

## EN BANC

[ G.R. No. 128875, July 08, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DEMETRIO NUÑEZ Y DUBDUBAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

For sheer carelessness of the prosecutors in this case in ensuring that the information contains all the essential allegations, a man who deserves no less than the supreme penalty of death for violating his own flesh and blood gets off with a sentence of *reclusion perpetua*.

Complainant Janeth Nuñez was born on August 30, 1981 to Demetrio Nuñez and Nelia Ebay. When her mother took on a job as domestic helper in Guam, Janeth stayed on with her father and younger brother in Lower Cabantian, Buhangin, Davao City.

On January 17, 1996, at around 10:00 p.m., complainant was roused from her sleep and discovered that her shorts and panties had been taken off. Her father, whom she found beside her, touched her nipple and inserted his finger into her vagina. He also sucked her nipple. Complainant pushed her father away, whereupon he returned to bed and complainant put on her shorts and panties and went back to sleep. She woke up again later and saw her father on top of her. He inserted his penis into her vagina. She pushed him aside and felt sticky fluid spill on her thigh and vagina. When her father left, complainant just sat down and could no longer sleep.

The following day, complainant confided the incident to her classmate and her teacher, Mrs. Meliana Geradona, who reported the matter to the police. Complainant thereafter submitted herself to an examination by the Medico-Legal Officer of the Davao City Health Office, Dr. Danilo Ledesma, who found a superficial laceration on her hymen at 6:00 o'clock position.

The incident made complainant very angry at her father, so she voluntarily instituted a case which led to the filing of the following Information with the Regional Trial Court of Davao City:

### INFORMATION

The undersigned accuses the above-named persons (sic) of the felony of Rape, under Article 335 of the Revised Penal Code in relation to Republic Act 7659, at the instance of Janeth Ebay Nuñez, whose affidavit is hereto attached to form part of this information, committed as follows:

that on or about January 17, 1996, in the City of Davao, Philippines, and

within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force, wilfully, unlawfully and feloniously had carnal knowledge of his daughter Janeth E. Nuñez, against her will.

CONTRARY TO LAW.

Davao City, Philippines, January 22, 1995.

(sgd)  
LOLITO O. EVANGELIO  
Prosecutor I

When arraigned on January 30, 1996, the accused entered a plea of not guilty.<sup>[1]</sup> Thereafter, trial on the merits ensued.

The prosecution presented Dr. Ledesma,<sup>[2]</sup> PO2 Raul Tonzo,<sup>[3]</sup> who arrested the accused, and Social Welfare Assistant Milagros Basmayor<sup>[4]</sup> who interviewed complainant.

On the second hearing day, November 14, 1996, defense counsel manifested that the accused was willing to plead guilty. After finding that the accused was making his plea voluntarily, the court entered his plea of guilt.<sup>[5]</sup>

The prosecution then presented its remaining two witnesses, Meliana D. Heradona,<sup>[6]</sup> Janeth Nuñez's teacher, and the victim herself, Janeth Nuñez.<sup>[7]</sup>

Following the testimony of Janeth, and the offer of its exhibits as evidence, the prosecution rested its case.

At the hearing for the presentation of evidence for the defense, the accused, through his counsel, manifested that he would no longer present any evidence, not even his own testimony, but would merely submit the case for decision based on the evidence submitted by the prosecution.<sup>[8]</sup>

On January 23, 1997, the trial court rendered its Decision,<sup>[9]</sup> the dispositive portion of which reads:

"Accordingly, finding the evidence of the prosecution more than sufficient to prove the guilt of accused, Demetrio Nuñez y Dubduban of the offense charged beyond reasonable doubt, notwithstanding his plea of guilty of the offense charged pursuant to Rep. Act 7659, Section 11, sub-par. 7 thereof, accused, Demetrio Nuñez y Dubduban, is sentenced to suffer the supreme penalty of death by lethal injection pursuant to Rep. Act 8176, amending Sec. 24 of Rep. Act 7659 as to the manner therein provided, subject to such method of carrying out his sentence as may be provided for under said Rep. Act or any regulation under such other means and procedure therein provided.

Moreover, pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity accused is furthermore ordered to indemnify complainant, Janeth Nuñez, his daughter, the amount of

P30,000.00, by way of moral damages for all the ignominy and sufferings she incurred out of accused demonic act of sexually abusing his own daughter.

Finally, in accordance with the automatic review of the Supreme Court of this judgment, it appearing accused was charged of a capital offense, considered heinous crime, the Branch Clerk of Court of this court, is ordered to at once after promulgation of this judgment to accused, elevate the entire records of this case with the Clerk of Court of the Supreme Court, Manila, for review, evaluation and final appropriate action.

