# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HONESTO LLANDELAR Y MAGANTI, ACCUSED-APPELLANT.

*G.R. Nos. 123138-39. November 08, 2001*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

For automatic review is the consolidated decision promulgated on December 8, 1995, by the Regional Trial Court of Libmanan, Camarines Sur, Branch 56, in Criminal Cases Nos. L-1728 and L-1729, finding appellant Honesto Llandelar guilty of two counts of rape and imposing on him in each count the penalty of death.

The informations against him, both dated March 9, 1995, read as follows:

> L-1728
>
> The undersigned 4th Assistant Provincial Prosecutor of Camarines Sur upon sworn complaint originally filed by the offended party, Marjorie M. Llandelar, accuses HONESTO LLANDELAR y DOE[2] of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, committed as follows:
>
> That on or about the 14th day of January, 1995 at around 12:00 o'clock midnight at Sitio Pag-Ultan, Barangay Salvacion, Municipality of Ragay, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation did then and there wilfully, unlawfully and feloniously did lie and have carnal knowledge of his own daughter, Marjorie Llandelar, 16 years of age, single, against her will and without her consent.
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> ACTS CONTRARY TO LAW.[3]
>
> L-1729
>
> The undersigned 4th Assistant Provincial Prosecutor of Camarines Sur upon sworn complaint originally filed by the offended party, Marjorie M. Llandelar, accuses HONESTO LLANDELAR y DOE of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, committed as follows:
>
> That on or sometime between the month of April, 1994 and January, 1995 at Sitio Pag-Ultan, Barangay Salvacion, Municipality of Ragay, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of violence, force, threat and intimidation did then and there wilfully, unlawfully and feloniously did lie and have carnal knowledge of his own daughter, Marjorie Llandelar, 16 years of age, single, against her will and without her consent.
>
> ACTS CONTRARY TO LAW.[4]

It appears that the spouses Honesto and Rosalina Llandelar resided in the far-flung sitio of Pag-ultan, barangay Salvacion, in the railroad town of Ragay, Camarines Sur. They occupied a small house, nestled on a hill, surrounded by cogon grass and dotted by shrubs and trees. Their nearest neighbor lived far out of sight. Their house had a living room and an elevated portion called "bintaas" (attic) with sawali walls, measuring 4 x 4½ meters. This was where the family members slept. The couple had eight children, namely: Marjorie, Allan,

Gilberto, Ruel, Lorena, Myra, Menchie and Jomar. At 16 years old, Marjorie was the eldest. Soft spoken, pensive, dark eyed and pretty, she was the spitting image of her father.

Alleging that her father, appellant Honesto Llandelar had sexually abused her, Marjorie filed rape charges against him. After conducting preliminary investigation and finding probable cause, MCTC Judge Benjamin Ramos of Ragay ordered the arrest of appellant. No bail was recommended considering the gravity of the charges.[5]

Appellant pleaded not guilty on arraignment. The cases were set for joint trial in the sala of RTC Judge Lore Valencia Bagalacsa in Libmanan. While the trial was in progress, appellant informed the trial court that he was willing to plead guilty to one offense on condition that the other be withdrawn. Judge Bagalacsa advised him to think about it as the imposable penalty is death, and that even if he pleaded guilty, the prosecution would still be directed to present evidence. Later, appellant told his counsel that he was willing to plead guilty to the lesser offense of qualified seduction. When informed of this matter, complainant vehemently refused to agree with the proposed plea of appellant.[6]

At the trial, MARJORIE LLANDELAR testified that she was born on July 29, 1978. She used to work as housemaid in Cavite. On February 14, 1994, her father brought her to Ibaan, Batangas, where she was employed as a housemaid by a certain Amor Esperina. In April, 1994, appellant fetched her from her employer's house and brought her to the residence of his uncle, Federico Llandelar in Ragay. It was there where appellant first vent his bestial lust on her. Despite the sexual abuse, Marjorie said she went home with him. She could not refuse to go because he was hurting her. In their home in Pag-ultan, he sexually abused her again while her mother was not around. Armed with a balisong, he held her by the shoulders, swung her to and fro, then dragged her to the sala. He forced her to lie down, then he removed her shorts and panty. He then inserted his penis in her vagina which took a little while. She said she tried to resist and fight him but she did not succeed. No screams escaped her lips. Even if she did scream, nobody would come to her rescue. They lived far from their neighbors. Her mother was not around. Her siblings could not help her either even if they were awake, for they were too young and small to defend her. After satisfying his lust, his father warned her not to tell anybody or else he would kill her, her mother and her siblings. In May, 1994, he again violated her. Again she said that she was too afraid to resist. She succumbed to his sexual advances because whenever she refused to `sleep' with him, he always hurt her.

