

EN BANC

[G.R. Nos. 134449-50, October 25, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO HERNANDEZ Y PALMA, ACCUSED-APPELLANT.

D E C I S I O N

PER CURIAM:

For automatic review is the consolidated decision^[1] of the Regional Trial Court of Batangas City, Branch 4, in Criminal Cases Nos. 9094-95, finding appellant Pedro Hernandez y Palma guilty on two (2) counts of rape of his minor daughter, Wilma Nieva Hernandez. For each count appellant was sentenced to death and ordered to pay the victim the sum of P50,000 as moral and exemplary damages.^[2]

In Criminal Case No. 9094, the information reads:

That sometime and within the month of October, 1994, at about 10:00 o'clock in the evening, at Brgy. Natunuan, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge with the said Wilma Nieva Hernandez, his thirteen (13) year-old daughter, against her will and consent.

Contrary to law.^[3]

In Criminal Case No. 9095, the charge reads:

That on or about the 24th day of February, 1997, at about 9:30 o'clock in the evening, at Barangay Natunuan, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge with the said Wilma Nieva Hernandez, his sixteen (16) year old daughter, against her will and consent.

Contrary to law.^[4]

On October 28, 1998, appellant was arraigned in both cases. Assisted by counsel *de oficio*, he pleaded not guilty to the charges. Trial on the merits commenced. As the two cases involved the use of common evidence, a joint trial was held.

The prosecution first presented complainant, WILMA HERNANDEZ, who was 16

years old at the time she took the witness stand. Pertinent to Criminal Case No. 9094, she testified that sometime in mid-October 1994, at about 10:00 P.M., she was awakened from her sleep when her father entered her mosquito net and started touching her private parts. He told her to undress and when she refused, he boxed her in the stomach and started to sexually abuse her. He inserted his penis into her vagina until he ejaculated. This incident happened while her siblings were in the "other room" of their house.

Although she could not state precisely how many more times her father raped her, between the first and the last rape, she stated that he did it more than 20 times. She, however, recalled clearly the last one, which happened on February 24, 1997, subject of Criminal Case No. 9095. She recounted that at around 9:30 P.M., she was sleeping when her father arrived home from a drinking spree. He lay beside her and started to touch her private parts and ordered her to undress and had intercourse with her. He boxed her when she started to make noises and threatened to harm her if she told anyone.

During cross-examination, she described their house as a one-room dwelling. When she was first raped, there were two bamboo beds (*papag*) in the room. The two beds were only about three feet apart, separated by a course cloth (*katsa*). She admitted she did not shout when her father first raped her but only uttered a stifled cry. As she was being raped, her father would hurt her or threaten her bodily harm if she would make noises or tell anyone. He sometimes undressed her, touched her breasts and inserted his fingers in her vagina before he would undress and insert his penis in her vagina. When asked if she tried to tell her mother of her ordeal, she said that she wrote her mother and left the letter on top of their television, but her father discovered it and after he read it, he accused her of trying to ruin his reputation. Her mother just advised her to keep it a secret because revealing her ordeal would bring shame to their family. When asked if she had a boyfriend, she said no.^[5]

She testified that after the rape on February 24, 1997, on the night her father had arrived from a drinking spree, she succeeded in escaping from her father. She escaped to a neighbor's house and never returned home, although her father told her siblings to get her. She went to her uncle's house and told him of her ordeal.^[6]

On December 11, 1997, DR. RODORA JAREÑO, a resident obstetrician-gynecologist of the Batangas Regional Hospital, testified that on request of a *barangay kagawad*, she conducted a physical examination on Wilma Hernandez, and found that she had a contusion on the left arm. Also, there were healed and incompletely healed lacerations in her hymen in the 4, 6, and 7 o'clock positions. Her *introitus*^[7] admitted two fingers with ease and her cervix tip was softish, short; and her uterus was small and negative. There was *adnexae*^[8] mass; negative bleeding; and no sperm cells found. She also stated that her findings on Wilma's genitalia could have been caused by biking, horseback riding, or penile penetration. Dr. Jareño also testified that Wilma admitted having had sexual intercourse with another since she had been raped by her father.^[9]

