

EN BANC

[G.R. Nos. 130599-600, April 21, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JUAN MANGGASIN Y LUCANAS, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

For review by the Court is the decision rendered by the Regional Trial Court of Ormoc City, Branch 35, in Criminal Case Nos. 4730-0 and 4731-0, finding accused-appellant Juan Manggasin y Lucanas guilty of two (2) counts of rape, the dispositive portion of which reads as follows:

WHEREFORE, all of the foregoing considered, this Court finds JUAN MANGGASIN y LUCANAS guilty of RAPE beyond reasonable doubt for two counts under Criminal Case No. 4730-0 and Criminal Case No. 4731-0, and hereby sentences him as follows:

Under Criminal Case No. 4730-0, since the commission of the offense was in March 1995 which is after the effectivity of Republic Act No. 7659 (the Death Penalty Law), and the attendant circumstance of the victim being under eighteen (18) years of age and of the offender being the common-law-spouse of the parent of the victim having been proven, the Court hereby sentences JUAN MANGGASIN Y LUCANAS to suffer the penalty of DEATH.

Moreover, the Court hereby orders the said accused to pay the offended party, the private complainant herein, the sum of P50,000.00 as indemnity, the sum of P20,000.00 as exemplary damage, and to pay the DSWD the sum of P20, 000.00 as actual damage.

Under Criminal Case No. 4731-0, since the commission of the offense was on September 3, 1991 which is before the effectivity of Republic Act No. 7659, the Court hereby sentences JUAN MANGGASIN Y LUCANAS to suffer the penalty of RECLUSION PERPETUA.

Moreover, the Court hereby orders the said accused to pay the offended party, the private complainant herein, the sum of P50,000.00 as indemnity, and the sum of P20,000.00 as exemplary damage.

SO ORDERED.^[1]

The complainant, Maria Fe Empimo, was born on September 4, 1978, the child of Luciano Empimo and Lilia Manggasin.^[2] Complainant's father, Luciano, died when she was just a few years old. When she was five (5) years old, her mother, Lilia,

lived with herein accused-appellant, Juan Manggasin y Lucanas, with whom she begot four children.

When complainant was seven (7) years old, she lived with her sister, Rosenda, in Barangay Mas-in, Ormoc City, until she was eleven (11) when she returned and lived again with her mother and accused-appellant.^[3]

It appears that at around 12 noon of September 3, 1991, complainant went with her mother to a nearby river to do some laundry. After a while, she was told to go back to the house and get her brother's clothes.^[4]

In an affidavit, dated November 14, 1995, complainant stated that when she arrived in their house, she was "allured/hypnotized" by accused-appellant, which rendered her unconscious.^[5] When she woke up, she felt some pain in her vagina, which was bleeding. When she asked accused-appellant what had happened to her, he warned her not to tell anyone what had been done to her, otherwise he would kill her and her mother.^[6] During the trial, complainant explained that accused-appellant looked at her "sharply." She claimed that accused-appellant then "dragged" her and "embraced" her so tightly that both of them fell down. He then touched her private parts and inserted his penis into her vagina. After he was through, accused-appellant told her she would be killed if she told anyone about the incident.^[7]

Complainant claimed that she had been sexually assaulted several times, the last one being one night during the last week of March 1995.^[8] Complainant, then seventeen (17) years old, was asleep together with her mother, siblings, and accused-appellant in their house in Barangay Tambulilid, Ormoc City. Their house was a single-room affair, with a floor area of 5 by 6 meters. That evening, according to complainant, accused-appellant slept near the wall, while lying next to him on the floor was complainant's mother and the other children. Complainant slept on the opposite side of the room. At around 10 that night, accused-appellant lay beside her, then dragged her, and covered her mouth to prevent her from shouting. Accused-appellant removed her panties, inserted his penis into her vagina, and did the sexual act until he ejaculated. After he was through, he stood up and went back to his place beside complainant's mother. When the latter asked him where he had been, accused-appellant simply kept quiet and went back to sleep.^[9]

