

EN BANC

[G.R. No. 137843, October 12, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO AÑONUEVO Y DELOS SANTOS, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

For behaving like a beast in satisfying his lustful desires on the daughter of his common law wife one sleepy afternoon, accused Eduardo Añonuevo will spend the longest dark night of his life behind bars, indeed like a captured beast.

On November 5, 1997, an information was filed against the accused Eduardo Añonuevo y delos Santos, *viz*:

"That on or about the 12th day of September 1997, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed instrument, did then and there wilfully, unlawfully and feloniously, by means of force, threat and intimidation, with lewd designs, have carnal knowledge of the offended party Analyn Evangelista y Gamora, a thirteen (13) year old girl, against her will and without her consent.

Contrary to law."^[1]

The accused pleaded not guilty. Trial ensued.

The prosecution evidence shows that the victim, Analyn Evangelista, is the daughter of the common law wife of the accused. Analyn used to live with her grandmother in Bicol, but in 1997, her mother took her to live with her, her three siblings and the accused in San Jose del Monte, Bulacan.^[2] Sometime in September of that year, she learned that her mother planned to marry the accused. She strongly opposed the plan as the accused was, according to her, a "contrabida" in her life. But she is not angry with the accused.^[3]

On September 12, 1997, at around noon, she was at home, sleeping. Her mother and siblings were out. She was awakened by the clattering of plates; the accused had arrived home and was eating. He smelled of liquor. She was still in bed when the accused asked her on the whereabouts of her mother. She replied that her mother was out. The accused told her that he would lie beside her, but she answered that she was getting up. As she stood up, the accused approached her, held her hands, and told her not to leave. He then let go of her hand, but drew a fan knife. With the fan knife,

he ordered her not to move and shout and warned her not to tell anybody about what he was doing, otherwise he would kill her. The accused instructed her to lie down again, but she refused. Failing to make her return to bed, he pulled her towards a mat and made her sit. She cried. The accused again held her hands and kissed her nape and cheeks. He removed her skirt and panty, and pushed her to lie down. He also removed his pants, shorts and brief, did the push and pull movement and inserted his penis into her vagina. The insertion caused pain in her private part. The accused stopped only when she told him that she wanted to urinate. He instructed her to wear her clothes and to urinate just inside the house. She then confessed that she was not really going to urinate. He ordered her to stop crying and fix herself up so she could borrow a saw from their neighbor as he was going to mend their dish rack. Before she went out, he warned her not to reveal the incident to anybody.

Once out of their home which was now hell to her, she went to their neighbor, but did not borrow a saw. Instead, she reported the incident to their neighbor named Elena. The latter accompanied her to the municipal building. Along the way, they met Analyn's mother to whom Analyn revealed what the accused did to her. But her mother dissuaded her from proceeding to the municipal building and told her that she would first talk to the accused. Elena warned Analyn's mother not to go home as the accused had a fan knife. Despite her mother's plea, Analyn, along with Elena, went to the municipal building and reported the rape incident to the police. Analyn executed a sworn statement narrating her father's dastardly act. The following day, Analyn went to the doctor with her mother and neighbor and had herself examined. A medical certificate was issued to her by the examining doctor.^[4]

Dr. Romeo Salen, medico-legal officer, took the witness stand. He examined Analyn from September 12, 1997 to September 15, 1997 upon the request of the San Jose del Monte Police Station. She was accompanied by her mother during the examination. Dr. Salen found that Analyn did not bear any external sign of injury. Upon examination of the victim's genitalia, however, his findings showed that there were congestion and abrasion of the vestibules, and the hymen was congested but intact. He explained that the vestibule is a part of the female genital organ adjacent to the hymen or vaginal orifice. Congestion means that there is reddish discoloration secondary to diffusion of blood in the tissue while abrasion means that the superficial skin was destroyed. He opined that the congestion could be caused by trauma, manipulation, infection or irritation. Irritation could be caused by manual manipulation. He further opined that the irritation may have started within 24 to 36 hours from the examination.^[5]

The lone witness for the defense was the accused. He testified that the victim is the daughter of his common law wife, Merlina Gamora. He has three children with Merlina aged ten, six, and one. Analyn is the eldest among Merlina's and their own children and he treats her like his own daughter. He spent for her sustenance.

The accused started living with Merlina in Bicol when Analyn was still three years old. In 1987, the family moved to San Jose del Monte, Bulacan. According to the accused, Merlina's sibling was against his living in with

Merlina and taught Analyn not to respect him. Thus, since Analyn was four years old, she has been disrespectful towards the accused, but the accused has only once scolded her since she was four years old. The accused and Merlina were planning to tie the knot on September 15, 1997. Analyn got mad when she learned of their plan.

