

## EN BANC

[ G.R. No. 123075, October 08, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO NUELAN Y LUDOVICE, ACCUSED-APPELLANT.**

### D E C I S I O N

**PARDO, J.:**

The case before the Court is an automatic review of the decision<sup>[1]</sup> of the Regional Trial Court, Camarines Norte, at Daet convicting accused Pedro Nuelan y Ludovice of three (3) counts of rape committed against his daughter, thirteen-year-old Margie L. Nuelan, and sentencing him to death for each count, and to pay the offended party in the amount of fifty thousand pesos (P50,000.00) as moral damages, plus costs.

On March 7, 1994, thirteen-year-old Margie L. Nuelan, assisted by her mother Lily Nuelan, filed with the Municipal Trial Court, Paracale, Camarines Norte a criminal complaint against her father, accused Pedro Nuelan y Ludovice charging him with three (3) counts of rape. After preliminary investigation, on March 23, 1994, the court found probable cause against the accused and issued a warrant for his arrest without bail.<sup>[2]</sup> On the same day, March 23, 1994, the court transferred custody of the accused to the Municipal Jail Warden, Paracale, Camarines Norte.<sup>[3]</sup>

On April 14, 1994, provincial prosecutor of Camarines Norte Pascualita Duran-Cereno filed with the Regional Trial Court, Camarines Norte three (3) informations<sup>[4]</sup> against the accused for rape, as follows:

#### ***Criminal Case No. 8209***

"That on or about 9:00 o'clock in the morning of January 1, 1994 at Purok IV, Barangay Gumaus, municipality of Paracale, province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged with bestial lust and by means of force and intimidation unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with his own daughter, Margie L. Nuelan, a girl of 13 years old against the will of said Margie L. Nuelan to her damage and prejudice.

CONTRARY TO LAW."<sup>[5]</sup>

#### ***Criminal Case No. 8210***

"That on or about 11:00 o'clock in the evening of February 27, 1994 at Purok IV, Barangay Gumaus, municipality of Paracale, province of Camarines Norte and within the jurisdiction of this Honorable Court, the

above-named accused urged with bestial lust and by means of force and intimidation unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with his own daughter, Margie L. Nuelan, a girl of 13 years old against the will of said Margie L. Nuelan to her damage and prejudice.

"CONTRARY TO LAW".<sup>[6]</sup>

***Criminal Case No. 8211***

"That on or about midnight of March 4, 1994 at Purok IV, Barangay Gumaus, municipality of Paracale, province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by bestial lust and by means of force and intimidation unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with his own daughter, Margie L. Nuelan, a girl of 13 years old against the will of Margie L. Nuelan to her damage and prejudice.

"CONTRARY TO LAW".<sup>[7]</sup>

On June 1, 1994, the accused, with the assistance of counsel *de officio* Atty. Camillus Ayo pleaded not guilty to the charges against him.<sup>[8]</sup> On August 15, 1994, the accused entered into plea-bargaining. With the consent of the prosecution, the offended party and her mother, the trial court dropped Criminal Case No. 8209 on condition that the accused would plead guilty to Criminal Cases Nos. 8210 and 8211.<sup>[9]</sup> The trial court ordered the re-arraignment of the accused and the prosecution to present evidence to establish the guilt of the accused beyond reasonable doubt with respect to Criminal Cases Nos. 8210 and 8211.<sup>[10]</sup> Upon re-arraignment on the same occasion, the accused assisted by his counsel pleaded guilty to the charges in Criminal Cases Nos. 8210 and 8211. Thereafter, Margie L. Nuelan and her elder sister, Agnes L. Nuelan,<sup>[11]</sup> testified for the prosecution.<sup>[12]</sup>

On August 17, 1994, after a searching inquiry on the voluntariness of the plea, the trial court found that accused did not fully comprehend the consequences of the plea of guilty. The accused thought that the two cases (Criminal Cases Nos. 8209 and 8210) were only for attempted rape, which he was willing to admit. The trial court allowed the accused to withdraw the improvident plea of guilt to Criminal Cases Nos. 8210 and 8211, and ordered the reinstatement of Criminal Case No. 8209.<sup>[13]</sup> It ordered the recall of prosecution witnesses to establish the guilt of the accused with respect to Criminal Case No. 8209.<sup>[14]</sup>

The prosecution presented Margie L. Nuelan, Agnes L. Nuelan and Dr. Virginia Barrameda-Mazo as witnesses, while the defense presented the accused himself.

On July 25, 1995, the trial court rendered a consolidated decision,<sup>[15]</sup> the dispositive portion of which reads:

"WHEREFORE, finding PEDRO NUELAN y LUDOVICE guilty beyond reasonable doubt of the crime of rape charged against him in Criminal

Cases Nos. 8209, 8210 and 8211 which is defined and punished under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, and in the absence of any mitigating circumstances he is hereby sentenced as follows:

1. In Criminal Case No. 8209 - to suffer the DEATH penalty;
2. In Criminal Case No. 8210 - to suffer the DEATH penalty; and
3. In Criminal Case No. 8211 - to suffer the DEATH penalty;

to pay the offended party the sum of FIFTY THOUSAND (P50,000.00) PESOS in moral damages and to pay the costs."<sup>[16]</sup>