Complainant said she related her ordeal to her mother, but the latter just told her to keep her disgrace to herself.^[10] However, on November 21, 1995, complainant filed two (2) complaints for rape against accused-appellant. The complaint in Criminal Case No. 4731-0 charged -

That on or about the 3rd day of September 1991, at around 12:00 o'clock noon, in Brgy. Don Felipe Larrazabal, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused, JUAN MANGGASIN y Lucanas alias Johnny, being then the step-father of the complainant herein MARIA FE EMPIMO, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said complainant MARIA FE EMPIMO, who was then about thirteen (13) years of age, against her will.^[11]

The complaint in Criminal Case No. 4730-0 charged -

That sometime during the last week of March, 1995, in Brgy., Tambulilid, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused, JUAN MANGGASIN y Lucanas alias Johnny, being then the step-father of the complainant herein MARIA FE EMPIMO, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said MARIA FE EMPIMO, a seventeen (17) year old lass, against her will.^[12]

On November 27, 1995, complainant gave birth to a baby boy.^[13]

At the ensuing trial, the prosecution presented four (4) witnesses, namely: Dr. Regino Lusino S. Mercado; complainant Maria Fe Empimo; complainant's half-sister Maria Empimo Calambo; and the representative of the Department of Social Welfare and Development (DSWD), Raquel Moralde.

Dr. Mercado identified the medical report (Exh. "A") issued by him after conducting a medical examination of Maria Fe Empimo on November 14, 1995. He testified that he found a 6 o'clock laceration in complainant's hymen which indicated that she has had sexual intercourse; that at the time of examination, complainant had been pregnant for approximately 9 months; and that she had probably been impregnated sometime between February 27, 1995 and March 27, 1995.^[14]

Complainant, then eighteen (18) years old, testified during the trial that she was born on September 4, 1978.^[15] This is confirmed by her mother, Lilia Manggasin.^[16] With respect to the rape subject of Criminal Case No. 4730-0, complainant testified that at about 10 o'clock in the evening in March 1995, while her mother and siblings were asleep on the floor in their single-room house in Barangay Tambulilid, Ormoc City, accused-appellant lay beside her, dragged her, covered her mouth, and then removed her panty; that he inserted his penis into her vagina and then executed the sexual act; and that after he was through, he stood up and went back to his place beside her mother. Complainant said it seemed that her mother noticed what was going on which is why she asked him where he had been; that accused-appellant did not answer; and that by reason of the repeated acts of sexual abuse committed on her by the accused-appellant, she got pregnant and, on November 27, 1995, gave birth to a child whose father she identified in open court to be accused-appellant Juan Manggasin.

With respect to the rape subject of Criminal Case No. 4731-0, complainant testified that on September 3, 1991, at about 12 noon, while she and her mother were washing clothes at a nearby river, her mother told her to go back to their house and get the clothes of his younger brother; that they were at that time living in Barangay Don Felipe, Ormoc City; that upon reaching the house, accused-appellant gave her a "sharp look" and then dragged her and embraced her so tightly that both of them fell on the floor; that accused-appellant touched her private parts and then inserted his penis into her vagina; and that she did not resist because she was afraid of accused-appellant, who, even as he raped her, threatened to kill her if she divulged to anyone what had happened to her.^[17] She identified her affidavit of November 14, 1995, paragraph 3 of which states that accused-appellant Juan Manggasin warned her not to tell anyone her story or else he would kill her and her mother.^[18]

Raquel Moralde, a social worker at the DSWD, testified that her agency took care of complainant; that the latter was very quiet and shy when she arrived at the center; that she was often seen with blank stares; that the DSWD provided her immediate needs at the center and defrayed the costs of her delivery by caesarean operation; and that she prepared a report^[19] containing her study and observations of Maria Fe as a sexually abused minor.^[20]

Certain letters allegedly written by accused-appellant while in prison were adduced and marked as Exhibits E, F, G, H, K, L, M, N, N-1, O, P, and Q by the prosecution.

On the other hand, the defense presented four witnesses, namely: Elizabeth Roble, SPO4 Virginia Sab, Lilia Manggasin, and accused-appellant himself.

