

EN BANC

[G.R. No. 134286, March 01, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LORETO AMBAN Y TROBILLAS, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

This is an automatic appeal from the decision ^[1] of the Regional Trial Court, Branch 50, Bacolod City in Criminal Case No. 97-18527 finding accused-appellant Loreto Amban y Trobillas guilty of raping his 12-year old daughter and sentencing him to death. No damages were awarded in view of the trial court's finding that complainant had waived accused-appellant's civil liability by recanting her claim that he had raped her.

Complainant Madelyn Amban is one of the three children of accused-appellant by his common-law wife Retania Amban. Her father, herein accused-appellant, is a carpenter by occupation, while her mother, Retania, is a laundrywoman who, at the time material to this case, worked for the Longno family whose house is walking distance (200 to 500 meters away) from where the Ambans live.

Madelyn's siblings are married and live in Canlaon City. Madelyn, the youngest, lived in a one-room shanty with her parents at Hacienda Helvetia, Purok Talungon, Barangay Villamonte in Bacolod City. ^[2]

On June 30, 1997, Madelyn filed a complaint ^[3] for rape against her father. Her complaint reads:

"The undersigned Complainant hereby accuses LORETO AMBAN y TROBILLAS of the crime of RAPE (Under Art. 335, Revised Penal Code), as amended by R.A. 7659 (Heinous Crimes), committed as follows:

That on or about the 21st day of October, 1995, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of violence and intimidation, and with lewd design, did, then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge of the undersigned complainant, Madelyn Amban y Oton, a child 12 years of age and a daughter of said accused, against the will and consent of the said complainant.

Act contrary to law.
Bacolod City, Philippines, June 30, 1997.

"[Sgd.]

MADELYN AMBAN y OTON
(Complainant)

"Assisted by:

"[Sgd.]
PRISCELA N. JARMONILLA
(Social Worker, DSWD)

"SUBSCRIBED AND SWORN to before me this 30th of June,
1997, in Bacolod City, Philippines.

"[Sgd.]
RAFAEL M. GUANCO
Prosecutor I

"APPROVED:

"[Sgd.]
ALEXANDER N. MIRANO
City Prosecutor"

Accused-appellant pleaded not guilty to the charge [4] whereupon trial was held. Madelyn testified in support of her complaint. The substance of her testimony is as follows:

On October 21, 1995, at around 5:00 a.m., Madelyn woke up and found herself without her shorts and panties, while her father, herein accused-appellant, had only his briefs on. Accused-appellant then covered her mouth with his hand as he went on top of her. He spread her legs apart, inserted his penis in her vagina, and commenced a push-and-pull motion. Madelyn cried as she felt pain. She said that her father "was so forceful that I could not do anything." She was afterwards told to keep quiet and not tell anyone what had happened. Accused-appellant tried to pacify her by promising he would take her to her mother, Retania, who slept that night at the Longnos' house. When her mother came home, Madelyn told her what accused-appellant had done to her, but she was told to forget the incident ("*Indi-i lang*") and pretend "as if nothing had happened." [5]

But accused-appellant kept molesting complainant. In the morning of April 23, 1996, Madelyn, who was then sleeping beside her parents, woke up and found accused-appellant touching her private parts. As she complained, accused-appellant removed his hand. [6]

On January 25, 1997, while Madelyn and accused-appellant were on their way home at around 6 p.m., accused-appellant pulled her towards a sugarcane field and tried to pull down her short pants. Madelyn, however, resisted and succeeded in running away. [7]

On February 9, 1997; accused-appellant again attempted to molest Madelyn. Earlier that day, accused-appellant had insisted that Madelyn accompany him in collecting his salary. While they were passing by Villa Angela in Bangga Cubay at around noon,

accused-appellant pulled Madelyn towards a sugarcane field. He tried to remove Madelyn's pants, but the latter was able to free herself and run away. Accused-appellant managed though to touch her private parts. [8]

The incident which finally led to accused-appellant's arrest occurred on April 23, 1997 at around 8 p.m. Accused-appellant and his wife, Retania, left to gather firewood, leaving Madelyn in their house. Accused-appellant then returned alone and asked Madelyn to accompany him in looking for her mother. Wary of his intentions, Madelyn refused. This angered accused-appellant who boxed Madelyn, thrust a finger inside her mouth, pulled her hair, and threatened her with a scythe. Fortunately for Madelyn, her mother arrived and called the police. [9] When the police arrived, they saw Madelyn jump from the top of the stairway while fleeing from her father. [10] They then arrested accused-appellant.

