

EN BANC

[G.R. No. 136247 & No. 138330, November 22, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL LIBAN, ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

"He eats his own children,"^[1] Nerissa so described her father, accused-appellant Manuel Liban, as she tearfully recounted before the trial court the details of her dire experience.

At early age, Nerissa Liban and her two other sisters were virtually left on their own. They were still little when their mother left the sleepy town of Caricaran, Sorsogon, for what she thought to be the green pastures of Manila to augment her husband's measly income from selling empty bottles. Letters from her, including some sums of money, regularly came at first but soon dwindled. After the last letter asking them to pray for the success of her bid to work in Japan, the family never heard from her again. Her three daughters - Leonarda, private complainant Nerissa, and Hilda - were left to the custody of her husband whose strange notion of discipline was to strike, pinch, and bite his daughters. Far worse, he would turn to them to sate the appetite of his loins whetted by his wife's absence.

The first rape occurred on 06 November 1995 when Leonarda spent the night at the house of an aunt. The young Nerissa and eight-year old Hilda, left behind by her, were already in bed when their father arrived home drunk. He demanded food but when Nerissa set the table for him, he threw the food away and slapped her. Reeling from the blow, Nerissa fell on her back. She was in this position when the accused placed himself on top of her. He then removed her panty and, pressing a knife on her, inserted his penis into her vagina and then had her. All that Nerissa could do was to cry in pain. His lust satisfied, he told her to put back on her clothes. The next morning, at about seven o'clock, Nerissa left the house and went to see her aunt with whom she stayed for a week until her father came to fetch her. She felt that she had no choice but to reluctantly go with him. The following night, he again raped her. Manuel Liban would eventually continue raping his daughter on seven different occasions within a one-year period, the specific dates of some of which Nerissa could no longer distinctly remember.

The last rape took place on 15 October 1996. The three sisters were already asleep. When Nerissa awoke, she found herself tied and naked. Her father then mounted her and inserted his organ into her vagina. She wanted to shout but she was gagged. When her father had left, Leonarda came and untied her. Manuel Liban later came back and seeing Nerissa already unbound, he lashed her to the window. Leonarda told her that their father was also doing the same thing to her.

Crying, the two sisters made plans to escape and proceeded to the house of their maternal aunts, remaining there for a while.

When school started, Nerissa also took Hilda away for fear that their father would do "the same thing" to the young sibling. Tormented by her traumatic encounters, Leonarda left for Manila. Other than Leonarda, Nerissa never told a soul about the rape incidents. On one occasion, while attending church services, she met her friend Manay Luisa. Unable to contain her pent-up anguish, Nerissa blurted out to Luisa her cruel experience. Luisa advised her to see a doctor for check-up to ascertain whether her frequent bouts with dizziness indicated possible pregnancy. The medical certificate^[2] issued by Dr. Ma. Humilde Janaban attested to private complainant's non-virgin state and the presence of vaginal lacerations caused by sexual intercourse. The doctor told Nerissa, to her relief, that she was not expecting.

In December that year, Nerissa was accompanied by her *Tia* Nora to the police headquarters to lodge a complaint against her father. Informations were filed against Manuel Liban for two counts of rape committed against Nerissa Liban, one on 06 November 1995, docketed Criminal Case No. 97-4363, and the second on 15 October 1996, docketed Criminal Case No. 97-4362, that read:

"INFORMATION^[3]

(Criminal case No. 97-4363)

"The undersigned Assistant Provincial Prosecutor accuses MANUEL LIBAN, of Barangay Caricaran, Bacon, Sorsogon, of RAPE defined and penalized under Article 335 of the Revised Penal Code, committed as follows:

"That on or about 9:00 P.M. of November 6, 1995 at Barangay Caricaran, Bacon, Sorsogon, the above-named accused with lewd designs, by means of force and intimidation and taking advantage of his moral ascendancy over his 12-year old daughter NERISSA P. LIBAN, did then and there willfully, unlawfully and feloniously, had sexual intercourse with the said victim against her will and consent, to her damage and prejudice.

"The offense is attended by the alternative aggravating circumstance of relationship, the accused being the father and direct ascendant of the victim.

"ACT CONTRARY TO LAW."

"INFORMATION^[4]

(Criminal Case No. 97-4362)

"The undersigned Assistant Provincial Prosecutor accuses MANUEL LIBAN, of Barangay Caricaran. Bacon, Sorsogon of RAPE defined and penalized under Article 335 of the Revised Penal Code, committed as follows:

"That on or about 9:00 P.M. of October 15, 1996 at Barangay Caricaran,

Bacon, Sorsogon, the above-named accused with lewd designs, by means of force and intimidation and taking advantage of his moral ascendancy over his 12 year old daughter NERISSA P. LIBAN, did then and there willfully, unlawfully, and feloniously, had sexual intercourse with the said victim against her will and consent, to her damage and prejudice.

"The offense is attended by the alternative aggravating circumstance of relationship, the accused being the father and direct ascendant of the victim.

"ACT CONTRARY TO LAW."

