

EN BANC

[G.R. No. 133068-69, May 31, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN JABIEN, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

This is an automatic review of the decision^[1] of the Regional Trial Court, Branch 19, Cagayan de Oro City^[2] convicting accused-appellant, Efren Jabien, of two counts of rape committed against his minor daughter, Emie Jabien, and imposing on him two death penalties. The informations aver:

CRIM. CASE NO. 98-06

"That sometime in April 1997 at Tignapoloan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private offended party, Emie Jabien y Pacala, his daughter, under eighteen (18) years old, against her will."^[3]

CRIM. CASE NO. 98-07

"That sometime in December 1995 at Tignapoloan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private offended party, Emie Jabien y Pacala, his daughter, a minor aged eleven (11) years old only, against her will."^[4]

CRIM. CASE NO. 98-08

"That sometime in OCTOBER 1996 at Tignapoloan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private offended party, Emie Jabien y Pacala, his daughter, under eighteen (18) years old, against her will."^[5]

Atty. Manuel Felicia of the Public Attorney's Office (PAO) assisted the accused during the arraignment on January 20, 1998. He pled guilty to Criminal Cases Nos. 98-06 and 98-07. He entered a not guilty plea in Criminal Case No. 98-08.

Despite his plea of guilt in Criminal Cases Nos. 98-06 and 98-07, the trial court

required the prosecution to present its evidence. The prosecution evidence showed that Emie was the youngest among nine (9) children of Efren Jabien and Amadia Pacala. She was born on January 4, 1984. Her misery started sometime in December 1995 when she was only eleven (11) years old.

At about 10:00 P.M., while Emie was reading the bible at the upper part of their house at Sitio Sili, Tignapoloan, Cagayan de Oro City, her father joined her and read to her Psalm 121.^[6] After reading the bible, Emie turned out the lamp inside her room and went to sleep. While drifting off to sleep, her father returned and warned her, "Mei, do not make any noise because if you will make any noise something evil will happen to all of you."^[7] He then removed her skirt and put himself on top of her. He held up her arms and pressed his thighs against her thighs. Emie tried to extricate herself but her father proved too strong for her. He forcefully went inside her. He executed push and pull movements with his pelvis. His thrust inside her caused excruciating pain which she felt all over her body.^[8]

The accused ravished Emie for three (3) to four (4) minutes. While performing his bestial act, Emie saw him laughing while saliva dripped from his mouth. After satisfying his lust, he told her that he just wanted both of them to be happy. Emie cried the whole night after her father left.

Emie felt very weak the next morning. The pain all over her body remained. She had difficulty working. She saw blood on the panty she wore that night. Her mother observed her condition but thought that this was due to menstruation. Emie did not say anything. She did not tell her mother about the incident for fear of the threats made by her father.^[9]

After the first incident, the accused molested Emie everyday for a week. After the first week, he defiled her in the same place about three (3) to four (4) times a week. This sexual abuse lasted from December 1995 to October 1996. It stopped momentarily when Emie left to live with her aunt, Arlene Damalan, at Centro Tignapoloan, Cagayan de Oro City. This was prompted by her enrolment in grade six at the Tignapoloan Elementary School. Sadly, her respite lasted only for a month.^[10]

One afternoon in the first week of December 1996, she returned to her parents who changed residence near Centro Tignapoloan. They transferred to the house of a certain Alex Abalde. Upon arriving in their new home, she learned about the frequent quarrels of her parents as her father did not consent to Emie's stay at the house of Damalan. Esm

In that fateful night, Emie and her parents slept in the same room. Her mother was in the middle while Emie slept by her right side. When her mother was asleep, the accused crawled toward her and, in the words of Emie, "[t]he same thing happened [like] the first rape, he held my two (2) arms and pressed his two (2) thighs on my thighs."^[11] Her mother did not wake up and neither did Emie wake her up. She was prevented by the evil that the accused forewarned would happen if Emie made any noise. During their stay at the house of Abalde, the accused violated her three (3) to four (4) times a week.^[12]

After Emie graduated from elementary school on March 21, 1997, her family

returned to Sitio Sili. They lived in a different house. The accused did not immediately join them as he attended a religious seminar at the Poblacion of Tignapoloan for a week. During this time, Emie realized that she was pregnant. When the accused came home and discovered her pregnancy, he told her that he would abort the child.^[13]

The accused apparently changed his mind regarding the fate of the child. In April 1997, he approached Emie while they were tending their farm. He told her that if someone inquires about the father of her child, she should say that she was raped and that she does not know the identity of her rapist because he wore a mask.

