

EN BANC

[G.R. No. 133227, October 10, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CHITO P. UCAB, ACCUSED-APPELLANT.**

DECISION

PUNO, J.:

Before us on automatic review is the Decision of the Regional Trial Court of Mambajao, Camiguin, Branch 28, dated February 19, 1998, in Criminal Case No. 833, finding appellant Chito Ucab guilty of two counts of rape he allegedly committed against his 12-year old daughter, private complainant Hanipi Ucab. Appellant was twice sentenced to death.

A single Information, containing the charges for two counts of incestuous rape, was filed against the appellant. Its accusatory portion reads:

"That on or about the 28th day of March 1997 at 10:00 o'clock in the evening and again repeated on April 28, 1997 inside the house of the offended party in Kilaa, Alga, Catarman, Camiguin, within the jurisdiction of this Honorable Court, the abovenamed accused employing force and intimidation upon the victim, did then and there willfully, unlawfully and feloniously have sexual intercourse with Hanipi Ucab, his own daughter of 12 years old.

CONTRARY TO LAW."^[1]

Despite the multiplicity of the charges in the Information, the appellant proceeded to plead not guilty and submitted himself to trial.

It appears from the evidence adduced by the prosecution that private complainant Hanipi Ucab is the eldest among the four children of appellant Chito Ucab and Corazon Amo. She was born on October 5, 1984 and was barely over the age of twelve when the first rape happened. The date was March 28, 1997. At about 10:00 in the evening, she was at home, sleeping. She was alone in bed as her brother Joffrey and sister Charry slept on the floor.^[2] While she was in slumber, appellant knocked at the door and asked her to open it. Rising from her sleep, she followed her father's order. She noticed him finish the cigarette he was smoking. Thereafter, he approached her and started touching her breast and other parts of her body, including her private organ. He was only wearing his briefs. Appellant then held her two hands with his left hand while his right hand removed her panties. Her attempts to shout for help were smothered when he threatened to kill her and her younger siblings. Appellant mounted her as soon as he succeeded in removing her panties. She then felt appellant's erect penis penetrate her organ. This caused her so much pain, which was aggravated when he executed the push and pull movement. All along, Hanipi was pleading with her father not to abuse her. Her pleas were in vain,

as her father, possessed by, and unable to control, his bestial desire, retorted "What will I do to you?"^[3] He proceeded to suck her breast and her sexual organ. He reinserted his penis later and placed it on the top of her abdomen after discharging. His bestial desire satisfied, he stood up and lighted a cigarette. Hanipi was forced to bear the agony and trauma of the experience by herself as she was warned by her father not to tell anybody of the incident if she does not want to die. In the course of her testimony, she identified several pictures including that of their house^[4] and of the bed^[5] where the first incident of rape took place.

The second incident of rape happened a month later on April 28, 1997 in their farmhut near a brook, seven hundred meters away from their house. Hanipi, together with Joffrey and Charry, went to the hut to ask their father's permission to watch a betamax movie show in their neighbor's house. Appellant allowed her younger siblings to see the show, but ordered her to stay behind. She was then outside the farmhut, approximately four to five meters from it. Appellant ordered her to come inside. When she refused, he threatened to fire his slingshot at her. When she still disobeyed him, he approached and intimidated her with a bolo. Then, he pulled her inside the hut where he succeeded in satisfying his lust. Her attempts to resist were easily subdued. Appellant slapped her every time she moved.

Unable to bear the trauma of having her womanhood violated by her father himself, Hanipi related the sad ordeal to two of her closest friends, Michelle Caja and Cherry Joy Banaag, on May 2, 1997. Cherry Joy then informed her mother of the shocking story of Hanipi. In turn, Cherry Joy's mother told Hanipi's paternal grandmother about the incident.

Not surprisingly, Hanipi decided to leave their house. On May 4, 1997, she sought refuge in the house of Mrs. Alice Orcajo, the public school teacher with whom her other sister Rutchie Mae was staying with. Mrs. Orcajo brought her to the neighboring town of Sagay in the house of a certain Vallar family. Unfortunately, the Vallars would not accept the young girl because they were afraid of her father's violent tendencies. Mrs. Orcajo and Hanipi then returned to Catarman where they sought the help of Evangeline Avendano. They proceeded to the Department of Social Welfare and Development (DSWD). The next day, May 5, 1997, Hanipi was spirited to the house of the *Hijas de Jesus* congregation. With the assistance of a nun named Sister Mary and Social Welfare Officer Emelie Salutan of the DSWD, Hanipi reported the sexual violations committed by her father against her to the police authorities at Catarman. She thereafter submitted herself to a medical examination conducted by Dr. Erwin Mondragon at the Camiguin Island Hospital. The test results, contained in a Medical Certificate,^[6] revealed dead sperm cells in the vaginal canal of Hanipi.

Hanipi further disclosed that her mother works as a helper in a canteen in Manila, leaving her and her younger siblings to the care of their father in the family house at Kilaa. Her father works in his small farm, which does not make enough profit to sustain the whole family. Moreover, he does not work hard enough and would usually go home drunk. In this state of stupor, appellant would usually beat his children for no apparent reason. Hanipi stated that it is practically her mother who is the sole breadwinner in the family, regularly sending them one thousand pesos a month. She goes home to visit them from Manila only once a year. She would stay there for approximately a month, after which she goes back to her work in the big

city. Usually, her arrival coincides with the Christmas season in December and she leaves by early February.

