

## EN BANC

[ G.R. No. 127356, June 29, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID  
SILVANO Y HAYAG, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

It is not for human to ravish what they produced. The rape committed by a father against his own daughter regardless of whether it is done under the cloak of parental discipline has no place in our society. That is why, it is considered as a heinous felony meted with the supreme penalty of termination of the assailant's life. For indeed those who lust must not last.

Once again the Court is saddled with another nightmare of lustful and incestuous defloration committed by one from whom the victim expects protection. The facts given credence by the trial court and quoted by both the prosecution (with page reference) and the defense in their respective Briefs, which are ably supported by evidence on record happened this wise:\*

"Sheryl Silvano is a beautiful mestiza (as may be shown in the pictures, Exhs. "T" to "T-5"), and already 5'6 tall at her age of sixteen (16) years, having been born on January 20, 1980. (Exhs. F and F-1) Her height have been inherited from her parents as her father is 6'2 tall and her mother is a mestiza. She is the legitimate daughter of David Silvano y Hayag, the accused in this case, and Shirley Ann G. Pedrosa, as evidenced by a marriage contract (Exhs. "E" & "E-1"). Sheryl is the eldest and the only girl with two brothers, namely: John David, who was born on July 29, 1984 and Noel William, who was born on April 16, 1986. (pp. 1-5, tsn, August 14, 1996)

"On January 23, 1996 at 10:30 in the evening, while Sheryl was sleeping in her room at the second floor of their house located at 134-C Scout Rallos Street, Barangay Sacred Heart, Quezon City,\*\* she was awakened by her father, the accused in this case. The accused then started scolding Sheryl for her coming late. (pp. 6-7, tsn, *ibid.*) The accused who appeared tipsy, started undressing Sheryl by lifting her T-shirt, as a form of punishment for her coming home late, which punishment she has been experiencing from the accused since she was 13 years old. After lifting Sheryl's T-shirt, as she was not then wearing any bra, the accused started holding Sheryl's breast at the same time kissing it. As Sheryl was practically leaning on the bed, the accused dragged Sheryl at the edge of the bed so that she would be facing the accused a little bit. The accused then knelt down on the floor and continued holding the breast of Sheryl with one hand while the other hand was holding the private organ of Sheryl. Sheryl tried to prevent the accused from doing what he was doing

but the accused told Sheryl "you did something wrong and I told you I would do that as a punishment to you" (p. 7, tsn. *ibid.*). Despite the pleas of Sheryl, the accused continued kissing her breasts. Afterwards, the accused pulled Sheryl at the side of the bed and the accused removed her pair of short pants and panty. After removing the pair of short pants and panty of Sheryl, the accused grasped the hips and waist of Sheryl and pulled her towards him. Thereafter, when the accused was already in between the thighs of Sheryl, the accused started kissing the private organ of Sheryl, the accused was at the same time inserting his finger into Sheryl's vagina (p. 8, tsn, *ibid.*). Thereafter, the accused stood up a bit, pulled down his short pants and knelt down at the side of the bed. The accused then got a hold of Sheryl's two feet and placed them on top of his shoulders. The accused once again grasped the hips of Sheryl and pulled her nearer to him. When Sheryl was pulled nearer to the accused, the accused inserted his private organ into Sheryl's private organ. Although 'Sheryl tried to free herself by pushing the shoulders of the accused with her two feet and telling the accused to stop what he was doing to her, the accused, in order to have a full grip, got hold of the legs of Sheryl and placed them in between the arms of the accused (pp. 8-9, tsn, *ibid.*). After inserting the accused's private organ into the private organ of Sheryl, the accused performed a pumping motion. Subsequently, the accused's private organ was removed from the private organ of Sheryl and the accused rubbed his organ with the private organ of Sheryl. Thereafter, Sheryl felt something cold which was a sticky liquid emitted from the private organ of the accused and which the accused scattered in between Sheryl's private organ and on her stomach. Later on, the accused got a tissue paper and wiped the liquid-like substance. The accused then put on his pair of pants and left the room (pp. 9-11, tsn, *ibid.*). The following morning, Sheryl went to school at Jose Abad Santos Memorial School (JASMS) in Quezon City.

