

FIFTH DIVISION

[CA-G.R. CR HC NO. 01156, August 01, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEDDY
MAGAYON, ACCUSED-APPELLANT.**

D E C I S I O N

ROMILLA-LONTOK, J.:

Before Us on intermediate appeal is the Decision dated January 28, 1999 of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41, in Criminal Case No. P-5558, convicting the appellant of the crime of Rape under Article 335 of the Revised Penal Code, and sentencing the accused to a penalty of *reclusion perpetua*. The dispositive portion is as follows:

"WHEREFORE, in the light of the foregoing, this Court finds accused Teddy Magayon guilty beyond reasonable for the crime of RAPE under Article 335, paragraph 3 of the Revised Penal Code and he is hereby sentenced to suffer the penalty of Reclusion Perpetua and to indemnify the offended party, Anabel Amar, the sum of Fifty Thousand (P50,000.00) Pesos as moral damages (People vs Bondoy, 222 SCRA 216) and to pay the cost.

The accused is credited in full for the period of his preventive imprisonment in accordance with the Revised Penal Code."

Facts antecedent to the appeal are as follows:

Appellant Teddy Magayon was charged of Rape in an information which reads as follows:

"That on or about the 9th day of August, 1996, at 9:00 o'clock in the morning of August 9, 1996, more or less, in barangay Rosacarra, Municipality of Bansud, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, did then and there willfully, unlawfully and feloniously lay with and have carnal knowledge of one ANABEL AMAR, a nine-year-old girl, against her will and without her consent."^[1]

The accused when arraigned, pleaded not guilty. Pre-trial and trial were set.

The prosecution presented five witnesses, namely: Milagros Gayos, Dra. Preciosa Soller, Francisco Asi, Anabel Amar herself and Mrs Violeta Nazareno.

Milagros Gayos is the grandmother of Anabel Amar, the offended party. She testified that Anabel Amar was almost ten (10) years old in 1996. She was the one who filed the complaint for Anabel. The mother, Lily Mariscal, being married to the uncle of

Teddy Magayon, was not interested to pursue a case against Teddy. Sometime in August, 1996, Francisco Asi confirmed to her that Teddy raped Anabel. She had Anabel examined. Upon advise of the doctor she filed a complaint against Teddy with the police authorities of Bansud. She executed an affidavit (Exhibit "A").

Dra. Preciosa Soller, the Municipal Health Officer of Bansud testified as to having examined Anabel on September 4, 1996. She prepared a Medico-Legal Report (Exhibit "B") with the findings as follows:

- "Perinium – 1) Abrasion left side along the labia minora & majora
- 2) Hymen- destroyed completely with remnants at the right side
- 3) Vaginal laceration, complete, posterior portion with inflammation of the edges
- 4) No semen recovered, vaginal rugae present

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REMARKS:

1. Physical Virginity lost"^[2]

Dr. Soller confirmed that the lacerations on Anabel's hymen could have been caused by the insertion of an erect penis. Since the laceration was still inflamed, it could have been inflicted within seven (7) days from the time of examination.

Francisco Asi stated that he knew Teddy Magayon even prior to August 9, 1996. Teddy is a resident of their place. He also knows Anabel who also resides in Bansud. At about 9:00 o' clock in the morning of August 9, 1996 he was at home preparing to haul bananas; he saw Teddy about two arms length away from him pulling up and down a little girl on top of him whom he held by the waist. Teddy was leaning on a wooden sledge (kangga). The little girl was Anabel Amar. Francisco shouted at Teddy "Toy ano gang ginagawa mong iyan sa bata?". Anabel was trying to extricate herself (nagpupumiglas) from the hold of Teddy. He passed by the two and after that "magkakasunod na kami." They parted ways at the junction. Francisco Asi identified the affidavit ("Exhibit "C") he executed in connection with said incident, affirmed the truth and correctness of the contents thereof and confirmed that the signature thereon is his.^[3]

Anabel Amar testified that she is ten (10) years old. On August 9, 1996, at about 9:00 o' clock in the morning while her eleven (11) year old brother was in their house, her uncle Teddy took her out of the house, brought her somewhere else and raped her. The rape took about two (2) minutes. She did not tell anybody about the rape.

Mrs. Violeta Nazareno is a Social Worker of Bansud to whom Anabel's case was referred for assistance. She knows that Anabel was born on September 28, 1986 based on the birth certificate (Exhibit "E") given by Milagros Gayos.

