

## SECOND DIVISION

[ G.R. No. 124005, June 28, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS ABLOG Y FERNANDO, DEFENDANT-APPELLANT.**

### DECISION

**BELLOSILLO, J.:**

TOMAS ABLOG y FERNANDO was convicted of raping his ten-year old grandniece Christine Winda Montera and sentenced to *reclusion perpetua*. He was also ordered to indemnify his victim in the sum of P100,000.00.<sup>[1]</sup> He now pleads anew for acquittal as he invokes the constitutional presumption of innocence in his favor. He insists that the prosecution has failed to prove his guilt beyond reasonable doubt.

Christine Winda Montera's family lived in a house abutting a wall of the house of Tomas Ablog at No. 14, Block O, Road 5, West Crame, Quezon City. The Montera and Ablog families were living harmoniously until 27 May 1995 as will be narrated hereunder.

Between 7:30 and 8:00 o' clock in the evening of 27 May 1995 Christine Winda Montera nicknamed *Tin-tin* was sitting on a wooden bed under their house together with her grandmother Vivian Baldo whom they fondly called *Lola Bibing*. They were watching *Tin-tin's* mother, Erlinda Baldo Montera, who was washing clothes at the Montera's private washing area about three (3) steps away.

After some time, *Tin-tin* asked permission from her *Lola Bibing* to go to the comfort room which was used in common by both families to urinate. She was allowed to go alone. While she was relieving herself she saw through the sackcloth, which doubled as a covering and as the door of the room, her granduncle, Tomas Ablog whom she called *Lolo Tomas*, coming towards the room and lowering down the zippers of his short pants. From past experiences with him, she already sensed his sexual intentions towards her. So, she hurriedly pulled up her short pants but was dismayed when her *Lolo Tomas* suddenly called her. Resigned to her fate and fearful of his abuse, she remained where she was. It was then that she saw her granduncle enter the room bringing a slat of wood. In silence, she watched as he laid it down on the rough floor.

Her *Lolo Tomas* then looked at her and told her to lie down on the slat of wood. *Tin-tin* obliged. Then he commanded her to undress while he removed his shorts and underpants. After discarding his underwear and seeing *Tin-tin* lying naked, cowering, he told her to spread her legs. He briefly played with *Tin-tin's* private parts which she referred to as her "*dede*" and "*pepe*" in her testimony. He also kissed her immature breasts. He then placed himself on top of her and told her to hold his flaccid penis. Afterwards he penetrated her. He was pumping on *Tin-tin* when she heard her grandmother calling for her. Oblivious of her *Lola Bibing's* call

accused Ablog continued pumping until her *Lola Bibing* called for Erlinda. Finally accused Ablog pulled himself out, stood up, and told *Tin-tin* to rise immediately and dress up as she tried to put back her clothes. Then he instructed *Tin-tin* to step out of the room first.

As *Tin-tin* was going out of the room she met her mother Erlinda who also noticed Ablog coming out of the same room while zipping up his shorts. Erlinda became suspicious so she hurriedly took *Tin-tin* up to their house and told her to sit down. She asked *Tin-tin* why she and her *Lolo Tomas* came out of the comfort room together. Then *Tin-tin* tearfully narrated her ravishment by Ablog. Erlinda told her husband William about *Tin-tin's* ordeal and the couple agreed to have their daughter medically examined and to file the necessary complaint.

*Tin-tin* was physical examined by Dr. Owen Lebaquin of the PNP Crime Laboratory Service at Camp Crame, Quezon City. The medico-legal findings showed shallow and healed lacerations on the hymen at the 3:00 o'clock and 9:00 o'clock positions and the external vaginal orifice offered strong resistance to the insertion of the doctor's index finger. With these findings, the Monteras charged Tomas Ablog on 31 May 1995 with statutory rape. Thereafter they were inundated with several offers for settlement of the case from Baltazar Ablog, a nephew of the accused, and from a certain Aida Alvarez, a townmate. William Montera himself was approached by the accused during the investigation at PNP, Camp Crame, to seek his forgiveness. The Monteras however never yielded.

There is nothing on record to show any compelling reason to doubt the veracity of the facts established by prosecution witnesses Dr. Owen Lebaquin, spouses Erlinda and William Montera, and the offended party herself Christine Winda Montera who clearly identified in open court her granduncle Tomas Ablog as her defiler.

