

EN BANC

[G.R. No. 137480, February 28, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FILOMENO SERRANO Y CALLADO, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

A sad but concrete fact is that a remarkable number of rape cases passed upon by this Court involves incest. Rape in itself is prompted by the abnormal need of a man to overpower and control a woman by way of sexual abuse. But nothing is more barbaric and inhuman than the act of a father sexually abusing his minor daughter, his own flesh and blood.

On automatic review before us is the decision of Branch 256 (Special Court for Heinous Crimes) of the Regional Trial Court at Pasig City, the Honorable Edwin A. Villasor presiding, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding Accused FILOMENO SERRANO y CALLADO Guilty beyond reasonable doubt of the crime of RAPE, aggravated by the fact that the victim was the Accused's minor daughter, and hereby sentences him to suffer the penalty of DEATH, as provided for under R. A. No.7659; to pay the Complainant, Gemmalyn Serrano, the sum of FIFTY THOUSAND PESOS (P50,000.00) by way of indemnity; THIRTY THOUSAND PESOS (P30,000.00) as moral damages, plus all the accessory penalties provided by law, without subsidiary imprisonment in case of insolvency; and to pay the costs.

SO ORDERED.

(p. 39, Rollo.)

The instant case was initiated by a complaint against accused-appellant filed by Gemmalyn Serrano y Hagos, which resulted in the filing of an Information charging:

On or about February 19, 1997 in Pasig City and within the jurisdiction of this Honorable Court, the accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Gemmalyn Serrano y Hagos, his daughter, a minor, thirteen (13) years of age, against her will and consent.

Contrary to law.

(p. 1, Record.)

At his arraignment on July 31, 1997, accused-appellant entered a plea of not guilty. Afterwards, trial on the merits ensued, resulting in the judgment of conviction now under automatic review considering that the supreme penalty of death was imposed.

The inculpatory facts, based on the testimony of private complainant Gemmalyn, her mother Adel Serrano, and Dr. Thomas D. Suguitan, the Medico- Legal Officer who examined the victim, are as follows:

Gemmalyn Serrano is the third of six children of accused-appellant, Filomeno Serrano, and Adel Serrano (tsn, July 31, 1998, p. 11; Sept. 11, 1998, p. 4) whose family resided at 26 G. Esguerra St., Pinagbuhatan, Pasig City. At around 9 P.M., February 19, 1997, Gemmalyn was about to sleep and was lying in bed between her brother and sister. Accused-appellant then called on Gemmalyn and ordered her to come to him. Adel Serrano was not at home that night having been sent away by accused-appellant (tsn, May 18, 1998, pp. 7-10; July 31, 1998, pp. 10-11). Out of fear of her father, Gemmalyn obeyed. Accused-appellant then touched her thigh and inserted his hands inside her panties. When he touched her vagina, she resisted. Accused-appellant then asked Gemmalyn to take off her clothes. She began crying and said, "Father, why are you doing this to me?" Because of her resistance, accused-appellant boxed Gemmalyn on the stomach (tsn, May 18, 1998, p. 10).

Accused-appellant proceeded to remove Gemmalyn's clothes. He raised her skirt and lowered her panties to her knees. He also removed her blouse and sando. After that, he sucked her nipples. Naked from the waist down, he proceeded to insert his penis into Gemmalyn's vagina. While doing so, he said, "*Tutuluyan ko nang palayasin ang nanay mo at ikaw na ang gagawin kong asawa.*" Because of this, Gemmalyn broke down and cried. Accused-appellant again attempted to insert his penis into Gemmalyn's vagina. She continued her resistance which made him box her for the second time. He likewise threatened, "*Kapag nagsumbong ka sa nanay ma, papatayin ko lahat ng kapatid mo!*" (tsn, May 18, 1998, pp. 11-12, 14-15, and 20).

Finally, accused-appellant succeeded in slightly inserting his penis into Gemmalyn's sex organ when he was able to "rub" his penis into her vagina. This was when accused-appellant saw that his son Jeffrey was wide awake. He told him, "Why are you still awake? You are supposed to be asleep!" He then proceeded to maul Jeffrey. After that, as if nothing unusual had occurred, he went to sleep (tsn, May 18, 1998, pp. 15-16).