The accused denied raping Analyn. He was a truck helper of a certain Victorino Gerona and on September 12, 1997, he was at work from 7:00 a.m. up to 11:00 a.m. He arrived home at 12:00 noon. Analyn was home, sleeping. He awakened her and shouted at her to borrow a saw from the neighbor as he was fixing their dish rack. Crying, Analyn went out to their neighbor Elena, but did not borrow a saw. At about 2:00 that afternoon, while the accused was eating inside the house, policemen arrived and arrested him. He inquired why he was being arrested, and they replied that he committed an offense. He went with the police to the police station and there he was told that a child was complaining against him.

The accused denied owning a fan knife or *bolo*. He surmised that Analyn filed a complaint against him because she was mad at him for ordering her to borrow a saw from their neighbor and because Merlina's sibling instructed her not to respect him. She was also mad at him because of his plan to marry her mother.^[6]

The trial court found for the prosecution and convicted the accused, viz:

"WHEREFORE, in view of the foregoing, the Court hereby finds accused EDUARDO AÑONUEVO y DELOS SANTOS GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences him to suffer the penalty of DEATH, and to pay private complainant Analyn Evangelista the amount of Fifty Thousand Pesos (P50,000.00) as moral damages."^[7]

Hence, this automatic review with the following assignment of errors:

I.

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE DEFINED AND PENALIZED UNDER ARTICLE 335 OF THE REVISED PENAL CODE, AS AMENDED BY REPUBLIC ACT 7659.

II.

THE LOWER COURT ERRED IN NOT TAKING INTO CONSIDERATION THE FACT THAT THE COMPLAINT WAS DEFECTIVE FOR FAILURE TO STATE THAT THE ACCUSED IS THE COMMON LAW HUSBAND OF THE VICTIM'S MOTHER.

The law applicable to the case at bar is Art. 335 of the Revised Penal Code, as amended by R.A. 7659. It provides in relevant part, viz:

"Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- a) By using force or intimidation;
- b) When the woman is deprived of reason or otherwise unconscious; and
- c) When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death."

The pieces of evidence presented by the prosecution show that the accused had carnal knowledge of Analyn through force and intimidation. The accused ordered her to lie down, but she refused. Thus, the accused had to pull her to a mat to make her sit and push her knees so she would lie down. While the records do not show much physical struggle on Analyn's part to resist the advances of the accused, this is understandable as she was intimidated by the accused with a fan knife. He warned her not to shout nor to reveal the incident to anybody, otherwise he would kill her. In rape through intimidation, it is sufficient that the intimidation produces fear in the mind of the victim that if she did not submit to the bestial demands of the accused, something far worse would befall her at the time she was being molested. As ruled by the Court, "(i)f resistance would nevertheless be futile because of intimidation, then offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary."^[8] In several rape cases, the Court has held that threatening the victim with bodily injury while holding a knife or a *bolo* constitutes intimidation sufficient to bring a woman to submission to the lustful desires of the molester.^[9]

Analyn's testimony and sworn statement, taken together, give us a picture of the lechery committed by the accused on that fateful day of September 12, 1997. The following parts of her testimony are relevant:

"Q. What about your father (sic) where was he when he was talking at (sic) you?

A. He was near the window, Sir.

Q. How far were you away from him?

A. I was near to him.

Q. From where you were lying, could you see your stepfather (sic) while he was talking to you?

A. For a short time, Sir.

Q. After that short time, what happened next?

A. He approached me, Sir.

Q. Upon approaching you, what did he do if he did any?

A. He hold (sic) my hands, Sir.

COURT:

Q. What did your father told (sic) you while you were lying?

A. I told him that I will (sic) stand because he told me that he will (sic) lie beside me.

Q. Before that, you said that your father (sic) talked to you while you were lying, what did your stepfather (sic) tell you?

A. He asked me where is (sic) my mother.

Q. What was your answer?

A. I told him that my mother sent off her nephew.

Q. After that, that was the time he approached you?

A. Yes, Sir.

PROS. SANTIAGO:

May we make it of record that the witness is crying as the question is propounded to her.

Q. When your father (sic) approached you and hold (sic) your hands, what did he do?

A. He hold (sic) my hand while I am (sic) standing.

Q. I thought you were lying?

A. When my stepfather (sic) approached me and I was about to stand up, he held my hands and told me not to leave.

Q. And you were able to stand up?

A. Yes, Sir.

Q. After that what happened next?

A. While he was holding my hand and he later on unhold (sic) it and he drew a fan knife.

Q. What did he do with the fan knife?

A. **He was threatening me with the fan knife and told me not to report or else he will kill me.**

Q. How did your stepfather (sic) threaten you by using the fan knife?

A. **He was holding that fan knife and showing that fan knife to me.**

Q. After you were threatened by your stepfather (sic) with the fan knife, what happened next?

A. He instructed me to lie down again but I did not accede and then he called me again.