Hence, this automatic review of the death sentences.<sup>[17]</sup>

On January 1, 1994, at around nine o'clock in the morning (9:00 a. m.), thirteen-year-old Margie Nuelan was cooking in their house located at Gumaus, Paracale, Camarines Norte. At that time, her younger siblings<sup>[18]</sup> were playing outside the house. Suddenly, the accused grabbed her and dragged her inside the room. Then, he removed her shorts and panty, as well as his pants and brief. The accused pushed her down, separated her legs, inserted his penis in her vagina and stayed there for about five (5) minutes. Margie cried and struggled, trying to free herself, but did not cry for help because her father threatened to kill her.<sup>[19]</sup>

On February 27, 1994, the accused repeated the rape. At around eleven o'clock in the evening (11:00 p. m.), accused approached Margie while she was sleeping in the *sala* of their house. When she saw him, Margie ran to the bedroom and proceeded to the kitchen. Accused ran after her and when he caught her, he removed both their undergarments. He forcibly separated her legs, laid on top of her and inserted his penis in her vagina. All she could do was to struggle and cry. Accused threatened to kill her if she shouted for help.<sup>[20]</sup>

On March 4, 1994, accused again took advantage of his daughter. At around twelve o'clock midnight (12:00 m.n.) while Margie was sleeping beside her younger siblings in the *sala* of the house, the accused undressed her, removed his undergarments, forcibly separated her legs and inserted his penis in her vagina. She struggled and cried. She could not cry for help since accused threatened to kill her. He even boxed her. During this time, Agnes, Margie's elder sister, was inside the bedroom.<sup>[21]</sup>

On March 5, 1994, at around six o'clock in the morning (6:00 a. m.), Agnes asked Margie why she was crying during the night. After Agnes' persistent inquiry, Margie confessed the bestial acts she suffered at the hands of their father. Agnes immediately relayed the incidents to their eldest brother, Gilbert. They accompanied Margie to the Jose Panganiban Hospital for medical examination, but no medical certificate was issued.<sup>[22]</sup>

On March 7, 1994, Margie went to Talobalib Hospital to be reexamined. Dr. Virginia Barrameda-Mazo examined Margie and issued a medical certificate with the

following findings:

- "1. Multiple Linear Abrasions, about 2.5 cm in length, just above the wrists area, medial aspect, L.;
2. Linear abrasion, tendon of achiles (sic) area, R.
3. Healed hymenal Tear, 12:00, 4:00, 6:00, and 8:00 position;
4. The examining finger can go in and out of the introitus and vaginal canal with ease and without any pain experienced on the part of the patient;
5. Gaping labia minora, and introitus is very visible on a lithotomy position.

NOTE: Vaginal Smear for presence of sperm - result negative (done after 3 days).

Above findings revealed that patient is no longer virgin. Slight physical injuries has been inflicted to the patient."<sup>[23]</sup>

Dr. Mazo testified that the hymenal lacerations could have been caused by sexual intercourse with deep penetration. She explained that the healed hymenal lacerations could have been inflicted on the dates<sup>[24]</sup> charged in the informations.<sup>[25]</sup>

Accused Pedro Nuelan testified in his behalf. He stated that he had five (5) children<sup>[26]</sup> with his wife Lily. He denied the charges of rape committed on January 1, 1994 and February 27, 1994 and interposed the defense of *alibi*. At around nine o'clock in the morning of January 1, 1994, accused testified that he was working at his friend's house.<sup>[27]</sup> However, he claimed that he was having a drinking spree with his friends during the same period.<sup>[28]</sup> On February 27, 1994, at around eleven o'clock in the evening, accused asserted that he was on night duty in a mining company where he worked, located about three (3) kilometers from their house.<sup>[29]</sup>

As to the rape committed on March 4, 1994, accused admitted that he committed the crime because he was dead drunk at that time. He asked forgiveness from his family and regretted what he had done. He asked his family for help and to have the case dismissed, but the court did not allow it.<sup>[30]</sup>

In his sole assignment of error, accused averred that the trial court erred in not appreciating the mitigating circumstances to reduce the death penalty imposed on him. Accused contended that the trial court gravely erred in failing to immediately inquire into the voluntariness of his plea of guilty in Criminal Cases Nos. 8210<sup>[31]</sup> and 8211.<sup>[32]</sup>

We find the contention meritorious.

The Court observes that the manner by which the trial court, during the re-arraignment, conducted the inquiry into the voluntariness and full comprehension of the accused-appellant's plea of guilty leaves much to be desired.<sup>[33]</sup> The trial court did not impress on the accused the full comprehension of the consequences of his plea of guilty.<sup>[34]</sup> Rule 116, Section 3 of the Revised Rules on Criminal Procedure is explicit:

"Section 3. *Plea of guilty to capital offense, reception of evidence.*- When the accused pleads guilty to a capital offense, the courts shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf."

Under the formulation, three (3) things are enjoined on the trial court after a plea of guilty to a capital offense has been entered by the accused:

"1. The court must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea;

"2. The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and

"3. The court must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires."<sup>[35]</sup>

This rule is mandatory.<sup>[36]</sup>

When accused-appellant was re-arraigned on August 15, 1994, the trial court failed to observe the required procedure of conducting a searching inquiry, thus:

"COURT:

Atty. Intia, is your client ready for re-arraignment?

"INTERPRETER:

According to the accused, Your Honor, as he is to make his change of plea but if he is going to sentence life imprisonment, he prefers death sentence.

"COURT:

But it depends upon the number of mitigating circumstances when the crime was committed.

"ATTY. INTIA: