

## EN BANC

[ G.R. Nos. 134122-27, February 07, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPITO  
ALAMA MAGDATO, ACCUSED-APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

Before us for automatic review<sup>[1]</sup> is the decision<sup>[2]</sup> of 5 May 1998 of the Regional Trial Court, Branch 1, of Legazpi City, 5th Judicial Region in Criminal Cases numbered 7658 to 7663, inclusive, finding accused-appellant Pepito Alama Magdato (hereafter PEPITO) guilty beyond reasonable doubt of six (6) counts of rape committed on her 12-year old daughter Cherry Ann Magdato (hereafter CHERRY ANN) and, in each count, sentencing him to suffer the penalty of *death* and to pay the amounts of ₱50,000 for the "civil aspect" of the case, and ₱20,000 as exemplary damages.

The information in Criminal Case No. 7658 alleged that PEPITO committed the crime of rape as follows:

That in the morning of April 7, 1997, at Barangay Gabawan, Municipality of Daraga, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter CHERRY ANN MAGDATO, 12 years old, against her will and consent to her damage and prejudice.

#### ACTS CONTRARY TO LAW.<sup>[3]</sup>

The accusatory portions of the informations in Criminal Cases numbered 7659, 7660, 7661, 7662 and 7663 are similarly worded as that in Criminal Case No. 7658, except as to the dates and the time of the commission of the rapes which are, respectively, (a) 5 April 1997, at 9:00 a.m. in Criminal Case No. 7659<sup>[4]</sup>; (b) April 3, 1997, in Criminal Case No. 7660<sup>[5]</sup>; (c) 26 March 1997, at 10:00 a.m. in Criminal Case No. 7661<sup>[6]</sup>; (d) 24 March 1997, at 2:00 p.m. in Criminal Case No. 7662<sup>[7]</sup>; and (e) 11 March 1997, at 9:30 a.m. in Criminal Case No. 7663.<sup>[8]</sup>

The informations were based on complaints subscribed and sworn to by CHERRY ANN and her mother Rosita Llandelar Magdato.

The cases were consolidated and after PEPITO entered a plea of not guilty in each case during his arraignment, joint trial was had.

The witness presented by the prosecution were Dr. Babelyn Lana of the Daraga

Health Unit of Daraga, Albay, and CHERRY ANN.

PEPITO took the witness stand and offered denial and alibi for his defense. His son, Dennis, Amelia Mata and Delia Solomon were presented as his witnesses.

The evidence for the prosecution is summarized by the Office of the Solicitor General in the Appellee's Brief as follows:

A. The rape of March 11, 1997:

1. On March 11, 1997, at about 9:30 in the morning, twelve year old Cherry Ann Magdato was playing with her one-year old brother Oliver outside their house at Barangay Gabawan at Daraga, Albay. Momentarily, she was called by her father, appellant Pepito Alama Magdato, to come upstairs and to put her brother Oliver to sleep. Cherry Ann obeyed her father. Her brother Oliver though did not want to sleep yet. Since Oliver refused to sleep, Cherry Ann, who was a Grade IV student, decided to study (pp. 7-8, tsn, C. Magdato, November 6, 1997).
2. While studying, Cherry Ann noticed appellant looking at her uncle Junior Batagan from inside their house. Junior, who was their neighbor, was sweeping the area outside the house. Appellant went out of the house. When he came back, he turned on the radio almost full blast. Afterwards, he entered the bedroom where Cherry Ann was studying. He peeped at Junior Batagan through the holes in the room (pp. 8-9, tsn, C. Magdato, November 6, 1997)
3. Thereafter, appellant sat on the mat laid on the floor near where Cherry Ann was studying. Cherry Ann felt uneasy and asked him what he intended to do. Appellant did not answer but instead grabbed Cherry Ann's left arm with both hands. Cherry Ann tried to shout but appellant covered her mouth with his palm and held her by the waist (pp. 9-12, tsn, C. Magdato, November 6, 1997).
4. Appellant undressed himself. He removed his t-shirt and "maong" pants. Cherry Ann tried to escape from appellant by running from the bedroom but appellant caught her by her right foot and pulled her back into the bedroom (pp. 12-13, tsn, C. Magdato, November 6, 1997).
5. Appellant tried to take off Cherry Ann's skirt. As he pulled the skirt down, Cherry Ann pulled it back up. As appellant was stronger than his daughter, he was able to eventually remove her skirt and panty, leaving her brown t-shirt on. He then forced Cherry Ann to sit on a covered drum above two and a half feet in height, which serve as a rice container. At that time, the drum was half filled with rice (pp. 13-15, tsn, C. Magdato, November 6, 1997).
6. Appellant sat on top of Cherry Ann. He held his penis in his hand and inserted it into her vagina. Only part of appellant's penis was able to penetrate her sex organ. Cherry Ann felt excruciating pain

but did not notice if her sex organ bled. Her mother though, almost four hours later, noticed bloodstain on the bedroom floor and casually remarked that it probably came from their dog. After having sexual intercourse with his own daughter, appellant left but not before he threatened to kill her if she told her mother what had happened (pp. 15-19, tsn, C. Magdato, November 6, 1997).

7. Cherry Ann's mother, Rosita Llandelar, was not in the house when the rape was committed. She was a vendor who sold rice cakes and vegetables from morning till early evening in the market in Daraga, Albay (p. 22, Joint Decision, p. 8, tsn, C. Magdato, November 6, 1997).

B. The rape of March 24, 1997:

1. On March 24, 1997, at about two o'clock in the afternoon, Cherry Ann and her brother one-year old Oliver were inside the kitchen of their house at Barangay Gabawan in Daraga, Albay. Her brothers Pepito and Kevin, who were also in the house, were sent by appellant to buy cigarettes for him (pp. 20-21, tsn, C. Magdato, November 6, 1997).
2. Appellant approached Cherry Ann in the kitchen and caressed her back. Appellant took off his shorts. He did not bother to take off his brief after putting out his penis through a slit therein (p. 21, tsn, C. Magdato, November 6, 1997).
3. Cherry Ann tried to escape from appellant but the latter blocked her path and closed the windows and the door of the house. Appellant then took off Cherry Ann's skirt and shorts. Then he forcibly removed her panty. Cherry Ann tried to stop appellant by pressing her legs hard against each other but appellant who was very much stronger forced them open and inserted his penis into her vagina. Only part of appellant's penis was able to penetrate her sex organ after which he made a push and pull movement with his body. Cherry Ann felt excruciating pain (pp. 22-25, tsn, C. Magdato, November 6, 1997).
4. After having sexual intercourse with her, Cherry Ann saw appellant wiping from his penis a white substance which dripped off. Appellant warned her not to tell anybody about what took place between them otherwise he would kill her. Cherry Ann put on her shorts, went inside the bedroom and cried (pp. 25-26, tsn, C. Magdato, November 6, 1997).
5. When the second rape was committed, Cherry Ann's mother was not in the house (p. 25, tsn, C. Magdato, November 6, 1997).

C. The rape on March 26, 1997:

1. On March 26, 1997, at about 9:30 o'clock in the morning, Cherry Ann was in the kitchen of their house located at Barangay Gabawan in Daraga, albay, cooking vegetables. Cherry Ann's one year old

brother Oliver was also in the house (pp. 3, 6 and 11, tsn, C. Magdato, November 12, 1997).

2. While Cherry Ann was cooking, appellant approached her from behind and held her back. Fearful that appellant might rape her again, Cherry Ann cried (pp. 3-4, tsn, C. Magdato, November 12, 1997).
3. Appellant caressed Cherry Ann's hands. Cherry Ann tried to pull away from appellant but he held on tightly and forced her to sit on a bamboo bench about a meter in length. Cherry Ann tried to escape but appellant pushed her down and undressed her (pp. 4-7, tsn, C. Magdato, November 12, 1997).
4. Appellant pulled down Cherry Ann's skirt and panty. She tried to pull up her skirt but to no avail. Appellant then took off his shorts, leaving his short on. Cherry Ann tried to shout for help but appellant covered her mouth with his hand and pinned her thighs down on the bench. Appellant inserted his penis into her vagina. Only part of appellant's large penis was able to penetrate her sex organ. Cherry Ann felt excruciating pain (pp. 7-11, tsn, C. Magdato, November 12, 1997).
5. After the rape, Cherry Ann saw appellant wiping a whitish substance from his penis (p. 11, tsn, C. Magdato, November 12, 1997).
6. During the rape, Cherry Ann's mother, Rosita, was not in the house (p. 6, tsn, C. Magdato, November 12, 1997). However, on one occasion when appellant was not around, Cherry Ann told her mother about the rapes. Rosita told her daughter to just "ignore" what had happened because the next time it happened, they will file a case against him (pp. 12-14, tsn, C. Magdato, November 12, 1997).

