

EN BANC

[G.R. No. 142747, March 12, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RESTITUTO CAPILI Y SEBASTIAN, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

According to Melissa Manuel, on the 25th of April 1997, about 2:30 p.m., she was in their residence at No. 147 Pitong Gatang, Sipac, Navotas, Metro Manila, when Restituto Capili y Sebastian called her to come up to the second floor of the house. Obediently, she went up. Capili was alone. To her astonishment, she was told to take his penis into her mouth. When she refused, he undressed her, placed himself on top of her and inserted his organ into her vagina. His lust sated, Capili told her to return downstairs before leaving for his nearby house. What made the incident appalling was that Melissa Manuel was but ten years old at the time and Restituto Capili was her uncle. The event that afternoon would just be the beginning of what the girl, like before, would suffer in silence, punctuated by threats that would cow the child into hopeless, numbing despair. The private torture ceased only when Melissa, on 05 May 1997, finally lodged a complaint against her uncle. Capili was charged thusly:

"That on or about the 25th day of April, 1997 in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being an uncle by affinity within the third civil degree of Melissa Manuel y Zeta, a minor of then 10 years (old) of age, with lewd design, and exercising ascendancy over said Melissa Manuel y Zeta, and by means of force, violence and intimidation, willfully, unlawfully and feloniously did, then and there, have sexual intercourse with Melissa Manuel y Zeta against her will and without her consent."^[1]

Melissa recalled that during the first incident, her mother was at home doing some cooking. Separated from her husband, she had to single-handedly raise her brood. She came to know of the molestation only on 25 April 1997 when she asked Melissa why she was acting so strangely. It was then that Melissa told her mother everything. Mary Rose, the older sister of Melissa, having learned of the beastly act committed against her younger sister, immediately accompanied the latter to the doctor for medical examination. The next day, they proceeded to Camp Crame to report the matter.

Examining physician Anthony Joselito R. Llamas confirmed the non-virgin state of Melissa, although he opined that it was probably not the penis of a male adult that penetrated the organ of complainant but, more likely, a smaller object such as a finger. According to the doctor, a penis would have caused a deeper injury.

The accused interposed the defense of *alibi* and denial. He narrated that five days prior to the incident, a Sunday, he had a shouting match with Maryjane Manuel, another sister of Melissa, who had accused him of taking her gold bracelet. The confrontation made him shout invectives at the Manuel family. Later, his son found the missing piece of jewelry and returned it to Maryjane. The accused surmised that it was bad blood that led Melissa's family to file the rape charge against him. He insisted that he could not have raped the young girl on the date and time testified to by her because he was, starting at about nine or ten o'clock that morning, playing "pusoy" with buddies Tony Peñaranda and a certain Rogel. On cross-examination, the accused admitted that his wife had approached Herminia Manuel, his sister-in-law and mother of Melissa, asking the latter's forgiveness, although he added that it was only on account of the previous misunderstanding he had with Maryjane.

Catherine Capili, a daughter of the accused, corroborated her father's testimony and claimed that on 25 April 1997, at about 2:30 that afternoon, her father was playing "pusoy" with "Mang" Tony and "Mang" Ruben.

On 25 January 2000, the Regional Trial Court of Malabon, Metro Manila, rendered judgment, finding the accused guilty beyond reasonable doubt of the crime of statutory rape and sentencing him to suffer the extreme penalty of death. The trial court held:

"WHEREFORE, premises considered, the Court finds accused RESTITUTO CAPILI Y SEBASTIAN guilty beyond reasonable doubt of the crime of Statutory Rape, attended by the circumstance of relationship within the third civil degree of affinity, and hereby sentences him the penalty of DEATH.

"The accused is likewise ordered to pay the victim Melissa Manuel the sum of P75,000.00 as indemnity, P50,000.00 as moral damages, P50,000.00 as exemplary damages and costs of the suit."^[2]

In this automatic review of his conviction, appellant Restituto Capili would insist that -

"THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE VICTIM, MELISSA MANUEL.

"THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE DEFENSE OF DENIAL AND ALIBI INTERPOSED BY THE APPELLANT, WHICH IS MORE CREDIBLE."^[3]

The young Melissa Manuel gave a brief but sufficiently elaborate and convincing account of how she was sexually abused by appellant. She testified:

"Q. In [your] complaint, you said that you were raped by Restituto Capili on April 25, 1997 at Navotas, Metro Manila, will you please tell us how did it happen?

"A. He ordered me to swallow his penis, sir.

"Q. Did you swallow his penis as ordered by Restituto Capili?

"A. No, sir.

"COURT:

"Q. What time did this happen?

"A. 2:30 in the afternoon, sir.

"Q. Where?

"A. In our house, sir.

"Q. Where is your house?

"A. In Navotas, sir.

"Q. Where in Navotas?

"A. No. 147 Pitong Gatang, Sipac, Navotas, Metro Manila, sir.

"Q. In what part of the house did this happen?

"A. Upstairs, sir.

"Q. By the way, what is your relation with the accused?

"A. He is an uncle, sir.

"Q. Were there other persons present in the second floor of your house when your uncle ordered you to swallow his penis?

"A. None, sir.

"Q. After he ordered you to swallow his penis and you refused to do so, what happened next?

"A. He first undressed me and then he undressed himself, sir.

"Q. After you and the accused were already undressed, what happened then?

"A. He went on top of me or pinned me then he inserted his