

EN BANC

[G.R. No. 128108, July 06, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FERNANDO DIASANTA Y VILLANUEVA, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

Appellant Fernando Diasanta was indicted for the crime of Rape, defined and penalized under paragraph 3, Article 335 of the Revised Penal Code, in relation to Section 11 of Republic Act No. 7659, under an Information filed on the basis of the Complaint of the victim's grandmother, alleging:

"That on or about 8:30 o' clock in the evening of October 28, 1995 at Sitio Naboongan, Purok 5, Barangay Daguit, Municipality of Labo, Province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by his bestial lust and taking advantage of his parental authority unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with his own daughter Andrea Diasanta, a minor below 12 years old to her damage and prejudice.

CONTRARY TO LAW."

Upon arraignment thereunder on March 27, 1996, with the assistance of counsel, appellant entered a plea of not guilty to the charge. Pre-trial having been waived, trial ensued.

On November 29, 1996, the trial court came out with its decision finding appellant guilty and disposing as follows:

"WHEREFORE, IN THE LIGHT OF THE FOREGOING PREMISES, judgment is hereby rendered finding accused FERNANDO DIASANTA Y VILLANUEVA guilty beyond reasonable doubt of the crime of RAPE as defined and penalized under paragraph 3, Article 335 of the Revised Penal Code in relation to Section 11 of Republic Act. No. 7659 (Death Penalty Law) and accordingly sentencing him to suffer the supreme PENALTY OF DEATH and to pay to the victim the amount of P50,000 as moral damage pursuant to Article 2219 (3) in relation to Article 2217 of the Civil Code and P30,000.00 as exemplary damage; and to pay the costs.

SO ORDERED."

With the imposition of the death penalty, the case was elevated to this Court for automatic review.

Version of the prosecution:

Since the death of her mother, victim Andrea B. Diasanta lived in Capalonga, Camarines Norte, with her father, the herein appellant, and her younger brother. During the month of October, 1995, appellant worked in the construction of a dike in Barangay Daguit, Labo, Camarines Norte, such that the victim and her younger brother stayed in a room adjacent to the house of their aunt, Meriam Bacla, in Sitio Naboongan, Daguit, Labo, Camarines Norte.

At around 8:30 o'clock in the evening of October 28, 1995, the victim, then eleven years old, was dragged by the appellant to a space below the house of Meriam Bacla, and thereat, he forced the victim to lie down on her back, removed her underwear, placed himself on top of her and thereafter, unleashed his bestial and incestuous desires. The victim neither resisted nor shouted for help because appellant threatened to kill her if she did. While appellant was sexually abusing her, she had a glimpse of her aunt, Meriam Bacla, peeping from the house above.

The said aunt of the victim testified that in the evening of October 28, 1995, she noticed that the victim was missing. As it was getting late, she started looking for her. When she peeked below the house, she was shocked to see the victim lying on her back with appellant on top of her. She (witness) then immediately left to call the uncle but when they returned, appellant and the victim were no longer around. When she confronted the victim after the incident, the latter told her that she was raped by appellant.

Also presented by the prosecution was Dr. Marcelito B. Abas, Medico-Legal officer of the Camarines Norte Provincial Hospital, who testified that on October 29, 1995, Andrea Diasanta, the victim, was brought to his clinic for genital examination. He found hymenal lacerations at the two o'clock, four o'clock, seven o'clock, and eleven o'clock positions which could have been caused by a forced penetration of a penis into her vagina. The findings were "negative" for sperm cells but according to the same medico-legal officer, the absence of sperms could have been due to movements by the victim, such as standing, walking and running, or the sperms could have been washed out by urinating or washing by the hands.

Lastly, in support of its allegation that the victim, Andrea Diasanta, was below twelve years old at the time the rape was committed on October 28, 1995, the prosecution duly presented in evidence the Certificate of Live Birth of Andrea Diasanta that she was born on December 1, 1983.^[1]

The defense relied solely on appellant's testimony.

Appellant Fernando Diasanta, testifying for and on his behalf, theorized that on October 28, 1995, he was at a construction site near Barangay Daguit I, Labo, Camarines Norte, where he stayed until 8:30 o'clock in the evening. From there, he proceeded to the house of his sister-in-law at Sitio Naboongan, about three (3) kilometers away from the said construction site, arriving there at 9:00 o'clock. He was on his way to give money to his sister-in-law, when he was apprehended by two soldiers who informed him that he was accused of raping his own daughter.

On the basis of the testimonies of the victim, Andrea Diasanta, and her aunt, Meriam Bacla, the lower court convicted appellant of the crime of incestuous rape,

as charged.

Appellant's Brief theorized that the guilt of appellant has not been proved beyond reasonable doubt and therefore, the trial court erred in convicting him.

In the review of rape cases, like this, the Court is always guided by the principle that: (a) an accusation of rape can be made with facility, is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the nature of the crime which usually involves only two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits; and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[2]

Rape is almost usually committed in seclusion, the fact of carnal knowledge being essentially known only to the victim and her abuser.^[3] Usually, it is only the victim who can identify the assailant by the very nature of the crime which, almost always, is committed in seclusion.^[4] More often than not, the courts are constrained to balance the evidentiary weight of the testimony of the victim as against the evidence for the defense. In the absence of other direct witnesses, it is possible for the judgment of conviction to be based solely on the testimony of the victim provided her testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things.^[5]

The case under scrutiny is one of incestuous rape. The trial court discharged its arduous task of weighing the affirmative testimony of the victim in the face of the vehement denial by the appellant.

The testimony of the victim appears categorical and straightforward. She definitively narrated the sexual ordeal she suffered in the hands of her very own father, thus:

Q: Now, at around 8:30 o' clock in the evening of October 28, 1995, you said, you were in the house of your auntie Meriam Bacla, do you know of any unusual incident that happened to you on that date at around 8:30 o' clock in the evening?

A: There was, sir.

Q: What was that incident about?

A: I was pulled under the house, sir.

Q: Who pulled you?

A: My papa, sir.

Q: This Fernando Diasanta, the accused in this case?

A: Yes, sir.

Q: After you were pulled under the house by your father, the accused in this case, what did he do to you?

A: "Pinagsamantalahan po ako", I was sexually abused, sir.

Q: When you said "pinagsamantalahan", what do you mean?

A: My father put himself on top of me, sir.

Q: What did your father do, while he is on top of your body?

A: His penis was inserted to mine and pushed and pulled it in my vagina, sir.

Q: Now, by the way before your father went on top of your body, were you wearing a panty?

A: There was none, sir.

Q: Before your father went on top of your body were you wearing your panty?

A: It was removed, sir.

Q: Who removed it?

A: My papa, sir.

Q: The accused in this case?

A: Yes, sir.

Q: Now, at the time when your papa was on top of you and you said, it happened under the floor of your auntie Meriam Bacula, did you make any resistance or shout?

A: No, sir.

Q: Why were you not able to resist or shout?

A: I was afraid, sir.

Q: Why were you afraid at that time?

A: He told me that I will be killed if I will shout, sir.

Q: How many times were you sexually abused by your father at that time when you were under the floor of your auntie?

A: Only once but on previous times, I was molested many times, sir.

Q: Was there anybody who saw you while you and your father was under the house of your auntie that night of October 28, 1995?

A: There was (sic), sir.