

FIFTEENTH DIVISION

[CA-G.R. CR.-H.C. NO. 01368, August 18, 2006]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN MALICSI, ACCUSED-APPELLANT.

DECISION

REYES, JR., J., J.:

Before Us is an appeal from the Decision of the Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro, Branch 42, dated October 8, 2001, in Criminal Cases Nos. P-5765, P-5766, P-5767, and P-5768 (*Rollo*, pp. 20-24; 74-78; *Records*, Vol. IV, pp. 63-67), entitled "*People of the Philippines, Plaintiff, vs. Edwin Malicsi, Accused*," the dispositive portion of which is as follows:

"ACCORDINGLY, judgment is hereby rendered finding accused Edwin Malicsi guilty beyond reasonable doubt of the four (4) counts of qualified rape, which is defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659, by death. Consequently, accused is hereby sentenced to suffer death for each count of rape. As civil indemnity, the accused is ordered to pay P300,000.00 (P75,000.00 in each case) and as moral damages, to pay P200,000.00 (P50,000.00 in each case) to the private complainant.

Let the records of this case be forwarded to the Honorable Supreme Court for automatic review and judgment pursuant to par. (d) Section 3, in relation to Section 10 of the Revised Rules of Criminal Procedure.

SO ORDERED." (*Rollo*, p. 24; 78; *Records*, Vol. IV, p. 67)

The facts are as follows:

Accused-appellant stands charged with the crime of rape under Article 335 of the Revised Penal Code as amended by Republic Act (R.A.) No. 7659, in four (4) separate Informations, to wit:

Criminal Case No. P-5765

That on or about the 4th day of April, 1998, at barangay Pagala-gala, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the Offended Party, with lewd and unchaste design, by means of force, threat and intimidation did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned Offended Party, a 15-year-old girl, against her will and without her consent.

CONTRARY TO Article 335 in Relation to R.A. 7659." (*Rollo, pp. 7-8; Records, Vol. I, pp. 1-2*)

Criminal Case No. P-5766

That on or about the month of March 1998, at barangay Pagala-gala, municipality of Pinamalayan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the Offended Party, with lewd and unchaste design and by means of force and intimidation did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned Offended Party, a 15-year-old girl, against her will and without her consent.

CONTRARY TO Article 335 in Relation to R.A. 7659. (*Rollo, pp. 9-10; Records, Vol. II, pp. 1-2*)

Criminal Case No. P-5767

That on or about the month of December, 1996, at around 7:00 o'clock in the evening, at barangay Pagala-gala, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the Offended Party, with lewd and unchaste design and by means of force and intimidation did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned Offended Party, who at that time is only a 13-year-old girl, against her will and without her consent.

CONTRARY TO Article 335 in Relation to R.A. 7659. (*Rollo, pp. 11-12; Records, Vol. III, pp. 1-2*)

Criminal Case No. P-5768

That on or about the 1st day of April 1998, at barangay Pagala-gala, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the Offended Party, with lewd and unchaste design, by means of force, threat and intimidation did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned Offended Party, a 15-year-old girl, against her will and without her consent.

CONTRARY TO Article 335 in Relation to R.A. 7659 (*Rollo, pp. 13-14; Records, Vol. IV, pp. 1-2*)

Upon arraignment, accused-appellant pleaded not guilty to the crimes charged. Thereafter, trial ensued.

The prosecution presented Dr. Marlon Dela Rosa, the examining physician of the offended party, Maricel Del Rosario, as its first witness. Dr. Dela Rosa testified that he examined Maricel and found that she sustained "nulliparous introitus with old

hymenal laceration(s) at 1 o'clock, 7 o'clock, and 5 o'clock position(s)" and that by hymenal lacerations, he meant that Maricel lost her virginity (*TSN, September 8, 1998, p. 3*). He also stated that he executed a medical certificate (*Records, Vol IV, p. 6*) when he examined Maricel on April 24, 1998. Upon cross-examination, Dr. Dela Rosa testified that the lacerations Maricel sustained could not have been caused by masturbation, but it is possible for the hymen to have such lacerations when hard objects are inserted thereto (*TSN, September 8, 1998, p. 5*).

