

EN BANC

[G.R. No. 130509-12, June 19, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELO "MARLON" NAVA, JR., ACCUSED-APPELLANT.**

DECISION

BUENA, J.:

On automatic review is the decision dated May 28, 1997 of the Regional Trial Court, First Judicial Region, Branch 69, Lingayen, Pangasinan in Criminal Cases Nos. 5525, 5526, 5527 and 5528. The dispositive portion reads:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered, finding the accused Marcelo "Marlon" Nava, Jr., guilty beyond reasonable doubt of the crime of Rape in all these four (4) cases. Accordingly, the accused Marlon Nava, Jr. is hereby sentenced in each case to suffer the penalty of DEATH, and to indemnify the private complainant Maribeth A. Nava the sum of PhP200,000.00 as moral damages, and PhP25,000.00 as exemplary damages, and to pay the costs.

May God have mercy on his soul.

SO ORDERED."^[1]

The antecedents as culled from the records show:

Private complainant Maribeth A. Nava is the second of the nine children of accused-appellant Marcelo Nava, Jr. and his wife Leonarda A. Nava.^[2]

One Thursday morning in January 1996, while Maribeth's mother and eldest sibling were in Manila, accused-appellant forced himself on Maribeth. While Maribeth's other siblings were then playing outside their house in Naguelguel, Lingayen, Pangasinan, accused-appellant asked Maribeth to give him a massage. Soon thereafter, he grabbed her left arm causing her to fall on the bed where accused-appellant lay. Armed with a knife, accused-appellant forced her to undress and to part her legs. Then, he went on top of her and inserted his penis in her vagina by making "push and pull" movements. She felt pain and became weak. A whitish substance came out from accused-appellant's private part. He threatened to kill her if she revealed the incident to anyone.^[3]

In the evening of that same day, Maribeth was again raped by accused-appellant. He was lying on the bed while Maribeth was at the rear part thereof. Maribeth's younger siblings were on the floor sleeping. Accused-appellant removed her shorts and panty and parted her legs before he raped her. With accused-appellant's threats, Maribeth

was too frightened to shout.^[4]

The third incident of rape complained of took place one Monday evening in the same month of January 1996, while Maribeth's mother and eldest sibling were still in Manila. While the rest of her siblings were fast asleep, accused-appellant undressed her by removing her short pants and panty. Then, he disrobed and went on top of Maribeth and raped her. She acceded to her father's bestial advances for fear of being harmed. She feared for her life because accused-appellant poked a knife at her. The pain she felt at the height of the despicable act left her weak.^[5]

On August 9, 1996, accused-appellant, Maribeth, her four (4) year old sister Marina, and her ten (10) year old brother Marcelo went to the house of their paternal grandmother at Matalava, Lingayen, Pangasinan. At that time her paternal grandfather was ill and was confined in the hospital. While her paternal grandmother accompanied her grandfather to the hospital, Maribeth's group together with her cousins, Ronald and Joel, slept over at her grandmother's house. That evening, accused-appellant took two (2) shots of Tanduay, and while everyone was sound asleep, Maribeth was awakened by accused-appellant who was in the process of undressing her. She shouted, "*ayaw ko po, ayaw ko po.*" When Maribeth reached for her brother Marcelo to wake him up, accused-appellant pulled her hair and boxed her. She was hit on her stomach, mouth and the upper part of her left and right arm. Then, accused-appellant went on top of her and made "push and pull" movements. After the incident, accused-appellant hurriedly put on his pants. Immediately thereafter, Maribeth and accused-appellant noticed the former's cousin Ronald peeping. This prompted accused-appellant to pretend that he was trying to wake-up Maribeth from a bad dream.^[6]

When Maribeth went home to Nagueltuel the following day, she decided to tell everything to her mother. She found the latter in their neighbor's house doing laundry. When Maribeth confided that she was raped by her father, her mother suggested that they talk about it later in private at their house. After Maribeth narrated her ordeal at the hands of her father, her mother callously replied, "*kaunting tiis lang.*" Disheartened by her mother's indifference, she answered, "I could no longer bear it, so I better go away." On August 25, 1996, Maribeth left their house and went to the Lingayen Police Station on her own. She was subsequently placed under the custody of the Department of Social Welfare and Development.^[7]

On August 27, 1996, Maribeth underwent a physical examination which resulted in the following:

"PE genitalia with old hymenal lacerations at 6 o'clock, 7 o'clock and 9 o'clock positions."^[8]

Maribeth Nava, accompanied by her mother Leonarda A. Nava, filed this criminal complaint for all the four (4) incidents of rape:

"The undersigned offended complainant MARIBETH NAVA y ARIAS with the consent of her mother, LEONARDA ARIAS NAVA, after having been duly sworn to in accordance with law, hereby accuses, his father MARCELO `Marlon' NAVA Jr., of the crime of Multiple Rape, committed as

follows: That on or about undetermined time and date of January 1996 and undetermined time of the night of 09 August 1996, inside the house of her grandfather at Barangay Naguelguel and Matalava, in the municipality of Lingayen, province of Pangasinan, Philippines and within the Jurisdiction of this Honorable Court, the above named accused, motivated with lewd designs and by using force, violence, threats and intimidation, did then and there, wilfully, unlawfully, feloniously and criminally have carnal knowledge with his daughter, the herein complainant, a 14yrs old, innocent looking girl, despite the latter resisted as it was against her will to have sexual intercourse with the said accused. Medico-legal certificate issued by Dr Revelina Millan, medical officer 3 of Pangasinan Hospital in Dagupan City is hereto attached and made as integral parts of this Criminal Complaint."

