

## FIRST DIVISION

[ G.R. No. 137745, February 15, 2002 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
REYNALDO TAGUN, ACCUSED-APPELLANT.**

### DECISION

**PUNO, J.:**

The world was anything but generous to Charity Tagun. Left to her paternal grandma's care by her mother, who had to seek greener pastures in a foreign land, her womanhood was defiled at an age when she barely was a girl. Worse, she points to her own father, appellant Reynaldo Tagun, as the author of the beastly act. Once again, before this court is a criminal case of an incestuous rape committed by a father against his minor child.

Appellant was indicted and tried under the following Information:

"That on or about and during the period covered by the months of December of 1991 to December of 1992, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, taking advantage of his ascendancy and influence as father of the victim and by means of force, threats and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of his daughter, Charity Tagun y Bebon, a child of five years and daughter of the undersigned complainant, against the will of said child, and with the aggravating circumstance of relationship, the victim being the daughter of the accused.

Contrary to law."<sup>[1]</sup>

Upon arraignment, he entered a plea of Not Guilty. Thereafter, the case immediately proceeded to trial.

It appears from the evidence adduced by the prosecution that the complainant Charity Tagun is the daughter of appellant Reynaldo Tagun, whom she calls "papa." A girl of tender age,<sup>[2]</sup> she does not know how to read or write, for lack of formal schooling. She testified<sup>[3]</sup> that on one occasion between the periods from December 1991 up to December 1992, her papa inserted his penis into her *pekpek*. Together with her brother James, she was at that time staying with, and being taken care of by the appellant and her paternal grandma because her mother was working as a domestic helper in Hongkong. The incident happened one night, the exact date of which she could not remember, in a room in her grandmother's house. Before inserting his penis to her vagina, her papa told her what he was about to do. He then succeeded in introducing his sexual organ into hers. This made her cry due to the pain that she experienced. Appellant, however, merely told her to stop before

proceeding to insert his penis for the second time. He also inserted his finger into her vagina. She remembered the sight of blood caused by her bleeding.

In December 1992, while vacationing from her work, Norily Tagun,<sup>[4]</sup> the mother of Charity, learned of the fate her daughter suffered in her husband's hands. Upon her arrival, she stayed with appellant in the house of her mother-in-law. Barely a week into her holiday, she was notified by Charity that appellant inserted his penis into her vagina. The exact words of her young child broke her heart: "*Mama, si Papa, dinukit ang pipi ko,... inilusot ang titi nya sa pipi ko,...*"<sup>[5]</sup> She then asked her sister Mercidita Caday to accompany her and her daughter to the Quezon Memorial Hospital to have the latter physically examined. Dra. Maricel P. Rivera performed the check-up on December 11, 1992.

Dra. Rivera testified<sup>[6]</sup> that she conducted a medical examination of Charity Tagun. Her findings were reduced in a Medical Report, dated May 5, 1993, which revealed that the child had "deep healed hymenal laceration" and other superficial lacerations. The wounds could have been caused by sexual intercourse or insertion of foreign objects to the vagina. The deep healed hymenal laceration at six o'clock position indicated a possible attempt at penetration by a male genitalia. The lack of spermatozoa could merely signify that the penetration happened sometime prior to the child's physical check-up since spermatozoa has a lifetime of only 48 to 72 hours.

After learning the result of the examination, Norily confronted her husband about the whole mess. The latter warned that if she causes his imprisonment, he will kill her and the child. He also threatened to hide the child if she files any complaint against him. She decided to bring Charity to her sister Mercidita's house out of fear the appellant would make good his evil threat. She then went back to Hongkong on January 7, 1993. She was forced to return to the Philippines in April 1993 after receiving a voice tape from the appellant telling her that if she does not send him money, he will take Charity from her sister. Mustering enough courage, she finally reported the rape to law-enforcement authorities on May 4, 1993. The next day, her husband was brought to the police station for investigation. He was able to escape, though, on the pretext that he was going outside just to buy softdrinks.

Professing innocence, appellant, for his defense, offered an alibi. He presented, aside from himself, two other witnesses to substantiate his defense, namely, his sister Lourdes Sumale and his mother Gregoria Tagun.

Lourdes recalled that sometime in November 1992, her niece Charity went to her house. The child was at that time living with the two brothers of her mother: Ramon and Isyo, both surnamed Bebon. On that occasion, her sister Remedios requested her to wash the little girl's vagina. The former apparently noticed Charity scratching it. When she was washing the girl's private organ, Charity told her it was painful. She noticed it was reddish and swollen (*namamaga*). When she asked Charity why it was in that condition, the little girl replied, "*gawa ni Isyo.*" She then told her mother about her discovery and the child's revelation. They immediately agreed that Charity's parents should know this matter as soon as possible. For her part, she telephoned appellant in Hongkong. While she did not tell him the real purpose of her call, she asked him to come home at the earliest moment he could. When Reynaldo arrived from abroad, his family told him the sad incident involving his child.

Thereafter, Reynaldo fetched Charity from the house of her uncles and took custody of her. She admitted, during cross examination, that she did not report the matter to the police nor brought Charity to a hospital for the reason that she opted to leave the decision on what to do with the child to the latter's parents.

The testimony of Lourdes was confirmed by Gregoria. She stated that sometime in November 1992, her daughter Lourdes informed her that she noticed Charity's vagina reddish and swollen. The child apparently admitted to her aunt that it was "because of Isyo." Upon hearing this horrible information, she summoned her children Lourdes, Jasmine and Floro to decide what to do with the child. They unanimously agreed to call her father, who thereafter arrived in the first week of December, 1992. When appellant learned of the child's condition, he got angry and removed his children Charity and James from the custody of Isyo. Gregoria then took care of the kids for about one week, after which their mother came and took them away.

