

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO MALATE, ACCUSED-APPELLANT.***G.R. No. 40791. September 11, 1982*

Ponente: ABAD SANTOS, J.

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There should be a special place in hell for child molesters for they are men who are dirty, despicable, deviant and the dregs of society. Such is Ernesto Malate, the appellant, who was convicted by the Court of First Instance of Sorsogon for raping a 9-year old girl and sentenced "to suffer an imprisonment of reclusion perpetua and to indemnify the complainant in the amount of P1,344.30 in concept of actual damages and P500.00 for moral damages."

The People's version of the facts is the following:

"In the afternoon of May 10, 1972, upon his return to his residence at barrio Malbog, Pilar, Sorsogon, from barrio Gapo, Daraga, Albay where he harvested palay, Rafael Lustina found his nine-year-old daughter Salvacion Lustina in bed, complaining of pain in the stomach (pp. 5, 8, 13-14, tsn., May 18, 1973). Three days later, because the pain had not subsided, Lustina brought his daughter to an herbolario or quack doctor at barrio San Roque of the same municipality (p. 15, tsn., Feb. 13, 1973; pp. 8, 23, 24, tsn., May 18, 1973). When the pain persisted, Lustina took his daughter to the Albay Provincial Hospital on May 18, 1972 (p. 9, tsn., May 18, 1973). Dr. Purificacion Orense, a resident physician thereat examined the girl (p. 10, tsn., Ibid). On the patient's private parts, the examining physician found:

1. Slight irritation of the labia majora which was reddish;
2. Marked irritations around the urethral opening and labia minora;
3. An unhealed tear or rent at the forchet about 1 cm.

No other injuries were located (pp. 6-7, tsn., April 13, 1973; p. 3, tsn., August 5, 1974; Exh. "A").

"The above injuries, in the doctor's opinion, could have been caused by a blunt object like a pumicent (tumescent) penis (p. 8, tsn., April 13, 1973). Said injuries prompted the doctor to inquire from the girl what happened, and the latter finally confessed that she was abused by the appellant, who threatened to hack her with his bolo if she revealed the matter to anyone (pp. 13-14, tsn., April 13, 1973). The doctor relayed the information to the girl's father, Rafael Lustina who, after obtaining the corresponding medical certificate from the physician on May 23, 1972, lost no time in instituting the complaint against the appellant (pp. 10, 12, tsn., May 18, 1973).

"On the witness stand, Salvacion Lustina recounted that at about 8:00 o'clock in the morning of May 10, 1972, appellant, a neighbor living about 120 meters away from the Lustina's house, accosted complainant who was playing alone under a coconut tree, and covered the latter's mouth with his hand, then dragged her to a nearby spot with tall grasses. There, he made her lie on the grass, raised her skirt, removed her panty and then his pants, after which he inserted his penis into her vagina. The girl felt pain and cried. After satisfying his bestial

instincts, he threatened to hack her with his bolo if she should divulge what had happened (pp. 7-10, 13-14, 24, 45, 47, tsn., Feb. 13, 1973; p. 11, 17, tsn., May 18, 1973)."

The accused denied the rape and put up an alibi. He attributed the charge to a personal grudge which Rafael Lustina, Salvacion's father had against his family. He also claimed, thru Municipal Health Officer Wilhelmo Abrantes, that Salvacion's vaginal condition could have been due to washing with polluted water or sitting too long in a hot place.

As in most criminal cases, the appeal raises factual issues only. Specifically, the appellant makes the following assignment of errors:

"I. THE LOWER COURT ERRED IN FULLY ACCEPTING THE TESTIMONY OF PROSECUTION WITNESS DR. PURIFICACION ORENSE AND REJECTING THE TESTIMONY OF DEFENSE WITNESS DR. WILHELMO ABRANTES.

"II. THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE MOTIVE OF COMPLAINANT'S FATHER RAFAEL LUSTINA, IN FABRICATING THIS CRIMINAL CASE AGAINST THE ACCUSED.

"III. THE LOWER COURT ERRED IN CONVICTING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE OF RAPE THERE BEING NO MORAL CERTAINTY OF HIS ALLEGED GUILT.

"IV. THE LOWER COURT ERRED IN BEING SEEMINGLY BIASED IN FAVOR OF THE PROSECUTION DURING THE COURSE OF THE PRO-CEEDINGS AS THE RECORDS WILL BEAR OUT.

"V. THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF DEFENSE WITNESSES."

The first assignment of error is easily refuted. Both Dr. Purificacion Orense and Dr. Wilhelmo Abrantes are general practitioners. Dr. Orense presumably has a wider general practice since she is a resident physician at the Albay Provincial Hospital whereas Dr. Abrantes' line is public health since he is a municipal health officer. Between the two physicians, the testimony of Dr. Orense is the more acceptable especially because she personally examined Salvacion whereas Dr. Abrantes did not.

The second assignment of error is to the effect that Salvacion's father fabricated the charge of rape because he resented the fact that Ernesto Malate and his father Lucio were placed as co-tenants on a piece of land thus reducing his share of the harvest. The appellant also claims that as a further ground for resenting him, he had testified in favor of Edwin Artita whom Rafael Lustina had allegedly boxed. We reject this assignment of error for as very well said in the People's brief:

"The imputation of motive is obviously a desperate, albeit, vain attempt, at seeking exculpation by the defense. But assuming there was such resentment, the same could not have sufficiently impelled the victim's father to falsely and maliciously fabricate a charge of rape against Lucio Malate's son, herein appellant. The girl's father would not have gone as far as subjecting not only his daughter of tender age to the rigors and ordeals of a public trial and thereafter suffer the consequent social humiliation, but his whole family as well. Indeed, only a desire to bring the offender to justice for his bestial act could have moved Rafael Lustina to rightly press the charges against appellant."

