

## SECOND DIVISION

**[ G.R. No. 175833, January 29, 2008 ]**

**PEOPLE OF THE PHILIPPINES, Appellee, vs. EDWIN MALICSI,  
Appellant.**

### **R E S O L U T I O N**

**CARPIO, J.:**

This is an appeal from the 18 August 2006 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 01368. The Court of Appeals affirmed with modification the decision of the Regional Trial Court, Branch 42, Pinamalayan, Oriental Mindoro, finding appellant Edwin Malicsi guilty beyond reasonable doubt of four counts of rape.

In four separate Informations dated 28 May 1998, the prosecution charged appellant with raping AAA, who was then alleged to be 13 years old when she was raped for the first time and 15 years old during the succeeding rape incidents.

Appellant pleaded not guilty upon arraignment.

During the trial, the prosecution presented three witnesses namely, AAA, AAA's mother, and Dr. Marlon dela Rosa (Dr. dela Rosa), the examining physician.

AAA testified that sometime in December 1996 at 7 o'clock in the evening, her father asked her to buy wine from a store 10 meters away from their house. AAA was only 13 years old then. The house of AAA's family is some 20 meters away from appellant's house. On her way home, AAA chanced upon appellant who is her uncle, her father being the brother of appellant's wife. Appellant placed AAA on his lap. Appellant switched off AAA's flashlight and embraced her. Appellant ordered AAA to bend over. AAA acceded because appellant threatened to kill her. Appellant removed AAA's shorts and underwear. Appellant, while poking a knife at AAA's breast, succeeded in inserting his penis inside her vagina. AAA felt pain. Appellant warned AAA not to say anything to her parents.

AAA further testified that sometime in March 1998, her mother asked her to gather coconuts that have fallen off from the tree at the bamboo grove. Appellant followed her and grabbed one of the coconuts she was holding. AAA tried to retrieve the coconut but appellant forced her to lie on her back. Appellant removed her underwear and inserted his penis inside her vagina. AAA struggled to no avail. Appellant again threatened to kill her if she informed her parents about the incident.

AAA added that on 1 April 1998, appellant ordered AAA to meet him at a banana grove. Out of fear, AAA went there because she knew appellant always carried a knife. Again, appellant forced her to lie on the ground and inserted his penis inside her vagina.

AAA alleged that three days later, appellant caught up with her while she was gathering firewood. AAA was again forced to lie on the ground and appellant inserted his penis inside her vagina. AAA's cousin witnessed the incident and informed AAA's mother. When AAA confirmed to her mother that appellant raped her, they went to the police headquarters to file a complaint against appellant. AAA testified that she was thereafter brought to the doctor for physical examination.

AAA's mother testified that appellant is her brother-in-law. Sometime in April 1998, her nephew informed her that he saw appellant rape AAA. Thereafter, AAA confirmed to her mother that appellant raped her on different occasions. AAA's mother discussed the matter with her husband and they decided to report the rape incidents to the police authorities. AAA's mother alleged that appellant's wife offered to settle the case for P10,000 but she refused the offer because of the dishonor to her daughter.

Dr. dela Rosa testified that he examined AAA and executed a Medical Certificate with the following findings:

"P.E.

Vagina: nulliparous introitus with old hymenal lacerations at 10, 7o and 5o positions."<sup>[2]</sup>

Dr. dela Rosa added that based on his findings, AAA had lost her virginity. On cross-examination, Dr. dela Rosa stated that the hymenal lacerations were inflicted possibly by the insertion of a hard object.<sup>[3]</sup>

The defense presented appellant as its only witness. Appellant denied the accusations of rape and alleged that he and AAA were sweethearts and they mutually agreed to engage in sexual intercourse. Appellant claimed that AAA visits their house about thrice a week when his wife is not at home. Appellant then recounted the incidents of his sexual intercourse with AAA.