D. D. The rape of April 3, 1997:

1. On April 3, 1997, at about ten o'clock in the morning. Cherry Ann was in the kitchen of their house in Barangay Gabawan, cooking vegetables. Her younger brother Oliver was also in the house (pp. 14 and 16, tsn, C. Magdato, November 12, 1997).
2. Appellant, who had been pacing the kitchen while Cherry Ann was cooking approached her and caressed her back. Cherry Ann tried to avoid appellant's touch but he held her at the back and made her sit the bamboo bench. Cherry Ann cried (pp. 14-17, tsn, C. Magdato, November 12, 1997).
3. Appellant pulled at Cherry Ann's shorts. Cherry Ann tried to pull up her shorts but appellant was too strong for her. He removed her shorts and her panty. Appellant took off his short pants. Cherry Ann tried to stand up from the bench but appellant pushed her down on the shoulders and sat on top of her (pp. 17 and 21, tsn, C.

Magdato, November 12, 1997).

4. Appellant inserted his penis into Cherry Ann's vagina. Only part of his large penis was able to penetrate her sex organ. Cherry Ann felt excruciating pain and cried. After the intercourse, Cherry Ann saw a whitish substance come out of appellant's penis (pp. 19-20, tsn, C. Magdato, November 12, 1997).
5. During the time of the rape, Cherry Ann's mother was not in the house (pp. 16 and 22, tsn, C. Magdato, November 12, 1997). Cherry Ann was not able to tell her mother about the fourth time she had been raped by appellant as he was always around her mother (pp. 22-23, tsn, C. Magdato, November 12, 1997).

E. The rape of April 5, 1997:

1. On April 5, 1997, at about nine o'clock in the morning, Cherry Ann was in the kitchen of their home at Barangay Gabawan, cooking rice. Oliver and another younger brother Kevin were in the house with her. Appellant was likewise in the kitchen, watching Cherry Ann (pp. 2-3, tsn, C. Magdato, November 19, 1997; p. 14, Joint Decision).
2. After cooking rice, Cherry Ann played. While Cherry Ann played, appellant embraced her. She tried to free herself from appellant's embrace but appellant was too strong for her. Appellant made her sit on a chair and then took off his short pants (p. 4, tsn, C. Magdato, November 19, 1997)
3. Appellant took off Cherry Ann's shorts and kissed her neck. Cherry Ann tried to resist appellant's advances but to no avail. Appellant sat on top of Cherry Ann (p. 5, tsn, C, Magdato, November 19, 1997)
4. Appellant proceeded to insert his penis into Cherry Ann's vagina. Cherry Ann tried to remove appellant's penis from her sex organ and move away from him. However, appellant succeeded in inserting his penis and made a push and pull movement. Only part of appellant's penis was able to penetrate her vagina. Cherry Ann cried (pp. 6-7, tsn, C. Magdato, November 19, 1997).
5. After the sexual intercourse, Cherry Ann saw a whitish fluid come out of appellant's penis. Appellant then dressed himself, while Cherry Ann put on her shorts, still crying (p. 8, tsn, C. Magdato, November 19, 1997)

F. The rape of April 10, 1997:

1. On April 10, 1997, at about ten o'clock in the morning, Cherry Ann was in their home at Barangay Gabawan, washing dishes. Cherry Ann's younger brothers Oliver and Kevin were also at home (pp. 8 and 15, tsn, C. Magdato, November 19, 1997<sup>[7]</sup>).