

## EN BANC

[ G.R. No. 134480-82, October 04, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GREGORIO MAGTRAYO, ACCUSED-APPELLANT.**

### D E C I S I O N

**VITUG, J.:**

For automatic review is the decision of the Regional Trial Court Branch 19 of Cagayan de Oro City, convicting accused-appellant Gregorio Magtrayo of rape, on three counts, committed against Mary Mae L. Cabactulan and sentencing him to suffer three penalties of death, or one death sentence per each count of rape, and to pay private complainant indemnity in the sum of P150,000.00 and exemplary damages of P30,000.00.

Sometime in August, 1995, the Philippine National Police ("PNP") of Balingasag, Misamis Oriental, detained private complainant Mary Mae L. Cabactulan, for stealing several packs of cigarette at a marketstall. In an interview conducted by SPO4 Eusebia Delute, police chief investigator, Mary Mae narrated that she had run away from home because the common-law husband of her mother, herein accused-appellant Gregorio Magtrayo, raped her on three separate occasions during Saturday evenings of January, March and July of 1994, the exact dates of which she could not recall. Being a minor, Mary Mae was entrusted by Delute to the Department of Social Welfare and Development ("DSWD") Center in Balingasag.

Mary Mae was born on 12 January 1979, the third and only surviving child of Elvira Ladao and vicente Cabactulan of Calawag, a remote barangay of Balingasag, in Misamis Oriental. Vicente soon died. Mary Mae was three years old when Elvira started living, without the benefit of marriage, with accused-appellant with whom she had four children. Mary Mae regarded accused-appellant as her own father and so affectionately addressed him "Papa".

Magtrayo supported his family working six days a week from Mondays to Saturdays. He would be home only on Sundays, he claimed, and return to his job on Mondays, at times Tuesdays, of the week. Elvira, to augment the family income, peddled food and drinks at a dancing hall until late evening. It was on one Saturday evening in January of 1994, according to Mary Mae, when accused-appellant, taking advantage of Elvira's absence, first made his lustful advances on Mary Mae, then only fourteen years old. Gregorio Magtrayo embraced Mary Mae, poked a knife at her neck, and told her not to shout or be killed. She tried to free herself but he was too strong for her. He pressed his legs tightly against hers, mashed her breasts and later tied her hands and feet to the bedposts with a nylon rope. He spread her legs and inserted his fingers, then his penis, to her vagina. Mary Mae felt pain and shouted "No, Pa, x x x it's painful."<sup>[1]</sup> After accused-appellant had made several push and pull movements, private complainant noticed blood in her genitalia. None of her four

brothers and sisters witnessed the incident because accused-appellant had meanwhile transferred the sleeping children, then aged two to seven years old, from the lone bedroom of the house to the sala. When her mother arrived around midnight, Mary Mae immediately told her of what had transpired but Elvira refused to believe her.

Like before, on a Saturday in March of the same year, Mary Mae said she was sexually assaulted by accused-appellant. He embraced her and when she ran to escape from him, accused-appellant caught up with her and pulled her to the bedroom. Fear cowed her to submission. The last rape was committed, also at about midnight, on a Saturday of the month of July 1994 when Elvira was still at the poblacion. Accused-appellant reclined beside her on the bed, removed her clothes and, despite her pleas, again violated her.

Unable to bear the repeated indignity, as well as the indifference of her mother to her plight, private complainant left home in August 1994 and, for the next three months, worked as a domestic helper in the house of Congressman Pelaez. Later, in the company of peers her age, she abandoned her new home and wandered from place to place. It was a year after, sometime in August 1995, when Mary Mae was caught pilfering several packs of cigarettes at a Balingasag market stall. At the police station, Mary Mae narrated her past ordeal before the interviewing police officer. Finding credence in her story, police officer Delute entrusted Mary Mae to the custody of the local DSWD. An examination conducted by Dr. Clarito Cañete, a rural health doctor, yielded the following prognosis -

"No physical findings, except that introitos readily admits one finger (physical virginity no longer possible)."<sup>[2]</sup>

Three informations for rape, docketed Criminal Cases No. 96-144, No. 96-355 and No. 96-356, were filed against Gregorio Magtrayo for the separate occasions of sexual assault on Mary Mae during the months of January, March and July of 1994; viz:

#### "I N F O R M A T I O N

"The undersigned Assistant Provincial Prosecutor, upon sworn complaint originally filed by private complainant, MARY MAE L. CABACTULAN, hereby accuses and charges GREGORIO MAGTRAYO, of the crime of RAPE committed as follows:

"That several years prior to 1994 when offended party was still 11 years of age and until the last week of July 1994, at Barangay Calawag, Municipality of Balingasag, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, accused GREGORIO MAGTRAYO, the stepfather of the offended party, by means of force, violence, threat and intimidation, did then and there willfully, unlawfully and feloniously succeeded in having carnal knowledge upon the offended party Mary Mae L. Cabactulan, against her will and consent.

"CONTRARY TO and in violation of Article 335 of the Revised Penal Code."

<sup>[3]</sup>

## "I N F O R M A T I O N

"The undersigned Assistant Provincial Prosecutor, upon sworn complaint of Mary Mae Cabactulan hereto attached as Annex `A', accuses and charges Gregorio Magtrayo of the crime of RAPE, committed as follows:

"That on or about the month of March, 1994, at more or less 12:00 o'clock midnight, at Barangay Calawag, Municipality of Balingasag, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then the step father of the offended party, Mary Mae L. Cabactulan, did then and there willfully, unlawfully and feloniously and by the use of force, intimidation and threats pinned her down and succeeded in having carnal knowledge with Mary Mae L. Cabactulan, who was only 14 years old at that time, against her will and without her consent.