Appellant denied the accusations against him. As the lone witness for the defense, he claimed that on the night of the first incident, he slept in their house with his three children: Hanipi, Joffrey and Charry. They slept together side by side. To his left was Charry. Farther away was Hanipi. Joffrey stayed farthest from him. At various times that night, Charry screamed and complained that the thigh and leg of her sister would go on top of her. Despite being tired and weary from the day's work, he forced himself to rise just to remove the thigh and leg of Hanipi. This was repeated several times until Charry lost her patience and transferred to the other side of her father. Charry slept on his right while beside him on his other side was Hanipi. Joffrey remained at Hanipi's left. They then resumed sleeping.

Not much time has gone by when he felt the weight of Hanipi's thigh resting on his body, with her leg immediately on top of his sex organ. He was then clad with only his briefs because he felt exceptionally warm that night. He removed the thigh and leg of his daughter and went back to sleep. This was repeated several times in the course of their sleep until it reached the point when he noticed that he became aroused from the sensation of Hanipi's thigh and leg coming into contact with his private organ. He tried to suppress his sexual urge but lost control of himself. He had an erection. He touched the thigh of his daughter, then directed his penis towards her vagina. Turning on his left side, he removed his briefs and pulled down her shortpants and underwear. In that position, he executed several push and pull movements, bumping his penis into her private part without penetrating the same. He had an orgasm but ejaculated only on the lower abdomen of his daughter. After which, he pulled back the shorts of his daughter. He thought she was asleep but was mistaken. When he observed that she was awake, he told her, "Ta, I'm sorry that I was able to do that because I cannot hold myself but I was very thankful that I was not able to consummate my act."^[7] Hanipi replied, as if reassuring him, "You go back to sleep, nothing happened."^[8]

Appellant denounced the second rape as a lie. He alleged that the incident on April 28, 1997 is the result of his efforts to discipline the private complainant. He recalled Hanipi coming to their farmhut at about 6:00 in the evening. He confronted her for coming late. She said that she cleaned their house. He then asked her if it was true that she received five hundred pesos from their mother. Hanipi answered that she was under no obligation to tell him about the money. He then ordered her to prepare their supper. After they finished eating, Hanipi asked permission from him if she could go to their neighbor's house to watch a betamax movie. He refused having discovered that in the past, Hanipi, instead of going to their neighbor, would join her friends in disco dances in a neighboring barangay. The young girl murmured something, apparently, in defiance. This enraged him and to stop her from murmuring further, he got his slingshot and aimed it at her lips. The rubber of the slingshot, however, snapped, nearly hitting her on the lips. In frustration, he threw the weapon at her, which landed on her breast area. He then snatched the scabbard of his scythe and hit her with it. The girl ran to their other house. He never saw her again that night and only met her the next morning. For this reason, he scolded her. Thus, appellant insists, there was no rape that occurred the night of April 28, 1997. Asked for a reason why his daughter would charge him of such a serious offense, he could only surmise that she was mad at him for castigating her. After Hanipi left their house on May 4, 1997, he exerted all efforts to search for her. On May 9, 1997,

he learned that she was under the care of the religious sisters of the *Hijas de Jesus* congregation. His attempts to contact the sisters failed.

After trial, the court *a quo* rendered a decision convicting the appellant of two counts of rape, the dispositive portion of which states:

“WHEREFORE, finding the accused Chito Ucab y Palamine guilty beyond reasonable doubt in both counts of rape charged in the information the court hereby strikes a verdict of conviction and hereby sentences him to suffer the supreme penalty of death in each of the said two counts of rape. He is further hereby ordered to indemnify Hanipi Ucab, the victim, in the amount of P50,000.00 in each count.

Let the entire original records of this case be transmitted to the Honorable Supreme Court for automatic review as provided for under the Constitution.

x x x

SO ORDERED.”^[9]

The case is before us on automatic review. In his brief, appellant made a lone assignment of error, *viz.*: “The trial court erred in convicting the accused for two counts of rape and for penalizing him with the extreme penalty of death.”^[10]

On the first charge of rape which took place on March 28, 1997, appellant, relying heavily on the case of **People v. Tolentino**,^[11] argues that he should be convicted of attempted rape only. He claims that although he was not able to totally control himself and was compelled to release his pent-up sexual urges on his daughter that night, he did not consummate the act. He asserts that he merely bumped his private organ into that of his daughter’s.

On the second count of rape, which happened on April 28, 1997, appellant contends that it was filed merely to firm up the first charge of rape. He added that Hanipi concocted it to get back at him for chastising her.

We sustain the trial court’s verdict of conviction.

It bears emphasis, from the outset, that we find no cogent reason to disturb the findings of the lower court. Well-entrenched is the rule that an appellate court will generally not disturb the assessment of the trial court on factual matters considering that the latter, as a trier of facts, is in a better position to appreciate the same. The only exceptions allowed are when the trial court has plainly overlooked certain facts of substance which, if considered, may affect the result of the case, or in instances where the evidence fails to support or substantiate the lower court’s findings and conclusions, or where the disputed decision is based on a misapprehension of facts.

^[12] This case does not fall under any of the exceptions.

Our review of the evidence convinces us with moral certainty that Hanipi was twice sexually violated by her father. We find her declarations on the stand worthy of credit. The young girl testified in a categorical, frank, spontaneous manner and remained consistent in recounting the material occurrences of the criminal incident. The rule is that when a rape victim’s testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or