

## EN BANC

[ G.R. No. 147033, April 30, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIO UMayAM,  
APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

In incestuous rapes, the age of the victim and her relationship with the offender must be both alleged in the information and proven beyond reasonable doubt during the trial; otherwise, the death penalty cannot be imposed. These circumstances alter the nature of the crime and increase the penalty.

### The Case

For automatic review before this Court is the January 31, 2001 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Ilagan, Isabela (Branch 16) in Criminal Case No. 2825, finding Mario Umayam guilty beyond reasonable doubt of qualified rape. The dispositive portion of the Decision reads thus:

“WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape, [the Court] hereby sentence[s him] to suffer the supreme penalty of **DEATH** and to indemnify the victim Dominga C. Umayam of P75,000.00 plus the sum of P50,000.00 as moral damages and the sum of P50,000.00 as exemplary damages and to pay the costs.”<sup>[2]</sup>

The January 16, 1998 Information<sup>[3]</sup> charged appellant as follows:

“That on or about the 31<sup>st</sup> day of May, 1997, and for sometimes prior thereto, in the [M]unicipality of Ilagan, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, intimidation and with lewd designs, did then and there, willfully, unlawfully and feloniously, have carnal knowledge with his own daughter **DOMINGA C. UMayAM**, a girl of 15 years of age and subjecting her to exploitation and sexual abuse, against her will and consent.”<sup>[4]</sup>

When arraigned on April 1, 1998, appellant, with the assistance of his counsel *de oficio*,<sup>[5]</sup> pleaded not guilty.<sup>[6]</sup> After trial in due course, appellant was found guilty of qualified rape.

### The Facts

#### Version of the Prosecution

In its Brief,<sup>[7]</sup> the Office of the Solicitor General (OSG) summarized the

prosecution's version of the facts in the following manner:

- "1. Dominga C. Umayam, then fifteen years old, was barely eight (8) years old when her father, appellant Mario Umayam, started sexually abusing her. The first sexual assault occurred in the 'sala' of their residence at Calamagui 2<sup>nd</sup>, Ilagan, Isabela, while she was sleeping. It was the day that her older sister Irma, who had passed away, was buried. Dominga was reportedly mentally retarded but she had the capacity to understand and recollect.
- "2. Appellant repeatedly sexually abused his daughter. At the age of nine years, Dominga was again raped by appellant. The repeated sexual abuse continued for several years and took place in their residence in Calamagui, Ilagan, Isabela. During these rapes, appellant threatened to kill Dominga if she told anyone about the sexual assault. Dominga believed her father and did not report the rapes.
- "3. The last rape occurred on May 31, 1997, at eight o'clock in the evening. Dominga was fourteen years old and a grade V pupil at the Ilagan South Central School at Ilagan, Isabela. That night, Dominga was sleeping on a wooden bed which she shared with her mentally ill mother, Brigida. They slept in a room where appellant, Dominga's Aunt Evelyn and Dominga's elder brother Pascual also slept.
- "4. Dominga was roused from her sleep when appellant took off her clothes, tickled her private parts and inserted his penis into her vagina. Appellant made a push-and-pull movement and stayed on top of Dominga for about ten minutes. After satisfying his lust, appellant went back to sleep. Dominga, who felt excruciating pain after being ravished, cried herself to sleep.
- "5. Appellant's misdeeds were eventually discovered when Evelyn witnessed appellant kissing Dominga and mashing her breast. Evelyn, who was the wife of appellant's brother, reported the sexual abuse to another aunt of Dominga, Pacing, who went to the police authorities. Dominga was investigated by the police.
- "6. On June 2, 1997, Dominga was examined by Dr. Lilian Bringas, the Chief of the Obstetrics Department of the Isabela Provincial Hospital in Ilagan, Isabela. The doctor found that Dominga had old healed lacerations at the three o'clock and nine o'clock positions and that an external force, such as the penetration of a male organ, masturbation and

accident, could have caused the lacerations.”<sup>[8]</sup>  
(Citations omitted)

Version of the Defense

On the other hand, appellant’s statement of facts is as follows:<sup>[9]</sup>

“Accused Mario Umayam on the other hand, vehemently denied the accusation. He averred that in the evening of May 31, 1997 he was at home with his wife Brigida, his sister Patty and Nida and his children Dominga and Pascual. He averred that he and Pascual slept together on a separate bed, while her daughter Dominga slept beside her mother in another bed.

“He averred that he did not rape her daughter on May 31, 1997 or in any occasion prior to the said date. Accused-appellant further declared, that his daughter filed the charges against him because he laid hands on her, when she insisted in going to Manila with her brother Pascual.

“Leonida Sawadan declared that she knows the accused being her elder brother as well as Brigida, the wife of his brother, and their children Dominga, and Pascual who are all living in their house at Calamagui 2nd, Ilagan, Isabela. In the early morning of May 31, 1997, Pascual Umayam arrived home from Manila after being away for 6 months. Dominga intimated to her brother Pascual, that she would go with him to Manila. However, his father Mario did not allow her to go, since her mother Brigida is mentally ill and that she could not leave her alone because of her condition. Furthermore she was still studying. Dominga was insistent, prompting her father Mario to slap her. Dominga cried, then left and went to her cousin’s place. Dominga however came back in the afternoon when her father pacified her and asked for forgiveness. In the evening of May 31, 1997, Dominga slept in their house, and with her in the said room, which measures about 3x4 meters, were her parents and her brother Pascual. Witness Sawadan and her husband likewise slept in the adjoining room. She did not notice any unusual incident that happened during that night and until the following morning of June 1, 1997 at 7:00 o’clock when she went to her stall. In the afternoon of June 1, 1997, she came to know from her sister Paz Parungao that their cousin, Pacita Umayam had Dominga medically examined and that a case for rape is being lodged against their brother Mario. She further declared that she does not know any reason why Dominga would charge her father Mario with a very serious offense. She has not heard of any complaint that Dominga Umayam was raped during the wake of her sister Irma, much less since the time Dominga was 8, 9, 10 and 14 years old and so on until May 31, 1997. This is the first time that she is giving information relative to the May 31, 1997 incident and she neither gave any statement to the police nor to the investigating fiscal. Because the accused is now in jail, she took custody of Brigida Umayam, the wife of the accused, she being a little bit mentally deranged, since she gave birth to private complainant Dominga.”<sup>[10]</sup> (Citations omitted)

## **Ruling of the Trial Court**

The RTC gave full weight and credit to the testimony of private complainant. It held that she "candidly, positively and categorically testified as to her harrowing experience at the hands of no less than her father."<sup>[11]</sup> The court *a quo* also ruled that she was "emphatic and categorical in pointing to [her] father Mario as her tormentor or as the very person who sexually molested her and against her will on the evening of May 31, 1997."<sup>[12]</sup> It did not believe his denial, which was unsubstantiated and inferior to her positive identification of him as the culprit.

Hence, this automatic review before us.<sup>[13]</sup>

## **Issues**

In his Brief, appellant assigns the following alternative errors:

"I

"The Court a quo gravely erred in finding that the guilt of the accused-appellant for the crime of rape has been proven beyond reasonable doubt.

"II

"Assuming arguendo that the guilt of the accused-appellant has been proven beyond reasonable doubt, the court a quo erred in imposing the extreme penalty of death."<sup>[14]</sup>

## **The Court's Ruling**

Appellant is guilty of simple, not qualified, rape; hence, the penalty should be reduced to *reclusion perpetua*.

### **First Issue:**

#### **Guilt Beyond Reasonable Doubt**

Appellant faults the RTC for having accepted the testimony of private complainant with precipitate credulity. Describing her testimony as incredible and incoherent,<sup>[15]</sup> he argues that his conviction cannot be based on her mere say-so.

This Court has consistently ruled that in view of the intrinsic nature of the crime of rape where only two persons are normally involved, the testimony of the private complainant must always be scrutinized with great caution. In a prosecution for rape, credibility becomes the single most important issue.<sup>[16]</sup>

We therefore always subject a victim's testimony to careful scrutiny, so as to eradicate any doubt as to the complicity of the accused in the crime. With care and circumspection, we assessed the testimony of private complainant in the present case. Undoubtedly, it was positive, clear and convincing. Her narration could have been made only by someone subjected to a harrowing sexual assault. She testified

thus:

“Q Do you remember of any incident that happened on the night of May 31, 1997 while you were in your home at Calamagui 2nd, Ilagan, Isabela?

A Yes, sir.

Q What was that incident all about?

A My father undressed me, sir.

Q What were you wearing at the time when you were undressed by your father?

A Short pants.

Q Aside from your shorts, what else were you wearing?

A Panty, sir.

Q What else?

A I was wearing a T-shirt, sir.

Q When you were undressed by your father on the night of May 31, 1997, what were you doing at that time?

A I was crying, sir.

Q What I mean, what were you doing at that time? Were you sleeping or were you awake?

A I was sleeping, sir.

Q At what point of time were you awakened?

A When my father was removing my garments and he was about to insert his penis into my private part.

Q What was your father wearing at the time when he was undressing you?

A He was wearing short pants.

Q And after he undressed you, what did he do, if any?

A He inserted his penis into my private part.

Q Before he inserted his penis into your private part, what did he do first?

A He tickled my private part.

Q After he tickled your private part, what else did your father do?

A None, sir.

Q Did you not mention earlier that your father inserted his penis into your private part?

A Yes, sir.

Q Was he able to insert his penis into your private part?