

EN BANC

[G.R. Nos. 130665, April 21, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO
BALIAO EMPANTE @ "PETER," ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

This is an appeal from the decision of the Regional Trial Court of Oroquieta City, Misamis Occidental (Branch 12) finding accused-appellant Pedro Baliao Empante guilty of three counts of rape against his daughter, Elvie Empante, then below 18 years of age, and sentencing him to death and to indemnify his daughter in the amount of P50,000.00 and to pay her moral damages in the amount of P50,000.00 for each count of rape. Accused-appellant admits his guilt. He contends, however, that the trial court erred in sentencing him to death because it should have appreciated two mitigating circumstances in his favor, *i.e.*, voluntary confession of guilt and intoxication, and sentenced him to a lesser penalty.

The facts are as follows:

Accused-appellant Pedro B. Empante is married to Flaviana Intong Empante, by whom he has four children, namely, Elvie, Elmer, Elna, and Eric. Elvie, the eldest, was born on March 6, 1982 (Exh. "A"). During the time relevant to these cases, accused-appellant worked as a laborer at a quarry in Barangay Unidos, Plaridel, Misamis Occidental, while his wife worked as a domestic helper outside Plaridel and went home only on weekends.

In November 1994, Elvie, then only 12 years old and a Grade VI student, was left alone with her father, accused-appellant, in their house at Sitio Napo, Barangay Unidos, Plaridel, Misamis Occidental. For some reason, her mother, brothers, and sister were all out at that time. She was cleaning the living room of their house when she was called by accused-appellant to his room. When Elvie approached him, accused-appellant, without warning, poked a hunting knife (Exh. "B") on her right side and told her not to make any noise, otherwise he would kill her. Elvie described the knife as one with a sharp blade and a wooden handle covered by black tape wound around it. Accused-appellant pushed her to the bed as a result of which she fell on her back. Accused-appellant then went on top of her. He removed her shorts and panties with his right hand as he held with his left hand the hunting knife. After removing his shorts, accused-appellant succeeded in violating his daughter. Elvie resisted and tried to prevent accused-appellant from ravishing her by closing her thighs, but her efforts proved futile. Elvie felt pain in her private parts. She was warned not to tell her mother about the incident or accused-appellant would kill both of them. Elvie knew her father to be a violent man. He maltreated her mother and threatened her with a bolo. Hence, when her mother arrived later that day, Elvie did not tell her anything about the incident.^[1]

The family later moved from Sitio Napo to a place near the national highway, also in Barangay Unidos, Plaridel, Misamis Occidental. In the evening of December 24, 1996, Elvie was left at home with only her younger brothers Elmer and Eric, their younger sister being then in the house of their grandmother, Lourdes Intong. Elvie was going to church with her mother to hear midnight mass, but accused-appellant told her to stay home on the pretext that he would be going to work the next morning. Elvie, therefore, prepared to go to sleep. She was made to sleep near the wall, with her father at her left side. Her two young brothers, Eric and Elmer, slept beside their father. Elvie was awakened as she found accused-appellant on top of her. She noticed that her shorts and underwear had been removed and that her father was naked from the waist down. She tried to free herself from her father's hold and prevent him from ravishing her by closing her thighs, but he was too strong for her. Elvie testified that a hunting knife (Exh. "B") was pointed at her side. She knew that he had succeeded in inserting his penis into her vagina because she felt pain in her private parts. As accused-appellant did the sexual act, he kissed Elvie all over the face, neck, and breast, even sucking her lips and telling her to stick out her tongue. So revolted was she by what her father was doing to her that she tried to cover her face with her hands. After satisfying himself, accused-appellant put on his shorts and gave Elvie her panties and shorts to wear. Again Elvie did not tell her mother, who arrived late that night, about the incident because of fear of her father.^[2] She, however, asked her mother to let her sleep in another room. But when accused-appellant learned that Elvie was not in his room, he got mad and forced the door open. He slapped her, hit her on the back, pinched her side, and then grabbed and dragged her outside. Elvie's mother was not home at that time, but when she arrived Elvie told her about her experience. Elvie's mother confronted her father and a quarrel ensued between the two.^[3]

Elvie went to her grandmother's house, located a few kilometers away, and stayed there, but her father forced her to come home with him.^[4]

