

EN BANC

[G.R. Nos. 124449-51, June 29, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL ALITAGTAG Y DE LA CRUZ, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

Before the Court for automatic review, conformably with Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659,^[1] is the joint decision dated November 10, 1995, of the Regional Trial Court of San Pedro, Laguna, Branch 31, in Criminal Cases Nos. 8800-B, 8801-B, and 8802-B, finding accused-appellant Manuel Alitagtag guilty of three (3) counts of rape and sentencing him to two (2) terms of *reclusion perpetua* and death.^[2]

In three separate informations, accused-appellant Manuel Alitagtag (hereafter MANUEL) was charged with three (3) counts of rape allegedly committed sometime in September and October 1993 and January 1994, against his thirteen-year old daughter Marilyn Alitagtag (hereafter MARILYN), which were docketed as Criminal Cases Nos. 8802-B,^[3] 8800-B^[4] and 8801-B,^[5] respectively.

The informations were similarly worded, except as to the dates of the commission of the crime, as follows:

That sometime in ..., in the municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court , accused MANUEL ALITAGTAG Y DELA CRUZ, prompted with lewd design and by means of force, threats and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with her daughter, MARILYN F. ALITAGTAG, a thirteen (13) years [sic] old minor, against her will and consent, to her damage and prejudice.

On 14 June 1994, MANUEL, duly assisted by counsel, entered a plea of not guilty in each of the three cases. Thereafter, joint trial of the cases proceeded.^[6]

The trial court's summary of the evidence for the prosecution, with references to exhibits excluded, is as follows:

Private complainant Marilyn Alitagtag was born on December 19, 1980 and is the eldest and only girl among the brood of spouses accused Manuel Alitagtag and Regina Alitagtag. Her brothers are Reynaldo Alitagtag (12 years old), Manuel Alitagtag, Jr. (7 years old) and Raymart Alitagtag (1 year old).

During the period from September , 1993 up to December 14, 1993

when she was almost 13 years old, she and her parents as well as her brothers were residing at Barangay Estrella, San Pedro, Laguna. Their one-room house containing an area of 5 x 5 meters had a wooden floor with its roof made of galvanized iron sheets and wall sidings, of "sawali", and is erected on a portion of the lot owned by her mother's parents. It is about 10 to 15 meters away from the houses of her mother's parents, aunt and uncle.

In September, 1993, accused was working as a jeepney driver and her mother, as a saleslady in a jewelry store at Cubao, Quezon City. Both of her parents used to leave their house early in the morning but accused used to come home ahead of her mother. She was a second year high school student at the San Pedro Relocation Center in San Pedro, Laguna. Since accused would not like to see her talking to or be with any man, he used to fetch her from school and go home with her on board his passenger jeepney. Sometime in the second week of September, 1993 at about 7:00 p.m. while her mother had not yet arrived home from work and she was lying flat on her back on their wooden bed accused laid down beside her. Then he carried Manuel, Jr. who was fast asleep beside her, placed him on the floor and returned to the bed. He was touching her breast and when she was trying to remove his hands, he warned her not to make any noise. At that time, she was wearing a t-shirt and a pair of short pants. Then, he kissed her on the cheek and when she attempted to stand up, he stopped her by holding her hands and feet. She kicked him when he was removing her shorts. However, he was able to remove it completely after holding her feet. Later, he forcibly removed her panty as she just cried and kicked him. She pleaded, telling him "*Ayoko po, ayoko po, maawa po kayo sa akin*" but she told her not to make noise, covered her mouth with his hand and threatened to kill her and her mother and brothers. He continuously kissed her lips and held her breast. Thereafter, he stood up and took off his pants. He laid down on his side beside her, held her and fondled her vagina with his finger. She cried and tried to stand up but he prevented her by placing himself on top of her. At that juncture, he brought out his private organ and placed it into hers while she pleaded to him not to do it to her. She felt intense pain while he continued pulling his organ in and out her private organ for about 15 minutes. After he had finished, he dressed up. She was still awake when her mother arrived but she did not tell her about what had happened to her.

