

NINTH DIVISION

[CA-G.R. CR HC NO. 01371, August 03, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DENNIS MALIWAT Y MACAPAGAL, ACCUSED-APPELLANT.**

DECISION

CARANDANG, J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Angeles City, Branch 59, dated November 22, 1996, finding the accused-appellant Dennis Maliwat y Macapagal guilty beyond reasonable doubt of the crime of rape, the dispositive portion of which reads:

“WHEREFORE, the foregoing considered and after finding the accused Deniis Maliwat GUILTY beyond reasonable doubt of the crime of Rape committed against the minor child Kristine Joy Calimlim, said accused is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is also hereby ordered to indemnify his victim the sum of P50,000.00.

SO ORDERED.”

The antecedent facts are as follows:

Accused-appellant Dennis Maliwat y Macapagal (“appellant”) was charged with rape under the following Criminal Complaint^[2]:

“That on or about the 23rd day of November 1994, at a vacant lot near the El Retiro Cemetery, in Barangay Dau, Municipality of Mabalacat, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, DENNIS MALIWAT y MACAPAGAL, by means of force and intimidation, did then and there wilfully, unlawfully, feloniously and maliciously succeed in having carnal knowledge with the undersigned seven (7) year old complainant.

Contrary to law. ”

During the arraignment, appellant entered a plea of not guilty.^[3] After the pre-trial was terminated, trial on the merits ensued. The prosecution presented the testimonies of private complainant Kristine Joy Calimlim, Senior Agent Narciso Pena, Jr. and Annaliza Yambao.

The prosecution established that on November 23, 1994, at about 2:00 o’clock in the afternoon, seven (7)-year old Kristine Joy Calimlim was sent to buy cortical at a nearby drug store near the market of Dau, Mabalacat, Pampanga. She was accompanied by Nene, her playmate. On their way home, a man on a bike, whom she identified later as the appellant, asked Kristine Joy where Pamintuan Village

was. When she answered in the negative, appellant asked her where Dau Central was. She pointed the direction towards Dau Central. Appellant then asked Kristine Joy to accompany him, leaving Nene behind. She was made to sit on the bike's frame. Appellant told Kristine Joy that they would just go to his friend. However, they did not go to his friend's house. Instead, they proceeded to a school in Mabalacat, passed by the El Retiro Church, crossed a creek, took a rest at a ruined house and afterwards went straight towards a grassy area. Appellant let go off his bike and they both answered the call of nature. At that point in time, appellant took off his shorts and made Kristine Joy swallow his penis and after which he pulled down Kristine Joy's shorts and panty. She was told not to make any noise or else he will kill her. Appellant laid her down, inserted his penis into her vagina. As she cried in pain, appellant boxed her chest. Kristine Joy's private part was bleeding. After appellant was through and already rested, appellant told her to wear her panty and shorts. Then, she was brought to a basketball court at Del Pilar, Mabalacat, Pampanga.^[4]

At the basketball court, Kristine Joy could barely walk. She was assisted by her playmates, which noticed blood on her buttocks. The authorities arrived and she was brought to the Polymedic Hospital in Dau, where she narrated her ordeals to the authorities. Dr. Orlando L. Feliciano conducted the medical examination on Kristine Joy and found lacerated hymen at 3, 6, 9 and 12 O'clock, with a bleeding vagina.^[5]

During the reception of defense evidence, appellant through counsel manifested that he is no longer presenting any evidence in his favor and he is just submitting the case for decision. However, appellant questioned the authority of Presiding Judge Eliezer R. De Los Santos to decide the case considering that it was Judge Eli G.C. Natividad who totally heard and tried the case.^[6]

After trial, appellant was convicted of the crime of rape. Hence, this appeal. Appellant imputes to the trial court the following assignment of errors:

-I-

THE COURT A QUO DEPARTED FROM THE NORMAL COURSE OF JUDICIAL PROCEDURE WHEN IT CONVICTED AN ACCUSED WHO WAS NOT IDENTIFIED BEYOND REASONABLE DOUBT.

-II-

THE COURT A QUO DEPARTED FROM THE NORMAL COURSE OF JUDICIAL PROCEDURE WHEN IT EXERCISED JUDICIAL NOTICE OF ANOTHER CASE INVOLVING THE ACCUSED BUT IGNORED THE EVIDENCE ON RECORD.

-III-

THE COURT A QUO DEPARTED FROM THE NORMAL COURSE OF JUDICIAL PROCEDURE AND ABUSED ITS DISCRETION WHEN IT SANCTIONED CONSTITUTIONALLY INFIRM INVESTIGATION AND IDENTIFICATION PROCEDURES.

We find the appeal unmeritorious.

The crux of the present controversy lies on whether the prosecution was able to sufficiently establish beyond reasonable doubt the identity of appellant Dennis Maliwat as the same person who raped Kristine Joy in that fateful afternoon of November 23, 1994.

Appellant contends that the prosecution failed to positively identify him as the perpetrator of the crime. Considering that the judge who penned the decision was not the judge who conducted the trial, the lower court should have considered the inconsistencies between the testimony and sworn statement of the victim, specifically the color and make of the bicycle used and the scar on the chin of the perpetrator. Appellant asserts that in her sworn statement, Kristine Joy stated that the perpetrator has a prominent scar on his chin, a moustache and deepened cheeks. When presented and shown to Kristine Joy, however, she could not pinpoint the scar near the chin of appellant. Likewise, Kristine Joy declared that the bicycle used was a stainless mountain bike with color red, while appellant's bike is a three-wheeler bike and the color is orange and green.

We have carefully and thoroughly reviewed the records of the case and We are convinced that the prosecution was able to positively identify the appellant as the perpetrator of the crime.

The inconsistency with regard to the scar on the chin of appellant was adequately clarified by Kristine Joy when she took the witness stand. When asked if she could see any scar on the chin of appellant, Kristine Joy answered during the cross examination in this wise:

Atty. Feliciano:

But I would like to ask the complainant herself if she could see any scar aside from the admission from the counsel.

Court:

Q: May nakikita ka bang pilat ngayon?

A: **Kapag nagagalit po siya, gumaganon po iyong baba niya.**

(witness demonstrates)

TSN, May 23, 1995, p. 33.

Suffice it to say that with her clarification on the witness stand, there is no more inconsistency to talk about. Further, the inconsistency with respect to the scar does not necessarily discredit the victim considering that she was recounting details of an experience so harrowing and painful to recall, thus, it is reasonable to expect her to fall into minor lapses. Terrified and scared, it is understandable that Kristine Joy could not commit to memory the exact facial features of the man who raped her. For what is important is that Kristine Joy was able to identify appellant as the person who raped her.

The inconsistency as to the bicycle used by the appellant does not have any substantial effect on the nature of the offense. We take note of the fact that the