Gemmalyn, accompanied by two of her sisters, left the house and went to the market where her mother was staying (tsn, May 18, 1998, p. 30). She told her mother that accused-appellant had raped her. Thereupon, mother and daughter went to the Barangay Hall of Pinagbuhatan and reported the crime. The barangay tanods then arrested accused-appellant who was still naked from waist down and was just wearing "nighties". He was brought to the Pasig City Jail (*Ibid.*, pp. 17-18; tsn, July 31, 1998, pp. 11-12).

The following day, Gemmalyn was brought by her mother to Camp Crame in Quezon City for medical examination (tsn, July 31, 1998, p. 13). She was examined by Dr. Thomas D. Suguitan, Medico-Legal Officer of the PNP Crime Laboratory, Camp Crame, who found that: Gemmalyn's *labia minora* was reddish in color; that her hymen bore a fresh laceration at the 7 o' clock position, which was inflicted within

the last 24 hours, and two healed lacerations at the 5 o'clock and 9 o'clock positions, and that said lacerations could have been caused by the insertion of a blunt object; that at the time of the examination, she was in a non-virgin state physically; and that she complained of pain in the knee, back, and buttocks (*Ibid.*, pp. 3-5).

As his defense, accused-appellant denied the charge and presented his own version of the events. He testified that at about 9 o'clock on the night in question, he was with his six children looking for his wife Adel Serrano who had been gone for a week. Failing to find her, they just proceeded home. He explained that his wife left their house when he found out that she was having an affair with his " *kumpadre*". He also described their house as a small room measuring about four meters by four meters; that he and his children were all sleeping in that small room; that their house and that of their nearest neighbors were divided by a mere wall; and that most of their neighbors were his wife's relatives (tsn, Sept. 11, 1998, pp. 5-7; Sept. 17, 1998, p. 3).

The defense's second witness Jorge Serrano was the brother of accused-appellant. He testified that accused-appellant's wife and a certain "Toge" were having an illicit affair as relayed to him by Gemmalyn herself. He also corroborated accused-appellant's description of their house and the area thereof (tsn, Sept. 17, 1998, p. 9).

The trial court favored Gemmalyn's version of the events and ruled in this wise:

The testimony of the Private Complainant, Gemmalyn Serrano, appeared convincing. She testified candidly and in a straightforward manner with firmness and spontaneity, only interrupted at times with emotional sobs when asked to recall details of the incident and the lewd advances and acts of her own father upon her. While on the witness stand, she re-affirmed her accusation and pointed to her father as the man who raped her.

On the other hand, the Accused appeared evasive and was observed to be avoiding looking straight at his accuser-daughter. He did not give the appearance of a man unjustly and falsely accused of a very grave offense who, understandably, would manifest loud protestations. His answers to simple questions propounded to him appeared to be irresponsive. He spoke in a low voice while casting his eyes towards other directions and barely whispered his answers prompting the direct and cross examiners to repeat and clarify their questions.

(pp. 196-197, Record.)

In his brief, accused-appellant argues that the trial court erred in (1) giving weight and credence to the improbable and incredible testimony of private complainant and in disregarding the theory of the defense; and (2) in finding that his guilt had been proven beyond reasonable doubt.

In support of these arguments, accused-appellant posits that the commission of the crime charged was improbable considering the size of the room (4 x 4 meters), the fact that said place and the next room (the neighbor's place) were separated by a

flimsy wall, and that accused-appellant's neighbors were relatives of his wife. Because of these circumstances, the opportunity to commit rape was hardly present, it is said, with accused-appellant further asking that had it been true that he had sexually assaulted Gemmalyn, why is it that she did not make an outcry when she had all the opportunity to shout or resist since there was no showing that accused-appellant was armed with any weapon. He argues that Gemmalyn's declaration that she did not shout for help because her father would kill her brothers and sisters is false and a mere afterthought because she did not mention this matter in her affidavit.

Accused-appellant further asserts that the accusation lodged against him is a mere concoction since both complainant and her mother have a standing grudge against him for his habitual drunkenness and the alleged beating he gave them; and that their only means to get rid of him was to charge him with rape so that he could be imprisoned or even given lethal injection.

