

EN BANC

[G.R. No. 132047, December 14, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE PECAYO SR., ACCUSED-APPELLANT.

DECISION

PANGANIBAN, J.:

In incestuous rape, the death penalty may be imposed only if the age of the victim and her statutory relationship to the rapist are alleged in the information *and* proven beyond reasonable doubt during the trial.

The Case

Before us for automatic review is the Judgment^[1] dated December 3, 1997, promulgated by the Regional Trial Court (Branch 3)^[2] of Balanga, Bataan in Criminal Case Nos. 6595 and 6596, finding Felipe Pecayo Sr. guilty of raping his minor daughter Kristina^[3] on two occasions, and imposing upon him the death penalty in each case.

In two Informations,^[4] both dated July 21, 1997 and similarly worded except as to the date of the alleged commission of the offense, Second Assistant Provincial Prosecutor Angelito V. Lumabas charged accused-appellant as follows:

"That in or about the month of December 1996 at Brgy. Balut II, Pilar, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused thru force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed to have sexual intercourse with the offended party, Kristina L. Pecayo, a 14 year old minor girl, who is his daughter, against the will and consent of the latter, to her damage and prejudice."

Appellant, duly assisted by Counsel Joey V. Saldaña, was arraigned on August 11, 1997. To both charges, he pleaded "not guilty."^[5] On August 26, 1997, he waived his right to pretrial.^[6] Trial proper thence proceeded with dispatch.

On December 9, 1997, the trial court promulgated its Decision, the dispositive portion of which reads:^[7]

"WHEREFORE, the guilt of the accused having been established beyond reasonable doubt, he is sentenced in each of Criminal Cases Nos. 6595

and 6596 to the penalty of death and to indemnify the victim in the amount of P50,000.00, with costs."

The Facts

Version of the Prosecution

The solicitor general sums up the People's version of the facts as follows:^[8]

"At about 3:00 a.m. of January, 1996, Cristina Pecayo, x x x was asleep in her room with her youngest sister (p. 7, supra). Suddenly, Cristina sensed that her father, Felipe Pecayo, entered the room, stripped off her clothes, her shorts and panty. Felipe then removed his shorts, went on top of Cristina and inserted his organ into hers. When Felipe saw her daughter's sex organ ble[e]d, he wiped it off and left (supra). Cristina did nothing as she was afraid of her father, Felipe, who, when drunk, always threatened to kill his family (supra).

Sometime in December, 1996, at about 3:00 a.m., Felipe again entered Cristina's room. After removing his shorts, Felipe stripped off Cristina's clothing then went on top of her and inserted his sex organ into Cristina's. When Cristina's sex organ bled, Felipe wiped off the blood and left. Cristina, aware that her father always carried a knife in his pocket, could only cry (p. 9, supra).

Dr. Marissa Mallari examined Cristina on June 20, 1997. The result of said examination which was reduced into writing (Exhibit A) showed a positive deep-healed hymenal laceration at 5:00 o'clock; x x x positive superficial healed hymenal lacerations at 2:00, 4:00 o'clock positions which hymenal lacerations could have been caused by penetration, masturbation, strenuous exercise [or] instrumentation (p. 3, tsn, August 26, 1997)."

Version of the Defense

The version of accused-appellant, the lone defense witness, is as follows:^[9]

"When asked what could be the reason why Kristina charged him of raping her, he said that she resent[s] him because he gets angry with her everytime she comes home late from school. There was even a time when he spanked her in the presence of several persons.

During cross-examination, Felipe Pecayo, Sr., described himself as a good father and provider. According to him, however, his children do not want him to work anymore because he is already old. He affirmed that his daughter Maricris works in Mariveles starting at 5:00 a.m., prompting her to leave the house as early as 4:00 o'clock in the morning. Felipe, Jr., on the other hand, goes to sea and sometimes leaves at 4:00 o'clock in the morning and returns after two or three hours. As far as he knows, Kristina filed these cases against him because he spanked her prior to

December 1996 and after January 1996. (TSN, November 11, 1997, pp. 2-10)."

Ruling of the Trial Court

Assessing the credibility of the private complainant as well as her testimony in open court, Judge Lorenzo R. Silva Jr. wrote as follows:^[10]

