

EN BANC

[G.R. No. 130522, February 15, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO PAGDAYAWON, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

Rolando Pagdayawon was charged upon the sworn complaint of his stepdaughter Lori Pagdayawon with the crime of rape under Article 335, par. 3 of the Revised Penal Code as amended. The Information^[1] reads:

"The undersigned Prosecutor, upon sworn complaint filed by LORI PAGDAYAWON, a copy of which is attached, accuses ROLANDO PAGDAYAWON of the crime of RAPE under Article 335, par. 3 of the Revised Penal Code, as amended by R. A. 7659, committed as follows:

That on or about September 16, 1996, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his stepdaughter Lori Pagdayawon, 11 years of age, against the will of the latter.

CONTRARY TO LAW."

Complainant Lori was an eleven year old girl when she filed a complaint for statutory rape on September 20, 1996 against accused Rolando Pagdayawon, a policeman, the husband of her mother Hazel delos Reyes Pagdayawon. In her accusatory affidavit, Lori claimed that she had been repeatedly sexually molested by her stepfather since she was still nine (9) years old. The last time was on September 16, 1996, in the house where she was living with the accused after her mother left home for good. She revealed her ordeal to her teacher and the matter was brought to the attention of the police authorities. Medical examination revealed old healed hymenal laceration.

Lori is the daughter of Hazel delos Reyes and a certain Levy Bienvenide. According to her mother, Lori was born on February 24, 1985 at Macabebe, Pampanga. They moved to Davao City sometime in 1985 or 1986 where Hazel got married to the accused Rolando in a civil ceremony and thereafter started to live as husband and wife. There were frequent family quarrels after which Hazel would leave the conjugal home and return thereafter. Sometime in April 1996, the couple quarreled again; Hazel left the conjugal home but left Lori behind as the latter was going to school and Rolando was sending her to school.

The rape subject of the complaint occurred at about 9:00 o'clock in the evening of

September 16, 1996^[2]. According to Lori, Rolando followed her to her room, locked the door and the windows and then raped her.

Dr. Danilo Ledesma conducted a medical examination of the complainant two days after, which revealed old deep hymenal laceration at 8:00 o'clock position, which is more than 4 months old.^[3] Dr. Ledesma testified that subsequent sexual intercourse would not cause laceration of the hymen if the penis of the man is not more than 2.5 cms. in diameter.^[4]

The accused denied that he raped Lori, and claimed that he has been sexually impotent since 1986. He presented a medical certificate issued by a government physician showing that he is sterile^[5] but he admitted that he made love to his wife prior to April 1996^[6]. Several witnesses were presented by the defense to show that Lori had many male and female friends with whom she often went out, and stayed out till late at night, that she was an incorrigible liar, that she was once spanked by the accused and was overheard to threaten the latter that she would retaliate. The accused also claimed that Lori's mother fabricated the charge to get rid of the accused and to live or marry another man with whom she was pregnant at the time the rape case was filed. Also, the defense claims that a teacher of Lori could have suggested that the accused was molesting her, as she was living alone with her stepfather.

The trial court rejected the defense put up by the accused, and found him guilty of statutory rape:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of statutory rape, he is hereby sentenced to suffer the penalty of DEATH together with all the accessory penalties, and to indemnify LORI PAGDAYAWON, the offended party, in the amount of P50,000.00.

His immediate confinement at the National Penitentiary is hereby ordered.

Costs de oficio.

SO ORDERED."^[7]

The case is before us on automatic review.

Accused-appellant seeks a reversal or modification of the decision of the trial court, claiming that there was no convincing proof as to the age of Lori at the time of the alleged rape incident and that Lori only stated that "the accused had sex with her xxx similar to what a husband and wife does."

After an examination of the evidence on record we find no cogent reason to set aside or disturb the factual findings of the trial court upholding the version of the prosecution. Lori testified:

"PROS. GARCIA, JR:

Q: Tell this Court, why did you initiate a complaint against Rolando?

A: Because he raped me.

Q: Try to recall, how did he rape you?

A: First, he caressed me and later on he removed my short pants and my panty.

Q: After doing these, do you know what happened?

A: He told me not to tell my mother of what he did to me.

Q: So, what happened then after your clothes were removed?

A: After that, he kissed the different parts of my body and he kissed my vagina. After that, he inserted his penis to my vagina.

Q: Did you allow these?

A: I agreed because I was forced.

Q: How did he force you, Lori?

A: He pointed his gun at me.

Q: Where was your mother at that time?

A: She left.

Q: Why?

A: Because she quarreled with my father.

Q: Do you believe at that time that your stepfather will shoot you?

ATTY. ALEGARBES:

Your Honor, please, I think the question is not proper.

COURT:

No, it's a proper question.

PROS. GRACIA, JR:

Because she was being threatened with a gun.

COURT:

Answer.

WITNESS:

A. Yes, sir.

PROS. GARCIA, JR:

Q: Why do you have that belief?

A: Because he can fire anytime. He can fire to my mother, he can fire to the walls and to the ceiling of our house, and he can fire anywhere.

Q: How did you feel when your stepfather had intercourse with you?

A: Pain, sir.

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PROS. GARCIA, JR:

Q: What prompted you to file the case against your father?

ATTY. ALEGARBES:

Already answered, Your Honor.

COURT:

Answer.

WITNESS:

A: Because I don't want him to continue what he is doing to me. That is why I decided to file a case against him.

COURT: (To witness)

Q: What was that he was doing to you?

A: He had sex with me, Your Honor.

Q: You said that Pagdayawon has been continuously doing it to you?

A: Sometimes when he comes home from duty and sometimes when he is drunk, and sometimes when my mother is not around.

Q: When was the first time and when was the last time?

A: The first time was in 1993, Your Honor, and that last time was on September 16, 1996.

PROS. GARCIA, JR.:

Q: Where did these happen?

ATTY. ALEGARBES:

That is very vague, Your Honor.

PROS. GARCIA, JR.:

Q: I am referring to the last act on September 16, 1996; where did this happen?

A: In our house, Sir.

Q: Where is this house located?

A: In NHA, Bangkal.

Q: Where was your mother at that time?

A: She left our home. She was not in the house because she quarreled with my father.

ATTY. ALEGARBES:

I believe the answer will be quoted exactly as testified by the witness-"naglayas siya".

PROS. GARCIA, JR.:

She abandoned our home because she quarreled with my father.

(To witness)

Q: How many persons were living then at NHA, Bangkal on September 16, 1996.

ATTY.ALEGARBES:

I believe there are several people living in NHA, Bangkal. That is very vague, Your Honor.

PROS. GARCIA, JR.:

Q: In your house in NHA, Bangkal?

A: My father and myself were left there.

Q: What time was this when he had intrercourse with you on September 16, 1996?

A: Around 9:00 o'clock in the evening.

Q: How many times did he do this to you at that particular evening?

A: Once, sir.

Q: Did you allow this?

A: Yes, because I was afraid of his gun because he placed it on his side.

xxx xxx xxx

ATTY.ALEGARBES:

(Cross-examination)

Q: So, are you implying to this Honorable Court now that on the night that you alleged you were raped, your mother was still around?

A: In the morning of September 16, 1996, my mother left because she reported to work in Livearn, and in the evening, she went home drunk. That was the time that they quarreled, then, my mother left.