

SECOND DIVISION

[G.R. Nos. 80437-38, July 11, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO B. ABORDO, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

Roberto Abordo was the houseboy of Antonio Tan. He was accused of the rape and attempted rape of his employer's 10-year old daughter, Arlene Tan, in two separate complaints filed with the Regional Trial Court, Branch 100, at Quezon City.

In Criminal Case No. 80437, the complaint alleged:

That on or about the 7th day of August, 1982, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, said accused, by means of force and intimidation, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, a minor, 10 years of age, against her will and in her own house.

In Criminal Case No. 80438 it was alleged:

That on or about the 15th day of August, 1982, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there, wilfully, unlawfully and feloniously, and by means of force and intimidation, commence the commission of rape directly by overt acts, to wit: while the undersigned complainant, a minor, 10 years of age, was inside their bedroom, the said accused, without the permission of any one, entered the said room, lay on top of the undersigned, embraced, kissed and touched her private parts and with intent of having carnal knowledge of her by means of force and threats to kill her, and if the accused did not accomplish his purpose, that is, to have carnal knowledge of the undersigned, it was not because of his voluntary desistance but because of the opportune intervention of her brother and another relative who responded to her cries for help.

Accused-appellant was found guilty of the charges. For the crime of rape, he was sentenced to a prison term of *reclusion perpetua* and ordered to indemnify Arlene Tan in the sum of P10,000.00, without subsidiary imprisonment in case of insolvency. For attempted rape, he was sentenced to suffer an indeterminate penalty of 4 years, 2 months, and 1 day of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum, and to indemnify Arlene Tan in the sum of P2,000.00, also without subsidiary imprisonment in case of insolvency.

The facts are as follows:

Arlene Tan was ten (10) years old at the time of the commission of the crimes. She and her brothers Aris Tan and Arthur Tan lived in Quezon City with their father. Her mother worked abroad. The complainant's father, Antonio Tan, ran a store on the ground floor of their house, selling snacks (*merienda*) and car spare parts. The store usually closed between 9:00 o'clock and 10:00 o'clock in the evening. Antonio Tan and his son Arthur occupied the room on the second floor of the house, while Arlene and her four-year old brother Aris occupied the room at the mezzanine.

Accused-appellant had been employed as a houseboy on August 1 or 2, 1982,^[1] less than a week before the commission of rape charged in Criminal Case No. 80437. He cooked the food, washed the clothes and cleaned the house. He was also in charge of opening the store in the morning and closing it at 9:00 in the evening. He slept in the sala located at the mezzanine, near the room of Arlene.^[2]

On August 7, 1982, at around 10:30 in the evening, Arlene was awakened by the weight of accused-appellant on top of her. She found she had been undressed. Accused-appellant kissed her and with his two hands pinned down her shoulders. Then with the use of his right hand, accused-appellant inserted his penis into her vagina. Arlene said she suffered pain but she could not shout because accused-appellant placed his mouth on her mouth all the while that he was doing the sexual act. He threatened Arlene with harm if she shouted. Arlene testified that when the incident happened, her brother, Aris, was outside the room playing near the door. Although Aris saw what accused-appellant was doing to her, because of his tender age, being then only four years old, Aris did not do anything.^[3]

The next day, August 8, 1982, accused-appellant warned Arlene not to tell anybody about the incident, otherwise she and her brother Aris would get hurt.^[4]

On August 15, 1982, at around 10:00 in the morning, while Arlene was in her room playing hide-and-seek with Aris, accused-appellant entered their room, undressed her and from behind inserted his penis.^[5] Aris testified^[6] that he saw accused-appellant on top of his sister and both lay straight on the floor. Aris said he saw Arlene's skirt raised up to her waist and her panty removed.^[7] Arlene pushed accused-appellant as she asked Aris to help her. Aris hit accused-appellant on the head with a piece of wood. When accused-appellant stood up, Aris said he saw accused-appellant's penis because his pants was unzipped.^[8] Accused-appellant ran down the stairs and went away. In her sworn statement,^[9] Arlene said that at about 11:00 in the morning, she told her cousin Tadeo de Lara about what accused-appellant had done to her.

