

FIRST DIVISION

[G.R. Nos. 125939-40, October 12, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO ABANGIN ALIAS "PATOK," ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE, JR., J.:

Accused MARIO ABANGIN appeals from the 7 February 1996 decision^[1] of Branch 24, Regional Trial Court (RTC) of Maasin, Southern Leyte, in Criminal Cases Nos. 1698 and 1708, finding him guilty of two counts of statutory rape and sentencing him to suffer in each count the penalty of *reclusion perpetua* and to pay the offended party SHIRLEY SACBAYANA P50,000 in each case as moral damages, and the costs.

The accusatory portion of the information in Criminal Case No. 1698 reads as follows:

That on the 5th day of June 1993, at about early in the afternoon, more or less, in barangay Central, municipality of San Francisco, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lustful intent and lewd designs, did then and there willfully, unlawfully and feloniously, by means of force, threats and intimidation, had carnal knowledge or sexual intercourse with the offended party, Shirley Sacbayana, 11 years old, who was then sleeping alone in her grandfather's house, without her consent and against her will, to the damage and prejudice of the said offended party and of social order.

CONTRARY TO LAW.^[2]

The information in Criminal Case No. 1708^[3] is similarly worded as that in Criminal Case No. 1698 except as to the date of the commission of the crime, which is 30 May 1993.

After MARIO pleaded not guilty upon arraignment, the cases were consolidated and jointly tried.

The prosecution presented six witnesses, namely, SHIRLEY, Erlinda Gloria, Dr. Diego Yuboc, Dr. Bonifacio Cerio, Iluminada Lura (SHIRLEY's mother), and Florita Gloria Wilkinson. The defense presented MARIO, Leonila Palen, Lolita Abangin, and Ronnie Tortor. On rebuttal the prosecution presented SHIRLEY, Victoriano Legista (SHIRLEY's grandfather), and Iluminada Lura. The surrebuttal witnesses were Lolita Abangin and Leonila Palen.

The evidence for the prosecution is summarized in the Brief for the Appellee as follows:

In the afternoon of May 30, 1993, Shirley Sacbayana, then eleven (11) years old, was alone in their house sleeping. She was awakened by a noise of steps, ascending the stairs of their house and when the person entered the door of their room she feigned to be asleep. She recognized the person as appellant Mario Abangin alias "Patok," who was known to her because appellant was her neighbor (Pages 10-11, TSN, March 16, 1994).

Appellant approached her and lay down beside her. Then, he opened the zipper of his black pants, opened wide her thighs (legs), and held his penis out of his pants (Pages 10-13, TSN, March 16, 1994). He knelt on his right knee, in a position placing her right leg under his half-bent left leg and placed her left leg on top of his right thigh. He coursed his penis through the torn short pants of Shirley, forcing his penis inside her vagina, and made pumping motions which caused her intense pain.

Afraid of the appellant, Shirley cried softly. Appellant then pulled out his penis from her. She noticed that her vagina became wet. Appellant threatened her not to tell anyone, otherwise, he would kill her (Pages 11-19, TSN, March 16, 1994). Then he exited from the house through the kitchen door. Shirley went to the kitchen and washed her vagina. In the process of cleaning, she noticed sticky liquid in her vagina (Page 19, TSN, March 16, 1994).

That was not to be the last time appellant would forcibly satisfy his lust on Shirley (Page 22, TSN, March 16, 1994).

In the afternoon of June 5, 1993, Shirley was alone sleeping in her home. She was suffering from fever, boils on her mouth and some sore in her vagina (Page 20, TSN, March 16, 1994). She was roused when she felt somebody on top of her making pumping motions. Again, she recognized the person as appellant (Page 4, TSN, March 17, 1994). His penis was going in and out of her vagina. She felt pain (Page 5, TSN, March 16, 1994). At that time, she was wearing a red and white-dotted short pants (Ibid., p. 7) which was torn at the crotch. Appellant was wearing a black shirt and red short pants (Page 8, TSN, March 17, 1994). While appellant was on top of her, Shirley kicked appellant in the body, causing him to fall off her (Page 9, TSN, March 17, 1994). She cried aloud and called her grandmother. Appellant suddenly rushed out upon hearing a sound coming from the door of the bedroom (Page 10, Ibid. March 17, 1994).

Soon, Leonila Palen arrived, together with Emily Micabulo, Teresita Abangin and Erlinda Gloria. Shirley was given a glass of milk which she drank slowly because of her sore throat. Erlinda and Teresita tried to remove her short pants to wash her but she refused as she was ashamed of her skin disease. Thus, Erlinda and Teresita just poured water through Shirley's torn panty. She was handed another short pants which she wore. Subsequently, the visitors left. She did not tell them that she was raped because she was afraid of appellant (Pages 11-16, TSN, March 17,

1994).

On June 7, 1993, Shirley was brought by Florita Wilkinson to Dr. Diego Yuboc, a private medical practitioner in San Francisco, Southern Leyte, for examination of her fever and sores in her vagina (Page 9, TSN, July 7, 1994).

Upon being examined, Shirley told Dr. Yuboc that she was [sexually] abused. Dr. Yuboc discontinued with his examination and referred her to Dr. Bonifacio Cerio, a medico-legal and Municipal Health Officer. However, during his external examination, Dr. Yuboc noticed lacerations in the hymenal membrane of Shirley (Pages 10-12, TSN, July 7, 1994).