On February 12, Sheryl who could no longer bear the punishment in the form of sexual abuse she had been getting from her father as in fact she was first raped when she was thirteen (13) years of age, left their house at Scout Rallos, Quezon City, and stayed at her maternal grandmother's house at Scout Lozano, Quezon City. When she was asked to go back to her parents' house at and settle her differences with the accused, Sheryl confided to her mother and grandmother the real reason why she did not like to go back to their house. Thereupon, her mother and grandmother immediately sought the assistance of General Hercules Cataluña, Chief of the Central Police District Command, who happens to be married to a cousin of the mother of Sheryl."<sup>[1]</sup>

Consequently, appellant was charged with rape by his own daughter to which he pleaded not guilty when arraigned. Prior to the presentation of evidence for the prosecution, the complaint was amended without objection from appellant, who when re-arraigned entered the same plea. The amended complaint reads:

"That on or about the 23rd day of January, 1996 in Quezon City, Philippines, the said accused who is the father of the Complainant by means of force and intimidation, to wit: then and there wilfully, unlawfully and feloniously, undressing the undersigned complainant who is under eighteen (18) years of age and putting her legs on top of his

shoulders, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent."<sup>[2]</sup>

After the prosecution presented its case, appellant filed a motion for leave to file demurrer to evidence on the ground that his guilt was not proven beyond reasonable doubt, which motion, however, was denied by the lower court. Appellant thus presented evidence for his defense. Thereafter, the lower court rendered judgment convicting appellant of the crime charged, sentenced him to suffer the penalty of death, and ordered him to indemnify the victim. The dispositive portion of the decision *a quo* states:

"WHEREFORE, this court finds the accused David Silvano y Hayag guilty beyond reasonable doubt of the crime of rape defined in and penalized by Article 335 of the Revised Penal Code, as amended, and sentences him to suffer the penalty of death and to pay the costs. The accused is hereby ordered to indemnify the victim, Sheryl P. Silvano, the amount of P50,000.00, as moral damages, and P30,000.00 as exemplary damages.

"SO ORDERED".<sup>[3]</sup>

Upon automatic appeal to this Court,<sup>[4]</sup> appellant assails his conviction by insisting on his innocence. He denied the accusation arguing that the charge leveled against him was a mere ploy of his wife and the latter's relatives for the purpose of severing their marital relationship.

In the review of death cases, foremost in the mind of the Court is the heavy penalty which an accused faces. Aware that life once taken, is like virginity which once defiled, can never be restored,<sup>[5]</sup> a thorough scrutiny of the case is in order. Against the proffered excuses of appellant, however, and guided by the three principles in the review of rape cases, to wit:<sup>[6]</sup>

- a.) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
- b.) In view of the intrinsic nature of the crime of rape, where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and
- c.) The evidence of the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.

The fundamental presumption of innocence<sup>[7]</sup> enjoyed by appellant was overcome with the requisite quantum of proof in criminal cases and his guilt sufficiently established by proof beyond reasonable doubt.<sup>[8]</sup>

The qualified rape of an underaged relative for which appellant was charged is classified as a heinous crime and penalized under Section 335 of the Revised Penal code (RPC), as amended by Section 11, Republic Act (R.A.) 7659,<sup>[9]</sup> which provides:

*"When and how rape is committed* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

- 1.) By using force or intimidation;
- 2.) When the woman is deprived of reason or otherwise unconscious; and
- 3.) When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any the following attendant circumstances:

- 1.) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
- 2.) When the victim is under the custody of the police or military authorities;
- 3.) When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity;
- 4.) When the victim is a religious or a child below seven (7) years old;
- 5.) When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease;
- 6.) When committed by any member of the Armed Forces of the Philippines or Philippine National Police or any law enforcement agency;
- 7.) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. (emphasis supplied)<sup>[10]</sup>

In proving such felony, the prosecution must allege and prove the ordinary elements of 1.) sexual congress 2.) with a woman 3.) by force and without consent,<sup>[11]</sup> and in order to warrant the imposition of death penalty, the additional elements that 4.) the victim is under 18 years of age at the time of the rape and 5.) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim should also be

alleged and proven. All such elements are undisputedly present in this case. The victim herein at the age of sixteen (16) years was subjected to forced sexual intercourse by appellant, as duly shown in her testimony:

Q. While you were sleeping at 10:30 in the evening of January 23, 1996, what happen?\*\*\*

ATTY. UMINGA:

Objection, your Honor, the question is misleading, "while you were sleeping" it does not mean established that she was sleeping.

COURT:

Witness may answer.

A. I was awakened by my father.

Q. When your father woke you up, what happened?

A. He was scolding me.

Q. What did he say?

A. He was asking me why I came home late. That I knew that I had a punishment.

Q. What else did your father do, if there was any aside from scolding you?

A. He was trying to undress me, particularly my shirt.

Q. Was he able to undress you?

A. Yes, he was able to lift up my shirt.

Q. And then what happen?

A. He was holding my breast and he was kissing my breast.

Q. What else did he do?

A. I was leaning on the bed, he dragged me on the side ways, so that, I will be facing him a bit and then he knelt down on the floor.

Q. After he knelt down on the floor, what else did he do?

A. He continued kissing and holding my breast, while he was holding his other hand to my breast and he was kissing it, he was holding my private organ his other hand.

Q. And what were you wearing at that time?