

## EN BANC

[ G.R. Nos. 135511-13, November 14, 2001 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ENRICO MARIANO Y EXCONDE, ACCUSED-APPELLANT.**

### AMENDED DECISION

**PARDO, J.:**

#### The Case

The case is before the Court on automatic review<sup>[1]</sup> of the decision<sup>[2]</sup> of the Regional Trial Court, San Pablo City, Branch 32<sup>[3]</sup> finding accused Enrico Mariano y Exconde guilty beyond reasonable doubt of three (3) counts of rape against his own daughter, Jenalyn F. Mariano, and sentencing him to **death** for each count and to pay Jenalyn F. Mariano the sum of P500,000.00 as moral and exemplary damages.

#### The Charge

On the basis of a sworn statement<sup>[4]</sup> of Jenalyn F. Mariano that the accused tried to rape her on three (3) occasions, on March 25, 1997, Assistant City Prosecutor of San Pablo City Perla D. Abril-Pawang filed with the Regional Trial Court, San Pablo City, three (3) criminal complaints<sup>[5]</sup> for rape under Article 335 of the Revised Penal Code against accused Enrico Mariano y Exconde, as follows:

#### **Crim. Case No. 10343-SP(97)**

"That sometime in the month of August, 1992, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, being then the father of JENALYN F. MARIANO, a minor, then (10) years of age having been born on August 14, 1982, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously had sexual intercourse with the said JENALYN F. MARIANO.

"CONTRARY TO LAW.

"City of San Pablo, March 21, 1997.

"(Sgd.) PERLA D. ABRIL-PAWANG  
Assistant City Prosecutor"

#### **Crim. Case No. 10344-SP(97)**

"That sometime in the month of September, 1992, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this

Honorable Court, the accused above-named, being then the father of JENALYN F. MARIANO, a minor, then (10) years of age having been born on August 14, 1982, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously had sexual intercourse with the said JENALYN F. MARIANO.

"CONTRARY TO LAW.

"City of San Pablo, March 21, 1997.

"(Sgd.) PERLA D. ABRIL-PAWANG  
Assistant City Prosecutor"

### **Crim. Case No. 10345-SP(97)**

"That on or about February 02, 1997, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, being then the father of JENALYN F. MARIANO, a minor, then (10) years of age having been born on August 14, 1982, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously had sexual intercourse with the said JENALYN F. MARIANO.

"CONTRARY TO LAW.

"City of San Pablo, March 21, 1997.

"(Sgd.) PERLA D. ABRIL-PAWANG  
Assistant City Prosecutor"

### The Facts

#### I. The first attempt:

One night a few weeks after Jenalyn's mother left for London on August 9, 1992, then ten year-old Jenalyn was at home with her father, herein accused, and her brother, Ronald, in a rented house at Block 14, Lot 24, NHA, Barangay Sto. Angel in San Pablo City. While accused was drinking gin, he called both Jenalyn and Ronald and ordered each to drink a glass of gin. Since accused look irritated at them and both were afraid of their father who would spank them for no apparent reason, they drank gin as ordered. Accused then told them to sleep in the "*sala*." As instructed, they slept on a mat in the "*sala*." Accused joined them and slept between Jenalyn and Ronald. Jenalyn fell asleep immediately.<sup>[6]</sup>

At ten o'clock later that night, Jenalyn was stirred from her deep slumber by the movements of accused. Jenalyn was shocked to see her father naked. He was kneeling in front of her and his penis was touching her vagina. She no longer wore her panty. Accused's hands were mashing her pre-pubescent breast and he was forcibly introducing his penis in her vagina. Jenalyn struggled hard against accused, trying to remove accused's hands and to move aside his legs. Accused desperately tried to insert his penis into her vagina but could not. Then, accused masturbated. Jenalyn covered herself with a blanket and tried to sleep but was unable to do so at

once, not only for fear that accused might rape her but likewise because she felt unbearable pain in her vagina.<sup>[7]</sup>

At around seven o'clock the next morning, Jenalyn woke up. She saw accused beside her, fast asleep. She got up, went to the toilet and urinated. Her vagina was still painful. She cleaned and washed her vagina. Jenalyn did not tell anybody about what the accused did to her because she was afraid of him since every time accused was drunk, he would warn them that he would kill them next to the others he had killed before.<sup>[8]</sup>

## II. The second attempt:

The second attempt occurred in September 1996. At that time, Jenalyn was living with her aunt, Sonia M. Flor, accused's older sister, and her aunt's two children at Block 14, Lot 27, NHA, Barangay Sto. Angel, San Pablo City. Accused was likewise staying there. Accused and Jenalyn occupied the extension room located at the back of Sonia's house.<sup>[9]</sup>

One night in September 1996, at around ten o'clock in the evening, accused, who was very drunk, ordered Jenalyn to sleep in the extension room. Jenalyn obeyed her father as he was drunk and she was afraid to cross him. Accused once again said the names of persons he killed. Jenalyn was half-asleep as she was afraid that accused might attempt to rape her again. Accused took off his pants when he came into the room. Wearing only his brief, he laid down on a folding bed where Jenalyn lay. He smoked a cigarette and placed a knife on a table.<sup>[10]</sup>

After he smoked one cigarette, accused removed the pillows by Jenalyn's side and entered the mosquito net which covered Jenalyn's side of the bed. Accused took off Jenalyn's "*porontong*" shorts and panty and placed himself on top of her. Jenalyn wanted to call out for help but accused poked the knife at her. Accused then tried to insert his penis into her vagina. Jenalyn struggled and kicked the accused. She felt accused's penis on her vagina. However, the penis was not able to penetrate Jenalyn's vagina. Accused stood up and masturbated until he ejaculated.<sup>[11]</sup>

## III. The third try:

On February 2, 1997, accused wanted to rape Jenalyn for the third time. Jenalyn and accused were still staying at the extension room of the same house of Sonia M. Flor in San Pablo City. While Jenalyn and her two cousins, Abigail and Iris, were watching the Sunday noontime show called ASAP, accused came home after a drinking spree and proceeded to the extension room. He summoned Jenalyn by whistling at her. Afraid of her father, Jenalyn went to him. Accused told Jenalyn to lie down on the folding bed and sleep. Jenalyn obeyed him since accused was drunk and she was terrified. Accused took off his trousers and placed his knife on top of the cabinet where he kept his clothes. Jenalyn tried to sleep but could not as accused was talking and telling her that he had already changed his ways and that "*malapit na akong mamatay*."<sup>[12]</sup>

Clad in his brief, accused took the knife on top of the cabinet and placed himself on top of Jenalyn. He took off Jenalyn's pants and panty and, with his brief lowered to his knees, tried to insert his penis into her vagina. As accused tried to force his

penis into Jenalyn's vagina, she felt "as if something has been broken or turning apart (sic)." Jenalyn struggled against accused and tried to kick him off. Accused's penis was not able to penetrate Jenalyn's vagina, as his sex organ was big. He then stood up and masturbated until he ejaculated.<sup>[13]</sup>

After the third attempted rape and Jenalyn could no longer stand the acts of her father, Jenalyn went to see her aunt, Rosario Fernandez Concepcion, a sister of her mother, and confided to her aunt what the accused had done to her. When Rosario asked Jenalyn why she divulged the incidents only then, she answered that it was because she was afraid. Jenalyn's aunt brought her to the police, who investigated her and took her statement.<sup>[14]</sup>

### The Arraignment and Plea

On September 16, 1997, the trial court arraigned the accused.<sup>[15]</sup> Assisted by counsel *de officio*, he pleaded "not guilty" to each count of rape.<sup>[16]</sup> Thereafter, a joint trial of the three cases on the merits ensued.<sup>[17]</sup>

### The Trial

The prosecution presented evidence, principally the testimony of the victim, Jenalyn F. Mariano, which established the factual narration above. We quote:

On the first attempted rape committed on August 19, 1992:

**"ATTY. QUINTOS**

**"Q** On August 19, 1992 where were you residing?

**"A** At Block 14 Lot 24 NHA, Brgy. Sto. Angel, San Pablo City.

**"xxx xxx xxx**

**"Q** Sometime in [sic] that date do you remember it there was any [sic] unusual incident that happened to you?

**"A** Yes, sir.

**"Q** Will you tell the Court what was that incident?

**"A** A few weeks after my mother had left and one night when my father was drinking alone.

**"xxx xxx xxx**

**"Q** Why were you awaken? (sic)

**"A** I was awaken (sic) and I saw my father was kneeling in front of me and he was not wearing any brief and **his organ was touching my organ.**

**"xxx xxx xxx**

**"Q** Tell the Court was he able to penetrate your vagina with his penis?

**"A** **Only at my singit and he was trying to insert.**<sup>[18]</sup>

On the second attempted rape committed in September 1996, the complainant's testimony is clear, quoted as follows:

**"ATTY. QUINTOS**

**"Q** In September 1996 do you also recall where you were residing?

**"A** Yes, sir.

**"xxx xxx xxx**

**"Q** Do you remember if there was any unusual incident that occurred to you?

**"A** Yes, sir.

**"Q** Tell the Court what was that?

**"A** In the house of my auntie my father told me that he will not sexually molest me because he has changed.

**"xxx xxx xxx**

**"Q** While you were there in the house of your auntie, was there anything that happened to you?

**"A** Yes, sir.

**"Q** Tell the Court what was it?

**"A** It was already night time [sic] of September, 1996, he told me to sleep at the back of the extension room, at the back of the house of my auntie.

**"xxx xxx xxx**

**"Q** While you were sleeping in the extension room, was there any [sic] unusual incident that happened to you?

**"A** Yes, sir.

**"Q** What was that?

**"A** While I was sleeping although I was not fully sleeping and I was a little awake I was then very much afraid because he might do it again [sic].

**"xxx xxx xxx**

**"Q** After he smoked one stick of cigarette, do you know what did he do?

**"A** He removed the pillows placed on my side and then he entered the mosquito net.

**"Q** When he was inside the mosquito net what did he do?

**"A** He placed himself on top of me.

**"Q** While he was on top what did he do?

**"A** He was forcing his penis to insert to (sic) my vagina and then kakanyogkanyog.