With particular reference to the Artita affair, We adopt with approval its dismissal by the court a quo as follows:

"The accused further alleged that another reason why complainant conceived this charge against him is the fact

that he (accused) testified against complainant during the investigation of the barrio captain of an incident when Lustina was charged of boxing Edwin Artita. But the accused himself explained that the case between Lustina and Edwin was amicably settled upon payment of P5.00 by the former to the latter. Considering that the quarrel between complainant and Artita was so trivial that it was easily settled with the payment of P5.00, we cannot believe that it was sufficient cause for Lustina to frame up the accused. Incidentally, in the cited incident the name of the party involved was Edwin Artita which makes us wonder whether he is related to the defendant's witness, Hugo Artita, who corroborated the defense of alibi."

The third and fifth assignment of errors mean the same thing, i.e. that the trial court erred in giving credence to the evidence of the prosecution rather than to that of the defense. Involved, therefore, is the credibility of witnesses and on this score We are not disposed to discard the appreciation of the evidence by the court a quo because it was in a peculiar position to do so having personally seen the witnesses testify and their demeanor while doing so. And it should be noted that there is nothing in the record which the trial court overlooked and could have materially changed the result.

As previously stated, the appellant denied the rape and put up an alibi. He claimed that on May 10, 1972, at about 7:00 a.m. he started to plow the farm he was cultivating. He stopped plowing at 11:00 a.m. when he had to lend his carabao to Hugo Artita. He also said that while he was plowing, Artita helped him pull out some weeds. He ate lunch with Artita at the latter's house and at about 1:00 p.m. they plowed Artita's field and finished the task at around 5:00 p.m. Hugo Artita substantially corroborated the alibi of the appellant.

The alibi cannot prevail over the positive testimony of Salvacion identifying the appellant as her ravisher. It should also be borne in mind that the place where he claimed to have worked is only 160 meters from the scene of the crime so that it was not impossible for him to be there.

The appellant claims that the trial court was biased in favor of the prosecution. Illustrative of the trial court's conduct cited by the appellant to support his claim is the following:

"Court:

We cannot allow that these proceedings will run intermittently mainly because the lawyer will say that he has a certain purpose for the question. The cross examination is more than one and one-half hours already and considering the tender age of the witness, she came out with flying colors. Those questions are quite complicated for a child to answer. And then let us be realistic. There is absolutely no human being on this earth even how small, who is not, in some parts of the day, sick or is not left by the parents because sometimes the parents go to seek for their livelihood. Not only that, this girl was not yet in her senses, then how could she know. How could she answer your question at the age of four? Probably she does not know what happened in this world. If she were already at the age of reason it can be allowed. But from a child, it is improper. Reform the question. If you feel that there are still some questions, you may proceed. The Court would prefer that you ask your question and you should not be stopped because it is already past twelve and the Court would like the defense counsel to make the cross-examination as long as he believes necessary in order that there will be absolutely no alibi later on if the Court would find the accused responsible for this sordid and detestable crime of which he is tried. We want to give you the opportunity." (TSN, February 13, 1973, pp. 56-58.)

The trial judge made the statement during the cross-examination of Salvacion and he had to do so because counsel for the accused was obviously trying to confuse, bewilder, harrass and exhaust the girl of tender years who, according to the trial judge in his decision, "exuded an aura of innocence and simplicity devoid of artifice and deception." In fact if the statement is read with an unprejudiced eye, it can easily be perceived that the court was disposed to be patient and liberal in respect of cross-examination. The same patient and liberal attitude of the judge is revealed in other statements to defense counsel which the appellant also cites to support his claim of bias, thus:

"Court:

In the opinion of the Court the line of questioning is very immaterial, irrelevant and impertinent, but considering that the accused is being charged of a very serious offense and the counsel has manifested that he has a certain objective or information which he wants to elicit from the witness, we will give him all the chances so that it cannot be said that the right of the accused to a just and fair trial has not been unnecessarily curtailed by the Court. However, if the trend of questioning will continue and the Court will detect that there is no material information that will be elicited from the witness, we will be constrained to stop the line of question." (TSN, May 18, 1973, p. 16.)

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"Court:

While it is true that you are on cross-examination but it does not necessarily mean that you can ask any question under the sun. And as to this testing of credibility is a hackneyed reason for cross examineers to forward to the Court just to allow them to ask immaterial and irrelevant questions. Otherwise, if the Court will not control those kinds of questions there will be no end to a litigation. The trial of a case will be prolonged so much and the administration of justice will be subverted. This Presiding Judge does not believe that we are placed in this podium powerless and without objective. It is the belief of this Presiding Judge that we have the right to regulate the proceedings, to stop excess not only on the part of the counsel for one party but also the counsel for the other party. As it is the Court has been quite liberal, including the prosecutor, with the defense counsel and we believe that the defense counsel has no basis to complain as to the attitude of the Court in allowing him to proceed with his cross examination. But certainly there is a limit to anything, and the Court believes with all sincerity that the cross examination is going out of bounds. Objection sustained." (TSN, May 18, 1973, p. 19.)

In view of the foregoing, We cannot take seriously the appellant's claim that the court a quo was biased in favor of the prosecution and prejudiced against him.

WHEREFORE, finding no error in the appealed decision, the same is hereby affirmed in toto. Costs against the appellant.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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