The prosecution next presented the testimony of Maricel's mother, Elenita Del Rosario, who testified that she knows accused-appellant because the latter's wife is the sister of her husband; that their house is only about twenty (20) meters away from the house of accused-appellant; that her nephew, Ronilo Soriano, reported to her sometime in April 1998 that Maricel was raped by accused-appellant (*TSN, October 5, 1998, p. 3*); that she asked Maricel if she was raped by accused-appellant and for how many times; that Maricel told her that she was indeed raped by accused-appellant five (5) times in different occasions; that Maricel informed her of the months when she was raped but not the exact times thereof; that she was informed by Maricel that she was first raped by accused-appellant in December 1996 at about 7 o'clock in the evening near the creek; that Maricel did not tell her the exact dates for the second and third rape incidents (*TSN, October 5, 1998, p. 4*); that Maricel further told her that she was raped by accused-appellant on two (2) more occasions in April 1998, particularly on April 1 and 4, respectively; that they reported the matter to the local police authorities; that accused-appellant was apprehended and that a confrontation at the police station ensued between Maricel and accused-appellant; that during the confrontation, Maricel told accused-appellant "*ako man din tiyo ay ginahasa mo*;" that she executed an affidavit (*Records, Vol. IV, p. 5*) at the police station (*TSN, October 5, 1998, p. 5*); that the wife of accused-appellant approached her to settle the case for ten thousand (P10,000.00) Pesos and that the said offer took place before a certain Fiscal Enriquez; and that she and her husband refused the offer because their child, Maricel, was dishonored (*TSN, October 5, 1998, p. 7*).

On cross-examination, witness Elenita Del Rosario stated that they reported the matter to the police approximately about two (2) years after the first incident of rape because she only learned of the matter after the "*sumbong*" made to her by her nephew (*TSN, October 5, 1998, p. 9*); and that Maricel, during the said 2-year period, acted as if nothing happened to her (*TSN, October 5, 1998, p. 10*). On re-direct, she testified that Maricel did not reveal the matter to her because she was threatened to be killed by accused-appellant, and since she became aware of the incidents only after her nephew told her of the same, that was the only time she went to the police (*TSN, October 5, 1998, p. 11*).

Finally, the prosecution presented Maricel as its last witness. Maricel testified that she knows accused-appellant because the latter is her uncle, her father being the brother of her *Tiya* Ana who is the wife of accused-appellant; that she was raped by accused-appellant five (5) times, and the first incident happened sometime in December 1996 around 7 o'clock in the evening at the creek near the house of a certain *Aling* Puring (*TSN, December 1, 1998, p. 4*); that on the day of such incident, she was asked by her father to buy wine and as she was returning home, accused-appellant laid on top of her, held both of her hands, turned off the flashlight she was bringing, and embraced her; that she was ordered by accused-appellant to stoop down and the latter removed her shorts and panty (*TSN, December 1, 1998,*

p. 5); that she obeyed accused-appellant because she was threatened to be killed by a knife; that while in that position, accused-appellant inserted his penis into her vagina and while accused-appellant did that, she felt pain in her sex organ (*TSN, December 1, 1998, p. 6*); that she tried to free herself from accused-appellant and when she was able to do so, accused-appellant warned her not to say anything to her parents (*TSN, December 1, 1998, p. 7*).

Maricel further testified that the second incident happened sometime in March 1998 at the bamboo grove near their house while she was looking for a fallen coconut; that accused-appellant ordered her to lie down (*TSN, December 1, 1998, p. 8*); that accused-appellant removed her panty and inserted his penis into her vagina; that she tried to free herself from accused-appellant but could not remember for how long she resisted the sexual assault (*TSN, December 1, 1998, p. 9*); that she did not report the same to her parents because she was threatened by accused-appellant (*TSN, December 1, 1998, p. 10*); and that the third incident happened also in March 1998 near the bamboo grove when accused-appellant ordered her to lie down on the ground and inserted his penis into her vagina (*TSN, December 1, 1998, p. 11*).

She likewise stated that the fourth incident took place on April 1, 1998 at the banana grove of a certain *Mang* Duko which is far from their house; that she went there because she was ordered by accused-appellant to go, and she was afraid of what he will do to her if she does not obey; that upon reaching the banana grove, accused-appellant asked her to lie down and the latter again inserted his penis into her vagina (*TSN, December 1, 1998, p. 12*); that the fifth incident took place on April 4, 1998 at about 3 o'clock in the afternoon while she was gathering firewood; that accused-appellant was following her and was able to catch up with her (*TSN, December 1, 1998, p. 13*); that she was ordered to lie down and accused-appellant once again inserted his penis into her sexual organ; that her *Kuya* Ronilo Soriano saw them and reported the matter to her mother (*TSN, December 1, 1998, p. 14*); and that she confirmed to her mother that she was raped by accused-appellant, and thereafter, she was brought to the police headquarters where she executed a sworn statement (*Records, Vol. IV, pp. 3-4*) as to the above incidents of rape (*TSN, December 1, 1998, p. 15*).