"It is obvious that the testimony of Cristina that she was raped by her father in January and December, 1996 is positive, direct, straight forward and unadorned. The Presiding Judge was observing her while testifying and observed that she narrated the terrible ordeal she had to bear with anguished and pained sincerity coupled with dread of her defiler, her own father. There was no reason for the Court to doubt any whit her testimony given with a spat[e] of tears. The defense of the father was one of undiluted denial; innuendo that she filed the case out of revenge because he x x x scolded her several times and spanked her once after the first rape and before the second rape; and insinuat[ed] that he could not have raped her because she was sleeping with her siblings at least with Maricris, Angie and Rolly after Felipe, Jr. went to sea and Maricris left for work in Mariveles. On this score, the testimony of Cristina was clear that it was only the youngest, aged eleven who was near her when she was ravished. The Supreme Court has held that lust is no respecter of time and place and rape can be committed even in places where people congregate in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. (People vs. Cura, 240 SCRA 234) While there seem[ed] to be no resistance by the daughter when she was raped by her father, the Court is convinced that the lack of resistance was due to fear or to the novelty of a harrowing experience. Moreover, in rape committed by a father against his own daughter, the father's moral ascendancy and influence over the latter substitutes for violence and intimidation x x x. The cross-examination of the complainant did not dent any bit her credible testimony given in a forthright manner. The simple answers of this witness on the stand exude candor and sincerity. Since the complainant is of tender years and not exposed to the ways of the world, it is improbable that she would impute a crime as serious as rape to her own father if it were not true."

The lower court concluded that, without doubt, "the accused father had carnal knowledge of his daughter against her will[,] taking advantage of his moral ascendancy and influence."

Hence, this Court's automatic review of the judgment.^[11]

Issues

In his Brief,^[12] accused-appellant assigns the following errors to the court *a quo*:

"I

The trial court gravely erred in giving full weight and credence to the testimony of the private complainant and disregarding the theory of the defense.

II

The trial court erred in adopting the prosecution's theory which is incongruous and contradicts human experience and ordinary behavior of men.

III

The trial court gravely erred in holding the accused guilty beyond reasonable doubt in both charges."

In brief, these issues boil down to the sufficiency of the prosecution evidence to convict appellant.

The Court's Ruling

We affirm the conviction of appellant for two counts of rape, but reduce his penalty in each count to *reclusion perpetua* for failure of the prosecution to present sufficient proof of the victim's age.

Main Issue:

Sufficiency of the Prosecution Evidence

Appellant contends that the testimony of Kristina Pecayo has "too many loose ends, x x x resulting in the failure of her case to meet the test of moral certainty [in establishing the] guilt of the accused." *First*, it was allegedly improbable for the rapes to have taken place in an 8-by-12-foot room where the victim's siblings were also sleeping. *Second*, Kristina did not shout for help or awaken her siblings who were in the same room where she was being raped. *Third*, nearly a year passed between the alleged two instances of rape, during which the victim failed to report the matter to anyone. There was no showing, however, that in the interval, appellant continued to intimidate or instill fear in the victim. *Finally*, the uncorroborated testimony of the private complainant allegedly failed to support the conviction of appellant.

After a careful scrutiny of the evidence for both the prosecution and the defense, the Court finds that the objections raised by appellant are unworthy of belief. The testimony of Kristina Pecayo, as corroborated by the medical findings, are sufficient to establish beyond reasonable doubt the guilt of Felipe Pecayo Sr. Her testimony was straightforward, spontaneous and convincing, thereby manifesting truth. We

quote it at length, as follows:

"PROS. MENDOZA:

Q. You said that you were raped by your father at 3:00 a.m. of one day of January, 1996[;] will you please tell the Court how that rape happened?

WITNESS:

A. Just after my sister working at Mariveles left the house, I felt that my father entered our room and then I felt that he stripped off my clothes, removing my shorts and panties; and then he put himself on top of me; he removed his shorts and then he inserted his sex organ [in]to mine; after that when he saw that I bled, he wiped the blood and left, sir.

Q. Who was with you at that time that this rape incident happened?

A. My youngest sibling, sir.

Q. How old is your youngest sibling?

A. 10 or 11 years old, sir.

Q. At that time that your father went on top of you, remov[ed] his shorts, and put his sex organ inside your organ, what were you doing?

A. None, sir.

Q. Why?

A. I was afraid of him, sir.

Q. Why were you afraid of him?

A. Everytime he would get drunk, he would say, he would kill us all, sir.

PROS. MENDOZA:

May we make it of record, Your Honor, that the witness is crying while testifying.

Q. You said that your father wiped the blood which he found on you[;] what part of your body bled?

A. My sex organ, sir.

PROS. MENDOZA:

Q. You said also that your father wiped the blood and then left you[;] where did he go?

WITNESS:

A. He went outside because he slept outside, and then he slept there, sir.

Q. In December, 1996, do you remember of any unusual incident that happened in a day of that month?

A. Yes, sir.

Q. What was that unusual incident?

A. I was raped by my father again, sir.

Q. Do you still remember what day was that in December, 1996 that you were again raped by your father?

A. No, sir.

Q. Do you still remember the time?

A. At the same time about 3:00 a.m., sir.

Q. Why do you remember that it was about 3:00 a.m.?

A. It was again just after my sister working at Mariveles ha[d] left, and I have a brother who goes to the sea, sir.

Q. At that time, in December, 1996, who was with you aside