Next on the witness stand was GLORIA HERNANDEZ, mother of Wilma. She testified that her daughter told her sometime in mid-1995 that the latter was being sexually abused by appellant. Her husband denied he molested Wilma sexually when she

confronted him about it. She further stated that her husband, who was a soldier for 22 years, when drunk would hurt her and her children.^[10] She said that she was never an actual witness to the sexual abuse of her daughter, who never told her of being raped. However, Wilma had told her that appellant did acts of lasciviousness. On cross-examination, however, she admitted that Wilma told her many times that she had been raped by her own father. She recounted that she was in Manila in 1997 when a barangay councilwoman, "Ka Tinay," assisted her daughter in reporting the rape.^[11] It is not quite clear if she was also in Manila in 1994, during the first rape committed by appellant.

JUSTINA GARCIA, the councilwoman, corroborated the testimony of Gloria Hernandez. Justina testified that she was the one who brought Wilma for medical examination. She said that Gloria had told her that Wilma was being sexually abused by her father. The night of the last rape, when Wilma escaped from her father's house, she found Wilma in the house of a Consuelo Dimaapi, in Bauan. She found Wilma had bruises all over her body and her eyes were swollen from crying. There, Wilma narrated her ordeal. Two days after, Justina heard that Gloria was going to take Wilma to Manila, so, she took Wilma to her place in Brgy. Natunuan in San Jose, Batangas and then accompanied her to the hospital for the medical examination. On cross-examination, she added that there had been rumors in their place that appellant was sexually abusing his daughter. Even appellant's father had told her that when drunk, appellant liked to have sex with Wilma. At about the same period, she noticed that Wilma no longer attended choir practices.^[12]

When it was the turn of the defense, GLORIA HERNANDEZ was again presented. Gloria testified that during the period that Wilma claimed she was being raped by her father, she observed that her husband became strict with their daughter. She, however, swore that she never witnessed her husband sexually abuse their daughter nor commit lascivious acts on her. When asked if she still loved her husband, she answered, "Now, not anymore because of what he did to my daughter."^[13]

On June 8, 1998, appellant PEDRO HERNANDEZ testified in his own defense. He denied all accusations against him and offered an alibi as his defense.^[14] With respect to the alleged rape in October of 1994, subject of Criminal Case No. 9094, appellant categorically denied raping his daughter. When asked why Wilma would accuse him of raping her, he answered he did not know and could only surmise that it was because he castigated her for his missing P4,000. He also averred that he only slapped his children when they did not follow his orders.^[15]

On the alleged rape committed on February 24, 1997, subject of Criminal Case No. 9095, appellant recalled that he was at the house of his brother-in-law at Barangay Natunuan, San Jose, Batangas. At that time his wife was in Manila applying for a job abroad. When he came home that evening, he noticed that his daughter, Wilma, was not home and when he knocked on the door shouting, his sons woke up and scampered away. He found out that Wilma was sleeping in his sister-in-law's house. He told his sons to fetch her after he discovered his P4,000 was missing.^[16]

The trial court found the testimony of private complainant credible and amply supported by medical evidence. It rendered judgment as follows:

In the light of all the foregoing consideration, the Court is morally convinced that accused Pedro Hernandez y Palma, did in fact commit the offenses charged in these cases. He is therefore found Guilty beyond reasonable (doubt) of committing the heinous crime of rape in each of these two cases under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and is therefore sentenced to the capital penalty of Death in each of these cases, considering that the complainant is his 16 year old minor daughter living with him at the time these offenses were committed. The herein accused is further directed to indemnify the private offended party, Wilma Hernandez, with the sum of Fifty Thousand (P50,000.00) for each case as moral and exemplary damages.

SO ORDERED.^[17]

Pursuant to the second paragraph of Article 47 of the Revised Penal Code,^[18] the penalty imposed being death, the cases are now before this Court for review.

In his brief, appellant assigns two errors:

I. THE TRIAL COURT ERRED IN GIVING FULL AND UNCONDITIONAL CREDENCE AND CONSIDERATION TO THE TESTIMONY OF WILMA HERNANDEZ DESPITE FACTUAL AND MATERIAL INCONSISTENCIES IN HER TESTIMONY.

