

EN BANC

[G.R. No. 136252, October 20, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIO FRANCISCO Y LOPEZ, ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE JR., J.:

In what seems to be a continuation of a dream so surreal, Marilyn Perez (hereinafter **MARILYN**), twelve years (12) old, woke up from her deep slumber between 10 p.m. and 11 p.m. of all nights of 25 December 1997, in their residence in barangay Sagrada Familia, Hagonoy, Bulacan, to find her alleged stepfather Julio Francisco (**FRANCISCO**), sucking her nipples and inserting his male organ into her private parts.^[1] The bizarre situation assumed contemptible proportions by reason of the perverted intrepidity in which the dastardly deed was undertaken.

On that night, the family members slept side by side with each other on a single mat and under one mosquito net. **MARILYN** slept by the wall and beside her mother. On her mother's other side slept **FRANCISCO**. Beside **FRANCISCO** slept his daughter with Felicidad. About a meter away was **MARILYN**'s brother. With these sleeping positions, **FRANCISCO**, as earlier detailed, was able to sexually violate **MARILYN**.^[2]

MARILYN claimed that after the sexual transgression, **FRANCISCO** threatened her with a kitchen knife so as not to divulge the incident to anybody lest he kill her.^[3] But **MARILYN** seemed to have gathered courage for she was able to tap (*kalabit*) her sleeping mother who woke up to find her husband atop her daughter. She heard her mother blurt out "Hey, why did you do that to my child? She is also your child! (*Hoy, bakit mo ginalaw ang aking anak? Anak mo na rin iyan!*).^[4]

Mother and daughter went to the house of the former's sister Virginia and told her the story. From there, the trio proceeded to the barangay hall to lodge a complaint. **FRANCISCO** was later on brought to the police station where he was incarcerated.

FRANCISCO was subsequently indicted for rape under an information which reads as follows:

The undersigned Asst. Provincial Prosecutor, on complaint of offended party, Marilyn M. Perez, accuses Julio Francisco y Lopez of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code, as amended by R. A. 8353 otherwise known as "The Anti-Rape Law of 1997, committed as follows:

That on or about the 25th day of December, 1997, in the municipality of Hagonoy, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there

wilfully, unlawfully and feloniously, by means of force and intimidation, with lewd designs, have carnal knowledge of his stepdaughter, Marilyn M. Perez, 12 years old, against her will and without her consent.

Contrary to law.^[5]

FRANCISCO was arraigned on 20 May 1998 before the Regional Trial Court of Bulacan, Branch 21 in Malolos, whereby he entered a plea of "Not Guilty." His case was docketed as Criminal Case No. 529-M-98. After the mandatory pre-trial conference, trial on the merits ensued.

The prosecution first presented **MARILYN** who testified on matters tending to prove the above narration of facts. She also disclosed that the sexual molestation committed upon her by **FRANCISCO** on Christmas night of 1997 was not the first time. She revealed that since she was eight (8) years old she had been sexually assaulted for about five times already by **FRANCISCO**. She remembered that her mother started living in with **FRANCISCO** when she was about seven (7) years old. Her natural father was already dead at that time.

The prosecution also presented the mother of **MARILYN**, Felicidad Perez. She basically claimed that on the night in question, her daughter "touched (*kalabit*)" her which gesture woke her up. Felicidad then heard **MARILYN** say that **FRANCISCO** had lain on top of her. She then saw that **FRANCISCO** was indeed on top of her daughter who was silently weeping.^[6] Felicidad asked **FRANCISCO** "why he placed himself on top of Marilyn when she thought all the while that he treated the girl as his own child." **FRANCISCO** remained silent.^[7]

Felicidad also admitted that the Christmas night incident was not the first time that **FRANCISCO** sexually abused **MARILYN**. In fact, **MARILYN** had been telling Felicidad of the sexual molestations which occurred since the former was in Grade Two. Felicidad remained patient with **FRANCISCO** because their union produced a daughter. In fact, she had personally caught **FRANCISCO** in coitus with **MARILYN** when the latter was in Grade Two.^[8] Felicidad claimed that **FRANCISCO** is her husband but admitted that they are not married.^[9]

Felicidad's other testimonial evidence coincided with **MARILYN**'s recital relative to **FRANCISCO**'s arrest.

Dr. Manuel Aves of the Bulacan Provincial Crime Laboratory Office was also called to the witness stand to confirm the medical findings he made after conducting a physical examination on **MARILYN** on 29 December 1997. Dr. Aves stated that his findings revealed that "there were multiple [hymenal] healed lacerations at 12, 3, 4, 6, 9 and 10 o'clock with abrasions and swelling." He concluded that said results manifested recent sexual manipulations.^[10]

For its part, the defense first presented accused **FRANCISCO**. He denied the accusation and gave the excuse that he was sleeping on the night and time in question. He rationalized that his wife, furious at his failure to adequately provide for the family needs aggravated by the fact that she had to earn money during the Christmas season, concocted the malevolent scheme.

He then admitted that he had been living with Felicidad without the benefit of marriage which relationship produced a daughter who was already eight (8) years

old.^[11] He also testified that **MARILYN** lived with the sister of Felicidad and only visited the family.