Sometime in the last week of October, 1993 when her mother was still in her place of work, and while she was lying down on their bed with Manuel, Jr., accused brought her sleeping brother down the floor. Then he touched her breast so firmly that despite her efforts she was unable to remove his hands. She cried and kicked him as he was undressing her. He was on a squat position when he was able to pull down her shorts together with her panty just above her ankle. When he was taking off his shorts, she tried to stand but he prevented her. He was separating her thighs but could not do so because of the presence of her shorts on her ankle. However, he succeeded in separating her legs after her shorts was forcibly torn. Then, he placed himself on top of her. She boxed him on his breast but he slapped her on both cheeks for four times, cursed her and

threatened to kill her. Later, he inserted his private organ into her private organ although it took time for him to make a full penetration because she was kicking him. Again, he pulled his organ in and out her private organ and stood up after 15 minutes. He warned her not to report the incident to her mother.

On December 15, 1993, accused surreptitiously took her and her brother Manuel, Jr. away from their house at Barangay Estrella and brought them to the house of his mother at Barangay Magsaysay, San Pedro, Laguna after he and her mother quarrelled about his burning her right temple near the eye with a cigarette butt. The quarrel resulted to the hacking of her mother by the accused with a scythe hitting her arm. Her mother did not follow them to Barangay Magsaysay. While there, she used to sleep on a bed with Manuel, Jr. located at the second floor of the house. Accused used to fetch her too from her same school on board his jeepney every day. Sometime in the second week of January, 1994 at about 8:00 p.m., she went to bed with Manuel, Jr. At that time, her uncle and aunt together with their family were occupying the ground floor of said house. Accused went to their room and brought down the sleeping Manuel, Jr. on the floor. After turning off the light, he took off his shorts and went near her. He pushed her back to the bed when she attempted to stand up. Then, he touched her breast and forced her to remove her short pants. He succeeded in removing the same after slapping her and threatening to kill her and the family. Then he parted her legs, placed himself on top of her, kissed her lips, inserted his private organ into hers, and pulled his private organ in and out of hers for about 15 minutes.

It was nighttime on February 6, 1994 when accused wanted to rape her again. He had removed her shorts already but when he was undressing, she succeeded in getting loose from him. She was about to go down with her back towards him when he took a hot flat iron that she had just used and pressed it at the back of her thigh. She felt so much pain that he did not rape her that night. Her mother fetched her and her brother Manuel, Jr. from the house at Barangay Magsaysay. At that time, accused was in Indang, Cavite where his services as a jeepney driver was hired. She told her mother that accused burned her thigh with a hot flat iron. Her mother got mad and both of them went to the house of her grandparents in Sta. Cruz, Manila. While there, she told them about the burning incident and thereafter, the rape committed to her by accused. She and her mother returned to San Pedro, Laguna and filed a complaint against accused for rape. They also executed their respective sworn statement relative to these cases.

It was on February 8, 1994, when she submitted to a physical and genital examination at the National Bureau of Investigation in Manila where Medico-Legal Ludivino Lagat found an old healed deep laceration on her hymen which could have occurred a month or even 2 or 3 months prior to said examination but definitely not within the period of from January 8, 1994 to February 8, 1994. However, the medico-legal officer opined that it is possible that she could have sexual intercourse immediately before his examination without showing any laceration except the old, healed and deep laceration.^[7]

On the other hand, the defense interposed the defense of denial and alibi. MANUEL claimed that he did not rape his daughter MARILYN. According to him he was not in good terms with his in-laws and had frequent quarrels with his wife Regina, with whom he has four (4) children. He and Regina had, in fact, separated from each other many times after a quarrel.^[8] Their residence in Barangay Magsaysay, San Pedro Laguna, is a two-storey affair, with the upper floor as the bedroom.^[9] Their one-storey, one-room house in Barangay Estrella, San Pedro, Laguna, was made of *sawali*, whose walls have holes such that the occupants inside can be seen from the outside.^[10]

