

## EN BANC

[ G.R. No. 136779, September 07, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL ASUNCION Y VILLADUS, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

Little Arlin Asuncion was plucked from her world of games and toys when her own flesh and blood, the accused Arnel Asuncion, marred her innocence. She tells us of her sad tale, through the eyes and lips of a seven-year old who hardly understands sex and sexuality. Barely does she comprehend, at least for now, the depth of the violation committed by her own father upon not only her body, but her personhood; painfully, however, she will more fully comprehend when she grows up and remembers her sad childhood memory.

On March 23, 1998, an information was filed against accused-appellant Arnel Asuncion y Villadus, viz:

"On or about in the month of December, 1997, in Taguig, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, exerting strong moral influence over, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter, Arlin C. Asuncion, a minor, seven (7) years of age, against her will and consent.

Contrary to law."

The evidence on record shows that sometime after Christmas of 1997, the accused and Arlin were at home in Taguig while Erlinda Asuncion, the accused's wife, was out working. Arlin's siblings were also out watching *Kengko*y on television when the accused perpetrated the sordid sexual assault upon his little seven-year old Arlin.<sup>[1]</sup>

With much effort from the fiscal and the trial judge to elicit the details of her tragic tale, Arlin so innocently narrated that the accused who was then naked asked her to remove her clothes, including her panty. He then asked her to lie down on the bed, and then lay on top of her, face down. The accused spread her legs, then did the push and pull movement which caused severe pain in her vagina.<sup>[2]</sup> According to Arlin, the accused did not insert his penis into, but rubbed it against, her vagina.<sup>[3]</sup> On the same day after that incident, Arlin urinated and there was blood in her urine. Sometime after that fateful day, Arlin narrated to her mother, Erlinda, what her father did to her.<sup>[4]</sup> On February 10, 1998, Erlinda executed a sworn statement regarding the rape. Upon her complaint, an investigation of the incident was

conducted, which then gave rise to the present case.<sup>[5]</sup> Erlinda, however, did not testify as she later had a change of heart and wanted to have the case dismissed.<sup>[6]</sup>

Emmanuel Reyes, Medico-Legal Officer of the PNP Crime Laboratory, conducted a physical examination on Arlin on February 4, 1998. Arlin was then accompanied by her aunt, Belita Castañeda. Dr. Reyes' findings showed that Arlin's hymen had "deep healed laceration elastic, located 3 o'clock and 6 o'clock positions" He opined that the "insertion of a hard object similar to a male sex organ during the period of sexual intercourse" could cause the lacerations which could have been inflicted more than a month's time from the date of examination on February 4, 1998.<sup>[7]</sup>

The lone witness for the defense was the accused. He testified that Arlin is his daughter and that she was eight years old at the time of his testimony on August 25, 1997, but he denied having committed the dastardly act on his daughter. According to him, on December 26, 1997, he and his family, including the victim Arlin, were in his father's house in Caloocan. They arrived home in Taguig in the afternoon of that day. He avers that Arlin filed the instant case against him because his sister-in-law, Violeta (also Belita above) Castañeda, did not want her sister Erlinda to marry the accused as he studied only up to Grade 1. Violeta wanted Erlinda and the accused to separate. The accused also claims that Violeta was angry at him because he and Violeta's husband previously had a fist fight.<sup>[8]</sup>

The trial court gave credence to the evidence of the prosecution and convicted the accused of the supreme penalty of death, viz:

"WHEREFORE, premises considered, this Court finds Arnel Asuncion y Villadus, guilty beyond reasonable doubt as principal of the crime of rape defined in Art. 266-A and penalized under Art. 266-B, par. 6(1) of the Revised Penal Code, as amended, and imposes upon him the supreme penalty of death; to pay his victim moral damages in the amount of P20,000.00 and to pay the costs"<sup>[9]</sup>

Hence, this automatic review with the accused's lone assignment of error, viz:

"THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

As the alleged rape was committed in December 1997, the law applicable to the case at bar is Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997" which took effect on October 22, 1997. Articles 266-A and 266-B of this law read:

"Article 266-A. Rape; When and How Committed.- Rape is committed-

By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

The **death penalty** shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

**1) when the victim is under eighteen (18) years of age and the offender is a parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; x x x " (*emphasis supplied*)

Jurisprudence dictates that in order for rape to be consummated, there must be penetration of the penis into the vagina. In **People v. Salinas**,<sup>[10]</sup> we ruled that perfect or complete penetration is not essential for the offense of consummated rape and that entry, to the least extent of the labia or lips of the female organ is sufficient. We held that, "(i)n a manner of speaking, bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle."<sup>[11]</sup>