Accused-appellant also maintains that Gemmalyn gave flip-flopping testimony. First, she did not state in her affidavit that accused-appellant mauled her brother when the latter was awakened during the alleged rape. However, in open court, she declared that her brother was mauled by accused-appellant. Second, she said that her father boxed her at the stomach, but that this is negated by the findings of the medico-legal officer who found no external signs of violence. In addition, accused-appellant points out, Gemmalyn testified that she told her mother about the rape at the market, whereas Adel Serrano claimed that she was informed by her daughter at their residence.

In accused-appellant's reply-brief, he places emphasis on what he describes as the doubtful and incredible testimony given by Gemmalyn that sexual intercourse took place. In support, he quotes that portion of Gemmalyn's testimony when she said accused-appellant "tried to insert his penis to [her] vagina" creating a doubt as to whether or not the penis of accused-appellant did enter the vagina or pudendum of Gemmalyn. Further, he says, Gemmalyn's resistance made it impossible for him to insert his penis.

Time and again, the Court has been consistent in laying down the guiding principles in reviewing rape cases, to wit: (a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (b) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense (*People vs. Gallo*, 284 SCRA 590 [1998]; *People vs. Barrientos*, 285 SCRA 221 [1998]; *People vs. Balmoria*, 287 SCRA 687 [1998]; *People vs. Sta. Ana*, 291 SCRA 188 [1998]; *People vs. Perez*, 270 SCRA 526 [1997]).

Not unlike the trial Court, we are now faced with two opposing and contradictory versions of what occurred on the night of February 19, 1997.

The focal point of the prosecution's evidence is inevitably Gemmalyn's testimony. After carefully observing the demeanor of Gemmalyn, accused-appellant, and other witnesses, with emphasis on gesture and tenor of voice, the trial court arrived at a

favorable assessment of Gemmalyn's testimony. As mentioned above, the trial court found Gemmalyn's testimony spontaneous and straightforward, as opposed to accused-appellant's evasive demeanor.

It has long been held that the trial court's evaluation as to the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimony. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimony. Thus, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected (*People vs. Ramirez*, 266 SCRA 336 [1997]; *People vs. Gabris*, 258 SCRA 663 [1996]; *People vs. Vallena*, 244 SCRA 685 [1995]).

Accused-appellant's defense is primarily denial which is essentially a weak defense, for denials unsubstantiated by clear and convincing evidence are negative and self-serving which merit no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters (*People vs. Tumaob, Jr.*, 291 SCRA 133 [1998]). Denial cannot prevail over the positive identification of the accused by the prosecution witnesses (*People vs. Villamor*, 297 SCRA 262 [1998]).

Accused-appellant argues that the commission of the crime charged was improbable considering the physical circumstances surrounding the event. In the first place, there is no rule that rape can be committed only in seclusion. Rape may in fact be committed in a room adjacent to where the victim's family was sleeping or even in a room which the victim shared with other women (*People vs. Talaboc*, 256 SCRA 441 [1996]; *People vs. Burce*, 269 SCRA 293 [1997]). In this light, rape, in the case at bar, is not an impossibility.

Verily, the evil in man has no conscience-the beast in him bears no respect for time and place, driving him to commit rape anywhere, even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants (*People vs. Agbayani*, 284 SCRA 315 [1998]). Lust is no respecter of time and place (*People vs. Gementiza*, 285 SCRA 478 [1998]; *People vs. Lusa*, 288 SCRA 296 [1998]).

Gemmalyn's testimony creates a graphic picture of her father as someone, who, as correctly described by the Solicitor General, could carry out whatever he wanted- a man without fear or shame. Notably, he mauled his wife and children when intoxicated. Surely, cries and moans of his family members during a mauling incident would have been easily heard by neighbors. But did that stop accused-appellant from hurting them? What then would deter him from satisfying his bestial instincts in a house where there was only the presence of young children?

And how come there was no outcry from Gemmalyn during the rape? The workings of the human mind when placed under emotional stress are unpredictable, and people react differently- some may shout, some may faint, and some may be shocked into insensibility; while others may openly welcome the intrusion (*People vs. Alfeche*, 294 SCRA 352 [1998]). The fact that Gemmalyn suffered in silence hardly makes her testimony incredible.