Consequently, accused-appellant Marcelo "Marlon" Nava, Jr. was charged with four (4) counts of Rape under four (4) separate informations, thus:

CRIMINAL CASES NOS. L-5525, L-5526 AND L-5527

"The undersigned upon a verified complaint of Maribeth A. Nava, a minor of 13 years old, assisted by her mother Leonarda Arias Nava, hereby accuses MARCELO "Marlon" NAVA, Jr. of the crime of RAPE, committed as follows:

That on or about the month of January 1996 in barangay Naguelguel, municipality of Lingayen, 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 have sexual intercourse with Maribeth A. Nava, against her will and consent, to the damage and prejudice of said Maribeth A. Nava."^[9]

CRIMINAL CASE NO. L-5528

"The undersigned upon a verified complaint of Maribeth A. Nava, a minor of 13 years old, assisted by her mother Leonarda Arias Nava, hereby accuses MARCELO "Marlon" NAVA, Jr. of the crime of RAPE, committed as follows:

That on or about the 9th day of August 1996 in the evening, in barangay Matalava, municipality of Lingayen, province of Pangasinan, 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 have sexual intercourse with Maribeth A. Nava, against her will and consent, to the damage and prejudice of said Maribeth A. Nava."^[10]

Upon arraignment, accused-appellant entered a plea of not guilty to each one of these informations.^[11]

In order to avoid liability for these offenses, accused-appellant offered the defense of alibi in Criminal Cases Nos. L-5525; L-5526 and L-5527 and denial with regard to Criminal Case No. L-5528.

As regards the three offenses that happened sometime in January 1996, accused-appellant claimed that from January 4, 1996 to February 25, 1996 he was working for a foreman, Jerry Gonzales, in repairing a house located in a certain "Villa Subdivision" somewhere in Baguio City.^[12]

As regards the fourth incident of rape that happened on August 9, 1999, accused-appellant denied the charge, contending that Maribeth had a bad dream that fateful night and that he merely shook and slap Maribeth to wake her up.^[13]

After trial on the merits, accused-appellant Marcelo "Marlon" Nava, Jr. was found guilty beyond reasonable doubt of the crimes charged and was sentenced accordingly. Hence, this case before us for automatic review with the following assigned errors:

ASSIGNMENT OF ERRORS

"I

THE COURT A QUO ERRED IN ACCORDING WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT MARIBETH A. NAVA DESPITE ITS LACK OF CREDIBILITY.

"II

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF FOUR (4) COUNTS OF RAPE AND SENTENCING THE LATTER TO SUFFER THE PENALTY OF DEATH AND TO INDEMNIFY THE PRIVATE COMPLAINANT THE SUM OF PhP 200,000.00 AS MORAL DAMAGES AND THE SUM OF PhP 25,000.00 AS EXEMPLARY DAMAGES."^[14]

Since both errors are interrelated, accused-appellant discussed them jointly. In support of these errors, accused-appellant attacked the credibility of private complainant, Maribeth A. Nava, by pointing out inconsistencies in her testimony.

First, accused-appellant invites our attention to Maribeth's testimony that for the month of January 1996 she was raped three times^[15] while she said she was only raped twice during her preliminary examination before MTC Judge Hermogenes C. Fernandez.^[16]

Second, Maribeth testified that the first incident of rape in January 1996 happened in the morning^[17] while on preliminary examination she said it was in the mid-evening.^[18]

Third, Maribeth testified that the second incident of rape in January 1996 happened in the evening^[19] while her answer on preliminary examination is that it happened in the afternoon.^[20]

Next, accused-appellant called our attention to Maribeth's testimony with regard to how the first incident of rape was committed, thus: "he (accused-appellant) raped me, **he let removed my dress**. He moved my two (2) feet far a part and then he went on top of me."^[21] Then accused-appellant pointed to Maribeth's sworn statement which declared, "he (accused-appellant) **forcibly removed my short pants and panty**, ordered me to open my legs apart while he is holding a kitchen knife."^[22]

Finally, accused-appellant referred to Maribeth's testimony that she was threatened^[23] while on preliminary examination, she answered in the negative when asked whether or not accused-appellant told her something.^[24]

As regards the first three enumerations, there were indeed inconsistencies between Maribeth's testimony and her answers on preliminary examination. We do not, however, find these to be sufficient to erode Maribeth's credibility as a witness. A reexamination of the records reveal that Maribeth's testimony is substantially corroborated by her sworn statement executed before SPO1 Jose Tandoc of the Lingayen Police Station, Mrs. Teresita Manoloto, and Ms. Marietta Loresco of the Department of Social Work and Development.^[25] Moreover, Judge Hermogenes C. Fernandez, the MTC Judge who conducted the preliminary examination, adopted the more detailed narration of Maribeth's ordeal in her sworn statement^[26] and even made the following observation in the conduct of the preliminary examination:

"During the preliminary examination, the court observed that complainant could not exactly recall the dates when her father sexually abused her. **She was however, consistent in her claim that she was raped several times**. The first occasion of molestation visited upon her person by her father was when she was in Grade III. **She never wavered in her statements**."^[27]

Likewise, Judge Emilio V. Angeles of the regional trial court made uncurtailed observations during the proceedings, thus:

"X X X.

At the witness stand, the Court noticed that complainant sometimes wiped the tears in her eyes as she recalled her ordeal in the hands of her father. x x x."^[28]

"X X X.

She was candid to admit that her father touched softly her hair and mashed her breast but she was categorical and emphatic that she refused to remove her panty and short pants. She remained consistent even on cross-examination. x x x."^[29]

In this light, we are convinced of Maribeth's credence. Besides, the precise time of the commission of the crime is not an essential element in the crime of rape. In fact, "It is settled that even a variance of a few months between the time set out in the indictment and that established by the evidence during trial has been held not to constitute an error so serious as to warrant reversal of a conviction solely on that