

## SECOND DIVISION

[ G.R. No. 113265, March 05, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MANUEL PEREZ Y MAGPANTAY, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

On appeal is the decision<sup>[1]</sup> of the Regional Trial Court of Kalookan City, Branch 124, dated April 5, 1991, in Criminal Case No. C-35033 finding appellant Manuel Perez y Magpantay guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua*. Appellant was also ordered to indemnify his victim, Jennifer Dimaano, the sum of P50,000.00 and to pay the costs.

Appellant is the common-law husband of the victim's mother, Yolanda Casapao Dimaano.<sup>[2]</sup> He and Yolanda have been co-habiting since 1980 when the latter left her husband for appellant. The 12 year-old victim, Jennifer Dimaano, is the elder of the two daughters of Yolanda by her estranged husband. Jennifer's Certificate of Live Birth (Exhibit "A") shows that she was born on April 26, 1978 and thus, was already 12 years of age at the time of the incident on May 31, 1990. Yolanda has also borne appellant two children. All of them live in a one-story shanty with no partitions located at Block 54, Lot 3, Dagat-dagatan, Kalookan City.

In an information dated June 5, 1990, appellant was charged with rape allegedly committed as follows:

That on or about the 31st day of May 1990, in Kalookan City, Metro-Manila, and within the jurisdiction of this Honorable Court, above-named accused, with lewd design and taking advantage of his relationship as his (sic) stepfather, did then and there, willfully, unlawfully and feloniously lie and have sexual intercourse with one JENNIFER DIMAANO y CASAPAO, a minor of 12 years, against her will and without her consent.

CONTRARY TO LAW.<sup>[3]</sup>

On arraignment, appellant pleaded not guilty to the charge. Trial then commenced.

The trial court summed up the prosecution's evidence as follows:

At about 6:00 A.M. on May 31, 1990, Manuel Perez woke up Jennifer who lying asleep on the cemented floor of the house (TSN-Sept. 5, 1990, pp. 4, 26). The door and the windows of the house were closed. (TSN-Sept. 5, 1990, pp. 26-27). Manuel Perez ordered Jennifer to remain lying down on the cemented floor and began undressing Jennifer. Manuel then kissed the cheeks of Jennifer. He proceeded to kiss and touch the breasts of Jennifer as well as the upper part of Jennifer's body. (TSN-Sept. 5, 1990,

pp. 5, 28). Manuel, who was dressed in short pants, did not remove the same but he unzipped the zipper of his short pants. He pulled the legs of Jennifer apart and placed himself on top of the body of Jennifer. He then inserted his private part inside the private part of Jennifer. (TSN-Sept. 5, 1990, pp. 5, 36). All this time Jennifer protested and complained of pain but was unable to resist because Manuel threatened to kill her. After satisfying his lust, Manuel again threatened Jennifer not to tell anybody about what happened to her. (TSN-Sept. 5, 1990, pp. 5, 29). Jennifer left the house after the incident and proceeded to the nearby house of her aunt, Othelia Marco, who was then out of the house. Jennifer glanced at the clock in Othelia's house and found out that it was 6:00 A.M. in the morning of May 31, 1990 (TSN-Sept. 9, 1990, pp. 14-15). Jennifer remained outside the house until Manuel called her later on to clean the bleedings. (TSN-Sept. 5, 1990, p.16).<sup>[4]</sup>

It was not until June 3, 1990 that Jennifer disclosed her harrowing experience to a certain Malou (Marilou Castellano),<sup>[5]</sup> a *kumadre* of her mother, who was then staying with them. Malou promised to help her. She brought her to the Navotas Police Station in order to report the rape incident. The Navotas police, however, told them to report the matter to the Malabon Police Station. Malou and Jennifer then proceeded there, but they were advised that the matter fell under the jurisdiction of the Kalookan City police force. Malou and the victim, however, did not proceed to the Kalookan City police force as it was already late in the evening.

The next day, Jennifer reported the incident to her aunts, Othelia Marco and Myrna Casapao. They then accompanied Jennifer and Malou to the Kalookan City police station, where Jennifer filed a complaint for rape against appellant. After the police investigation, Jennifer was advised to go to the then-Philippine Constabulary (PC) Crime Laboratory in Camp Crame, Quezon City for a physical examination. However, it was only on June 13, 1990, that Jennifer submitted herself to a physical examination.

Dr. Manuel Aranas, a medical officer of the PC Crime Laboratory, examined Jennifer and found her to be "in non-virgin state physically."<sup>[6]</sup> He found that her hymen had a deep healed laceration at 5 o'clock and a shallow healed laceration at 10 o'clock.<sup>[7]</sup> In his interview with Jennifer, she disclosed to him that appellant first sexually abused her when she was 8 years old.

