

THIRD DIVISION

[G.R. No. 116741-43, March 25, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDWIN MONTEFALCON, ACCUSED APPELLANT.**

D E C I S I O N

PURISIMA, J.:

This is an appeal by accused EDWIN MONTEFALCON, from the Joint Decision^[1] of Branch 32 of the Regional Trial Court in Dumaguete City, finding him guilty of rape and sentencing him thus:

"WHEREFORE, premises considered, judgment is hereby rendered:

(1) In Crim. Case No. 10741 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua together with all the accessory penalties provided for by law.

(2) In Crim. Case No. 10742 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentence him to suffer the penalty of reclusion perpetua together with all the accessory penalties provided for by law.

(3) In Crim. Case No. 10744 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua together with accessory penalties provided for by law.

The above three (3) reclusion perpetua penalties shall be served by the accused successively, subject however to the 40-year limit provided for in Art. 70 of the Revised Penal Code (*People v. Duco*, 86 Phil. 176; *People v. Remolleno*, 109 Phil. 607). In all these three (3) cases, the accused is ordered to pay the offended party the aggregate sum of P4,000.00 as actual damages, and P75,000.00 as moral damages (at P25,000.00 for each case), and the costs.

The jailer is hereby ordered to make the proper reduction of the period during which the accused was under preventive custody by reason of

these cases in accordance with law.

SO ORDERED."^[2]

The Informations charging the accused of the crime of rape allege:

In Criminal Case No. 10741

"That on or about the 26th day of February, 1993, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did, then and there, wilfully, unlawfully and feloniously lie, and succeeded in having carnal knowledge with one SHARON SAING, a minor, 10 years of age, against her will.

Contrary to Art. 335, par. 1 of the Revised Penal Code."

In Criminal Case No. 10742

"That on or about the 28th day of February, 1993, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation did, then and there, wilfully, unlawfully and feloniously lie and succeeded in having carnal knowledge with one SHARON SAING, a minor, 10 years of age against her will.

Contrary to Art. 335, par. 1 of the Revised Penal Code."

In Criminal Case No. 10744

"That on or about the 1st day of March, 1993 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did, then and there, unlawfully and feloniously lie, and succeeded in having carnal knowledge with one SHARON SAING a minor, 10 years of age, against her will.

Contrary to Art. 335, par. 1 of the Revised Penal Code."^[3]

Based on three (3) sworn complaints for rape signed by the complaining victim, Sharon Saing, with the assistance of her father, Clemente Saing, the aforementioned Informations were presented by Fourth Assistant City Prosecutor Isabelito I. Trayvilla on March 29, 1993.

With the accused, assisted by counsel, entering a plea of Not Guilty upon arraignment, a joint trial of all three cases ensued.

The facts of the case as stated in the Appellee's Brief and found by the trial court more credible and worthy of belief are as follows:

"[The] victim Sharon Saing was born on May 1, 1982 (*Exhs. 'A' and 'A-1'*) to spouses Clemente Saing and Paz Silvano Saing. The family lives in a house belonging to Dr. Orbeta, at Batingual, Dumaguete City. Accused

Edwin Montefalcon, a handler of the fighting cocks of Dr. Orbeta, stayed with the Saing family (*p. 23, tsn, February 1-31, 1994*). He had a bed space in the kitchen of the house.

Sharon is a Grade 5 pupil. (*p. 23, tsn, September 9, 1993*) Her father Clemente is a pedicab driver (*p. 4, tsn, December 8, 1993*) while her mother Paz serves as a waitress at the Music Box, a disco house, along Rizal Boulevard, Dumaguete City, (*p. 5, ibid*).

Husband and wife used to come home late in the evening due to the nature of their jobs. On February 26, 1993, February 28, 1993 and March 1, 1993, at about 9:00 o'clock in the evening, while Sharon and her younger brother Michael, about eight (8) years old, were sleeping inside their bedroom, accused entered. He covered Sharon's mouth with a pillow and placed himself on top of her. He inserted his penis into her vagina and did some pumping motions of his buttocks. The accused warned Sharon not to tell her parents about the incident otherwise he would kill her. When these three (3) separate sexual abuses were committed by the accused, Michael did not mind. He appeared to be asleep. (*pp. 4-12, tsn, September 9, 1993*)

On March 5, 1993 at 3:00 o'clock dawn, her parents, upon reaching home discovered the accused sleeping inside their bedroom together with Sharon. His leg was placed over and across her body. Clemente woke him up. Caught by surprise, the accused pretended to have lost his way and immediately went back to the kitchen. Sharon's father noticed that Sharon's shorts and panty were pulled halfway down. He examined her and found seminal fluid on her vagina which was still wet. It was then that he investigated her. Sharon was forced, although reluctantly, to reveal the series of sexual abuses committed by the accused upon her. (*pp. 5-8, tsn, December 8, 1993*)

She said, the first sexual assault was done on February 22, 1993. This was repeated on February 23, and on February 25. The other sexual acts committed by the accused on February 27, March 2 and March 4, 1993. (*pp. 28 and 29, tsn, September 9, 1993*) The three other penile (*sic*) penetrations done by the accused upon her on February 26, 28 and on March 1, are the subject matters of these cases. All in all, the accused made nine (9) separate and distinct sexual intercourses with her on different nights. Alarmed, Clemente brought her (*sic*) daughter immediately to the police station and reported the incident. Sharon was also brought to Negros Oriental Provincial Hospital. (*pp. 8 and 9, tsn, December 8, 1993*) by Dr. Edna Tabaloc. Vaginal examination of Sharon shows '(a) old lacerations at 9, 2 and 4 o'clock positions. (*Exh. 'D,' 'D-1' and 'D-2'*)."^[4]

The defense version, as discussed in the Appellant's Brief, runs as follows:

"The evidence for the defense tends to establish that on February 26, 1993, accused Edwin Montefalcon was with Clemente Saing, the father of the victim, from 7:30 o'clock in the evening when they got the rented pedicab from the house of the owner up to 3:00 o'clock dawn the