

## **EN BANC**

**[ G.R. No. 140406, April 17, 2002 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANTONIO DESUYO ALIAS "TONY," ACCUSED-APPELLANT.**

### **D E C I S I O N**

**BELLOSILLO, J.:**

MARICEL PERU DESUYO was sleeping beside her younger sister Aisalyn one late night in September 1996 when she was awakened by someone caressing her breasts. She opened her eyes and saw her father, accused Antonio Desuyo, crouching before her. He was naked except for his underpants to cover his private parts. Instinctively, she begged her father not to touch her, reminding him that she was his daughter. But he paid no heed; instead, he removed her underwear while threatening to kill her should she make any noise. He mounted her, forced his penis into her vagina and gyrated his hips against hers. She wept as she continued to beg him to desist from his fiendish assault on her virtue. Meanwhile, Maricel did not tell her mother about the incident; instead, she kept the ignominy and pain to herself.

Maricel's mother worked as a housekeeper in a faraway town and she did not want to give her any trouble. Neither did she inform her relatives who lived nearby. She feared for her life as her father had threatened to kill her should she speak to anyone about what he had done to her.

The accused would repeat his sexual molestation of Maricel almost everyday from September 1996 to August 1997. His assaults on her virtue were always followed by threats on her that she would be killed should she report these to her mother. The sexual abuses of her father were so often that Maricel lost count.

On 14 August 1997, early dawn, as Maricel had been already accustomed to, she would be roused from her sleep by her father fondling her private parts. Again, he undressed her and unleashed his lechery on her. It was meant to be the last. In her young and impressionable mind, Maricel vowed that it would not happen to her again.

On 18 August 1997 Maricel summoned enough courage to relate her ordeal to a police officer who lived nearby. She bravely narrated to Police Officer Tito Ganggalang and his wife Riza her sordid tale which was actually a confirmation of what was already circulating around their neighborhood. She admitted that her father had been sexually abusing her for close to a year already. Emboldened by the encouragement she received from sympathetic neighbors, she next confided to Luisa Galit, Maricel's maternal aunt, who could only commiserate with her.

Forthwith, Luisa Galit accompanied Maricel to a doctor who upon examination found Maricel to have several old hymenal lacerations in her vaginal area. Thereafter, they

repaired to the municipal hall where Maricel instituted a complaint against her father, accused Antonio Desuyo, for having repeatedly raped her.

In the course of the preliminary examination conducted by the municipal trial court judge, accused Antonio Desuyo asked forgiveness from his daughter and promised to leave her alone should she withdraw the charge she filed against him. Maricel vehemently refused as her father grovelled for forgiveness.<sup>[1]</sup> As a consequence, an *Information* was filed against the accused Antonio Desuyo *alias* "Tony" for raping his fifteen (15)-year old daughter Maricel.

Maricel attested in court to the truth of her accusations. According to her, ever since her mother worked in a faraway town, her father was dauntless and unrelenting in sexually abusing her night after night within the confines of their home. She felt pain and cried everytime her father would forcibly insert his penis into her vagina; however she kept her ordeal to herself as she was afraid of him.

After having her first menstruation she became apprehensive that she might get pregnant. Her father however was unperturbed and simply dismissed her fears by telling her not to worry. A year after the first forced coition, Maricel decided to end her tribulation by unburdening her grief to neighbors who readily sympathized with her. She felt relieved after seeing her father locked up behind bars.<sup>[2]</sup>

The accused denied having raped Maricel. He affirmed however that he raised singlehandedly his two (2) daughters Maricel and Aisalyn as his wife was serving another household in a distant town. According to him, despite his guidance, Maricel turned out to be a wayward daughter who entertained suitors at an early age. Once, his daughter Aisalyn confided to him that Maricel was corresponding with a boy from another *barrio*. He immediately searched through her bag and found a letter intended for a certain Jerry. Incensed by his daughter's behavior he mauled her expecting that she would atone for her mistakes. However, instead of mending her ways, Maricel ran away from home and instituted this unfounded charge for rape against him. He presented in evidence Maricel's supposed letter to Jerry as well as a letter from his wife pledging her love and support. He averred that Maricel was being inveigled by his sister-in-law Luisa and the latter's boyfriend Boy into tormenting him for reasons which he could not fathom.<sup>[3]</sup>

