

EN BANC

[G.R. Nos. 136742-43, September 30, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO ALFARO Y YALUNG, APPELLANT.

D E C I S I O N

PER CURIAM:

Incestuous rape is at all times despicable and ultimately reprehensible as its sordidness is beyond the understanding and imagination of any normal human being. As one of the most perverted forms of sexual aberration, it deserves this society's condemnation without any compassion.

For automatic review is the Decision^[1] dated October 23, 1998 of the Regional Trial Court, Branch 55, Macabebe, Pampanga in Criminal Cases Nos. 97-1887-M and 97-1888-M finding Danilo Y. Alfaro, appellant herein, guilty of two counts of rape and imposing upon him the supreme penalty of death.

Appellant was charged with rape in two Informations^[2] which, except for the dates of its commission, similarly read as follows:

"That on or about the [15th day of January 1996^[3] and 14th day of February 1996^[4]], in Barangay San Nicolas, Municipality of San Simon, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, DANILO ALFARO Y YALUNG alias DAN/DANNY, with lewd design, taking advantage of superior strength and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with **her daughter**, Marilou M. Alfaro, **13 years old**, against her will and without her consent.

"Contrary to law."

Upon arraignment, appellant, assisted by counsel, pleaded "not guilty" to both charges.^[5] Thereafter, the two cases were jointly heard. The prosecution presented three witnesses, namely: Marilou Alfaro, the victim; Maria Luisa Alfaro, the victim's mother; and Dr. Marie Antoinette Golding who examined the victim. Their testimonies established the following:

Marilou was born on September 14, 1983 to appellant and Maria Luisa as shown by her Certificate of Live Birth.^[6] They live in San Nicolas, San Simon, Pampanga. On January 15, 1996, at around 10:00 o'clock in the evening, while Marilou was sleeping in their house she was suddenly roused from sleep by appellant when he removed her panty and placed himself on top of her.^[7] She felt terrible pain as he

inserted his penis in her vagina. He continued molesting her sexually until he was able to satisfy his bestial lust.^[8] After that harrowing incident, Marilou noticed a white sticky substance in her private part. Then she wore her panty and slept.

Again, on February 14, 1996, at around 11:00 o'clock in the evening, while Marilou and her two brothers were sleeping in their house, she was awakened by appellant as he undressed her and placed himself on top of her, inserting his penis into her vagina.^[9] She cried because it was painful. Thereafter, she found a white sticky substance in her private part.^[10]

Marilou did not immediately tell the incidents to anybody because appellant threatened to kill her and her mother if she would do so.^[11]

Maria Luisa testified that in the evening of April 23, 1997, she caught appellant stooping over their sleeping daughter Marilou and kissing her genitalia.^[12] Surprised by his wife's presence, he immediately went out with his penis protruding out of his shorts.^[13] He warned her to keep quiet or else he would kill her. This incident prompted Marilou to inform her mother that appellant sexually molested her on January 15 and February 14, 1996.

On April 25, 1997, Marilou accompanied by her mother, was examined by Dr. Marie Antoinette Golding, a resident physician of the Department of Obstetrics and Gynecology at the Jose B. Lingad Memorial Regional Hospital in Pampanga. On April 27, 1997, she issued a Medico-Legal O.B. -Gyne Report^[14] stating that the victim's hymen has superficial healed lacerations at 3:00 o'clock and 9:00 o'clock positions which could have been caused by a man's erect organ^[15] and by the rape incidents on January 15, and February 14, 1996. She also found that Marilou's introitus could admit two fingers with ease.

On April 26, 1997, Maria Luisa and her daughter Marilou went to the Apalit Police Station and reported the incidents. Marilou executed a "*Sinumpaang Salaysay*," marked as Exhibit "B,"^[16] partly quoted as follows:

T-09: *Bakit mo gustong ireklamo ang iyong tatay na si Danilo Alfaro?*

S: *Dahil po pinagsamantalahan (ginahasa) niya po ako ng **puwersahan na may halong pananakot at pagbabatang ako ay papatayin.***

T-10: *Ilan beses ka bang pinag-samantalahan o ginahasa ng iyong amang si Danilo?*

S: *Dalawang beses (2) po.*

T-11: *Kailan at saan naganap ang insidenteng ito na iyong binanggit?*

S: *Noon pong January 15, 1996 mga banding alas 9:00 ng gabi at February 14, 1996 humigit-kumulang alas 11:00 ng gabi rin na nangyari sa may aming bahay sa San Nicolas, San Simon, Pampanga.*

T-12: *Noong una kang pinag-samantalahan ng iyong amang si*

Danilo Alfaro, wala ba ang iyong ina na si Maria Luisa Manlapaz-Alfaro sa inyong bahay noon?

S: *Wala po siya at nasa trabaho po.*

T-13: *Nang pangalawa kang pag-samantalahan ng iyong tatay, wala na rin ba ang iyong nanay sa inyong bahay noon?*

S: *Wala rin po siya at nasa trabaho po.*

T-14: *Sino and iyong mga kasambahay nang mangyari ang bagay na ito sa iyo?*

S: *Wala rin po siya at nasa trabaho po.*

T-15: *Bakit hinde ka nagsumbong o nagtapat sa iyong nanay o mga kamag-anakan sa panggahasa sa iyo ng iyong amang si Danilo Alfaro?*

S: ***Dahil lagi po siyang nakamasid o nakabantay sa akin at nagbabanta na ako ay kanyang papatayin kapag ako ay nagsumbong sa aking nanay o kamag-anakan.***

T-16: *Kailan ka nakapag-sumbong at nakapag-tapat ng iyong nagging karanasan o kapahamakan sa iyong amang si Danilo Alfaro na gumahasa sa iyo?*

S: *Noong pong gabi ng April 23, 1997 nang nahuli po sa akto ng aking nanay na si Maria Luisa Manlapaz-Alfaro ang aking ama na hinahalikan ang aking kaselanan (vagina) at siya ay masinsinang kinompronta at kanyang inaway sa punto pong yun ay nakuha ko naring ipagtapat sa aking ina ang mga pinag-gagawa sa akin ng aking gahamang ama na sinira niya ang aking kinabukasan.*

T-17: *Ano ang iyong nararamdaman sa iyong amang si Danilo sa kasalukuyan?*

S: *Galit na galit at namumuhi po ako sa kanya dahil sa ginawa niya sa akin." (Underscoring ours)*

Maria Luisa also executed an affidavit^[17] stating that she caught appellant kissing Marilou's genital organ. Because of this incident, she came to know that he raped Marilou twice in the past.

Both Marilou and Maria Luisa confirmed the contents of their respective "*Sinumpaang Salaysay*" during the trial.

The defense presented appellant as its sole witness. He vehemently denied the charges, contending that on January 15, 1996, he was at home; and that on February 14, 1996, he was in Manila.^[18] He claimed that in testifying against him, his wife and daughter were ill motivated because he abandoned them for nine years. Moreover, that it took them one year before reporting the incidents to the authorities engenders doubt on the veracity of the charges.

On October 23, 1998, the trial court rendered its Decision convicting appellant of two counts of incestuous rape under Article 335 of the Revised Penal Code, thus:

"The acts committed by the accused against his daughter constitutes the abhorable (sic) crime of incestuous rape committed with the gravest

abuse of parental authority. **The accused had the moral ascendancy and influence that substitutes for the violence or intimidation required in rape cases. His act of having sexual intercourse with his daughter who was then at the tender age of thirteen (13) years old may be considered to have the effect of statutory rape. The Court also believes that strong force of intimidation by implication existed during the sexual molestation committed by the accused Danilo Alfaro against his daughter Marilou M. Alfaro.** His defense of alibi that he was elsewhere at the time, and his explanation that he did not do it as he loves his family and blamed his parents-in-law as those who were responsible in bringing about the accusation against him because they were mad at him, is totally rejected as they are unbelievable.

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of two (2) counts of rape and as a consequence of which and pursuant to Art. 335 of the Revised Penal code, he is hereby sentenced to the corresponding mandatory penalty of death and he is likewise ordered to indemnify the offended party the sum of P100,000.00."^[19]

Hence, this appeal, appellant ascribing to the trial court the following assignments of error:

"I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE WITNESSES FOR THE PROSECUTION DESPITE THE EXISTENCE OF ILL-MOTIVE ON THEIR PART AND THE INCREDIBLE LENGTH OF TIME IT TOOK THE COMPLAINANT TO REPORT THE CRIME.

"II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF RAPE."^[20]

The Solicitor General counters that if indeed appellant's wife and daughter were ill motivated, then they should have charged him earlier considering that he abandoned them for nine years. Likewise, Marilou failed to report the incidents to the authorities immediately because he threatened to kill her and her mother.

After a careful review and evaluation of the entire record, we agree with the trial court that appellant is guilty as charged.

Marilou testified in a straightforward, candid and convincing manner, which leaves no room for doubt that she was in fact ravished twice by her own father. She positively identified him as her rapist. She testified as follows:

"FISCAL DATU
Questioning

Do you know the accused in these cases?

WITNESS

Answering

Yes, sir.

Q **Why do you know him?**

WITNESS

Answering

He is my father, sir.

FISCAL DATU

Questioning

Will you please point to the accused your father?

A **There he is, sir.**

INTERPRETER

Witness pointed to a person inside the courtroom who when asked gave his name as Danilo Alfaro.^[21]

XXX

Q Do you recall where were you on January 15, 1996 at about 9:00 o'clock in the evening?

A I was in our house then, sir.

Q An where is your house situated?

A In San Nicolas, San Simon, Pampanga, sir.

Q What were you doing then at that particular date and time?

A I was sleeping then, sir.

Q What time did you wake up?

A 10:00 o'clock, sir.

Q 10:00 o'clock of January 15, 1996?

A Yes, sir.

Q And what made you to wake up at 10:00 o'clock in the evening of January 15, 1996?

A Because my father went upstairs, sir.

Q **When you said your father, you are referring to the accused Danilo Alfaro?**

A **Yes, sir.**

Q **You said that you woke up when your father went upstairs, what happened next?**

A **He removed my panty and then he removed his shorts, sir.**

Q What did you do when the accused removed your panty?