

SECOND DIVISION

[G.R. No. 128104, May 18, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERNANI SANDICO Y GABRIEL, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

HERNANI SANDICO y GABRIEL was charged with two (2) counts of rape in two (2) separate Informations filed with the Regional Trial Court of Malabon for raping his own daughter, Marivic Sandico, docketed as Crim. Cases Nos. 15896-MN and 15897-MN. In Crim. Case No. 15896-MN, he was found guilty as charged and sentenced to *reclusion perpetua*, to indemnify his victim P30,000.00, and to pay the costs. In Crim. Case No. 15897-MN, he was acquitted for insufficiency of evidence.^[1]

Accused-appellant assails his conviction on the ground that the court *a quo* in giving credence to the testimony of his daughter, Marivic Sandico, and that the prosecution failed to establish his guilt beyond reasonable doubt.

The two (2) incidents of rape took place in May 1995. First, on 19 May 1995, at around twelve o'clock midnight, when Marivic arrived home from the Fishwealth Canning Corporation, Fish Port, Navotas, where she was employed as a factory worker. Their house was a one-storey, one-room affair, situated at Martiniko St., Dagat-dagatan, Malabon. It had no bedroom, only an informal sala, four (4) by four (4) meters, with no partition or division. In other words, the whole Sandico family slept together in the same room with nothing to separate them from each other.

When Marivic arrived home that evening, her mother Gloria Sandico, sister Marife and a nephew were lying on a *papag*^[2] already asleep. After eating supper, Marivic changed to her duster, short pants and panty. Her father, accused-appellant Hernani Sandico, was also there. He was still awake. He was watching television. He had nothing on except his briefs.

When Marivic lay down on the floor to sleep, her father went near her, lay down with her and started to embrace her. Marivic resisted. She pushed his arm away. But the accused, now enraged by her resistance, kicked her in the buttocks and boxed her on her right side near her breast. Despite her tenacious defiance of her father, however, he was able to remove her short pants and underwear, then he removed his briefs, placed himself on top of her, inserted his penis into her vagina, and consummated his bestial desire. Before he could ejaculate, he pulled his penis off her vagina and let his sticky semen splatter on her thighs. After satisfying his lust, he went to sleep near the closet, an area not adjacent to Marivic who could only cry in silence and in fear. She was very much afraid of him and of the scandal that the family would be dragged into.^[3]

The second incident was on 21 May 1995, at around 2:30 in afternoon. While Marivic was watching television in their house together with her mother and sister, accused-appellant arrived. He was very drunk. He then ordered his wife and daughter Marife to leave, as they did immediately, because of fear.^[4] As soon as Gloria and Marife left, he stared at Marivic and forced her to remove her duster.^[5] He poked a bladed weapon on the left side of her neck. She was terribly afraid and shaken. She begged, "*Tay, ayoko ho, ayoko ho, nagmamakawa ako dahil may regla ako,*"^[6] But the accused merely replied, "*Hindi na bale.*"^[7] He removed her duster and cut the strap of her bra. After stripping her naked, accused-appellant ordered her to get out of the house. Of course, she refused. She could not go out streaking in broad daylight. Due to heavy drunkenness, accused-appellant fell asleep near the front door of their house. Marivic then hurriedly grabbed a towel to cover her body, escaped through the window and proceeded to her grandmother's house located in the same neighborhood. Her grandmother was at that time sleeping so she told instead her aunt Concepcion how she was sexually abused by her own father.^[8]

On 26 May 1995 Concepcion accompanied Marivic to the Malabon Police Station where she was instructed to undergo a physical examination first. She went to the National Bureau of Investigation (NBI) where she was examined by Dr. De Perio-Daniel who issued a medical report.^[9] Thereafter, Marivic returned to the Malabon Police Station where she executed a "*Sinumpaang Salaysay*" before Police Investigator Rolando Pilapil who referred the case to the Inquest Fiscal.^[10]

Dr. De Perio-Daniel testified that she examined Marivic on 26 May 1995 and that her findings showed that there was no laceration in Marivic's hymen. However, she explained that Marivic's hymen was the elastic type which would allow penetration by an average-size Filipino male organ in full erection without causing genital injury. The report also indicated that there was no sign of extra-genital physical injuries or violence on the body of Marivic.^[11]

Accused-appellant had a different story. As his own sole witness he testified that no unusual incident took place on 20 May 1995. He claimed that at around 1:00 o'clock that early morning he only watched television together with his wife and daughter Marife. Marivic arrived between 2:00 to 3:00 o'clock that morning.

Accused-appellant also denied having raped Marivic on 21 May 1995. He testified that at around 5:00 o'clock in the morning he woke Marivic up to ask for P100.00. Thereafter he went outside for a drinking spree with his friends and fellow construction workers and returned only at around 11:00 o'clock.^[12] When he arrived home, Marife together with Marivic and their nephew were watching television. Upon seeing him, Marivic inquired whether he was drunk; he replied, "*bitin*" (not so drunk). Marivic then told him that a bottle of *gin* was available in their house. When the *gin* was handed by Marife to him who was outside the house, the former asked permission to attend a birthday party together with her nephew.

