

## EN BANC

[ G.R. No. 132170, April 20, 2001 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ENRIQUE LABAYNE Y AGUILAR, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

This is an automatic review from the decision rendered by Branch 76 of the Regional Trial Court of San Mateo, Rizal, finding the accused-appellant, Enrique Labayne y Aguilar, guilty beyond reasonable doubt of the crime of Rape and nine (9) counts of Acts of Lasciviousness. The dispositive portion of said decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in these cases as follows:

1. Finding herein accused Enrique Labayne y Aguilar GUILTY beyond reasonable doubt of the crime of Rape as defined in and penalized under Article 3354 of the Revised Penal Code, as amended, and sentencing him to the penalty of death, to indemnify complainant Mary Rose S. Daligdig in the amount of P50,000.00 as moral damages, and to pay costs.

2 Finding herein accused Enrique Labayne y Aguilar GUILTY beyond reasonable doubt of nine (9) counts of Acts of Lasciviousness as defined in and penalized under Article 336 of the Revised Penal Code, and sentencing him to suffer six (6) years imprisonment for each count, to indemnify complainant Mary Rose S. Daligdig in the amount of P20,000.00 for each count, as moral damages, and to pay costs.

SO ORDERED.<sup>[1]</sup>

The records reveal that on December 2, 1996, complainant Mary Rose Daligdig, nine (9) years of age, assisted by her mother Angelina Daligdig, filed a criminal complaint for Rape against the accused. Subsequently, the public prosecutor filed the following information:

That on or about the 24th day of November, 1996 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with MARY ROSE DALIGDIG Y SABINO, a nine (9) years old girl, against her will and consent."<sup>[2]</sup>

When arraigned on February 7, 1997, appellant, with the assistance of counsel, pleaded "Not Guilty" to the aforesaid charge.

Thereafter, nine (9) counts of Acts of Lasciviousness were also filed by the same complainant against herein appellant. Nine (9) separate informations were subsequently filed. The information, dated 3 February 1997 in Criminal Case No. 3136-97-SM reads as follows:

That on or about the 8th day of October 1996, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, coercion and intimidation, with the use of a knife and with lewd design and intent to cause or gratify his sexual desire, abused, humiliated and degraded complainant MARY ROSE DALIGDIG Y SABINO, a nine (9) year old girl, having moral ascendancy over her being her acknowledged step-father (sic), did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon said complainant his acknowledged stepdaughter by then and there ordering her to hold and suck his penis which she did, and at the same time said accused kissed her lips, neck and vagina, against her will and consent.<sup>[3]</sup>

The other eight (8) informations for acts of lasciviousness are virtual reproductions of the above-quoted information; they only differ as to the dates of the alleged acts of lasciviousness. These cases were consolidated with the rape case.

When arraigned on March 12, 1997, Enrique Labayne entered a plea of "Not Guilty" to all nine (9) counts of Acts of Lasciviousness. Joint trial on the merits ensued henceforth.

Four witnesses testified for the prosecution.

The first was the victim Mary Rose Daligdig. She testified that she was born on May 27, 1987 to Angelina V. Sabino and Arthur A. Daligdig.<sup>[4]</sup> Mary Rose used to live with her grandparents until she was six (6) years of age when she moved in with her mother and her stepfather, herein appellant, at No. 66 B. Mariano St., Sta. Ana, San Mateo, Rizal.<sup>[5]</sup> After the alleged raped occurred, she transferred back to her grandmother's house at Sta. Rosa, Laguna.

According to Mary Rose, the first incident took place on October 4, 1996 at around 3:00 in the afternoon. She was taking her nap in the bedroom of their home in San Mateo, Rizal when appellant Enrique Labayne woke her up. Her mother was not at home. He told her to go to the door of the kitchen. She asked him why but he did not respond. She first went to the bathroom and then proceeded to the kitchen where she saw the appellant holding a knife. He told her not to make any noise or else he would kill her, thus: "*tutuluyan daw po niya ako*."<sup>[6]</sup> He then held the knife at her right neck and told her to remove his shorts and brief, suck his penis, and to move her hand back and forth as if in the act of masturbation. After ejaculating appellant kissed her on the lips, neck and vagina. She cried and when the sexual advances ended, she proceeded back to the place where she was sleeping. She

then encircled the date on the calendar but did not tell her mother about that incident. She was afraid the accused would carry out his threats to kill her.