The defense also presented Benigno Mercado who admitted that **FRANCISCO** was his uncle. He claimed that he visited **FRANCISCO** at the Hagonoy Municipal Jail when the investigation was being conducted. He heard **MARILYN** state that "there was no penetration, only touching by the accused." He later admitted on cross-examination that he did not hear the entire declarations of **MARILYN**.^[12]

Both **MARILYN** and **FRANCISCO** took the witness stand again as rebuttal witness and sur-rebuttal witness, respectively.

In its decision of 28 October 1998, the trial court^[13] convicted **FRANCISCO**. The trial court believed the testimony of **MARILYN** that she was sexually violated by accused **FRANCISCO** on the night of 25 December 1997. The trial court considered the testimony of **MARILYN**'s mother to have strengthened the girl's testimony. The positive identification of **FRANCISCO** and Dr. Aves' findings or physical evidence likewise "jibed and confirmed" **MARILYN**'s testimony "giving no reason to doubt that there was consummation of the sexual intercourse."

Against the damning evidence of the prosecution, the trial court considered the defense's denial a "self-serving negative evidence x which cannot stand against the affirmative testimonies of prosecution witnesses." The trial court also brushed aside the insinuation of the defense that it was physically impossible for **FRANCISCO** to commit the crime given the sleeping positions of the protagonists, his alleged physical infirmity and **MARILYN**'s disclosure on cross-examination that "her shorts and underwear were rolled down half-way above the knee and her legs were spread for about one and one-half (1½) feet only."

For the trial court, the first pretext had been amply refuted by the declaration of **MARILYN** that she woke up to find **FRANCISCO** sucking her nipples and inserting his male organ into her vagina and supported by the mother's testimony that she saw her husband on top of **MARILYN**. Besides, the trial court added, rape can be committed in the most unlikely places. Further, **FRANCISCO** had on five previous occasions successfully imposed his evil intentions upon **MARILYN** which could have "emboldened him to throw caution into the winds" and to once again impose his lechery on the girl that Christmas night. The trial court also rejected **FRANCISCO**'s alleged physical defect considering that it did not hinder him from working as a fisherman and in siring a daughter with Felicidad. As to the third alleged exculpating reason, the trial court declared that the fact that the shorts and underwear were not completely removed from the legs or that the legs were just one and one-half feet apart was not sufficient obstacle to a person bent on perpetrating a criminal act. The trial court observed that "[i]t is conceded from human experience that (under said circumstances) sexual intercourse would be difficult, but (not) physically impossible if we consider that the victim was initially asleep and when awakened, she was not in a position to resist." It is also likely that **MARILYN** did oversleep given her tender age.

The trial court also noted the inconsistencies and contradictions in the testimony of **MARILYN**, but concluded that the same failed to override the sincerity and candor of the girl when she said she was raped for she said in effect all that has to be said on the occasion. The trial court then proclaimed that the presence of the special circumstance of relationship indicated in Section 11 of R.A. 7659 qualified the rape

which necessitated the imposition of the death penalty. It found undisputed (1) MARILYN'S age, which was about twelve (12) years old at the time of the commission of the crime as evidenced by a birth certificate^[14] and the lack of objection thereto by the defense; and (2) **FRANCISCO**'s relationship with **MARILYN** as either that of a stepfather or common-law spouse of Felicidad by the defense's lack of objection to or denial of Felicidad's testimony that **FRANCISCO** is her husband.

The trial court also discarded as not fatal to the prosecution's cause, the absence in the Information of the exact words that "offender **FRANCISCO** is the stepfather of 12-year old **MARILYN** or common-law spouse of the parent of the latter" so as to explicitly constitute the qualifying circumstance of relationship mentioned in Section 11 of R.A. 7659. Thus, the dispositive portion reads as follows:

Wherefore, all premises considered, the Court resolves that the prosecution has successfully undertaken its burden to prove the guilt of accused Julio Francisco y Lopez beyond reasonable doubt. For having violated Article 335 of the Revised Penal Code, as amended by Republic Act 7659 with the attendant circumstance that "the victim is under eighteen (18) years of age and the offender is a x x x stepfather, x x x or the common-law spouse of the parent of the victim", accused Julio Francisco y Lopez is hereby found GUILTY of the crime of Rape as charged. Absent any circumstance that could mitigate the commission thereof, he is hereby sentenced to suffer the Supreme Penalty of Death by lethal injection.

In line with established jurisprudence, the said accused is also ordered to indemnify the offended party Marilyn Perez in the sum of P50,000.00 for moral damages.

With costs against the accused.

SO ORDERED.^[15]

In view of the penalty imposed, the case is brought on automatic appeal to this Court pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R. A. 7659.

In his Appellant's Brief, **FRANCISCO** attributes to the trial court as errors (1) its finding that his guilt was proven beyond reasonable doubt, (2) in giving credence to the inconsistent and incredible testimonies of the prosecution witnesses, (3) in rejecting the defense's exculpatory evidence, and (4) in imposing the death penalty despite the erroneous allegation in the information of the special qualifying circumstance of relationship.

FRANCISCO then specifies the following testimonial inconsistencies and contradictions as undermining the credibility of the prosecution witnesses and the possibility of the crime having been committed:

1. **MARILYN** was not sure whether she tapped her mother before or after **FRANCISCO** went on top of her.
2. She was uncertain whether her undergarments and shorts were removed or merely rolled-down the middle of her thighs.