With Marife and her nephew gone, accused-appellant asked Marivic for a "chaser." She did not obey. After asking her the third time, he got exasperated so (referring to Marivic), "*Sinabunutan ko po, pinitsiran ko at hinila ko palabas.*"^[13] After dragging her outside, he ordered Marivic to take off her clothes. When she refused to obey, he hit her at the back sending her to seek refuge in the house.

Accused-appellant asserts that on 18 May 1995 Marivic lodged a complaint against him allegedly for maltreatment and he was incarcerated by the Malabon Police Detachment. On 21 May 1995, he was again imprisoned at the instance of his daughter for beating her. He was apparently surprised to learn that he was being charged with two (2) counts of rape.

The trial court refused to believe the version of accused-appellant and found him guilty of rape in Crim. Case No. 15896-MN. However, in Crim. Case No. 15897-MN he was acquitted for insufficiency of evidence.

Accused-appellant insists on his innocence not only in Crim. Case No. 15897-MN but also in Crim. Case No. 15896-MN; hence, he comes to us for a reassessment of his conviction. He contends that the evidence for the prosecution should not be given credence. *First*, he questions the credibility of Marivic. According to him, Marivic hated him and that the instant case was instituted out of vengeance. *Second*, he makes much of the findings in the medical certificate of Dr. De Perio-Daniel showing the absence of laceration in Marivic's hymen and that there was no sign of physical violence in her body. *Third*, he advances the argument that it was inherently impossible for him to have committed the salacious act given the circumstances and the place where the crime was committed. *Fourth*, he maintains that there was insufficient resistance on the part of Marivic considering her was unarmed at the time of the alleged rape. *Lastly*, he claims that there was unreasonable delay in the filing of the charge against him.

The Court is far from persuaded. The trial court's assessment of a witness' credibility will not be disturbed on appeal in the absence of palpable error or grave abuse of discretion on the part of the trial judge.^[14] In the instant case, the defense has not given any sufficient reason to reverse or alter this finding. Indeed, Marivic was unequivocal in charging accused-appellant with rape. Her account of the rape was straightforward, detailed, and consistent, interrupted only by tears and bitter sobs when she recalled the repealed acts of lust that her father - of all people - mercilessly perpetrated on her. She testified, thus -

FISCAL CATALAN

Q: And could you still recall as to how long was he able to do that kind of act unto you or in other words how long his penis inserted into yours?

A: For quite a long time sir.

Q: And what happen (sic) after that, Maddam Witness?

A: At the time there was something coming out from his organ, he removed his organ and he placed that white thing on my thigh, sir.

Q: Madam Witness, tell us how long was your father doing this horrible thing to your person?

x x x x

A: When I was eighteen (18), sir.

Q: Could you tell us the reason, Madam Witness, why you had not reported this to your mother or to (any) other authorities?

A: Because I was very afraid and he was threatening me, sir.

FISCAL:

At this juncture, we would like to manifest that the witness while uttering those answers, Your Honor, is continuously in tears or crying, Your Honor.

Q: Now, you mentioned a while ago, Madam Witness, that while this molestation was being done to you by your father, your mother, your nephew and your sister was (sic) in the same room of the house or in the same roof, now tell us why did you not shout or cried (sic) aloud so as your mother can (sic) be awoken (sic)?

A: Because I was afraid and I already have a phobia that he will (sic) going to kill me, sir.^[15]

Accused-appellant alleges that the complaint against him was filed by his daughter out of resentment because he beat her and maltreated her a few days before the incident, and that the charge was simply concocted out of vengeance in order to get rid of him.

We are not convinced. A rape charge is a serious matter with pernicious consequences both for the accused and the complainant. It exposes both the accused and the accuser to humiliation, fear, and anxieties, not to mention the stigma of shame that both have to bear for the rest of their lives.^[16] These allegations are not enough to overcome the fact that the consequences of filing a case for rape are so serious that an ordinary woman would have second thoughts about filing the same. Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to fabricate a story which would put her own father in jail for the most part of his remaining life and drag herself and the rest of her family to a lifetime of shame.^[17]

Accused-appellant theorizes that the absence of any laceration in the victim's genital organ completely negated rape, there being no physical evidence of the same. This, according to him, was confirmed by the findings of the medico-legal officer who examined the victim. However, this phenomenon was satisfactorily explained by the medico-legal officer when she said that "Marivic's hymen is the elastic type which would allow penetration by an average-size Filipino male organ in full erection without genital injury."^[18] In other words, according to Dr. De Perio-Daniel, it was possible that Marivic's hymen would not break even if there was penetration. After all, and perhaps more importantly, full penetration is not required to sustain the conviction of rape, and that it is enough that there be proof of the entrance of the male organ within the labia of the pudendum of the female organ. In fact, penetration of the penis by the entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape.^[19]