II. THE TRIAL COURT ERRED IN NOT GIVING ANY PROBATIVE VALUE TO THE TESTIMONY OF MRS. GLORIA HERNANDEZ.

Thus, here the sole issue pertains to the credibility of witnesses. However, we shall also inquire into the propriety of the death penalty imposed twice on appellant.

Appellant assails the credibility of complainant's testimony. He contends that a minute scrutiny of Wilma's testimony would show that her declarations on the witness stand are so riddled with inconsistencies and are contrary to normal experience. Specifically, appellant argues that when asked to describe the layout of their house when she was allegedly raped in October 1994, Wilma testified that it was a one-room structure, with their living room used as a sleeping area at night. He points out that her testimony contradicts her statement that when she was raped for the first time, her mother and siblings were "sleeping in the other room." He avers that if Wilma could not even be sure on the layout of their house where she was raped, then her testimony should be of scant evidentiary value.

For the State, the Office of the Solicitor General (OSG) points out that there is no question that at the time the victim was first raped by her own father, their house consisted of a kitchen and one main room. However, the room had a curtain dividing the only room into two sections or "rooms". Thus, when Wilma testified on the "other room," she meant the other half of the room divided by the curtain. The OSG supported the findings and conclusion of the trial court.

We agree with the position taken by the OSG. In our review of Wilma's entire testimony, we find her testimony consistent on the subject of the principal occurrence of the two rapes and the positive identification of her violator in both instances. Despite certain variances on details, we find that her testimony as a witness consistently refers to significant facts, which are crucial to the innocence or guilt of an accused.^[19] A perfect description of the crime scene is not essential for it is not an element of the crime. The reference to the "other room" by complainant indeed meant the other half of the room divided by the *katsa* curtain. Her alleged contradictory statements pertain only to minutiae, not touching on the essentials of the crime. A minor inconsistency, if any existed, strengthens rather than diminishes the credibility of complainant as it erases suspicion of a contrived testimony.^[20] The disputed point on whether her mother was home either in mid-October 1994 or on February 24, 1997, appears to us secondary.

Appellant argues that in times of distress, natural human behavior should have propelled complainant to at least make a noise to alert or awaken her mother, who was sleeping merely three (3) feet away. He submits that her failure to do so is not only contrary to human behavior and experience, but also renders her charge doubtful.

We note, however, that at the time of the alleged rape in October 1994, Wilma was only thirteen (13) years old. That she did not shout for help nor awaken anyone else in the house does not mean she was not raped.^[21] Recall that she testified that appellant had boxed her into submission.^[22] Her youth, her fear of her father and his paternal ascendancy over the victim are sufficient reasons why she could not cry out.

Appellant also contends that Wilma said she had struggled against her ravisher atop the bamboo bed (*papag*). If this was so, he argues, his wife close by should have been awakened by the noise of the bed. That the latter did not wake up casts suspicion on Wilma's narration. On this matter, we have repeatedly held that rape can be committed in the same room where other members of the family are sleeping, and it is neither impossible nor incredible for the family members to be in deep slumber and not be awakened while the sexual assault is being committed.^[23] Moreover, appellant's claim that his wife was not awakened that night of the rape in 1994 is not accurate. In fact, she was awakened and asked what was happening late as it was.^[24] In our view, it was the mother's fear of scandal and shame mentioned earlier that inhibited her responses.

In a further bid to undermine the victim's credibility, appellant suggests that she was inconsistent regarding her mother's whereabouts at the time of the rape of February 24, 1997. He stresses that complainant said her mother woke up when the former fled the family house. However, he claims she contradicted herself when she later said that on said date, her mother was in Manila applying for an overseas job.

Appellant's assertion is, to say the least, misleading. Our review of complainant's testimony shows that it was on the occasion of the first rape in 1994 that the victim ran out of the house, causing her mother to wake up.^[25] Nowhere did complainant declare that she dashed out of the house on February 24, 1997, thus rousing her