

## SECOND DIVISION

[ G.R. No. 126025, July 06, 2004 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOSELITO ALMENDRAL Y ALCASABAS, ACCUSED-APPELLANT.**

### D E C I S I O N

**TINGA, J,:**

In this case of incestuous rape, the victim claims she was defiled by her own father about forty (40) times. Moral justice demands that the father be punished for each and every despicable act on his minor daughter, but the law, restricted by the requirements of procedure, allows his conviction only for two counts of simple rape.

This is an appeal from the *Decision*<sup>[1]</sup> in Criminal Case No. 9116-B of the Regional Trial Court of San Pedro, Laguna, Branch 31, finding appellant Joselito Almendral y Alcasabas guilty beyond reasonable doubt of the crime of Rape and imposing upon him the penalty of *reclusion perpetua* and the payment to the complainant, his daughter Ma. Jessica Almendral, of the amounts of fifty thousand pesos (P50,000.00) as civil indemnity and one hundred thousand pesos (P100,000.00) as moral damages.

The *Information* that spawned the *Decision* states:

That on or about sometime (*sic*) 1987, prior and subsequent thereto, in the Municipality of Biñan, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Joselito Almendral y Alcasabas, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of said Maria Jessica Estrada y Almendral against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.<sup>[2]</sup>

Appellant pleaded not guilty to the charge.<sup>[3]</sup> Trial proceeded in accordance with the Rules. The prosecution presented two (2) witnesses, namely: Ma. Jessica Almendral, the complaining witness, and Diosalinda Alcaraz, sister-in-law of the appellant.

Maria Jessica Estrada was born on December 27, 1976 to appellant and his wife, Emelinda. The other children born to the couple were Richelle (or Rachel), Michael, Joselito and Sarah Jane. They lived in Barrio Tubigan, Biñan, Laguna.

Sometime in 1987 when Jessica was eleven (11) years old and there were no other persons in the house, appellant summoned her to the room. He made her sit on the *papag* and touched her breast and her "private organ." As she was seated, he

undressed her. Not knowing what was going on, Jessica allowed appellant to undress her completely. Then he made her lie down and placed himself on top of her. He forcibly inserted his penis into her "private organ." At first, he failed to penetrate her but he tried to do it again and succeeded. Later, appellant dressed, told Jessica not to tell her mother about what happened, and left the house. It was then that Jessica noticed that her private part was bloody. Afraid that appellant might harm her should she tell her mother, she kept mum about the incident.<sup>[4]</sup>

Appellant did the same sex act to her around twenty (20) more times before she reached the age of thirteen (13) and twenty (20) more times after that, all in their house in Tubigan.<sup>[5]</sup>

The last time appellant sexually violated her was in 1992 when she was fifteen (15) years old and in third year high school. He was lying down on the bed in the room that she shared with her sister Richelle when appellant called her, "*Jessica, halika.*" Jessica was not surprised to find her father in that room because that was the only bedroom in the house; her parents slept in the sala. They were alone then and when Jessica approached appellant, he held her breast, made her lie down, and placed himself on top of her. Jessica did not resist. She was afraid that should she reveal to anyone what happened, it would be communicated to other people and should he hear of it, appellant would pinpoint her as the source of "bad talks" about him.<sup>[6]</sup>

After her marriage on June 30, 1994, her husband, Analito Estrada (Anton), asked her "who was ahead of him" in deflowering her. Jessica told her husband about the sexual incidents with her father. Later, she revealed the same incidents to her aunt, her cousins and some friends. Her mother learned that she and her sister Richelle had been raped by their father only through a subpoena. Jessica and her mother had a confrontation and her mother told Jessica to withdraw the complaint.<sup>[7]</sup>

Sometime in October 1994, Jessica and Richelle accompanied by their aunt Diosalinda Alcaraz filed their respective complaints for rape against appellant before the CIS at Camp Vicente Lim. Richelle had narrated to Jessica that she was asleep when their father raped her under threat of a firearm he carried. Richelle later withdrew her complaint and asked Jessica to do likewise through a letter she sent Jessica through their mother.<sup>[8]</sup>

Diosalinda Alcaraz, elder sister of appellant's wife Emelinda, was in her house on June 1, 1994 when Richelle and Jessica asked for help in reporting to the authorities the rapes committed against them by their father. Diosalinda told Jessica to think first before filing a complaint against appellant. It took four months before the two decided to report the crimes to the authorities and when they did, Diosalinda accompanied them to Camp Vicente Lim because Jessica and Richelle asked that their complaints be filed with the CIS. They did not want to report to the *barangay* captain because appellant was then the *barangay* secretary. Because she helped Jessica and Richelle in lodging the complaints, Emelinda stopped talking to Diosalinda.<sup>[9]</sup>

After the prosecution had rested its case, the defense presented evidence consisting of the testimonies of appellant's wife Emelinda, his daughter Richelle, Rene Maravillas, and appellant himself.