On January 16, 1997, Elvie's mother left their house to work in Manila after being beaten up by accused-appellant. As a result, Elvie was left with no one to protect her. In the evening of January 18, 1997, she was again molested by her father. She was asleep when accused-appellant went on top of her. When she woke up, she found that her shorts and underwear had already been removed. As before, she tried to hold her father at bay and prevent him from dishonoring her, but she was threatened with a hunting knife (Exh. "B"). Accused-appellant again was able to have sexual intercourse with her. In anger, she demanded from him, "Why do you sexually abuse me? Why not go to others?" To this, accused-appellant answered, "Why [do I have to] go to others when you are here?"^[5] even as he covered her mouth with his hands to keep her from talking. After accused-appellant was through, he put on his shorts and slept beside her. Elvie could not sleep and kept crying. As her sobbing kept her father awake, he hit her on the back and threatened her with harm if she did not stop.^[6]

Elvie feared that, with her mother gone, her father would make a mistress of her. She went to the house of her grandmother the next morning and told her her story. Her grandmother, Lourdes Intong, lost no time in taking her to the barangay captain who referred them to the police and advised them to take Elvie to the hospital for examination. On the same day, Elvie was examined by Dr. Jona Handumon at the

Calamba District Hospital in Calamba, Misamis Occidental. The medico-legal report (Exh. "C") of Dr. Handumon contained the following findings:

"Date & Time of Examination: January 19, 1997

"Findings:

- NORMAL EXTERNAL GENITALIA
- NULLIPAROUS VAGINA
- BLUNT & ROUNDED POSTERIOR FOURCHETTE
- (+) HEALED LACERATION AT POSTERIOR FOURCHETTE
- INTROITOUS ADMITS 2 FINGERS EASILY
- HYMEN RUPTURED W/ HEALED LACERATIONS AT 2:00 & 7:00 POSITIONS
- CERVIX CLOSED, FIRM
- (+) MUCOID, WHITISH DISCHARGES AT OS
- CORPUS SMALL
- (-) ADNEXAL MASS & TENDERNESS"^[7]

On June 20, 1997, Elvie filed with the Philippine National Police at Plaridel, Misamis Occidental three criminal complaints for rape which became the basis of informations lodged with the Regional Trial Court of Oroquieta City against accused-appellant.

In Criminal Case No. 1301, it was alleged -

"That on or about January 18, 1997 at about 8:00 o'clock in the evening at barangay Unidos, Plaridel, Misamis Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused PEDRO BALIAO EMPANTE alias "Peter" through threats, force and intimidation and with the use of a hunting knife wilfully, unlawfully and feloniously did then and there lie and succeeded in having carnal knowledge with complainant Elvie Empante, his own daughter, a minor, 15 years of age and against her will.

"CONTRARY TO LAW, aggravated that the victim is a minor, a 15 year old and the offender is the parent-father of the victim and use of a hunting knife."

Upon being arraigned on May 7, 1997, accused-appellant, assisted by counsel, Atty. Rudy Magsayo, entered a plea of "not guilty." Thereafter, the trial was set by the court on June 6, 1997.

Two more cases were later filed in court against accused-appellant. The information in Criminal Case No. 1304 alleged -

"That sometime in November 1994 at 10:00 a.m. at their house at Napo, barangay Unidos, municipality of Plaridel, Province of Misamis Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Pedro Baliao Empante, through threats, force and intimidation and with the use of a hunting knife willfully, unlawfully and feloniously did then and there have carnal knowledge with Elvie Empante his own daughter, a 12 year old girl against her will and without her

consent.

"CONTRARY TO LAW, with the qualifying circumstances of minority, Elvie Empante was a 12 year old girl a legitimate daughter of accused and with the used [sic] of a hunting knife."

In Criminal Case No. 1305, the information alleged substantially the same facts except as to the date of the incident which occurred at around 10 p.m. on December 24, 1996.

Accused-appellant pleaded "not guilty" to the two charges.

