

EN BANC

[G.R. No. 135200, February 07, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FLORENCIO FRANCISCO Y ALEJO, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

A Complaint was filed on 2 February 1996 against accused FLORENCIO FRANCISCO y Alejo alleging that on or about 3 October 1995 he, by means of force and intimidation, willfully, unlawfully and feloniously undressed and mashed the private parts of complainant Editha Francisco, then a minor of fourteen (14) years, and had carnal knowledge of her. In her Complaint, Editha was assisted by her aunt Mercedes Jucutan Edquibal.

On 6 August 1998 the trial court found the accused Florencio Francisco y Alejo guilty of qualified rape, sentenced him to death, and ordered him to pay his victim, his own daughter, Editha Francisco, P75,000.00 as civil indemnity, P5,000.00 as moral damages and P100,000.00 as exemplary damages.^[1]

The evidence mainly adduced through the testimony of Editha Francisco shows that on 3 October 1995, between 4:00 o'clock and 6:00 o'clock in the morning, while she was asleep together with her mother, five (5) sisters and three (3) brothers in their tenement at No. 9 J. P. Rizal St., Barangay Sta. Lucia, Novaliches, Quezon City,^[2] her father, the accused Florencio Francisco, woke her up and told her to look for his slippers as he was going out to buy cigarettes. When she told him that she could not find his slippers he suddenly covered her mouth tightly with his hands^[3] and forcibly dragged her towards the toilet^[4] located some five (5) steps^[5] away from their house. Once inside the toilet, the accused undressed her and removed her shorts and panty despite her cries and pleas for him to stop. He undressed himself, "feasted on her young breast and inserted his penis into her vagina while the two (2) of them were standing"^[6] with the accused propping her up on the seat of the toilet bowl. When he was about to ejaculate, he withdrew his penis from her vagina and wiped the semen from her organ. Afterwards, he warned her not to tell anyone about what happened. Since the accused had been beating her and her siblings in the past, she was afraid of what the accused would do if she would tell anyone about what he did to her this time.

Editha further disclosed that her father had been sexually abusing her repeatedly since she was only nine (9) years old. According to her, the rape incident that is the subject matter of this case was already her last sexual experience with him. However, she never disclosed any of his past sexual abuses until she learned that her father was also sexually molesting her two (2) younger sisters, Baby Flor and Maria Coralyn.^[7] This led her to reveal her ghastly experiences to her aunt

Mercedes Edquibal who accompanied her to the authorities to report the matter.

Dr. Ma. Cristina B. Freyra, a physician from the Philippine National Police, conducted a medical examination of Editha and found her hymen with deep, healed lacerations at 3:00 and 9:00 o'clock positions.^[8]

The accused alleged that his wife Isabelita Jucutan fabricated the charge as he denied the accusation against him. According to him, he used to beat and spank his wife and their daughters. He countered that it was actually the brother of his wife, Amuncio Jucutan, who sexually abused Editha but he did not file any charges against him upon the request of his wife Isabelita.

The accused, in his Appellant's Brief, questions the Decision of the trial court on two (2) points: *First*, he contends that rape was not committed, and that the trial court erred in giving credence to the testimony of Editha despite her silence or failure to shout and cry for help. He finds it inconceivable that Editha did not make any outcry when their house and those of her relatives were adjacent to the toilet where the rape was supposedly perpetrated. *Second*, assuming that he is guilty, he should be held liable only for simple rape as the Complaint failed to allege the special qualifying circumstance of his relationship to Editha. Accordingly, he argues, the absence of this allegation made it legally impossible to sentence him to death. Consequently, he must be imposed the penalty next lower in degree, i.e., *reclusion perpetua*.

We disagree with accused-appellant that simply because complaining witness failed to shout for help he could not be guilty of rape. The records of the case provide the explanation^[9] -

Q: When you were pulled by your father to the said toilet, did you shout?

A: No, your Honor.

Q: Why Madam Witness?

A: He was covering my mouth at that time. He was hurting me.

Moreover, even if accused-appellant did not cover the mouth of Editha, her silence would not by itself be sufficient to negate the conclusion that rape was committed. Being complainant's father, accused-appellant had moral ascendancy and influence over his daughter who was then of tender years. Her fear of her father was more than enough to intimidate her to submit to his lewd advances without shouting for help.

Furthermore, we cannot uphold the contention of accused-appellant that the rape could not have possibly occurred in a toilet which was adjacent to their one-room house where the rest of the immediate members of the family were then sleeping, and to the houses of their relatives who could have easily heard complainant's pleas. Such physical proximity and the possibility that these relatives might hear any sound or notice any commotion coming from the toilet do not warrant the