On cross-examination, Maricel stated that she could not remember the exact date of the first incident but she knows the same to be done in December 1996 at about 7 o'clock in the evening (*TSN, December 1, 1998, p. 22*); that there were only about five (5) persons at the store where she bought the wine for her father, and that accused-appellant was not one of them (*TSN, December 1, 1998, p. 24*); that on her way home, accused-appellant approached her and placed her on his lap; that accused-appellant asked her to undress but she did not accede thereto (*TSN, December 1, 1998, p. 25*); that she obeyed when accused-appellant ordered her to stoop down (*TSN, December 1, 1998, p. 26*); that it was the first time that she had sexual intercourse and she did not feel any sense of satisfaction (*TSN, December 1, 1998, p. 27*); that upon arriving home, his father asked her why she was late but she did not tell him what happened (*TSN, December 1, 1998, p. 28*).

Still on cross-examination, Maricel testified that the next incident was about two (2) years after the first incident of rape, and this second incident took place in March 1998 around 7 o'clock in the evening near the bamboo grove (*TSN, December 1, 1998, p. 29*); that after accused-appellant grabbed one (1) fallen coconut from her, he caught her and embraced her (*TSN, December 1, 1998, p. 31*) but she did not

respond to that embrace; that she could not remember the time she arrived home although she remembered the time that accused-appellant raped her (*TSN, December 1, 1998, p. 32*); that accused-appellant told her to go to the banana grove of a certain Mang Duko on April 1, 1998 and she went there even though she knew that accused-appellant will be there (*TSN, December 1, 1998, p. 34*); that she went to the place because she was afraid of accused-appellant (*TSN, December 1, 1998, p. 35*); and that when the matter was reported to the police authorities, the police officer who typewrote her affidavit was occasionally asking questions to her mother who was with her (*TSN, December 1, 1998, p. 37*).

On re-direct, Maricel stated that on the fourth occasion, she went to the place where accused-appellant told her to go to because she was afraid that if she does not go there, accused-appellant will kill her; that she was only thirteen (13) years old when she was first raped by accused-appellant on December 1996, her birthday being on January 9, 1983 (*TSN, December 1, 1998, p. 40*); that during the first incident, she did not shout nor make an outcry because accused-appellant told her not to or else he will kill her (*TSN, December 1, 1998, p. 41*); that accused-appellant poked a kitchen knife on her breast (*TSN, December 1, 1998, p. 42*); that she went to the bamboo grove as ordered by accused-appellant because she was afraid of him who always approaches her with a kitchen knife; and that she did not inform her parents that she was molested by accused-appellant because he threatened to kill her (*TSN, December 1, 1998, p. 43*).

As for the defense, the sole testimony of accused-appellant was presented. He testified that Maricel is the niece of his wife, Ana Malicsi; that Maricel's father is the brother of his wife (*TSN, November 15, 1999, p. 3*); that he denies the accusations of rape because those sexual incidents were agreed upon between himself and Maricel as they were sweethearts; that prior to the first incident in December 1996, Maricel came to their house about thrice a week when his wife was not at home (*TSN, November 15, 1999, p. 4*); that sometime in December 1996, he came home from Manila around 3 o'clock in the afternoon and asked his wife to go to the market; that he was very sleepy and while sleeping inside his room, he sensed that someone entered his house (*TSN, November 15, 1999, p. 5*); that upon seeing that it was Maricel, he stood up, held her hands and kissed her; that they entered his room and as he embraced and kissed Maricel, the latter embraced and kissed him back; that he told Maricel to remove her panty (*TSN, November 15, 1999, p. 6*) and he inserted his penis into her vagina; that Maricel did not have any violent reaction but merely closed her eyes as he inserted his sex organ into hers; that Maricel was lying face upward in his bed (*TSN, November 15, 1999, p. 7*); that after their sexual intercourse, Maricel went home (*TSN, November 15, 1999, p. 8*).

Accused-appellant further testified that there was another incident in 1998 in the banana grove near Maricel's backyard; that he was urinating at the creek when he called Maricel by whistling at her and the latter came near him (*TSN, November 15, 1999, p. 8*); that he embraced Maricel and she embraced him back; that he told her to remove her shorts and panty and had her lie down on the ground (*TSN, November 15, 1999, p. 9*); that he placed himself on top of her and inserted his penis into her sexual organ; that while doing so, Maricel was embracing him; that after their sexual intercourse, Maricel went home; that a third incident happened on April 4, 1998 in the banana plantation of Mamang Duko about two hundred (200) meters away from the house of Maricel; that Maricel went there because it was their agreement to meet there; that he embraced Maricel when she approached him