A few days later, in the afternoon of October 8, 1996, the appellant again woke up Mary Rose. The same sexual abuse happened in the same place and in the same manner with appellant again repeating his threats of death. Afterwards, she was told to go back to the place where she was sleeping. Mary Rose encircled the date on the calendar again, so that "if my mother will find out what happened I will be able to say the date."<sup>[7]</sup> According to Mary Rose the sexual abuse was repeated on the following dates: October 14, 16, 19, November 4, 9, and 13. After each incident, she would encircle the date on her calendar.<sup>[8]</sup>

On November 24, 1996 at about 2:00 in the afternoon, the accused again woke up Mary Rose Daligdig. He told her to go to the door of the kitchen and held a knife to her neck in the usual manner, threatening to kill her should she make any noise. He told her to remove his shorts and brief, and thereafter to remove her own shorts and panty. This time, however, he inserted his penis into her vagina. She told him it was painful. He then told her to suck his penis and to hold it back and forth as if in the act of masturbation. After ejaculating, he kissed her on the lips, neck and vagina, during which time her mother suddenly walked into the room. Her mother asked appellant what he was doing but he just left the house. Mary Rose then told her mother that appellant had asked her to hold his penis. When appellant returned, Mary Rose's mother asked her to step out of the house. After an hour, her mother fetched her and they proceeded to her godmother's house. There, Mary Rose revealed all the sexual abuses she was subjected to in the hands of her stepfather. She was thereafter brought by her mother to live at her grandmother's house in Sta. Rosa, Laguna.<sup>[9]</sup>

Ms. Angelina Daligdig, the mother of Mary Rose, corroborated the above narration of her daughter. She testified that on November 24, 1996, she was at their residence in San Mateo, Rizal together with her daughter, Mary Rose and Enrique Labayne, her live-in partner for more than six (6) years. At around 2:30 in the afternoon, she was sleeping and she woke up to answer the call of nature. She stood up and saw Enrique Labayne and her daughter Mary Rose at the back of the door of their kitchen. Angelina saw with her own eyes her daughter sucking the penis of Enrique Labayne, and described it, thus: "*Nakatayo si Enrique Labayne na nakababa ang short pants niya at brief at nakasubsob ang mukha ng anak ko sa titi niya, at subo-subo iyon ng anak ko.*" She was shocked at what she saw because she never expected that he would do such a thing to her daughter. She scolded him and uttered invectives against him. She asked him why he did that to her daughter to which Enrique Labayne responded, "*hindi naman aabot iyon sa iniisip ko.*" She talked to her daughter who told her all that had happened. Her daughter was crying and pale because of fright. When she asked Mary Rose why the latter did not disclose the abuses, Mary Rose responded that she was afraid because Labayne threatened to kill them both. On November 28, 1996, she brought her daughter to Camp Crame to report the incident and have Mary Rose examined.

From the time Enrique Labayne was apprehended and incarcerated, Angelina received letters from him asking for forgiveness, which she presented as evidence. In a Letter dated December 12, 1997, the accused wrote:

*"Huwag mo sanang patigas in and iyong puso at kalooban. Isiping makapagpatawad. Kung Diyos ay nakapagpatawad, ikaw pa kayang nilalang lang ang hindi makapagpatawad... Bigyan mo ako ng pagkakataon, patawarin mo na ako, Ma."*<sup>[10]</sup>

In yet another letter, he asked for forgiveness repeatedly:

*"Sana mapatawad mo na ako...please forgive me...Ma, sana mapatawad mo na ako at bigyan ng pagkakataong makapagpanibagong buhay."*<sup>[11]</sup>

Dr. Jaime Rodrigo Leal testified that on November 28, 1996, while working at the PNP Crime Laboratory, he examined the complainant. His findings were reduced into writing in the following report:

*FINDINGS:*

GENERAL AND EXTRAGENTIAL:

Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type and congested hymen with shallow healed laceration at 9 o'clock. External vaginal orifice admits tip of examiner's smallest finger." <sup>[12]</sup> CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.