The cases were thereafter tried together beginning June 6, 1997. The prosecution presented Elvie as its first witness. On June 16, 1997, accused-appellant, through his counsel, asked the court to allow him to change his plea from "not guilty" to "guilty." His motion was denied on the grounds that the prosecution had already started presenting its evidence and that "the purpose [of the accused-appellant in] changing his plea was to be given a lighter penalty of *reclusion perpetua* and not that of death x x x x"[8]

On the third day of trial on June 20, 1997, accused-appellant again asked the court to allow him to change his plea, assuring the court that his plea would be unconditional and that he would accept whatever penalty the court would impose on him. The trial court then asked several questions from accused-appellant to determine if he understood the consequences of a plea of guilty. Having been satisfied that the plea of guilty was freely, knowingly, and voluntarily being made, the trial court ordered accused-appellant re-arraigned by having the informations read to him in the Cebuano-Visayan dialect, which he understood, after which he pleaded guilty to all counts of rape.[9]

The trial court then directed the prosecution to complete the presentation of its evidence. Aside from Elvie, the prosecution presented Lourdes Intong, Elvie's grandmother and accused-appellant's mother-in-law. Lourdes Intong testified that at about 7 a.m. on January 19, 1997, Elvie went to her house and told her that she had been sexually abused by her father several times. Lourdes confirmed that she accompanied Elvie to the hospital where Elvie was examined and to the local authorities with whom Elvie filed her complaints against accused-appellant. Lourdes testified that, while accused-appellant was in detention pending investigation, he talked to her and asked for her forgiveness, but she told him to ask for forgiveness from Elvie. For this reason, accused-appellant sent relatives to talk to Elvie since the latter refused to see or talk to him personally. In addition, accused-appellant wrote Elvie three letters in which he asked for forgiveness so that he will be given a lighter sentence for his crimes. The letters could not be presented in court as they had been destroyed by Elvie who did not then realize they could be used in evidence.[10]

After the prosecution had rested its case, accused-appellant was presented as the sole witness by the defense. Accused-appellant admitted having raped his daughter, claiming, however, that he was drunk at the time. He denied that he used a hunting knife to threaten his daughter and claimed that he only threatened her verbally. He alleged that he did not have any hunting knife and that the hunting knife (Exh. "B") presented in court, which Elvie and her grandmother claim to have found in a closet

(*aparador*) in his house when he was detained, belonged to the brother of his mother-in-law, Pablo Calunod.^[11]

On June 30, 1997, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, finding him guilty beyond reasonable doubt of the crime of rape committed upon his own daughter Elvie Empante who was then below eighteen (18) years old in all the three criminal cases, the Court hereby sentences accused PEDRO BALIAO EMPANTE:

"1. In Criminal Case No. 1301, to suffer the penalty of death and to indemnify Elvie Empante the amount of P50,000.00 and to pay her the additional sum of P50,000.00 for moral damages;

"2. In Criminal Case No. 1304, to suffer the penalty of death and to indemnify Elvie Empante the amount of P50,000.00 and to pay her the additional sum of P50,000.00 for moral damages; and

"3. In Criminal Case No. 1305, to suffer the penalty of death and to indemnify Elvie Empante the amount of P50,000.00 and to pay her the additional sum of P50,000.00 for moral damages.

"The records of the three criminal cases including the transcripts of stenographic notes are hereby ordered forwarded to the Honorable Supreme Court for automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Republic Act No. 7659.

"With costs against the accused."

Accused-appellant does not seek a reversal of the findings of the trial court. In his lone assignment of error, he argues that -

"THE TRIAL COURT ERRED IN IMPOSING THE EXTREME PENALTY OF DEATH DESPITE THE PLEA OF THE ACCUSED-APPELLANT FOR HUMANITARIAN CONSIDERATION AS WELL AS THE PLEA OF GUILTY AND THE DEFENSE OF INTOXICATION WHICH MITIGATE HIS LIABILITY DESERVES A PENALTY OF RECLUSION PERPETUA ONLY."

After reviewing the evidence in these cases, the Court finds no reason to alter, much less to reverse, the decision of the trial court. The evidence establishes beyond reasonable doubt the guilt of accused-appellant. The testimony of complainant is plain, straightforward, and positive. Although in rape cases it is sufficient for the offended party to state that she has been raped, in the cases at bar, complainant's testimony is filled with details which can only enhance its credibility. With clarity and candor, complainant recounted the manner in which she was raped on the three occasions stated in the informations. Her testimony was in fact corroborated even by accused-appellant.

The defense points out an alleged contradiction between what she said during trial (that accused-appellant was not drunk when he raped her)^[12] and what she said in her sworn statement before the police (that accused-appellant smelled of liquor on