Her mother noticed Emie's bulging stomach and suspected that she had a tumor. The accused suggested that he massage Emie which he did later that night. At dawn, he repeated massaging her stomach while his wife prepared their breakfast below their house. In the process, accused pulled down Emie's skirt and penetrated her for about two (2) minutes. When his wife joined them, he pretended massaging Emie and told his wife that Emie was raped by a masked man.^[14]

Emie's parents took her to Tablon, Cagayan de Oro City to relay the rape to her aunt, Amada Jabien. Amada confirmed that Emie was pregnant. Bernie Jabien, a brother of Emie, suggested that Emie seek the assistance of the Department of Social Work and Development (DSWD) in the delivery of her baby.

In July 1997, Rosita Jabien, Emie's sister-in-law, accompanied her to the DSWD. Before proceeding to the DSWD, her sister Judith, and her mother told Emie that she should not divulge the identity of the person who raped her because he already changed for the better.

Daisy Barbiera, a social worker, admitted Emie in the DSWD office at Macanhan, Cagayan de Oro City. When she asked Emie about the person who raped her, Emie replied that she does not know her rapist. On August 1, 1997, Emie gave birth to a cephalic baby boy who was named Lowie Pacala Jabien.

In a case conference at the DSWD on August 14, 1997, Emie's mother, Amadia, came to assist her. Barbiera suggested to Amadia that they blotter the rape incident but Amadia disagreed explaining that the man who raped Emie has reformed and was serving the church. Barbiera perceived that Amadia knew Emie's rapist all along. She confronted Amadia but the latter only cried. She confirmed that she knew who molested Emie but refused to reveal his identity. Thus, Barbiera questioned Emie in a separate room. She learned that it was the accused who violated Emie.^[15]

After the case conference, Amadia frequently visited Emie to dissuade her from filing a case. On August 18 and August 22, 1997, Amadia admitted to Barbiera that the accused molested Emie. She also tried to convince Barbiera not to pursue the case as the accused has changed and was active in church activities. Barbiera made handwritten reports^[16] about these visits. The accused also went twice to the DSWD and admitted that he raped Emie.^[17]

On September 15, 1997, Emie executed a sworn statement^[18] at the National

Bureau of Investigation, Cagayan de Oro City against the accused. On September 22, 1997 Amadia handed Barbiera a letter.^[19] It came from the accused and it read:

"Mam:

"I am requesting information with due respect to your office as to the status of Emie. Whether you have already filed a case against me so that I could then voluntarily surrender.

"But if none yet, I am willing to be under the custody of the NBI this city...

"I also would like to request that this matter will not be aired as my family and its descendants is pitiful, whether true or not.

"I am thankful for your good treatment of Emie so with your assistance for the speedy trial of the case.

"xxx.

"P.S.

"Hopefully, with God's help the child will be given good future."^[20]

A week after, Barbiera received an undated letter,^[21] also from accused. It read:

"Allow me to disturb you in your works with this last letter. Thank you for being successful in guiding Emie. I would accept this with humility for this is my fate and my way to the truth that God wanted me to follow.

"Just help me to have a speedy trial of the case so judgment would be rendered by the Court.

"But even then I am not hurt with what happened to me, with the hope that all of us will die of sin before going back to our Heavenly Father.

"It is wonderful for a man to know of his death. Because he has still the chance to ponder upon the seven last words which the Lord shouted to forgive the repentant sinners that know him.

"But then I am making use of the few days left to endeavor for my obligations to my family, with the intention that when I leave they could finish their studies this year."

Subsequently, Amadia informed the DSWD that the accused surrendered to the authorities on January 4, 1998.^[22]

The accused did not present any evidence. Kyle

On February 16, 1998, the trial court rendered its judgment^[23] the dispositive portion of which reads: