

## EN BANC

[ G.R. Nos. 148716-18, July 07, 2004 ]

### PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SALVADOR ORILLOSA Y DELA CRUZ, APPELLANT.

#### D E C I S I O N

##### YNARES-SATIAGO, J.:

On automatic review is the decision of the Regional Trial Court of Malolos, Bulacan, Branch 21,<sup>[1]</sup> finding appellant Salvador Orillosa y dela Cruz guilty of acts of lasciviousness in Criminal Case No. 2700-M-99, sentencing him to suffer the penalty of two (2) years, four (4) months and one (1) day to three (3) years of *prision correccional* in its medium period, and two counts of rape in Criminal Cases Nos. 2701-M-99 and 2702-M-99, for which he was meted the supreme penalty of death for each count.

Appellant was charged with three counts of Rape committed against his daughter, Andrelyn Orillosa, in three separate Informations, the accusatory portions of which read:

##### Criminal Case No. 2700-M-99 -

That sometime in the year of 1993, in the municipality of Guiguinto, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force and intimidation, with lewd designs have carnal knowledge of his own daughter, Andrelyn Orillosa, 9 years old, against her will and without her consent.

Contrary to law.

##### Criminal Case No. 2701-M-99 -

That on or about the 27<sup>th</sup> day of July, 1999, in the municipality of Guiguinto, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, with lewd designs, have carnal knowledge of his own daughter, Andrelyn Orillosa, 16 years old, against her will and consent.

Contrary to law.

##### Criminal Case No. 2702-M- 99 -

That sometime in the month of December 1997, in the municipality of

Guiguinto, Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously, by means of force and intimidation, with lewd designs, have carnal knowledge of his own daughter, Andrelyn Orillosa, 16 years old, against her will and without her consent.

Contrary to law.

Appellant pleaded not guilty to the charges, after which the three criminal cases were jointly tried.

Sometime in December 1997, at around 10:00 in the morning, while Andrelyn Orillosa was on the ground floor of their house, her father, appellant Salvador Orillosa, called her upstairs. Appellant closed the door of the room and mashed his daughter's breasts. He whispered to her not to tell anybody. Appellant then ordered Andrelyn to lie down on the floor, then he removed her t-shirt and pulled down her short pants. He mounted the victim and tried to force his penis into her daughter's genitalia. Despite his efforts, appellant failed to fully penetrate the organ of Andrelyn. When appellant stood up, Andrelyn saw his penis dripping with a whitish substance. Andrelyn could do nothing but to whimper in protest. After her ordeal, she ran away from home and sought refuge in the house of a relative. Before long, her mother fetched her and brought her back home. She told her mother about her harrowing experience, but the latter chided her instead for making up stories.

On July 27, 1999, Andrelyn slept in the upper room of the house. Earlier that day, her parents had a quarrel, which caused her mother to leave. At 2:00 in the morning, appellant entered Andrelyn's room and carried her to the ground floor. There, he took off her clothing, and laid her on the floor. He then straddled her, and kissed her repeatedly on the neck. After undressing himself, he forced his penis into her vagina, but only a portion thereof penetrated Andrelyn's organ. His lust satiated, appellant dressed up and left for work. Andrelyn ran upstairs crying because of physical and emotional anguish. Her Kuya Leandre saw her and asked why she was crying. She did not tell him what happened for fear that her father might vent his anger on her Kuya.

Sometime in August 1999, Andrelyn told her *Lola* Iging about her father's sexual assaults, but the latter did not believe her and even rebuked her for causing embarrassment to her father. With no one to turn to, she personally reported the matter to the barangay captain who accompanied her to the police where she gave a written statement.

On direct examination, Andrelyn also revealed that in 1993, appellant first molested her when he inserted his finger in her vagina.<sup>[2]</sup>

On September 23, 1999, Dr. Ivan Richard Viray, medico-legal officer of the PNP-Bulacan Crime Laboratory, examined the victim Andrelyn Orillosa. He noted the presence of deep-healed lacerations at 3, 5, 7, and 9 o'clock positions which, according to the victim, were inflicted by appellant since she was in Grade III.<sup>[3]</sup>

The defense presented Mary Ann Orillosa, the victim's younger sister, who testified that in 1993, when the alleged first rape incident occurred, she was 8 years old and

was living with her parents in Ilang-ilang, Guiguinto, Bulacan. Her sister, Andrelyn, was then 9 years old. She was always in the house after classes and during lunch breaks, and she could not recall any single moment when appellant and Andrelyn were left alone in the house. Her father worked from 10:00 in the morning to 8:00 in the evening everyday, including Saturdays and Sundays.