In his defense, appellant resorted to a bare denial. He claimed that at the time of the incident, he was in the house sleeping with his two infant children. He said his common-law spouse, Yolanda, was just outside washing their clothes. He claimed that the charges against him were fabricated. He said Jennifer accused him of rape because he had chastised Jennifer for borrowing money by using his name. He added that Jennifer was pressured by Yolanda's relatives who wanted Yolanda to be separated from him.<sup>[8]</sup>

To corroborate his story, appellant's counsel put Yolanda, the victim's mother, on the witness stand. She stoutly insisted that appellant could not have raped her daughter, Jennifer. She also denied Jennifer's claim that Yolanda washed clothes for a living and thus was not in their house when the rape occurred. Yolanda testified that at the time of the alleged rape, she was doing the family laundry beside a water

tap which is just two steps from the door of their house. The rape could not have taken place without her knowledge. She admitted that her *kumadre*, Malou, stayed at their house for several days, but claimed that the reason Malou assisted Jennifer in charging appellant with rape was that Malou was in love with Manuel but her love was unrequited.<sup>[9]</sup>

The prosecution then presented Jennifer anew as a rebuttal witness. She vehemently denied the allegations of the defense that she is a liar and she frequently borrowed money from their neighbors using appellant's name. She admitted that the washing of clothes in Dagat-dagatan was done in a public faucet, but this was located some five to six meters away from the door of their house. As to her mother's claim that she was not a laundry woman but only washed the family's clothes, Jennifer declared that she was the one who did the family laundry and at the time of the incident, her mother was in Navotas, washing other people's clothes for a fee.

Jennifer's aunt, Myrna Casapao, likewise took the stand anew as a rebuttal witness. Myrna denied that she forced her niece to charge appellant with rape. She averred that the victim voluntarily filed the complaint with the Kalookan City police.

The defense opted not to present any evidence on sur-rebuttal.

On April 5, 1991, the trial court rendered its judgment in Criminal Case No. C-35033, thus:

WHEREFORE, in view of the foregoing, this Court finds the accused MANUEL PEREZ y MAGPANTAY guilty beyond reasonable doubt for the commission of rape on Jennifer Dimaano, as charged in the Information, which is punishable under Article 335 of the Revised Penal Code, as amended. This Court hereby sentences said accused MANUEL PEREZ y MAGPANTAY to suffer imprisonment of *reclusion perpetua*, there being no mitigating circumstances, to indemnify the victim, Jennifer Dimaano y Casapao, in the amount of P50,000.00 as consequential damages and to pay the costs.

The accused shall be entitled to the full period of his preventive imprisonment pursuant to Article 29 of the Revised Penal Code, as amended, provided the conditions enumerated therein have been complied with.

SO ORDERED.<sup>[10]</sup>

Hence, this instant appeal with this sole assignment of error:

THE TRIAL COURT ERRED IN NOT FAILING TO NOTICE THAT THE TESTIMONY OF THE ACCUSED<sup>[11]</sup> WAS SEVERELY AND SUBSTANTIALLY FLAWED ON SEVERAL MATERIAL POINTS.

Appellant contends that it was error for the trial court to have convicted him based solely on complainant's testimony. He submits that a closer scrutiny of her declarations in open court will show that her testimony was neither consistent nor credible. Appellant points out that on direct-examination, she claimed she was

asleep and was only awakened when appellant approached her and began undressing her, thus:

- Q: Jennifer, do you recall of (sic) any unusual incident that took place on May 31, 1990?
- A: Yes, Madam, I was raped by Manuel Perez.
- Q: And what time did the rape take place?
- A: Six o'clock in the morning, Madam.
- Q: Can you relate to us how this rape took place?
- A: Yes, Madam. I was sleeping then and I was awaken(ed) when Manuel Perez approached me.
- Q: Then, what happened?
- A: He undressed me, Madam.
- Q: And then next?
- A: He kissed my cheeks, Madam.
- Q: Continue.
- A: He also kissed my breast and upper part of my body, Madam.
- Q: Then, what happened?
- A: Then he inserted his private part to my private part, Madam.<sup>[12]</sup>

On cross-examination, however, she gave a completely different narration. Instead of being asleep and then awakened by appellant's approach, she declared that she was outside of their house, only to be called inside by appellant, and made to lie down. She was then undressed preparatory to sexual intercourse. The assailed testimony reads:

- Q: But you can remember how the accused Manuel Perez undressed you? Will you tell this Honorable Court how your clothing was removed?
- A: I was then lying on the cement floor when he undressed me, sir.
- Q: Why were you lying on the cement floor on May 31, 1990 at 6:00 o'clock in the morning?
- A: Because he ordered me to lie down, sir.
- Q: Before he ordered you to lie down, where were you during that time?