

## SECOND DIVISION

[ G.R. No. 134526, December 11, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PATRICK A. COLISAO, ACCUSED-APPELLANT.**

### D E C I S I O N

**DE LEON, JR., J.:**

Before us is an appeal from a Decision<sup>[1]</sup> dated May 27, 1998 rendered by the Regional Trial Court, Branch 46, Urdaneta, Pangasinan, in Criminal Case No. U-9456, the dispositive portion of which decrees:

WHEREFORE, JUDGMENT of CONVICTION beyond reasonable doubt is hereby rendered against accused PATRICK COLISAO for the crime of SIMPLE RAPE defined and penalized under Article 335 of the Revised Penal Code in relation to R.A. 7659, the Court sentences Patrick Colisao to suffer the penalty of Reclusion Perpetua and to pay Maylene Tabin the amount of P50,000.00 as moral damages.

xxx                      xxx                      xxx

On December 17, 1997, an Information<sup>[2]</sup> dated December 15, 1997 was filed against appellant Patrick A. Colisao. The information reads:

That on or about December 3, 1997, in the evening at barangay Bantog, municipality of Asingan, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously [sic] have sexual intercourse with Maylene C. Tabin, a minor 13 years old, against her will and without her consent, to her damage and prejudice.

CONTRARY to Art. 335, Revised Penal Code, as amended by R.A. 7659.

On arraignment, appellant, assisted by counsel, entered a plea of "not guilty." During trial, the prosecution presented and offered the testimonies of Maylene and her father, Melecio; Dr. Noemi Taganas; and SPO4 Benjamin Velasco Mariano. On the other hand, the defense presented four (4) witnesses, namely: the appellant himself; his aunt Rebecca Almanza; his mother Gloria; and his niece Marivic Almanza.

The evidence of the prosecution discloses the following facts:

At about 6:30 in the evening of December 3, 1997, Maylene Tabin, then 13-years old and the second of the ten (10) children of Melecio and Helen Casiano Tabin, went to the house of their neighbor Mario Almanza to watch television, together with

her two (2) sisters and one brother. That night, appellant was also a visitor at Almanza's house, Almanza being the former's uncle. Appellant was there to seek the assistance of his uncle in writing a billet-doux to a paramour named Naty.<sup>[3]</sup> Appellant, it turned out, was already married and the father of a four-year old son, although he and his wife separated after the latter ran off with another man.<sup>[4]</sup>

At approximately 8:00 p.m., Maylene stepped out of Almanza's house to answer the call of nature. Upon finishing, as she stood up to adjust her clothes, she was seized from behind by appellant. He clapped a hand over her mouth, and with the other, grabbed hold of her two (2) hands. He dragged her toward a nearby river, and after removing her shorts and underwear and his shorts, he succeeded in ravishing her. Maylene who stood only 5'4",<sup>[5]</sup> proved no match for her 5'9" tall, 65 kilogram<sup>[6]</sup> assailant, and was unable to shout for help as appellant threatened to kill her. She categorically stated that appellant was able to insert his organ into her vagina.

In the meantime, Maylene's siblings had gone home without her. Her father Melecio was alarmed,<sup>[7]</sup> particularly so when Marivic Almanza, Mario Almanza's daughter who had accompanied the Tabin children home, told him that she saw appellant pulling Maylene toward the river.<sup>[8]</sup> Melecio set out into the night to look for his daughter. He first went to Mario Almanza's house, but he was told by the latter's wife, Rebecca, that appellant and Maylene were not there. He crossed the river to the house of Badong Dumlao (whose daughter was a friend of Maylene's and whose wife was a relative of appellant's), but his daughter was not there either. Getting more agitated by the minute, he went to Asingan to the house of his in-laws to inform the latter that Maylene was missing. As a last resort, he looked for his daughter in the house of appellant's mother, Gloria, but he also failed to find her there. Hence, he went home and it was there that he found Maylene who appeared to be in a state of shock. Maylene informed her father that she was raped by appellant. Both father and daughter proceeded to the Medicare Community Hospital where the latter was examined by the hospital chief, Dr. Taganas. During the examination, Maylene was "crying and very hard to motivate."<sup>[9]</sup>

The medical examination<sup>[10]</sup> conducted on the complainant disclosed the following:

Internal Findings:

1. Hymen ruptured showing complete lacerations with fresh bleeding at about 11:00, 1:00, 3:00 6:00, 9:00 o'clock position;
2. Fresh bleeding coming from vagina.
3. Hymenal orifice admits 1-2 fingers with difficulty.
4. Fresh abrasion with bleeding from lower inner lower portion of the vagina.

Diagnosis: Physical Virginity Lost.