At around midnight of January 14, 1995, her father again raped her. As in previous occasions, Marjorie said her father hurt her before sexually abusing her. He forced her to remove her shorts and panty, after which he also removed his short pants. Then, he let his penis out of his brief and inserted it in her vagina. Her mother was not at home as she was confined at the Ragay District Hospital. Her younger siblings were already asleep at that time. She kept the abuse to herself. She was so afraid of him and she had likewise no opportunity to leave their house.[7]

Marjorie said she tried to keep her father's abuses a secret, as did the other members of the family, except that she became pregnant. On January 20, 1995, she told her grandmother, Erlinda Mantis-Almojela, of her father's lechery. On January 28, 1995, they reported the matter to the officials of Barangay Salvacion, Ragay, Camarines Sur. On January 30, 1995, police officer Merly Silva requested the Chief of the Ragay District Hospital to conduct a medical examination on Marjorie.[8]

On February 1, 1995, DR. MARILYN CERILO-FOLLOSO, Municipal Health Officer, Ragay, Camarines Sur, examined complainant. She later testified that complainant has a healed hymenal laceration at 6:00 o'clock position. The cervix was closed and the uterus was enlarged indicating pregnancy, at about two to three months at the time of examination. There was slight bleeding due to a threatened abortion.[9]

In their testimonies, ROSALINA LLANDELAR and her son GILBERTO related separately that they saw


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appellant hurting Marjorie whenever she would resist or refuse to lie down with him. Both confirmed that they saw father and daughter sleeping together ("nag-durog"), covered with a blanket, in the `bintaas'. In local parlance, nag-durog means lying with or having sexual relations.

Rosalina further testified that she and appellant married on May 3, 1978. She recalled that after appellant arrived with complainant from Batangas in April, 1994, she noticed that the two always slept together in the bintaas. She was also hurt by appellant and she also witnessed how Marjorie was hit by appellant in the arm and at the back. Rosalina said she was confined in the hospital starting December, 1994, because of tuberculosis.[10]

Gilberto stated on the witness stand that he sensed something wrong about his father and sister because the two were always sleeping together in the bintaas. He said that complainant was beaten by their father whenever she refused to sleep with appellant. He added that he and his mother could not do anything to help his sister because they were also physically abused by appellant.[11]

Appellant HONESTO LLANDELAR took the witness stand to defend himself. He said he learned that he was being charged with the rape of his daughter when he was already in the municipal jail. He admitted that complainant is his daughter by his wife, Rosalina. However, he denied sexually abusing his daughter because he loved his family and he would not do such a dastardly act. He claimed that he was in Batangas from April, 1994, to December 8, 1994, working in a poultry farm. In December, 1994, he learned that his wife was ill. On December 9, 1994, he went home to Ragay with Marjorie and Allan who also worked in Batangas. He brought his wife to the hospital and he took care of her. Sometimes, he stayed with his wife's mother in the hospital. In January, 1995, he brought his wife to the hospital every Monday. They would stay in the house of his uncle, Federico Llandelar, in Ragay because Rosalina could not bear the trip home to Pag-ultan. He said that Marjorie had a boyfriend; she was once abducted by the members of the New People's Army.[12]

FEDERICO LLANDELAR, appellant's uncle, also testified for the defense. He stated that appellant and Rosalina slept at his house for twenty days when the latter was brought to the hospital for medical check up. The couple went to his house on December 20, 1994. They stayed there until January 5, 1995, as Rosalina was undergoing medication. On January 28, appellant arrived at his house to raise money. It was only on January 29, that he learned about the rape charges and appellant's arrest.[13]

The trial court found the testimonies of witnesses for the prosecution credible. In contrast, it found appellant's alibi and denial unworthy of belief. Accordingly, the court found appellant guilty as charged. In its decision, the trial court decreed:

> WHEREFORE, in view of the foregoing, this Court finds the accused, HONESTO LLANDELAR Y MAGANTI, GUILTY beyond reasonable doubt, of the crime of Rape, under Article 335, as amended by Sec. 11 of RA 7659, in Crim. Case Nos. 1728 and 1729, and hereby sentences him to suffer the maximum penalty of DEATH in both cases. He is likewise directed to pay the sum of Fifty Thousand Pesos (P50,000.00) in each case, as moral damages, and Fifty Thousand Pesos (P50,000.00) in both cases, as exemplary damages, and to pay the costs of this suit.
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> x x x
>
> SO ORDERED.[14]

Hence, this appeal. In his brief, appellant alleges that:

> THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT WHEN THE EVIDENCE ADDUCED BY THE PROSECUTION FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN HIS FAVOR BY CLEAR AND CONVINCING EVIDENCE OF GUILT BEYOND REASONABLE

DOUBT.[15]

The issues for resolution are: (1) Is there sufficient evidence to support the finding of guilt beyond reasonable doubt for the two counts of qualified rape? (2) Is the sentence of death in each count properly imposed?

Appellant assails the trial court for giving full credence to the testimony of prosecution witnesses and totally disregarding the evidence for the defense. He contends that the delay in reporting the sexual abuses to her grandmother and the authorities makes private complainant's story doubtful. He points out that for ten months complainant allegedly had sexual intercourse with him yet she reported them only when she was already pregnant. He also asserts that complainant consented to the sexual advances because they always slept together covered by a blanket.[16]

First, we find that mere delay in reporting sexual abuses by complainant should not be taken against the victim. Such delay in reporting of a rape case may be justified where it is due to strong reasons like death threats against her. In this case, appellant warned complainant not to tell anybody about the incidents or else he would kill her, her mother and siblings. In addition, complainant was a girl of tender age who was completely under the moral ascendancy and control of appellant. The fear alone of what appellant would do if she would expose his evil deeds forced her to suffer in silence. Complainant's failure to promptly file charges did not diminish her credibility.[17]

Second, we find no reason to doubt the prosecution's exposition of the repeated sexual abuses committed by appellant. As noted by the trial court, private complainant could not help but shed tears profusely during her direct and cross-examination. She sobbed incessantly as she testified regarding her ordeal. She related her tragic experience in halting but coherent, clear and candid answers to questions asked of her. That complainant cried during her testimony shows the credibility of the rape charges with the verity born out of human nature and her own experience. We note that complainant is a young country girl, living with many siblings under one roof. We find nothing to show that complainant was actuated by ill motive to testify against appellant, her own father. We are convinced that she was motivated only by a sincere desire to seek justice for the wrong committed against her.

The proposition that complainant consented to appellant's sexual advances is too trite to be true. Considering her young age, complainant succumbed to appellant's abuses out of fear of violence, threats and intimidation. She testified that whenever she refused to bed with him, he would hurt her. Complainant feared not only for herself but also for the life and safety of her mother and her siblings. She was cowed into submission to appellant's satyric acts by actual and potential violence. In such a situation, to speak of consent is to sprinkle salt on the open wound of the young victim.

Now, with regard to appellant's alibi. It is a cardinal rule that for alibi to prosper, credible proof that it was impossible for the accused to be at the scene of the crime is indispensable.[18] In this case, appellant claims that he was not at their house in Pag-ultan at the time the rape incidents occurred. But his claim that he was in Batangas from April to December 8, 1994, is not corroborated by competent evidence. Moreover, he failed to prove that it was physically impossible for him to go home to Pag-ultan if ever he was in the poblacion of Ragay at the time of the alleged rape. There were vehicles plying the route, and the remaining distance to his house could easily be covered by foot in an hour. Likewise, the uncle, Federico Llandelar, did not actually see if appellant really slept at his house all the while as he did not keep constant watch over him.