After the prosecution rested its case, Teddy Magayon, through counsel, filed a

demurrer to the evidence.^[4] The same was denied.^[5] A hearing was set for the presentation of defense evidence. Accused through counsel waived his right to present his defense. He prayed that the case be submitted for decision after submission of memoranda by the parties.^[6]

The trial court convicted the accused of the charge.

Accused appealed on the lone assignment of error that:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

Accused-appellant maintains that the trial court erred in giving credence to the testimonies of the prosecution witnesses.

In instant case there is an eyewitness to the rape of Anabel. Francisco Asi was only two arms length away when he witnessed the incident. His testimony reads, to wit:

"Q. On August 9, 1996 at about 9:00 o' clock in the morning, where were you?

A. I was in my house preparing to haul bananas.

Q. Where is your house situated?

A. At Barangay Rosacarra, Bansud, Oriental Mindoro.

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Q. While you were preparing to haul banana, do you remember having seen this Teddy Magayon whom you identified a while ago?

A. Yes, sir.

Q. What was Teddy Magayon doing?

A. I saw Teddy Magayon holding the little girl. (Witness demonstrating imaginary pulling up and down.

Q. How far were you from the two referring to the girl and Teddy Magayon in that position?

A. Two arms length only.

Q. Will you please describe to this Court the position of Teddy Magayon when you said you saw him doing that motion which you described before this Court?

A. He was leaning on a wooden sledge (kangga).

Q. Were you able to recognize that person being held by Teddy Magayon?

A. Yes, sir Anabel Amar.

Q. What did you do when you saw them in that position?

A. I shouted him in Tagalog "Toy ano gang ginagawa mong iyan sa bata," What are you doing?

Q. To whom were you addressing that point?

A. To Teddy Magayon, sir.^[7]

Francisco Ylagan Asi gave a written statement (Exhibit "C") to the police authorities of Bansud, Oriental Mindoro. The pertinent portion of his aforesaid statement reads, to wit:

"03. T- Ano naman ang nais mong tukuyin na hindi pangkaraniwang pangyayari na iyong nasaksihan.

S- Nakita ko nga po na si Anabel Amar ay kasalukuyng ginagahasa ni Teddy Magayon.

"04. T- Kailan mo nakita itong si Teddy Magayon na ginagahasa itong si Annabel?

S- Noon pang Agosto 9, 1996, araw ng Biyernes na ang oras ay humigit kumulang sa alas 9:00 ng umaga.

"05. T- Saan lugar mo nakita itong si Teddy na ginagahasa itong si Annabel?

S- Doon po sa parting damuhan na sa bandang itaas ng aming bahay sa Rosacara, Bansud, Silangang Mindoro.

"06. T- Nang makita mong ginagahasa ni Teddy si Annabel ano ang iyong naging reaktion?

S- Kunyari po ay nilampasan ko sila para mapansin ako at bumalik din ako kaagad at noong balik ko "TOY ANO GANG GINAGAWA MO SA BATANG IYAN?"

"07. T- Ano naman ang naging reaktion din ni Teddy na nakita mo sila?

S- Kunyari po ay baliwala sa kanya ang nakita ko sa kanila at kunyari ay naninigarilyo itong si Teddy.

"08. T- Maaari mo bang isalaysay dito sa Pagsisiyasat na ito ang ditalyadong nasaksihan mo?

S- Ang nakita ko po ay nakasakay silang dalawa sa kangga at nakaupo itong si Teddy habang nakakaang itong si Annabel na kalong ni Teddy na hawak sa bay-awang si Annabel ay niyuyugyug na pataas at paibaba.

"09. T- Napansin mo ba itong si Annabel ay walang pante at ito namang si Teddy ay walang salawal?

S- Si Annabel po ay walang pante habang si Teddy naman ay nakababa ang kanyang pantalon hanggang hita.

"10. T- Ano pang ang ibang napansin mo kay Anabel habang siya ay ginagahasa ni Teddy?

S- Umiiyak po siya at nagpupumiglas na makawala ngunit sa kanyang kaliitan ay hindi po siya makawala sa pagkahawak ni Teddy."^[8]

Anabel Amar herself stated on direct examination as follows:

"Q. How old are you now?

A. Ten years old, sir.