Lastly, appellant declared that he was employed abroad as a seaman since 1983. The first time he returned to the country was in September 1988, when Charity was born. Upon his arrival, he discovered that most of their personal belongings plus the title of the land he and his wife bought were missing. He inquired from his spouse, Norily, about what happened to their properties. He recalled her exact reply: "*Tanga, tatanong-tanong ka pa sa akin!*" They thereafter decided to live separately. He stayed with his mother for a year or so in 1989. The next year, he worked abroad again. He returned in 1992 after receiving a radio telegram from his ship captain asking him to do so. He returned in the first week of December, 1992. He proceeded immediately to his mother's house where his mother and sister broke to him the bad news regarding Charity's reddish and swollen vagina. His sister informed him that the culprit was Isyo, his brother-in-law. The first thing that crossed his mind was to take the custody of his two children from Isyo. He brought them to the house of his mother. In a family meeting with his two sisters, Lourdes and Amy, and his mother, he examined the vagina of Charity which he noticed to be "reddish and swollen." He thought of filing a criminal case against Isyo. When he consulted a lawyer, however, the latter asked for a witness to the incident. Since he could not produce any, he scrapped the idea of a court action. Later, he went to Sampaloc, Quezon, where he stayed for a week. During that period, his mother called to inform him that his wife Norily took the two children away from their house. Since then, they never saw each other except during the hearings held in court. To conclude, he denied having inserted his penis into the vagina of Charity for two times.

On cross examination, he testified that he lost his passport and seaman's book while he was detained inside the city jail. He admitted that he failed to get a certification of his return to the Philippines from his ship captain. So, too, was he not able to get a certification of his date of arrival in the country from Cathay Pacific in view of his lost plane ticket. He could not also present the telegraphic message sent to him. He explained that he did not confront Isyo about the incident because he wanted to avoid scandal. Finally, he insisted that from 1988 to 1992, he was out of the country.

After both parties rested their respective cases, the trial court rendered its decision convicting the appellant, thus:

"WHEREFORE, in the light of the foregoing, the Court finds the accused REYNALDO TAGUN, a resident of Bgy. Gulang-gulang, Lucena City, guilty beyond reasonable doubt, as principal, of the crime of Rape, defined and punished under Art. 335, par. 3 of the Revised Penal Code and hereby imposes upon him the penalty of imprisonment of RECLUSION PERPETUA with all the accessory penalties provided therein; 'to pay the offended party, Charity B. Tagun and the complainant mother, Norily B. Tagun, the sum of Fifty Thousand pesos (P50,000.00) as moral damages; another amount of Thirty thousand pesos (P30,000.000) as exemplary damages; and to pay the costs of the suit.

SO ORDERED."

Dissatisfied with the judgment, appellant interposed the present appeal. In his brief, he assigns the following errors:

"1. The court a quo erred in finding, contrary to the evidence that it was the accused-appellant who sexually molested his daughter and in not finding that Isyo Bebon, the victim's uncle, as the culprit.

2. The court a quo erred, contrary to evidence, in giving undue credence to the testimony of the victim that the accused-appellant inserted his penis twice into her vagina which is not consistent with medical findings and testimony of the gynecologist who examined the victim and despite the fact that it has been established that she is a coached and rehearsed witness.

3. The trial court erred in not finding, contrary to the evidence, that the victim's mother Norily Bebon Tagun, had ulterior motives in testifying against the accused-appellant.

4. The trial court erred in not finding, contrary to the evidence, that the testimony of the accused and his witnesses are the true and accurate accounts of what really happened to the victim.

5. The court a quo erred in not acquitting accused-appellant on the ground that the prosecution failed to establish the guilt of the accused beyond the peradventure of doubt.

6. The court a quo erred in finding, contrary to law, that the admission of counsel, as part of the stipulation of facts, that the child, Charity, was in the custody of the accused-appellant from 1 December 1991 to December of 1992 is evidence that contradicts appellant's claim that he was abroad in Hongkong during that period."

We affirm appellant's conviction.

Our review of the evidence convinces us with moral certainty that Charity Tagun was sexually abused by the appellant. Worthy to note, the young victim testified in a categorical, frank, spontaneous manner and remained consistent in recounting the material occurrences of the criminal incident, thus:

“Q Please look around and tell us whether your father Reynaldo Tagun is inside the courtroom and please point him out?

A There, sir.

Note: (the person pointed to by the witness when asked of his name gave his name as Reynaldo Tagun)

Q Now last year or between the period beginning from December of 1991 to December of 1992 do you remember anything that your Papa has done to you?

A He inserted his penis into my “pekpek,” sir.

FISCAL GARCIA

May we request that the answer in tagalog be made on the record, Your Honor.

COURT

Granted.

WITNESS

A “Isinuot nya ang kanyang titi sa aking pekpek.”

FISCAL GARCIA

Q Aside from the penis of your Papa, was there anything else that was inserted in your sexual organ?

A Yes, sir, (Note: Witness pointing to her finger), his finger.

Q Now when you said your Papa inserted his penis into your sexual organ, did you experience pain?

A Yes, sir, painful, “masakit”.

Q When your Papa inserted his penis into your sexual organ was there any bleeding that you experienced?

A Yes, sir, it bleeds (*sic*).

Q And after your sexual organ became bloody was your sexual organ washed?

A Yes, sir, it was washed by Ate Lourdes.

Q Now please look around the courtroom and tell us whether the person whom you referred to as Ate Lourdes is inside the courtroom.