REMARKS:

Peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.<sup>[13]</sup>

Dr. Leal explained during his testimony that "congested" means that there is redness or swelling of the hymen as a result of the secretion of blood into the vaginal tissue. This could have been caused by trauma, or the hymen could have come in contact with any hard, blunt object, including the male organ, within seven (7) days from the time of examination on November 29, 1996. He stated that it was, therefore, possible that the congestion in the hymen was inflicted on November 24, 1996, which is within the seven (7) day period.<sup>[14]</sup> On cross-examination, however, he said that, in rare cases of small children or a woman who is not yet of adult size, the laceration of the hymen could be caused by other factors such as by riding a

bicycle, or could also be self-inflicted by using the finger of a woman.<sup>[15]</sup>

The last witness for the prosecution was Sr. Police Officer Darlito Dar. He testified that on November 29, 1996, he was assigned at the Criminal Investigation Division, National Capital Regional Office, Camp Crame, Quezon City. On said date, he was able to talk to Angelina Daligdig in connection with her complaint that her daughter, Mary Rose Daligdig was sexually molested. As part of the team tasked to conduct a follow-up investigation, he proceeded to Sta. Ana, San Mateo, Rizal together with Angelina Daligdig, PO2 Osea and Romeo Calsetas to invite the suspect, Enrique Labayne, for questioning. They went to the house of Enrique Labayne but the latter was not there. Fortunately, they chanced upon the suspect while cruising along B. Mariano St. They introduced themselves as policemen and informed him of the complaint filed by Angelina Daligdig and invited him for questioning. Labayne voluntarily went with them to Camp Crame. During the investigation, Mary Rose pointed to and positively identified Enrique Labayne as the one who molested her.

Appellant raised the defenses of denial and alibi.

Felix Soller Segui testified that he was in front of his vulcanizing shop at Resurreccion, San Mateo, Rizal, on November 18, 1996, when one of the alleged counts of Acts of Lasciviousness took place. Between 11:45 a.m. and 12:00 noon, Enrique Labayne met an accident near their shop. The motorcycle he was riding on turned to its side. Appellant was hurt and suffered bruises on his right hand and knee. Segui invited him into his house to be treated, after which Labayne and a neighbor waited for a mechanic to arrive. The mechanic repaired the motorcycle while they were chatting in front of the shop, about 10 to 15 meters away from the tricycle. Appellant Labayne bade him goodbye at around 4:00 p.m.<sup>[16]</sup>

Another witness, Jose San Jose, testified that he was at home on November 18, 1996 between 2:30 to 3:00 in the afternoon, when a certain "Eddie" came and fetched him to repair a motorbike. He proceeded to the corner of Resurreccion and General Luna St., Sta. Ana, San Mateo, Rizal, met an accident, at approximately 3:00 to 4:00 p.m. He saw the motorcycle of Labayne lying on the ground. Labayne had injuries on his palm, right elbow and right knee. San Jose repaired the motorcycle, and he and Labayne rode the same to the Petron gas station, where he left the appellant at past 4 p.m.<sup>[17]</sup>

Pablito Macagaling testified that on November 24, 1996, between 2:00 to 3:00 in the afternoon, he went to the house of Enrique Labayne in Sta. Ana, San Mateo, Rizal. After calling for appellant, a voice of a woman answered him that Labayne was taking a bath. Not long after, Labayne who was only covered in a towel peeped at the door. Magcaling told Labayne that he learned that he (Labayne) knows someone who is a *jueteng* operator. Labayne told him to wait at the Shoelander Restaurant near the plaza so they could talk. At around 4:00 p.m., they met at the designated place and discussed about seeing the *jueteng* operator the following week. They separated at approximately 4:30 p.m. They were not able to go to the *jueteng* operator as planned because he heard that Mr. Labayne was picked up by the CIS operatives.<sup>[18]</sup>

The last witness for the defense was appellant himself. Enrique Labayne testified that he and Angelina Daligdig, mother of the complainant, had been live-in partners