MANUEL also testified that in October of 1993 he and his wife had another quarrel. He hacked her. They separated. He stayed with his mother in Magsaysay together with MARILYN and his son Manuel, Jr.^[11] His mother, his brother Antonio with his family, and his sister Carmelita were residing in that house. MARILYN and Manuel, Jr., stayed there until February 1994.^[12] According to MANUEL sometime in that month MARILYN was "Allegedly taken by her mother,"^[13] and MARILYN stopped going to their residence in Magsaysay. When pressed for the reason why she no longer did, MANUEL answered: "*Pinagsamantalahan ko raw siya.*"^[14]

He also claimed that in the month of January 1994 he was on a trip -- "*nabiahe po ako,*" meaning "*namamasahero,*" driving his vehicle.^[15]

When asked by his counsel what could be the motive why MARILYN charged him with rape, MANUEL speculated, thus: "*Dahil po siguro doon sa pagkakapaso ko po sa kaniya, nagalit, sir.*"^[16]

On 10 November 1995, the trial court found MANUEL guilty of the crime of rape in each of the three cases and sentenced him as follows:

Criminal Case No. 8800*

1. to suffer the penalty of *reclusion perpetua*;
2. to indemnify private complainant Marilyn Alitagtag the amount of P50,000.00;
3. to pay private complainant Marilyn Alitagtag the sums of P50,000.00 as moral damages and P25,000.00 as exemplary damages; and
4. to pay the costs of suit.

Criminal Case No. 8801**

1. to suffer the death penalty;
2. to indemnify private complainant Marilyn Alitagtag the amount of P50,000.00;
3. to pay private complainant Marilyn Alitagtag the sums of P50,000.00 as moral damages and P25,000.00 as exemplary

damages; and

4. to pay the costs of suit.

Criminal Case No. 8802***

1. to suffer the penalty of *reclusion perpetua*;

2. to indemnify private complainant Marilyn Alitagtag the amount of P50,000.00;

3. to pay private complainant Marilyn Alitagtag the sums of P50,000.00 as moral damages and P25,000.00 as exemplary damages; and

4. to pay the costs of suit.^[17]

Pursuant to Article 47 of the Revised Penal Code as amended by Section 22 of R.A. No. 7659, the records of Criminal Case No. 8801-B was to be forwarded to us for automatic review of the judgment. No notice of appeal was required. However, in Criminal Cases Nos. 8800-B and 8802-B where the penalty imposed in each is *reclusion perpetua*, notice of appeal was necessary pursuant to the first part of Section 3 (c) of Rule 122 of the Rules of Court if MANUEL wanted to appeal from the judgment therein. Nonetheless, considering that these cases were consolidated and jointly tried and only one decision was rendered, we hold that MANUEL may be considered to have appealed from the judgment in Criminal Cases Nos. 8800-B and 8802-B.

In his brief, MANUEL contends that the trial court gravely erred (a) in giving credence to the concocted and contradictory testimony of MARILYN; (b) in convicting him and in not acquitting him on the ground of failure of the prosecution to prove his guilt beyond reasonable doubt; and (c) in imposing upon him an indemnity of P50,000.00 plus P50,000.00 moral damages and P25,000.00 exemplary damages for each count of rape.

The Office of the Solicitor General disagrees with MANUEL and urges the Court to affirm *in toto* the challenged decision.

Rape is an offense where conviction or acquittal depends almost entirely upon the word of the private complainant. Once again, credibility of the complaining victim takes centerstage in resolving this issue. We have adhered to these principles in the review of rape cases: (1) an accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[18]

The assessment of the credibility of witnesses is primarily the function of the trial court. It is doctrinally settled that the determination of the trial court on credibility of witnesses are usually accorded great weight and respect. The rationale for this is