Mary Ann further stated that on July 27, 1999, at around 7:00 in the evening, when the alleged third rape incident happened, appellant and the other members of the family were in the house, except for Andrelyn who ran away from home. She surmised that Andrelyn might have been prompted to file the instant complaint because of her father's cruelty to her sister. She explained that appellant frequently whipped and spanked Andrelyn, especially when she did not remit the proceeds of the jueteng collection to appellant, who moonlighted as a collector of the illegal numbers game. According to her, she was forced to sign the complaint by the Barangay Captain on the pretext that if she did Andrelyn would become an actress. Moreover, the said Barangay Captain coerced her into admitting that she too was the victim of her father's lechery. She belied the charge that her father raped Andrelyn. The truth of the matter, she claimed, is that she saw Andrelyn having sex with five boys and was apparently taking pleasure in the experience.

Mary Anne further testified that during the whole month of December 1997, when the alleged second rape incident happened, Andrelyn worked as a babysitter in Plaridel, Bulacan. She could recall only one instance when Andrelyn went back to their house in Guiguinto. Andrelyn stayed in the house for a short time in the morning but went back to work shortly thereafter. During Andrelyn's short visit in December, their mother and younger siblings were in the house while appellant was working in Marilao.

On the witness stand, Leijani Orillosa also testified that together with her sisters, Andrelyn and Mary Anne, they were brought by the Barangay Captain to the Barangay Hall. Before the Barangay officials, Andrelyn wanted her to admit that they too were molested by their father, but she adamantly refused to accede to Andrelyn's wishes. According to her, the Barangay Captain coaxed her and Mary Anne into signing a document by promising them that if they did, their sister Andrelyn would become an actress. The Barangay Captain coerced her into signing the document by holding her hand and forcing her to affix her signature. She asserted that her father could not have raped Andrelyn because she would always leave the house and was out for days on end. She opined that Andrelyn filed the instant complaint because she could no longer take the beatings from her father.

On January 24, 2001, the trial court rendered a decision finding appellant guilty of the crimes of acts of lasciviousness and of two counts of rape, the decretal portion of which reads:

WHEREFORE, this Court hereby resolves and finds the accused Salvador Orillosa GUILTY beyond reasonable doubt, in Criminal Case No. 2700-M-99 with the crime of Acts of Lasciviousness for which he is hereby sentenced to suffer the penalty of Two (2) years Four (4) months and One (1) day to Three (3) years of *prision correccional* medium; and in both Criminal Cases Nos. 2701-M-99 and 2702-M-99 with the crime of rape (with qualifying circumstance) for which, he is hereby sentenced to suffer the supreme penalty of Death on two counts.

Additionally, the offended party is to be indemnified in the sum of P3,000.00 in Criminal Case No. 2700-M-99 and P75,000.00 each in Criminal Cases Nos. 2701-M-99 and 2702-M-99. She is likewise awarded moral damages in the amount of P5,000.00 in the first case and another P100,000.00 each of the two other cases.

With costs against the accused.

SO ORDERED.<sup>[4]</sup>

Hence, this automatic review, pursuant to Article 47 of the Revised Penal Code, as amended. In his Appellant's Brief, appellant raises the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE GROUND OF THE CRIME OF ACTS OF LASCIVIOUSNESS.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF RAPE AND IN IMPOSING THE DEATH PENALTY.<sup>[5]</sup>

In support of the first assigned error, appellant argues that the rape allegedly committed in 1993 was not mentioned during the direct examination or in the cross-examination of Andrelyn and was only brought out on re-direct examination. In fact, the narration of the alleged crime of rape was insufficient so much so that the trial court reduced the charge to acts of lasciviousness. Moreover, the prosecutor put words in the mouth of the witness when he premised his question as: "Did you not say in 1993, your father merely inserted his finger on the private organ?"

Appellant's claim that the prosecution failed to prove its charge of acts of lasciviousness upon the victim is belied by the following exchange on direct examination of Andrelyn:<sup>[6]</sup>

Fiscal Gammad:

Q. Andrelyn, please tell us the truth in this statement, more particularly on the second page, did you really give this statement?

A. Yes, ma'am.

Q. Awhile ago, I asked you if in December of 1997 was the first time that you were

molested by anyone including by your father and you said "yes". It appears then here that in 1993 aside from fingering, your father inserted his "titi" to your private organ, will you please explain that?

A. In 1993, that was the first time that he molested me by fingering me then followed