Appellant claimed that sometime in December 1996, he arrived home from Manila and he told his wife to go to the market. After she left, he slept. Then, he sensed someone entering his house. Upon seeing that it was AAA, appellant asked her if she needed something but she replied negatively. Appellant then stood up, held her hands and kissed her. AAA told him that they might be seen by her mother as the door was not closed. Appellant and AAA then entered the room and he embraced and kissed her. AAA also embraced and kissed him. Then, he told her, "*maghubo ka ng panty* (take off your underwear)." While taking off her underwear, appellant also removed his briefs. While AAA was lying in bed face upward, she had no violent reaction but merely closed her eyes when he inserted his penis inside her vagina. After the sexual intercourse, AAA went home.<sup>[4]</sup>

Appellant contended that the second time they had sexual intercourse was in 1998 before AAA's graduation. It happened at the banana grove. He was urinating at the creek when he called her by a whistle. AAA approached him. He held her hands and they embraced each other. Then, they removed their undergarments. AAA lay on the banana leaves while he placed himself on top of her. He inserted his penis inside her vagina and while doing so, AAA was embracing him. Afterwards, she went home.<sup>[5]</sup>

Appellant alleged that the third sexual intercourse happened on 4 April 1998 at the banana plantation where they agreed to meet. AAA arrived while appellant was gathering "*puso ng saging*." When she approached him, they embraced each other and removed their undergarments. AAA lay on the banana leaves while he placed himself on top of her and inserted his penis inside her vagina. AAA was merely looking at him while he was doing it. After the sexual act, she went home.<sup>[6]</sup>

Appellant also alleged that in these three occasions, AAA gave her consent since they were sweethearts. Appellant attested that after he learned about the rape charges, he did not have the opportunity to talk to AAA anymore.

The trial court gave credence to the testimonies of the prosecution witnesses. The trial court took note of the fact that AAA was barely 13 years old when the first rape took place while appellant was in his early 30's.<sup>[7]</sup> The trial court also noted that appellant was AAA's uncle, thus he exercised some sort of moral ascendancy over AAA.<sup>[8]</sup> The trial court was not persuaded by appellant's defense that AAA was his girlfriend and that the sexual encounters were done with her consent due to the lack of outcry, lack of tenacious resistance, and delay in reporting the rape charges to the authorities. The trial court disbelieved appellant's testimony that they were sweethearts because there was no sufficient proof to substantiate the alleged love relationship. Appellant merely relied on his own uncorroborated testimony. The trial court added that a love affair is not a license for sexual intercourse.<sup>[9]</sup>

The trial court ruled that the lack of outcry and tenacious resistance did not make the sexual congress voluntary because being of tender age, AAA did not possess discernment and was incapable of giving an intelligent consent to the sexual act. Moreover, there is no standard form of human behavioral response to a startling or frightful experience such as rape being perpetrated by the victim's uncle. Furthermore, the resistance on the part of the victim need not be carried out to the point of inviting death or physical injuries, it being sufficient that the coitus takes place against her will or that she yields to a genuine apprehension of great harm.<sup>[10]</sup>

The trial court acknowledged that there was delay in reporting the rape incidents. However, the trial court believed that the delay was due to the death threats made by appellant coupled with the victim's immaturity. The fact that appellant was holding a knife is suggestive of the force or intimidation that would cause the victim to conceal for sometime the violation on her honor.<sup>[11]</sup>

On 8 October 2001, the trial court rendered its decision, finding appellant guilty of four counts of qualified rape. The trial court sentenced appellant to suffer the penalty of death for each count of rape, and to pay AAA P300,000 as civil indemnity (P75,000 for each count), and P200,000 as moral damages (P50,000 for each count).<sup>[12]</sup>

On appeal, appellant contended that the trial court erred in giving weight and credence to the incredulous testimonies of the prosecution witnesses especially AAA's testimony. Appellant alleged that the prosecution failed to prove his guilt beyond reasonable doubt. Appellant also questioned the imposition of death penalty considering the attendant circumstances of the case.