For its part, the defense offered a different version of the events in question. The accused denied having even laid a hand on Maylene. Appellant alleged that although he and Maylene were sweethearts, their expressions of affection were limited to

kissing, embracing and holding hands.<sup>[11]</sup> Although they supposedly called each other "Mama" and "Papa," they never engaged in the private and intimate activities that husbands and wives do.<sup>[12]</sup>

On the witness stand, appellant narrated<sup>[13]</sup> that at around seven of the night in question, he went to the house of Melecio Tabin to collect the sum of Three Thousand Pesos (P3,000.00). The amount allegedly owed was in payment of labor performed by appellant, as a chainsaw operator, for Melecio. Appellant claimed to have cut down some thirty (30) *ipil-ipil* trees and converted them to five hundred (500) board feet of lumber, at the cost of Six Pesos (P6.00) per board feet. Melecio, though, failed to pay, and allegedly even got angry at appellant since the former did not have the money that night. Afterward, appellant went to Almanza's house, where he came upon Maylene and her siblings. Maylene allegedly asked appellant to buy her Coca-cola and sanitary napkins at Lani's store. Together with Marivic Almanza, Maylene and appellant went to the store and bought the said items. The three (3) of them then proceeded to Marilou Dumlao's house where they were invited to watch television. After doing so for a while, they went home. Appellant then averred that he slept at the *nipa* hut of Mario Almanza, when a few moments later, Maylene approached him and proposed that they elope. Appellant, a 25-year old married man, agreed. Just as they were about to leave, they heard Maylene's father calling for her. Maylene allegedly changed her mind and informed appellant that she would be going home instead. After they separated, appellant claimed that he went back to town to buy cigarettes, and thereafter went home to sleep. He was accosted only the following morning by Maylene's father in connection with the alleged rape<sup>[14]</sup> and subsequently arrested by the police.

On May 27, 1998, the trial court rendered judgment<sup>[15]</sup> convicting appellant of simple rape and sentencing him to *reclusion perpetua*. The trial court found that the prosecution was able to prove appellant's culpability beyond reasonable doubt. In its decision, the trial court found and declared that:

The negative denial of Colisao that he had not raped Maylene could not prevail over the positive and categorical testimony of Maylene which is full of specifics and in details.

Besides, Maylene immediately reported to her father the dastardly acts committed by Colisao. They (Maylene and Melecio Tabin) immediately went to the Police about 10:00 P.M. to lodge her complaint against Colisao for rape. After the usual police investigation, she submitted for medical examination.

Even if the court would take as gospel truth the version of Colisao that he and Maylene were sweethearts and that Maylene addressed him as "Papa" and he addressed Maylene as "Mom" and that they kissed and embraced each other, nonetheless, on the night of December 3, 1997, about 8:00 o'clock P.M., when he dragged, pulled and covered the mouth of Maylene and brought her to the nearby river and thereafter forced her to lie down on the ground and inserted his organ to her private organ without the consent of Maylene, it constitute rape.

The prosecution was able to prove the guilt of the accused beyond

reasonable doubt of the crime of simple rape. The Court finds Patrick Colisao guilty beyond reasonable doubt of the crime of simple rape defined and penalized under Art. 355 of the Revised Penal Code in relation to R.A. 7659. On the civil aspect, the Court awards P50,000.00 for moral damages Maylene Tabin suffered in the hands of the accused.

Appellant premises the instant appeal on a single assigned error, to wit:

The lower court erred in giving full credit to the fabricated testimony of private complainant Maylene Tabin that she was raped by accused-appellant.

In reviewing a conviction for rape, we have been consistently guided by these precepts: (a) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape, where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (c) the evidence of the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.<sup>[16]</sup> Applying these principles to the case at bar, we find that appellant's culpability has been established beyond reasonable doubt. Perforce, we affirm.

The elements to be proven in an indictment for rape are: (1) *that the offender had carnal knowledge of the victim*; and (2) *that the act was accomplished through the use of force or intimidation*; or when the victim is deprived of reason or otherwise unconscious; or when the victim is twelve (12) years of age, or is demented.<sup>[17]</sup> An extract from Maylene's testimony, quoted hereunder, indubitably established the presence of the aforesaid elements:

xxx

xxx

xxx

PROS. BINCE:

Q: After the accused pulled you with a distance of 40 to 50 meters from the place where you urinated, what else happened, if any?

WITNESS:

A: I was made to lie down sir.

Q: Were you able to lie down when he made you to lie down?

A: Yes, sir.

Q: What else happened after you lay down to the ground?

A: He undressed me, sir.

Q: What did he remove when he undressed you?

A: My short pant together with my panty, sir.

Q: After the accused removed your short pant and panty, what did he do, if he did anything?

A: He also removed his pant sir.