q.

How did you know that his organ was inserted into your organ?

"A.

I felt it sir.

"Q.

And what was he talking or telling you while he was having sex with you?

"A.

For me not to tell or report the matter otherwise he will kill me sir.

"Q.

What else?

"A.

And for me to keep quiet and not to tell anybody about it, sir.

"Q.

After that, what happened?

"A.

After telling me those things, he told me to go down sir.

"Q.

How about him, what did he do at the second floor of your house?

"A.

After he ordered me to go down, I went down and he followed me downstairs sir."[4]

The defense of denial and alibi can hardly stand against such firm testimony so straightforwardly given by Melissa. The time-tested dictum is that the defense of denial and alibi, both negative and self-serving in character, cannot prevail over a positive declaration and identification made by an eyewitness.[5]

Appellant places much emphasis on the finding of the examining physician, Dr. Anthony Joselito R. Llamas, to the effect that the healed laceration at the six o'clock position on the victim's organ is not deep enough so as to conclude that there has been a penile penetration. In his opinion, a fully erect male penis would result in a deeper wound. The reliance by appellant is almost off-tangent. The crime of consummated rape does not require a showing of a full penetration of the vagina or even the rapture of the hymen.[6] In fact, the result of the physical examination of the woman's private part is not solely determinative of the outcome, nor is it a necessary or an indispensable element for the successful prosecution, of a charge for rape. Indeed, the sole testimony of a rape victim, if credible, could even suffice to convict.[7]

Admittedly, Melissa Manuel committed a number of discrepancies in her testimony but the variances focused more on her account of the events immediately prior to and following the rape than her narration on the commission of the crime itself. After all, Melissa was but a little girl of ten when she underwent the ordeal and eleven when she took the witness stand. It should be understandable that the young victim would more likely wish

to forget rather than to remember the sordid details of the outrage that claimed her innocence.[8]

In convicting appellant of the crime of rape and in meting upon him the penalty of death, the trial court relied on Article 335 of the Revised Penal Code, as amended by Republic Act 7659 -

"Article 335. – When and how rape is committed. Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under 12 years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"x x x x x x x x.

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

"x x x when the victim is under eighteen 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."

Before the death penalty can be imposed, two conditions are required to concur: first, that the victim be under eighteen years of age and, second, that the offender be a parent, ascendant, step-parent, guardian, common-law spouse of the parent of the victim, or, such as in this instance, a relative by consanguinity or affinity within the third civil degree. These requirements not only have to be alleged in the complaint or information but also should be proved beyond reasonable doubt.

Indubitably, Melissa was well under eighteen years when the rape occurred. In addition to the certificate of birth,[9] indicating that Melissa Manuel was born on 31 August 1986, her mother testified to confirm Melissa's age. The prosecution, however, failed to prove the alleged kinship between the offender and his victim, itself a qualifying circumstance, that should also be established with equal degree of certainty as that required for proof of age. In *People vs. Liban*,[10] where the age of the victim was at issue, the Court ruled that the testimony of the victim was insufficient to establish her minority, but that, further thereto, the prosecution should present corroborative evidence. In the instant case, the bare statement in passing of Melissa that appellant "is an uncle," without any corroborating testimonial or documentary evidence to clearly establish that relationship, would be insufficient to pass the test set in *Liban*.

WHEREFORE, the decision of the Regional Trial Court of Malabon, Metro Manila, finding appellant Restituto Capily y Sebastian guilty of the crime of Statutory Rape, is **AFFIRMED** with **MODIFICATION** in that the sentence of death imposed upon him should be, as it is hereby so, reduced to reclusion perpetua; conformably with prevailing jurisprudence, the award of P75,000.00 civil indemnity is decreased to P50,000.00, the grant of P50,000.00 moral damages is maintained, and the allowance for P50,000.00 exemplary damages is reduced to P30,000.00. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

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- [1] Rollo, p. 4.
- [2] Rollo, p. 37.
- [3] Rollo, p. 22.
- [4] TSN, Melissa Manuel, May 14, 1998, pp. 4-5.
- [5] People vs. Umali, 242 SCRA 17.
- [6] Ibid.
- [7] People vs. Cura, 240 SCRA 234.
- [8] People vs. Jimenez, 250 SCRA 349; People vs. Mandap, 244 SCRA 457.
- [9] Exhibit-A for the prosecution, Rollo, at page 51.
- [10] People vs. Manuel Liban, 345 SCRA 453.

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