On April 24, 1997, Dr. Joy Ann C. Jocson of the Bacolod City Health Department examined Madelyn. Her findings (Exh. "A") [11] are set forth in her report:

1. Abrasion, about 0.5. cm. long at right buccal mucosa.
2. Abrasion, about 0.5. cm. long at the left submandibular area, below left ear.
3. Abrasion with contusion hematoma, about 4.5. cm. long at the right anterior neck.
4. Abrasion about 2 cm. long at the right upper arm.
5. Abrasion with contusion hematoma, about 10x4 cm. size at the right forearm.
6. Abrasion with laceration, about 1x0.5. cm. size at palm of right hand.
7. Multiple abrasion, about 0.5. to 1 cm. size at the right lower extremity.
8. Multiple abrasions, about 2 to 3 cm. size with contusion and swelling, at the left lower extremity.
9. Pelvic Exam
 - = Sparse pubic hair
 - = Healed hymenal laceration, at the 6 o Clock & 7 o Clock position .
 - = Vaginal introitus admits 1 finger with ease
 - = Cervix small closed, uterus small

"In my opinion the patient would need Medical Attention for about 7 to 10 days. She would also need Psychological evaluation & management."

Madelyn told Dr. Jocson that she suffered the injuries on her jaw; neck, and hands because her father struck and dragged her. [12] As to the healed hymenal lacerations, Dr. Jocson believed that they were evidence that Madelyn "had already experienced either sexual intercourse or probably sexual molestation, like a finger inserted in her vagina." [13]

Madelyn's school record (Exh. "E" of the prosecution and Exh. "1" of the defense) [14] indicates that she was born April 1, 1983, so that when she was allegedly raped by accused-appellant on October 21, 1995, she was 12 years of age.

It appears that shortly after filing the complaint, Madelyn was placed in the custody

of the Holy Family Home, Bacolod Foundation, Inc., an institution run by religious sisters, upon the indorsement of the Department of Social Work and Development (DSWD). On December 3, 1997, Retania was granted custody of Madelyn on the condition that she would return Madelyn on December 7. However, once in custody of her daughter, Retania refused to return her to the DSWD. [15]

For her part, after testifying for the prosecution on October 2, 1997, Madelyn testified as a witness for the defense on January 7, 1998. [16] She claimed that she accused her father of rape in order to teach him a lesson for slapping her on April 23, 1997. She, however, denied that her father sexually molested her. She said that the lacerations revealed in the medical examination were caused by the pinching of her genital organ by her mother when she was small.

Accused-appellant testified in his defense. [17] Corroborating his daughter's claim, accused-appellant said that on April 23, 1997, he asked her to get the firewood he had earlier gathered and left on the roadside, but Madelyn refused. Accused-appellant and his wife then left to get the firewood themselves. When they returned, they found Madelyn gone. When she returned, accused-appellant scolded her. When Madelyn answered back and said she was already old enough to take care of herself, accused-appellant slapped her. Accused-appellant said that his wife and daughter then left the house, and 15 minutes later, the police arrived and arrested him.

With respect to the incident on October 21, 1995, accused-appellant claimed that early that morning, he mistook Madelyn for his wife with whom he wanted to have sex. He said that when he realized it was his daughter whose shorts he was removing, he stopped and said to her, "Keep quiet, Inday, I thought you were your mother. Where is your mother?" When Retania returned to his side after going outside the house to make coffee, he told her, "I wanted to have sexual intercourse with you, but you were not around. You left without telling me where you were going."

On February 26, 1998, the RTC rendered its decision. It rejected Madelyn's recantation and gave credence to her previous testimony. The dispositive portion of its decision reads: [18]

"The evidence ineluctably show that the accused committed the offense for which he is charged. His guilt was proved beyond reasonable doubt. The Court, therefore, sentences him to suffer the penalty of DEATH. The recantation of Madelyn is equivalent to a waiver of her claim for damages against the accused, her father. Accordingly, the Court makes no pronouncement with respect to the civil liability of the accused."

Hence, this appeal. Accused-appellant raises the following issue [19] -

"WHETHER OR NOT, THE RECONTATION TESTIMONY OF THE PRIVATE COMPLAINANT WHEN PRESENTED IN COURT AS A WITNESS FOR THE DEFENSE SHOULD BE TAKEN INTO CONSIDERATION CLAIMING THAT SHE WAS NOT RAPED, HOWEVER, THE CASE WAS FILED DUE TO HER RESENTMENT AGAINST HER FATHER FOR INFLICTING PHYSICAL HARM ON HER, SO THAT ACCUSED, HAS NOT COMMITTED THE CRIME OF RAPE."