In his defense, appellant testified that, on both dates of 06 November 1995 and 15 October 1996, he was resting at their house with his youngest daughter, Hilda, while Nerissa was with her friends, Eden Desoyo and a certain Embang, both residents of Cogon, Bacon, located about half a kilometer away from their house. Manuel asserted that Nerissa had always spent her time in the company of friends and that, since January 1993, Nerissa had been living with her peers. Manuel could not think of any reason why Nerissa would turn against him, except for the possibility of his daughter having been brainwashed by his in-laws. Manuel explained that the enmity between him and his in-laws had started when he demanded, through the *barangay* captain of Caricaran, the return of his daughter Leonarda who had gone to Laguna, without his prior knowledge and permission, to find work with the help of his in-laws. During an ensuing confrontation, an in-law, one Winefreda Pulvorido, accused him of raping his daughters.

In Criminal Case No. 97-4362, the trial court ruled to acquit accused Manuel Liban; it explained:

"The matter of the feet of the complainant being tied when the accused was on top of her was not clearly explained, thus; creating reasonable doubt in the mind of the court that when said accused was on top of the complainant and her feet were tied together, it became physically impossible for a sexual intercourse to take place. When two or more interpretations are possible, that interpretation which is favorable or beneficial to the accused must be adopted. In this particular instance, the Court honestly believes that when the feet of the victim were tied together, rape upon the victim cannot take place, hence on reasonable doubt, the accused must necessarily be acquitted."^[5]

In Criminal Case No. 97-4363, however, the court found the accused guilty beyond reasonable doubt of the crime of rape penalized under Article 335 of the Revised Penal Code, as so amended by Section 11 of Republic Act ("R.A.") No. 7659, and imposed upon him the penalty of death -

"WHEREFORE, premises considered, the COURT finds the accused guilty beyond reasonable doubt of the crime of RAPE under Article 335 as amended by Sec. II, R.A. 7659 in Criminal Case No. 97-4363 and hereby sentences him the maximum penalty of death and to pay the offended

party the amount of P50,000.00 as civil indemnity; to pay the amount of P10,000.00 as moral damages, and the amount of P10,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency and to pay the cost.

"As to Crim. Case No. 97-4362, on reasonable doubt, the accused is hereby acquitted.

"With cost *de officio*."[6]

The case has been forwarded to this Court for its review. Closely examining the records, the Court finds hardly anything of substance or significance that can warrant a reversal of the finding of the court *a quo* that indeed accused-appellant has violated his own daughter.

The testimony of private complainant was unflinching and straightforward. With tears of anguish, she was able to convincingly narrate the ordeal she had been through. No nefarious motive was shown that would have impelled her to testify falsely against her own father. She testified thusly:

"Q. When did the first time that he raped you happen?

"A. On November 6, 1995.

"Q. Where did that happen?

"A. In the house of Magno.

"Q. Who were your companions in that house?

"A. We, the siblings and our father.

"Q. Who owns that house?

"A. Magno.

"Q. And you are only renting that place?

"A. We borrowed it.

"Q. Let us go to that incident that you said that your father raped you on November 6. What time did that rape happen?

"A. Between 9:00 o'clock and 10:00 o'clock in the evening.

"Q. What were you doing then?

"A. I was asleep.

"Q. Then what happened?

"A. When my father arrived, he was drunk and he asked food, so I set the table for him, but when I set the table for him, he threw the food away.

"Q. What happened after that?

"A. He slapped me and I fell down on my back and when I fell down on my back, he placed himself on top of me.

"Q. What were you wearing at that precise time?

"A. I was wearing a skirt and my upper dress was a T-shirt with red stripes.

"Q. Now, let us go this one by one. After you fell, what did your father do to you?

"A. When I fell on my back, he removed my panty.

"Q. What else happened after he removed your panty?

"A. He inserted his penis to my vagina.

"Q. What were you doing while your father was doing these

things to you?

"A. I was crying.

"Q. And did you not try to ward him off?

"A. I tried to move away but he poked his knife on me.

"Q. What did you feel after your father inserted his penis into your vagina?

"A. It was very painful.

"Q. You said that you were then with your siblings. Were they awakened?

"A. My youngest sister was with me because my elder sister was sleeping in the house of my auntie.

"Q. How old was your youngest sister?

"A. Eight (8) years old.

"Q. Now, after your father had carnal knowledge with you, what did he do?

"A. He told me to dress up and the following morning, I went away."^[7]

Nerissa Liban appeared to have fully understood the impact of her decision to file the charges against her father -

"Q. Do you understand that the person you are accusing of having raped you is your father?

"A. Yes, ma'am.

"x x x x x x x x x

"Q. And do you understand that if found guilty, your father could be sentenced to death?

"A. Yes, ma'am.

"Q. . Now, what do you feel about the consequences of your filing a complaint against your father?

"A. Good for him because he is `eating his own children.'"^[8]

Manuel Liban, in this appeal, no longer persists in assailing the veracity of his daughter's account of the rape; instead, he bewails the death sentence, his lone assignment of error being that -

"THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE THE REAL AGE OF THE VICTIM."^[9]

Citing the cases of *People vs. Ernesto Perez*^[10] and *People vs. Amado Sandrias Javier*,^[11] accused-appellant asks the Court to reduce the penalty of death imposed upon him to *reclusion perpetua*.

Article 335 of the Revised Penal Code, as so amended by Section 11 of Republic Act 7659, has placed in the category of a "heinous" offense punishable by death the rape of a minor by her own father. This extreme penalty is to be imposed when the following circumstances concur, *i.e.*, 1) there is sexual congress without consent; 2) the offender is the father, stepfather, ascendant, guardian or relative by