

EN BANC

[G.R. Nos. 149392-94, January 16, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCILO UNTALAN Y PEREZ, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

The victim of sexual abuse in the case at bar is 17-year old **MARIVIC UNTALAN**, a first year college student residing at Ambulong, Batangas City. The aggressor is her very own father, **accused LUCILO UNTALAN**. The accused sired eight (8) children with his common-law wife, Damiana Arcega, the eldest child being Marivic.

The prosecutor charged the accused with three (3) counts of incestuous rape. Except for the date of commission and age of the victim, the three (3) separate Informations^[1] were similarly worded as follows:

"That on or about August 22, 1997 (November 1998 and January 1999) at around 11:00 o'clock in the evening at Sitio Mahacot, Brgy. San Pedro, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of Marivic Untalan y Arcega, who was then a minor, 15 (16 and 17) years of age, against her will.

That the qualifying aggravating circumstance of relationship is attendant in the commission of the offense, the then 15 (16 and later 17) year old victim/offended party being the daughter of the accused.

CONTARY TO LAW."

Marivic painfully recounted her cruel fate in the hands of her own father, the accused. On August 22, 1997, at about 11:00 p.m., 15-year old Marivic was in their house in San Pedro, Batangas City, together with her seven (7) siblings and her parents. She was then sleeping in her bedroom on the second floor, while the other household members were sleeping on the ground floor of their house. She was rudely awakened when she found appellant on top of her, covering her mouth with his hand and forcibly undressing her. He then successfully inserted his organ into hers. She felt pain and a sticky liquid came out from appellant's organ. After her defloration, she kept mum about the incident as she was afraid.

The sexual assault was repeated in November 1998 and January 1999 in the same manner. During the span of two (2) years, from 1997 until January 1999, the accused molested Marivic more than ten (10) times but Marivic could no longer remember the exact dates. It usually happened at midnight when the appellant

would come into her bedroom to satisfy his bestial desires. He would cover her mouth with his hand and undress her. He would then repeatedly do the pumping motion on top of her. She would try to push him away but to no avail. On some occasions, appellant carried with him a bolo or metal pipe when he entered her bedroom. Aside from the sexual molestation, Marivic also suffered physical beating from the accused. At times, the accused would kick her on the head and forbid her to go outside the house. The accused was also wont to hurt and maltreat her other siblings.^[2]

Marivic was last abused by the accused in January 1999. By July of the same year, Marivic started experiencing stomach cramps. Upon the advice of her classmate, Marivic consulted DR. MELODEE MERCADO at the Batangas Regional Hospital for physical examination. Dr. Mercado immediately noticed that Marivic's abdomen was enlarged, approximately seven (7) months into pregnancy, with fetal heartbeat in her womb. Further examination revealed old hymenal lacerations. Marivic's organ admitted two (2) fingers with ease. Marivic, during the course of her examination, confided to Dr. Mercado that she was sexually molested by the accused.^[3]

Marivic's teacher and mother accompanied her to the DSWD. When asked whether she wanted to file criminal charges against the accused, Marivic answered in the affirmative, desiring to obtain justice for the harrowing fate she suffered in the hands of the accused. Marivic's mother, who has known about the molestation when once she chanced upon the accused in the act of abusing Marivic, had qualms about the filing of rape charges as she pitied her other children should the accused be put to jail. The DSWD personnel could only gape in disbelief at the reaction of Marivic's mother. Nonetheless, in due time, Marivic lodged her complaint for rape against the accused with the police authorities.^[4]

On September 21, 1999, at about 5:00 p.m., the accused was arrested by PO3 FERDINAND LAURETA, a member of PNP Batangas City, after the latter received information that the accused was in front of the DSWD building in Batangas that day.^[5]

A day after, Marivic gave birth to a baby girl, sired by the accused. The baby was left at the Shalom Bata Institution, a parenting establishment in Parañaque, Metro Manila.^[6]

Only the accused testified for his defense. He denied the rape charges imputed against him. He protested that he was charged with rape as he severely berated Marivic when he noticed that she was carrying a child in her womb. He wanted her to finish her college education and have a bright future. He denied fathering the baby. Appellant insisted that he could not have raped and impregnated Marivic as he underwent herniorrhaphy in 1994 when his testicles were operated on due to direct inguinal hernia. As a result, he claimed to have become impotent. He presented the medical certificate issued by his physician on August 30, 2000 which certified the date when the accused underwent herniorrhaphy.^[7] On cross-examination, however, the accused admitted that after his operation, he was able to sire two (2) children with his common-law spouse.^[8]

After trial, the trial court found the accused guilty as charged, thus:

"WHEREFORE, accused Lucilo Untalan y Perez is hereby sentenced to the supreme penalty of Death in each of these three (3) cases. He is further directed to indemnify complainant in the total sum of One Hundred Fifty Thousand Pesos (P150,000.00) as moral damages and to pay the costs.

x x x

SO ORDERED."^[9]

On his lone assignment of error, appellant claims that the trial court erred in convicting him on the sole basis that the appellant had moral ascendancy over the victim as they were living under the same roof. Citing the case of *People vs. Chua*, ^[10] appellant argues that the prosecution should have presented evidence to show that appellant intimidated the victim into giving in to his sexual advances. Appellant thus insists that the sexual relation between him and his daughter was consensual.

We disagree.

The prosecution evidence proved beyond reasonable doubt that Marivic was repeatedly abused by the appellant through force and intimidation and their coitus were far from consensual. She painfully recounted her ordeal during the trial, thus:

"Q On August 22, 1997 at around 11 o'clock in the evening, do you recall where you were?

A Yes, sir.

Q Where were you?

A I was at home, sir.

x x x

Q What happened?

A I was raped by my father, sir.

Q Who were with you in your house on said date and time when you were raped by your father?

A My siblings and my father, sir.

Q Where were you in particular inside that house when you were raped by your father?

A In my bedroom, sir.

Q What about the other persons inside your house, where were they?

A They were in the room downstairs, sir.

Q How did your father rape you?

A I was undressed by my father and my mouth was covered by his hand, sir.

Q But before your father raped you, what did he do?

A He undressed me, sir.