Emelinda denied that her husband ever raped their daughters. She believed that the charges of rape were prompted by her sister Diosalinda Alcaraz. According to Emelinda, Diosalinda was mad at her and they did not talk to each other because Diosalinda believed that she (Emelinda) caused the demolition of Diosalinda's house, which was erected on Emelinda and appellant's lot.<sup>[10]</sup> Emelinda testified that appellant could not have committed the offenses because in 1987, appellant had left Biñan, Laguna to work as the private driver of Mayor Feliciano Bautista of Sta. Barbara, Pangasinan. In fact, because he was employed by the mayor for two years, appellant maintained a savings account with the Rural Bank of Sta. Barbara with the last entry therein being dated September 9, 1988. Because of his job, appellant seldom went home. He would only do so once a month although there were times when Emelinda herself would go to Sta. Barbara to get money.<sup>[11]</sup>

Emelinda also believed that Jessica's husband, Anton Estrada, had encouraged Jessica to file the complaint. Anton was allegedly mad at her and appellant because appellant confronted him about the story Anton banded around that he was forced to marry Jessica. Emelinda even claims that Jessica admitted to her that the filing of the case was her husband's decision and she would do whatever her husband would tell her.<sup>[12]</sup>

Richelle, testifying in favor of appellant, admitted that she filed a complaint for rape against her father but she did so only because she was mad at him. When Richelle saw him detained at Camp Vicente Lim, her conscience bothered her. She did not tell the authorities that there was no basis for her complaint; neither did she do anything while her father languished at the detention center for a year. It was only when she testified in the case filed by Jessica that Richelle claimed that there was no truth to her complaint against her father.<sup>[13]</sup>

Eventually, on February 14, 1995, Richelle filed an affidavit of desistance with respect to her own case, stating that she filed the complaint for rape because she had a grudge against her father and after thinking deeply, realized that filing the complaint was a mistake. Richelle claimed that since childhood, appellant had been cruel to them and Richelle resented him for this. When she found out that Jessica had filed the complaint against their father, she also filed the same charge against him.<sup>[14]</sup>

Rene Maravillas testified that he recommended appellant to his brother-in-law, Mayor Bautista, as the latter's personal driver. As the "personal agent" of Mayor Bautista, Rene was with appellant from 1986 to 1988 and they would go home to Biñan, Laguna once a month.<sup>[15]</sup>

Testifying in his own defense, appellant denied Jessica's allegations of rape. Appellant claimed that as a father he loved and took care of his children. He tried his best to discipline them. However, when Jessica was about thirteen years old, she left the house and got hooked on vices such as taking drugs. To discipline her, appellant would hit and tie her down. He would discipline all his children but he scolded, hit and tied down only Jessica and Richelle who, like Jessica, also learned to take drugs.<sup>[16]</sup>

Appellant validated his wife Emelinda's testimony as to his whereabouts during the years that the crimes were committed, and his wife's theory that the rape charge was instigated by Emelinda's sister and Jessica's husband.

Appellant testified that he was employed as the "personal security aid" of Mayor Feliciano Bautista of Sta. Barbara, Pangasinan from 1986 to 1988. He would go home to Biñan, Laguna once a month, and sometimes he would not go home at all. [17]

Appellant avers that there is no truth to Jessica's claim that appellant raped her around forty (40) times. If that were true, then Jessica should have filed the case against him as early as 1987. Jessica and Richelle filed the complaints only because they were influenced by other people like Diosalinda and Anton. Diosalinda had a grudge against him because his wife asked her and her family to vacate the place they were residing. There was bad blood between appellant and Anton. Appellant objected to Jessica and Anton's marriage because the latter was a drug addict but ultimately gave his consent because the two had eloped and were living together for three days when they asked to be wed. Whenever Anton was drunk, he would utter slanderous remarks against appellant and his wife. Anton was disrespectful towards appellant and his wife, to the point that Anton even boxed Emelinda. [18]

As stated at the outset, the trial court found appellant guilty of the charge filed against him. Through his counsel, Atty. Jose B. Alvarez, appellant appealed to this Court. For failure to comply with his duty as counsel for appellant, Atty. Alvarez was suspended from the practice of law for five months in the *Resolution* of December 4, 2000. [19] The Court then appointed the Public Attorneys' Office (PAO) as counsel *de officio* of appellant and required the PAO to file appellant's brief.