The trial court did not give credence to the bare denials of the accused. Solely on account of Maricel's testimony, the court *a quo* found the accused guilty beyond reasonable doubt of the crime of "multiple incestuous rape" and sentenced him to suffer the supreme penalty of death, and to indemnify the offended party P75,000.00 as civil indemnity.<sup>[4]</sup>

Accused Antonio Desuyo assails in his brief his conviction for "multiple rape" essentially on two (2) grounds, namely, that the *Information* is defective and that the court *a quo* erred in imposing upon him the penalty of death despite the failure of the prosecution to establish the age of Maricel with certainty.<sup>[5]</sup>

Accused avers that the *Information* for "multiple rape" filed against him is deficient since by merely stating that the sexual assaults were repeated "within the month of September 1996 up to August 18, 1997,"<sup>[6]</sup> it failed to state the exact dates when the alleged rapes were committed. Quoting heavily from the early case of *US v.*

*Diacho*,<sup>[7]</sup> accused asserts that unless he is informed of the precise "day, or about the day, he may be, to an extent deprived of the opportunity to defend himself."<sup>[8]</sup>

At the outset, it must be emphasized that the remedy against an indictment that fails to allege the time of commission of the offense with sufficient definiteness is a motion for bill of particulars. The records show that the accused never asked for a bill of particulars in accordance with the *Revised Rules of Criminal Procedure*.<sup>[9]</sup>

The failure of the accused to move for the specification of the date when the alleged crime was committed or for the quashal of the Information on the ground that it does not conform substantially to the prescribed form<sup>[10]</sup> deprives him of the right to object to evidence which could lawfully be introduced and admitted under an information of more or less general terms but which sufficiently charges the accused with a definite crime.<sup>[11]</sup> It is indeed too late in the day for the accused to raise this issue because objections to matters of form or substance in the information cannot be made for the first time on appeal. At any rate, it is settled that the *exact date* of the commission of rape is not an essential element thereof and need not be stated in the information.<sup>[12]</sup> The Court has sustained the following dates alleged in an information for rape as sufficient for purposes of complying with the provisions of the Rules of Court, to wit: "from November 1990 up to July 21, 1994,"<sup>[13]</sup> "sometime in November 1995, and some occasions prior and/or subsequent thereto,"<sup>[14]</sup> "on or about and sometime in the year 1988,"<sup>[15]</sup> "sometime in the year 1987"<sup>[16]</sup> and "before and until October 15, 1994."<sup>[17]</sup> In any event, a review of the evidence presented by the prosecution more than establishes the guilt of the accused for the rape of his daughter.

For one, it is highly inconceivable, if not completely preposterous, that Maricel, a guileless barrio lass, would concoct a story of rape against her very own father, taking into mind the societal humiliation and personal devastation which such a charge entails. More so, no serious motive, apart from the beatings which she supposedly suffered in the hands of the accused, was offered to satisfactorily explain why Maricel would come out and undergo legal scrutiny of the unfortunate encounters with her father. Thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.

An analysis of the records reveals that Maricel testified in a straightforward, spontaneous and consistent manner. Although Maricel expounded only on the first and last instances of rape, failing thus to give an accurate account of the other sexual violations, her testimony in its entirety was forthright, clear and free from any contradictions.

Maricel's failure to immediately inform her mother as well as her relatives about her ordeal is consistent with reason. It must be remembered that Maricel depended on the accused for existence and protection as her mother lived far. As to her total obedience to her father and the stoic silence she kept about her sufferings, these were all brought about by her genuine fear of a man who on account of his moral ascendancy needed no weapon to instill such terror in her.<sup>[18]</sup> Maricel was convinced of a potential yet real danger posed by a beast masquerading as the family's paladin.