"CONTRARY to and in violation of Article 335, As Amended, of the Revised Penal Code."<sup>[4]</sup>

## "I N F O R M A T I O N

"The undersigned Assistant Provincial Prosecutor, upon sworn complaint of Mary Mae Cabactulan hereto attached as Annex `A', accuses and charges Gregorio Magtrayo of the crime of RAPE, committed as follows:

"That on or about the month of January, 1994, at more or less 12:00 o'clock midnight at Barangay Calawag, Municipality of Balingasag, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named being then the step father of the offended party, Mary Mae L. Cabactulan, did then and there willfully, unlawfully and feloniously and by the use of force, intimidation and threats pinned her down and succeeded in having carnal knowledge with Mary Mae L. Cabactulan, who was only 14 years old at that time, against her will and without her consent.

"CONTRARY to and in violation of Article 335, As Amended of the Revised Penal Code."<sup>[5]</sup>

Myrna de los Reyes, a guidance psychologist who conducted a series of tests on private complainant, described Mary Mae as "tomboyish" or as one who would be comfortable in associating with male companions. The witness found Mary Mae to be suffering from anxiety and anger, whose schizophrenic tendencies were typical of a sexually molested girl. Her extrovert nature and her preference for the company of friends were diagnosed as being her way to seek comfort outside a dysfunctional family. Coincidentally, when complainant was asked the witness stand to describe her relationship with her mother and accused-appellant, hurt and resentment was evident when she emphatically cried, "I am nothing to them."<sup>[6]</sup>

In his defense, accused-appellant insisted that Mary Mae had left their house in

Calawag in August 1994 not because of having been raped by him but for his having punished her after she was caught stealing money from her mother. Accused-appellant later found her staying with a neighbor. He claimed that he was never absent from work at Vitarich since 1990. Not once, he said, was he home on a Saturday night. His alibi was corroborated by Ernesto Ayop, a co-worker, and in whose residence in Purok 6, Tablon, accused-appellant lodged during workdays.

Elvira Ladao, mother of private complainant, described Mary Mae as being a good and obedient girl but admitted having had "disciplinary problems" with her. Elvira corroborated the testimony of her common-law husband that he was never home on Saturdays, particularly during the months of January to July 1994, when supposedly the sexual assaults took place. Elvira dismissed the charges of her daughter to be mere fabrications, asserting that on the Saturday nights when the incidents of rape were claimed to have happened, she had all the while been with Mary Mae. She could only recall two Saturdays when private complainant did not accompany her because the latter had to take care of her younger siblings. Elvira expressed incredulity over Mary Mae's account of the rape, claiming that the entire family slept on the floor and owned no bed to which Mary Mae could have been tied while being molested. She did not mind that her daughter was apprehended and in the custody of the DSWD but when she finally decided to go and visit her daughter at the DSWD Center, Mary Mae refused to see her. It was only during her second visit at the DSWD, when Mary Mae told her "I will not go to your place because your husband will rape me,"<sup>[7]</sup> that Elvira first heard about the alleged rape.<sup>[8]</sup>

The trial court did not buy the defense of denial and alibi of accused-appellant. Giving more reliance to the testimony of private complainant than the version proffered by the accused, the trial court rendered judgment, thus:

"WHEREFORE, the court finds accused guilty of triple rapes and so hereby sentences accused to suffer 3 death sentences, or 1 death sentence for each case, to indemnify the complainant P50,000 in each case or the total of P150,000.00, and P10,000 as exemplary damages in each case or the total of P30,000, and to pay the costs.

"Accused's custodian is hereby ordered to ship accused to the proper higher authority soon after the promulgation of this judgment.

"SO ORDERED."<sup>[9]</sup>

In its own review, the Court sees no cogent reasons to depart from the factual findings of the of the lower court.

Mary Mae Cabactulan, the private complainant, has testified in a credible manner. The Court finds no serious inconsistency in her testimony; indeed, her narration of the rape incidents on three different occasions is quite firm and clear. Thus -

"ATTY. LACUBTAN:  
We are talking about January.

"COURT: (To the witness)

"Q. With what hand did he hold a knife?  
"A. His right hand.

"Q. Is it correct that you were already in bed when he raped you?

"A. Yes, I was already in bed when (he) came to rape me.

"Q. What did he do to the knife?

"A. He poked it on my neck and told me that if I would shout, he would kill me.

"Q. What did he do if any?

"A. I was about to shout but he put his hand on my mouth.

"Q. When the accused put his hand on your mouth, what did you do?

"A. I kept on kicking but I cannot release from his hold (sic) because he is very strong.

"Q. You said it was the right hand of the accused that hold the knife, what hand the accused (sic) used in holding your mouth?

"A. At the time, he put down the knife and he laid (sic) on top of me.

"Q. What did the accused use in holding your mouth?

"A. The right hand.

"COURT:

Proceed.

"ATTY. LACUBTAN:

"Q. You said he put down the knife, what part of the house the accused put down the knife?

"A. Far from the bed.

"Q. You said it was his right hand that held your mouth, what about his left hand?

"A. Both hands while he was lying on top of me.

"Q. You were telling this Court that both hands were holding you?

"A. Yes, sir.

"Q. What part of your body he was holding you?

"A. He held my mouth and his legs were pressed tightly to my legs.

"Q. And what anything happened (sic) after that?

"A. After that he mashed my breast, then he inserted his finger to my vagina and then he inserted his penis to my vagina.

"Q. What hand of the accused is mashing your breast?

"A. Both hands.

"Q. And so when he mashed your breast and your nipple, his hands were no longer on your mouth?

"A. Yes, sir.