In assailing the decision of the trial court, the accused points out that Arlin testified several times that he did not insert his penis into her vagina, thus negating the finding of consummated rape. He contends that assuming he is found guilty, he should only be convicted of attempted rape consistent with prevailing jurisprudence.<sup>[12]</sup>

We disagree. Being only eight years old when she testified and only seven when the rape took place, it would be unfair to apply the standards used for adults in assessing the testimony of little Arlin. Her testimony should be viewed as a narration of an eight-year old who barely understands sex and sexuality. It is with this stance and in the context of the other relevant portions of her testimony that we view Arlin's statement that the accused did not insert his penis into her vagina. The following are the relevant parts of her testimony:

COURT:

You said you were raped by your father, how were you rape (sic) by your father?

" A: Pinahiga po niya ako sa kama tapos dinaganaan po niya

ako.

FISCAL:

Q: Nung dinaganaan ka niya, saan nangyari iyon?

A: Sa bahay po.

Q: Nung nangyari iyon, asan ang Nanay mo?

A: Nagtatrabaho po.

Q: Iyong mga kapatid mo, asan sila?

A: Nanonood po ng T.V.

Q: Nung dinaganaan ka, anong nangyari?

A: Ni-rape po niya ako.

Q: Nakadamit ba siya nung dinaganaan ka niya?

A: Nakahubad po.

Q: Ikaw, nakadamit ka non?

A: Pinahubad po niya ako.

Q: Eh ang panty mo?

A: Hinubad din po.

Q: Nung nakahubad ang Tatay mo at saka ikaw, ano na ang nangyari pagkatapos non?

A: Ni-rape po niya ako.

Q: Meron bang ipinasok sa katawan mo?

A: Wala po.

Q: Ano lang ang ginawa niya nung nakapatong siya sa ibabaw mo?

COURT:

Hindi, sa katawan kase ang ginamit mo.

COURT:

Q: Was there anything that was inserted in your vagina?

A: Wala po.

FISCAL:

Q: Wala siyang ipinasok, ano lang ang ginawa niya nung nandun siya sa ibabaw mo?

A: Dinaganaan lang ako.

Q: Dinaganaan ka lang?

A: Opo.

Q: Nung nakadagan siya sa iyo, hindi siya gumalaw?

A: Gumalaw po siya.

**Q: Nung nakadagan siya sa iyo tapos gumalaw siya, nasaktan ka ba?**

**A: Opo.**

**Q: Anong masakit sa iyo noon?**

**A: Ang Pepe ko po.**

**Q: Bakit masakit ang Pepe mo?**

**A: Ni-rape po ako.**

**Q: Masakit na masakit ba ang Pepe mo noon?**

**A: Opo.**

COURT

When your father was on top of you, did he insert his penis into your vagina?

A: No, sir.

FISCAL:

**Q: Eh bakit sumakit and Pepe mo noon?**

**A: Kase po nung umihi ako may kasamang dugo, konti lang.**

**Q: Kailan iyong umihi ka na may kasamang dugo?**

**A:     Dati po.**

**Q:     Pagkatapos ng daganan ka ng Papa mo, nung araw na iyon umihi ka ng may kasamang dugo?**

**A:     Opo.**

**Q:     Paano mo nalaman ang salitang rape?**

**A:     Kantot po.**

xxx xxx xxx

**Q:     Paano mo nalaman ang salitang kantot?**

**A:     Kase siya ni-rape niya ako.**

**Q:     Pinasok niya ang titi niya sa Pepe mo?**

**A:     Kiniskis lang niya.**

**Q:     Iyong titi niya kiniskis sa pepe mo?**

**A:     Opo.**

xxx xxx xxx

**COURT:**

**Q:     When your father put himself on top of you he spread your legs, is that not correct?**

**A:     Opo.**

**Q:     After spreading your legs he made a push and pull movement?**

**A:     Opo.**

**Q:     And, it was at that time that you felt pain in your vagina?**

**A:     Opo.**

**Q:     How long was that push and pull movement of your father on top of you?**

**A:     Hindi ko po alam.**

**Q:     But, was a little longer?**

**A:     Opo.**

**Q:     When your father stop (sic) that push and pull movement on top of you, did you notice anything that happened in your vagina?**

**A:     Opo.**

**Q:     You noticed that there was some sticky substance in your pepe?**

**A:     Opo." (emphasis supplied)<sup>[13]</sup>**

**On cross-examination, she testified, viz:**

**"ATTY. LIM:**

**Q:     Arlin, isn't it the truth that your father never inserted his penis to your vagina?**

**A:     No, sir.**

**Q:     She (sic) did not insert his penis to your vagina, isn't it?**

**INTERPRETER:**

**Witness shaking her head.**