In this appeal, appellant imputes error to the trial court in convicting him based on the "improbable and incredible testimony of the private complainant." Jessica's testimony allegedly shows an inherent lack of credibility on crucial points, and disturbing improbabilities which cast doubt on the veracity of her story. Considering the implausible narration, the appellant believes that his guilt was not proven beyond reasonable doubt. [20]

The issue of credibility of the victim-witness is best addressed to the reasonable discretion of the trial court. As held by the Court a countless number of times, it is the trial court which has the unique opportunity to observe the witness firsthand and note her demeanor, conduct, and attitude under grueling examination. Hence, on the issue of credibility of witnesses, findings of the trial court will not be disturbed on appeal unless the lower court overlooked, ignored, misapprehended, or misinterpreted certain facts or circumstances so material such as to affect the outcome of the case. [21] In this instance, the trial court said:

x x x In addition thereto, Ma. Jessica related in a clear, straightforward and natural manner how she was raped by accused since she was 11 years old. x x x Ma. Jessica went through all the shame and humiliation of appearing in court in a public trial in order to exact justice for the sexual abuse she suffered at the hands of her own father, the herein accused. In this regard, her testimony is entitled to full faith and credit x x x. [22]

There is thus no reason to deviate from the findings of the trial court on the issue of credibility of the victim as a witness.

Appellant contends that the victim's testimony that she was raped about forty (40) times is incredible because she could not even remember the approximate dates thereof. He alleges that the victim divulged her ordeal only after her husband discovered that he was not the first man in his wife's life and charging appellant with rape was "an easy way out indeed to appease the ire of her husband who ha(d) violent tendencies."<sup>[23]</sup>

The victim's failure to recall the exact dates of the sexual assault she experienced in the hands of appellant, a failure she frankly admitted in court,<sup>[24]</sup> does not necessarily puncture her credibility. Forcible sexual invasion committed by no less than one's own father is an agonizing and distressful experience that, by human nature, is better left buried in the deepest recesses of one's memory. Repeated forty (40) times, the experience may only result in the victim's subconscious effort to erase and blot out any details thereof. Thus, in *People v. Villar*, where the child victim claimed that the accused raped her more than a hundred times, the Court said:

Furthermore, the Court cannot impose the burden of exactness in the victim's recollection of her harrowing experience more so in the present case where the victim was an innocent and tender 9-year old lass when she was first raped. It is all the more understandable that the victim in the present case may have been confused as to the exact details of each and every rape incident, considering that she claimed she had been sexually ravished for more than 100 times in a span of one whole year. It is in fact expected that such a victim would rather wish and even purposely forget the abhorrent memories of every single occasion. This being the case, it would be exacting too much should the Court demand a very accurate, detailed, and flawless account of the two occasions now subject of her charges out of the 100 occasions of forcible intercourse. In *People vs. Sagucio* (277 SCRA 183 [1997], where this Court faced the same issue of alleged inconsistencies in the victim's narration, we held that errorless testimony cannot be expected especially when a witness is recounting details of a harrowing experience. A court cannot expect a rape victim to remember every detail of the appalling outrage.<sup>[25]</sup>

Under the circumstances, it is enough that the victim was able to recount the first and last of the around forty (40) bestial sexual attacks against her.

The candid admission of the victim that her husband inquired about the "first man" in her sexual life attests to her credibility. It could have indeed been a factor that led her to divulge her ordeal to other people. However, the victim's refusal to divulge her harrowing sexual experience to anyone until her husband inquired about the man who took her virginity is explained by the victim's testimony that appellant, who exercised "ascendancy" over her, was a cruel man who maltreated her. The claim of maltreatment was in fact corroborated by defense witness Richelle.<sup>[26]</sup> Clearly, after her marriage, the victim found freedom from such "ascendancy" and an ally in her husband.

Hence, assuming that it was her husband who instigated the filing of the rape