Appellant's assertion that her daughter had a boyfriend deserves scant consideration. It is a vain attempt to deflect responsibility for his daughter's pregnancy. He also tried to imply that she was in that predicament because the NPA abducted her. We are inclined to agree with the trial court when it observed that the alleged abduction was more for the reason that the NPAs had wanted to protect her, considering that appellant admitted that his wife has a brother with the group.[19]

Finally, on the propriety of the penalty imposed. Apparently, the trial court imposed the death penalty in both cases because private complainant testified that she was then only sixteen years old and the offender is her father. This is pursuant to the first circumstance of the seventh paragraph of Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, which provides as follows:

> ART. 335 When and how rape is committed. ---
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> x x x
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> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> - 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.
>
> x x x

This Court has consistently required, however, that the victim's minority must not only be specifically alleged in the information but must likewise be established during trial. Neither the obvious minority of the victim, nor the absence of any contrary assertion from the defense, can excuse the prosecution from these twin requirements. The birth certificate of the victim or, in lieu thereof, any other documentary evidence, like a baptismal certificate, school records and documents of similar nature, or credible testimonial evidence, that can help establish the age of the victim should be presented. Judicial notice of the issue of age, without the requisite hearing conducted under Section 3, Rule 129, of the Rules of Court,[20] would not be considered enough compliance. While the declaration of a victim as to her age, being an exception to the hearsay proscription, would be admissible under the rule on pedigree, the question on the relative weight that may be accorded to it is another matter. Corroborative evidence would be most desirable or even essential when circumstances warrant.[21]

In the present case, the minority of the victim is properly alleged in the information. However, aside from the bare declaration of complainant that she was sixteen years old at the time of the sexual assaults, the prosecution did not present any other independent or corroborating evidence of the victim's age. Thus, it cannot be said that victim's minority was established beyond doubt. Accordingly, the penalty of death could not be imposed on appellant.

In sum, while we sustain the finding by the trial court that appellant committed two counts of rape, the penalty in each case must be reduced to reclusion perpetua on account of the insufficiency of proof concerning the qualifying circumstance of minority of the private complainant.

Finally, the trial court's award of moral damages in the amount of P50,000 in each case is proper without need of further proof. In addition, civil indemnity in the amount of P50,000 also must be awarded to the victim since it is mandatory upon a finding of the fact of rape.[22] Furthermore, pursuant to prevailing jurisprudence, exemplary damages in the amount of P25,000 in each case must also be awarded to her.

WHEREFORE, the appealed decision of the Regional Trial Court of Libmanan, Camarines Sur, Branch 56, is AFFIRMED with MODIFICATION. Appellant Honesto Llandelar y Maganti is found guilty of two (2) counts of rape but his sentence is reduced to RECLUSION PERPETUA in each case. He is also ordered to pay private complainant, Marjorie Llandelar, P50,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages for each count of rape, and the costs.


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**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Vitug, J., on official leave.

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[1] Also spelled as "Magante" in some parts of the records.

[2] Prosecution manifested that appellant's middle name is "Magante", TSN, August 25, 1995, p. 3.

[3] Rollo, p. 9.

[4] Id. at 10.

[5] RTC Records, Criminal Case L-1728, p. 11.

[6] Id. at 51.

[7] TSN, October 10, 1995, P.M., pp. 2-13; TSN, October 20, 1995, pp. 2-12.

[8] RTC Records, Criminal Case No. L-1728 p. 54.

[9] TSN, August 25, 1995, pp. 16-21.

[10] TSN, October 10, 1995, pp. 3-21.

[11] TSN, August 25, 1995, pp. 11-13; TSN, October 10, 1995, pp. 3-4.

[12] TSN, October 26, 1995, pp. 4-15; TSN, November 21, 1995, pp. 9-11.

[13] TSN, November 21, 1995, P.M., pp. 4-10.

[14] Rollo, pp. 33-34.

[15] Id. at 71.

[16] Id. at 80-82.

[17] People vs. Montefalcon, G.R. Nos. 111944-47, 243 SCRA 617, 623-624 (1995).

[18] People vs. Nang, G.R. No. 107799, 289 SCRA 16, 31-32 (1998).

[19] TSN, October 26, 1995, p. 14.

[20] SEC. 3. Judicial notice, when hearing necessary.--During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

[21] People vs. Liban, G.R. Nos. 136247 and 138330, November 22, 2000, pp. 15-16.

[22] People vs. Sandoval, G.R. Nos. 132625-31, December 18, 2000, p. 13.

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