In the face of his positive identification by Christine, the only defense accused-appellant could offer was his alleged impotency on account of old age. He was sixty-eight (68) years old at the time of the commission of the crime. This was complicated, according to him, by his recurring and symptomatic hypertension that never failed to cause him dizziness and general body debility which limited his daily activities such that he even failed to attend a party with his friend Grego who called on him in the morning of 27 May 1995.

Accused-appellant further claims he spent the whole day of 27 May 1995 sleeping until his friend Alden Cristobal went to his house at about 7:00 to 8:00 o'clock in the evening to inquire about the condition of the fighting cocks Ablog was raising for the cockfight the next day. After Alden left, Ablog went down from his house to the place where he kept his cocks near the common comfort room. He fed them and checked their conditions. Then he washed his hands and feet at the nearby faucet. While his wife Concepcion was checking on him from the terrace of the second floor he filled the drum that was lying alongside the faucet with water with the use of a hose. When Concepcion called him to go up he told her that the drum was not yet full. He noticed *Tin-tin* inside the comfort room but did not wait for her to come out because her grandmother was calling for her and Concepcion was also calling for him. Soon thereafter, he went home and slept. After a while Concepcion woke him up to ask if he did anything to *Tin-tin* and he simply replied, "*Ano bang ginawa ko?*" Then his wife allowed him to go back to sleep.

Accused-appellant denies asking forgiveness from William Montera but admits urging his wife Concepcion to file a complaint for ejectment against the Monteras as retaliation for the charge of rape. He could not think of any reason however for the charge against him as they and the Monteras had no quarrel at all.

The facile version of accused-appellant cannot be fortified by the testimony of his wife which aside from being obviously biased is basically negative in nature. Concepcion's testimony cannot prevail over the offended party's positive identification of Tomas Ablog as her rapist.

Neither can the claim of impotency by accused-appellant be countenanced. In *People v. Palma*,<sup>[2]</sup> we ruled that impotency as a defense in rape cases must be proved with certainty to overcome the presumption in favor of potency. We even rejected that defense in *People v. Olmedillo*<sup>[3]</sup> where a doctor had examined the accused by stimulating his organ with a wisp of cotton for three (3) minutes and there was no erection.

With more reason must we reject such defense in the face of the unsubstantiated allegation of Ablog. For at no time did he present himself for the same kind of examination. Even the expert witness he presented, Dr. Arnold Pasia, could not state with unequivocal conviction that his hypertension was of a permanent nature and of such gravity that it rendered him bereft of sexual desires and potency. On the contrary, Dr. Pasia stressed that the hypertension that Ablog suffered was merely symptomatic and could be healed by proper medication. Neither can accused-appellant invoke old age. In *People v. Bahuyan*,<sup>[4]</sup> we convicted an octogenarian of rape as we brushed aside his claim of impotency. There we said that assuming *arguendo* that this was the truth, his advanced age did not mean that sexual intercourse for him was no longer possible, as age taken alone could not be a criterion in determining sexual interest and capability of middle-aged and older people.

Failing to convince us with his allegation of impotency, accused-appellant then attacks the credibility of the offended party, posing a barrage of questions centered on the supposed inconsistencies in her testimony and hoping to overwhelm us with the quantity, albeit lacking in quality, of his contentions. Appellant places much importance on the omission by *Tin-tin* of the pumping motions he allegedly made on her during the rape in her report to the PNP. This is a stark indication on the part of the defense to harp at matters of little import for we have always stated that affidavits *ex parte* are generally considered to be inferior to testimonies given in open court. Thus, discrepancies, or omissions as in this case, in the statements of the affiant in her affidavit and those made by her on the witness stand do not necessarily discredit her.<sup>[5]</sup> The nitpicking continues with the statement of *Tin-tin* that Ablog's penis was soft and only one and three-fourths (1 <sup>3</sup>/<sub>4</sub>) to two (2) inches long. Appellant contends that the victim's declaration is inconsistent with the findings of the medico-legal officer that the laceration on the hymen was caused by a blunt and hard object and that the victim's organ exhibited a strong resistance to the entry of the doctor's index finger.

We do not see any inconsistency on either point. In the matter of the condition of the sexual organ of accused-appellant, the explanation of the Solicitor General<sup>[6]</sup> is noteworthy -