On the same day, at 1:00 o'clock p.m., Antonio Tan, who was in San Juan, Metro Manila attending a conference of real estate brokers, was fetched by his brother-in-law, Benjamin Heneral, and told about what happened to Arlene. The two proceeded to complainant's house and arrived at 1:30 o'clock in the afternoon. Antonio Tan confronted accused-appellant and asked him, "What have you done?" Accused-appellant at first did not answer, but when Tan demanded an answer accused-appellant said, "None, sir, I just went on top of her."^[10]

Aris testified that when he told his father that accused-appellant had gone on top of

Arlene, Antonio Tan hit accused-appellant.[11] Antonio Tan said that he was shocked and because he did not know what to do in such situation, he waited for his compadre and neighbor, Col. Manuel S.J. Peña. At 7:00 in the evening a certain Eddie Cruz arrived and, after an hour, they went to the police station at the Araneta Coliseum in Quezon City, together with Arlene, Aris, Tadeo de Lara, bringing with them accused-appellant.[12] When asked during his cross-examination why he decided to take accused-appellant to the police station, Tan said it was because he believed what Arlene had told him about the incident and Arlene would never lie about such a serious matter.

On August 17, 1982, Arlene was taken to the medico-legal branch of the Philippine Constabulary headquarters at Camp Crame where she was examined by Dr. Gregorio C. Blanco. Dr. Blanco's findings are contained in the medico-legal report (Exh. E) he issued. The report states:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child. Breasts undeveloped. Abdomen is flat and tight. There is a contusion at the left mandibular region, measuring 1.5 by 1 cm, 4.5 cm from the anterior midline.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish-brown labia minora presenting in between. On separating the same are disclosed a congested vulvar mucosa and an elastic, fleshy-type hymen with a deep, healing laceration at 3 and shallow, healing lacerations at 7 and 9 o'clock. External vaginal orifice offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency with scanty amount of whitish secretion.

Vaginal and peri-urethral smears are positive for gram-negative diplococci but negative for spermatozoa.

REMARKS:

Subject is in non-virgin state physically.

In addition Dr. Blanco testified. After identifying his report,^[13] he testified that based on his examination Arlene had been sexually abused and the hymenal lacerations could have been caused by sexual intercourse. Dr. Blanco explained that he observed "healing lacerations," not "healed lacerations" nor "fresh lacerations," which indicated that the sexual intercourse took place from 6 to 12 days before the examination was made, i.e., between August 5 and August 12, 1982.

Accused-appellant's defense was basically denial. Accused-appellant testified that on August 7, 1982, at about 10:00 in the evening, he stayed in the sala on the second floor. Complainant's father was then in the store on the ground floor.^[14] He said he could not have committed the rape "because Mr. Tan was there."^[15] He could not

have attempted to rape Arlene on August 15, 1982 either "because Mr. Tan was [also] there [in the house at the time]." On the other hand he was doing household chores from 6:00 o'clock in the morning to 9:00 o'clock in the evening.^[16]

The trial court sustained the prosecution version and convicted accused-appellant of rape committed on August 7, 1982. The trial court declared that it could have found accused-appellant guilty of consummated rape for the August 15, 1982 incident were it not for the fact that the Information in the second case charged only attempted rape.

Hence the appeals from the decisions in the two cases which were consolidated. In Criminal Case No. 80437 (Rape) it is alleged that the trial court erred:

I

In believing the testimony of the offended party Arlene Tan and witness Aris Tan taking into account the improbability and impracticability of the commission of the crime charged considering the presence of all the members of the household during its alleged commission on August 7, 1982 in the very house of the victim.

II

In not considering the absence of the possible physical effects of the crime charged, upon the body of the alleged victim.

III

In giving credence to the testimony of the examining physician, the physical examination of whom was of doubtful veracity as may be viewed from the testimony of the victim.

IV

In not believing and not giving significance and importance to the fact that accused has all the time stayed in the alleged victim's home from the day the crime complained of was allegedly committed to that day the complaint was filed.

On the other hand, in Criminal Case No. 80438 (Attempted Rape), it is alleged that the trial court erred:

V

In convicting the accused based on the uncorroborated testimony of the alleged victim.

First. Accused-appellant argues that he could not have raped Arlene on August 7, 1982 since the members of her family were in the house and were within a hearing distance from Arlene's room. He contends that much less could he have performed the sexual act "in the actual presence of another person"(Arlene's brother Aris).