On June 8, 1993, Shirley and Florita Wilkinson went to Dr. Bonifacio Cerio, Medical Health Officer of San Francisco, Southern Leyte, for medical examination. Since no woman attendant was available at that time, they were told to come back the following day (Page 23, TSN, March 17, 1994). The following day, June 9, 1993, they went back to Dr. Cerio where Shirley was examined. The result revealed a rupture in her hymenal membrane caused by a blunt or pointed object (Page 12, TSN, July 8, 1994; pp. 20-21, Ibid.).

On June 14, 1993, Shirley's mother, Iluminada Lura, arrived from Manila as she received a telegram from Shirley's grandmother, Paciencia Logista, urging her to come home immediately because Shirley was raped (Pages, 6-7, TSN, July 8, 1994). She confronted Shirley who confessed to her that she was indeed raped on June 5, 1993 (Page 10, TSN, July 8, 1994).

On July 17, 1993, while on her way to the house of Flory, Shirley told her mother that she was raped by appellant twice, on May 30, 1993 and June 5, 1993 (Pages 10-11, TSN, July 8, 1994).^[4]

The defense had another version. On 30 May 1993 at about 1:30 in the afternoon, Leonila Palen requested MARIO to search the neighborhood for her lost rooster and to proceed to Victoriano Legista's house if he could not find the rooster. MARIO went directly to Victoriano's house, looked around, but did not see Leonila's rooster. He checked again and even went underneath the house, where, upon peeping, he saw Victoriano bend down on Shirley, cover her head, and undress himself. MARIO heard SHIRLEY utter in the Visayan dialect, "*Ayaw lo, ayaw lo.*"^[5] Victoriano thereafter warned SHIRLEY not to tell anybody about the incident. When Victoriano noticed that someone was peeping, he pushed SHIRLEY and said, "*Hoy! What are you peeping?*" Instead of replying MARIO asked, "*Tor did you not go to the cockpit?*" Victoriano replied that he had no money. MARIO immediately left Victoriano's house and, upon reaching Leonila Palen's house, told Leonila that he saw Victoriano sexually abuse SHIRLEY. He then warned her not to tell anybody about what he had witnessed because the act was scandalous. Thereafter, MARIO watched betamax and went home at 8:00 p.m.^[6]

Leonila corroborated MARIO's story. She denied having told Erlinda Gloria that she saw MARIO sexually abuse SHIRLEY. Instead, she declared that it was MARIO who actually witnessed the rape incident.^[7]

In the morning of 5 June 1993, MARIO went to the mountains of Tinaan, Bongbong, San Francisco, together with his father Lucio, Ronnie Tortor, and several others, to look for antiques. Upon reaching Tinaan, they found that the cave where antiques supposedly abound had already been covered with sand, so they returned to Barangay Central.^[8] They arrived at Barangay Central by noon. After resting for an hour the group, joined by two others, proceeded to the sea, some 50 meters from Barangay Central, to gather fine black sand used in making hollowblocks. Some dived underwater to get sand; another stored the gathered sand into sacks; while MARIO hauled the sacks of sand into a boat. At approximately 5:30 p.m. they finished gathering sand, went home to Barangay Central, and rinsed themselves.^[9] At about 6 p.m. MARIO went to Barangay Napantao because it was vesper day in that place and there was a benefit dance. He went home at about 2 a.m. of the following day.^[10]

Ronnie Tortor corroborated MARIO's testimony regarding his whereabouts on 5 June 1993.^[11]

In defense of her son MARIO, Lolita Abangin testified that it was about 5:00 p.m. of 30 May 1993 when she met Victoriano, who was on his way to the cockpit.^[12] She also testified that since SHIRLEY's mother, Iuminada, arrived at Barangay Central from Manila she would take SHIRLEY with her everytime she went out, and they never slept at Victoriano's house,^[13] thus implying that Iuminada did not want SHIRLEY to be near Victoriano. Lolita Abangin further attributed the filing of the rape case to Florita Wilkinson, SHIRLEY's alleged financial backer, who had an "axe to grind" against MARIO's family because of a failed treasure-hunting scheme between Florita's brother and MARIO's father.^[14]

On rebuttal, SHIRLEY and Victoriano belied the testimony of MARIO that it was Victoriano who sexually abused SHIRLEY.^[15] Victoriano further stated that in the morning of 30 May 1993 MARIO asked him whether he was going to the cockpit; he answered in the affirmative. At around 12:00 noon of that date, while he was feeding SHIRLEY, he saw MARIO pass by. At about 2:00 p.m., not 5:00 p.m. as claimed by Lolita Abangin, he went to the cockpit.^[16]

For her part, ILUMINADA explained that she and SHIRLEY did not stay at her parents' house because of fear that something might happen to them, especially that MARIO was out on bail.^[17]

The trial court gave full faith and credit to the testimony of SHIRLEY, which it found to be "direct and straightforward." It also took into account her positive identification of MARIO and her lack of improper motive to falsely accuse him of rape. It considered as an escape mechanism or a concoction MARIO's defense that SHIRLEY's grandfather, Victoriano Legista, was the one who raped her on 30 May 1993. It observed that "the actuations of the accused, asking Victoriano whether he would go to the cockpit and passing by at noontime [were] preparations for what he planned to do to Shirley that afternoon after Victoriano left."^[18]

Neither did the trial court believe MARIO's defense of alibi as to the rape committed on 5 June 1993, as he was unable to show the physical impossibility of his presence