SO ORDERED."<sup>[10]</sup>

In his Appellant's Brief, accused raised a lone assignment of error -

THE TRIAL COURT GRAVELY ERRED IN ACCEPTING ACCUSED-APPELLANT'S IMPROVIDENT PLEA OF GUILTY TO A CAPITAL OFFENSE AND IN FAILING TO CONDUCT A SEARCHING INQUIRY TO FULLY DETERMINE WHETHER THE ACCUSED FULLY UNDERSTOOD THE CONSEQUENCES OF HIS PLEA.<sup>[11]</sup>

The records reveal that in making the plea of guilt, the accused was proceeding under the mistaken assumption that a plea of guilt would mitigate his liability. Rather than correcting this misconception, the trial court contributed to the mistaken belief of the accused. The records will show the infirmity attending such plea -

"FISCAL EVANGELIO:

For the Prosecution, we are ready.

ATTY. TE:

Respectfully appearing for the accused.

COURT:

How many more witnesses?

FISCAL EVANGELIO:

Two witnesses and we shall rest our case.

ATTY. TE:

The accused is not yet around your honor.

FISCAL EVANGELIO:

Considering the gravity of this case in case of conviction for death in view of the qualifying circumstance of the relationship as father and daughter.

COURT:

If he pleads guilty of the offense, . .

ATTY. TE:

I have conferred with the accused and he is asking for time.

COURT:

There is no more time.

ATTY. TE:

The accused is willing to plead guilty.

COURT:

If he pleads guilty, it could be mitigating. It is still life imprisonment. And so, whether it is life imprisonment, we still have the prosecution to present its evidence. If he pleads guilty to mitigating circumstance, the penalty will depend on the evidence of the prosecution.

ATTY. TE:

For humanitarian reason, we may be allowed that accused could not be sentenced to death?

COURT:

The court cannot determine the sentence. If accused will plead guilty, the court will require the prosecution to present their evidence to determine the penalty.

ATTY. TE:

I have conferred with the accused, accused confided to this representation that he will enter or want to withdraw his earlier plea of not guilty and instead enter a plea of guilty after this representation explained to accused with regards with his re-arraignment.

COURT:

Re-arraigned the accused upon manifestation of counsel.  
(Accused pleaded guilty to the information).

Q -I will ask you this question. In your plea of guilty, did you understand that you are pleading guilty to a capital offense?

A - Yes.

Q -Your counsel, Atty. Te explained to you the implication of your plea of guilty?

A - Yes.

Q -And I explain to you that when you plead guilty to a capital offense, it is either life or death penalty?

A - Yes.

Q -I am also explaining to you that consequences, you still continue your plea of guilty of the capital offense?

A - Yes.

Q -Did the court gets (sic) from you that your admission of your plea of guilty is your own will as stated by you, as explained by the court as well as your counsel?

A - Yes.

Q -Your plea of guilty is your own personal and voluntary plea

without any existing force and intimidation from anybody?  
A - Yes, it is my own will.

COURT:

Since the plea of guilty of the accused as voluntarily entered with the assistance of his counsel de officio as well as explanation given by this court to him, entering the plea of guilty of the accused, withdrawing his previous plea of not guilty, the court will require the prosecution to present their evidence as required by the court.

ATTY. TE:

May we moved (sic) that the mitigating circumstance of plea of guilty of accused be accepted in favor of the accused.

COURT:

Make that of record."<sup>[12]</sup> (underscoring, Ours)

Evidently, both the trial court and counsel for the accused led the accused to believe that his plea of guilt would be a mitigating circumstance in his favor. This was clearly misleading because (1) a plea of guilty may only be considered as mitigating when seasonably interjected, that is, before the prosecution presents its evidence;<sup>[13]</sup> and (2) the penalty of death is indivisible and is not affected by either aggravating or mitigating circumstances. Clearly, too, the accused was not categorically advised that his plea of guilt would not under any circumstance affect or reduce his sentence, making his re-arraignment flawed.<sup>[14]</sup>

However, even if the plea of guilt of the accused was improvidently made, it does not work to effectively vacate the finding of guilt made by the trial court. We note that at the onset, the accused had entered a plea of not guilty but had merely changed this plea to one of guilt midway during the presentation of evidence for the prosecution. It is a settled rule that a decision based on an irregular plea may nevertheless be upheld where the judgment is supported by other adequate evidence on record.<sup>[15]</sup> And such other evidence supports the finding of guilt in the instant case.

First, We have the direct and straightforward testimony of Janeth recounting the violation of body and spirit she suffered from her very own father. Her account of the harrowing incident is as follows --

"Q Now, on January 17, 1996, where were you?  
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A - At home.

Q - Sometime in the evening of January 17, 1996, can you tell the court what happened?

A - Yes.

Q - Tell the court what happened.

A - I was molested by my father.

Q - Can you describe to the Hon. Court, how your father molested you?