The first witness, Elizabeth Roble, a records officer of the Ormoc District Hospital, testified that she had issued a certificate of live birth to complainant Maria Fe Empimo; that the certificate was issued on September 25, 1996, about one (1) year after the birth of the child on November 27, 1995; that the entries were based on information supplied by an aunt of complainant; and that the word "unknown" in the blank space for the father's name was written.^[21]

SPO4 Virginia Sab was presented to identify the extract from the police blotter showing the arrest of accused-appellant on November 14, 1995.^[22]

Lilia Manggasin, common-law wife of accused-appellant and mother of complainant, denied that complainant was with her washing clothes on September 3, 1991 because complainant was then living in Barangay Don Felipe with her elder sister Rosenda; that it was only on the following day, September 4, 1991, that complainant went to their house because it was her birthday; that she had sent complainant to school until the latter finished the sixth grade; that while living in Barangay Don Felipe, complainant was allowed to have friends, and was "very happy" during that time; and that she did not notice if complainant had any problem and that when the family moved to Barangay Tambulilid, complainant went with them.^[23]

Lilia Manggasin further testified that their house in Brgy. Tambulilid was small, had only one (1) room and no beds and that the family slept on the floor. According to her, accused-appellant Juan Manggasin slept behind her near the door, while the children slept beside her. Complainant slept at the other side. She testified that they had a lamp at night so that they could see anything inside the house; that complainant often went out at night to watch TV and usually came home at about 12 midnight; and that on November 14, 1995, complainant was fetched by agents of the DSWD who said they would help her.^[24]

On cross-examination, Lilia Manggasin admitted that on September 3, 1991, complainant was after all with her washing clothes in the river. However, she maintained that, on that day, accused-appellant was not home as he was working in Barangay Punta which is about a kilometer from Barangay Don Felipe, where they then lived; and that accused-appellant did not return at lunch time as he brought with him his packed lunch. With respect to the second incident, she testified that during the last week of March 1995, she did not notice any rape or sexual

intercourse occurring between accused-appellant and complainant.^[25]

For his part, accused-appellant testified that, on September 3, 1991, he left for work in Barangay Punta returning home in the afternoon of the next day, September 4, 1991; that he did not go home for lunch on September 3, 1991 since he had his lunch box; and that prior to September 4, 1991, complainant was staying in Barangay Mas-in with her sister and it was only on September 4, 1991 that she started living with them. He denied having harmed complainant. He testified that there was no unusual incident that happened during the last week of March 1995; that he had never used force or intimidation on complainant; and that on November 14, 1995, he was arrested by the police; and that during the investigation, he was not afforded the assistance of counsel.^[26]

On cross-examination, accused-appellant admitted, however, that he had sexual intercourse with complainant many times. He claimed that their relation began when she was seventeen (17) years old. He said that they engaged in sexual intercourse beginning 1995, often upon complainant's initiative.^[27]

On May 23, 1997, the trial court rendered its decision, now the subject of this review.

Accused-appellant contends (1) that the trial court erred in finding him guilty of the crimes charged; and (2) that it erred in giving credence to the testimony of complainant for being materially inconsistent and improbable.^[28] Accused-appellant admits having had sexual intercourse with complainant several times but claims that the same were with the consent of complainant and, oftentimes at her instance. He insists that the prosecution has not in fact proven that he used force or intimidation. He asserts that the sexual relation began when complainant was already seventeen (17) years old.^[29]

We begin with the settled rule that the evaluation of the testimonies of the witnesses by the trial court is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value which, if considered, might affect the result of the case.^[30] In addition, in prosecutions for rape, this Court has been guided by the following considerations in the evaluation of the evidence: (a) an accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent, to disprove it; (b) in view of the nature of the crime in which only two persons are involved, the testimony of complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[31] Conviction must rest on nothing less than a moral certainty of guilt.^[32]

Applying the foregoing rules, the Court finds no cogent reason to reverse or modify the trial court's finding that accused-appellant is guilty of sexually assaulting complainant.

First. As aptly observed by the Solicitor General in this case, complainant testified in a straightforward, candid, and firm manner that accused-appellant had sexually