

## EN BANC

[ G.R. No. 131847, September 22, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CARMELITO S. ABELLA, ACCUSED-APPELLANT.**

### D E C I S I O N

**VITUG, J.:**

Herein appellant, Carmelito S. Abella, was accused by his 15-year old daughter, Violeta Abella, of the crime of rape in a complaint filed before the court *a quo*.

The complaint against appellant reads:

#### "C O M P L A I N T

"The undersigned complainant, VIOLETA ABELLA, after having been duly sworn to in accordance with law accuses Carmelito Abella y Savella of the crime of Rape, committed as follows: "That on or about the 12th day of December, 1996 at about 12:00 midnight, more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, a father of the victim, Violeta Abella, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously did lie and succeed in having carnal knowledge of said Violeta Abella.

"CONTRARY TO LAW.

"Cebu City, Philippines, Jan. 7, 1997.

"SUBSCRIBED AND SWORN TO before me this 7th day of January, 1997, in the City of Cebu, Philippines.

"ATTESTED BY:

"BAIL RECOMMENDED:

"(SGD) LEONARDO  
P. CARREON

"Prosecutor 1, Cebu  
City

"APPROVED:

"(SGD) PRIMO  
C. MIRO

"State  
Prosecutor II

"OIC-Dept.  
Order No. 296  
dated Oct. 1,  
1996"<sup>[1]</sup>

When arraigned, the indictee pleaded not guilty to the charge.

### **The Case for the Prosecution. –**

Complainant Violeta Abella, the fourth of seven children of accused Carmelito Abella, was just 15 years old. She was left alone with her father Carmelito and her two younger sisters, Andrea and Erlinda, at their house in Bocaue, Pamutan, Cebu City, by her mother and the other members of the family who attended a town *fiesta* celebration in Guadalupe, Cebu City. Shortly after nightfall of that day, the 12th of December, 1996, Violeta went to bed in the lone room of the house. The room was separated only by a curtain from the sala where her father and her two younger sisters stayed. Around midnight, Violeta was awakened when her father, who was half-naked, sat beside her. Violeta innocently asked what it was he wanted but he kept mum. Completely caught by surprise, she was suddenly held by the accused by her shoulders and forced to again lie down on the bed. Violeta vainly tried to struggle free from the firm hold of the accused. He succeeded in removing Violeta's underwear, then her dress, before finally mounting her. Violeta shouted for help but it was futile. The carnal knowledge of her lasted for about an hour. Crying, Violeta asked her father "why" but he could only say that he felt the urge for it (*Ganahan siya*<sup>[2]</sup>). Before going back to sleep in the sala, he threatened Violeta with death if she were to tell on him. Violeta spent the rest of the night awake numbly waiting for daybreak to come.

The following day, Violeta took her usual morning bath, dressed up and, without partaking of breakfast, went to school straightaway. Violeta simply ignored her father when he asked her to be home early from school. That afternoon, Violeta decided to tell her teacher about the incident. The latter lost no time in bringing Violeta to the office of the Department of Social Welfare and Development ("DSWD"). Violeta decided not to return home that afternoon; instead, assisted by the DSWD, she had herself examined by a medico legal officer of PNP Crime Laboratory 7, at Gorordo Avenue, Cebu City. The medical report of Dr. Nestor A. Sator, Police Senior Inspector and Head of the Medico Legal Branch of the PNP Crime Laboratory, disclosed:

"General: Fairly developed, fairly nourished and coherent female subject. Breasts are conical with brown nipples and areola from which no secretions could be pressed out. Abdomen is flat and tight.

"Genital: Pubic Hair is scanty. Labia majora is full, convex and coaptated with the light brown labia minora presenting in between. External vaginal orifice offers strong resistance to the introduction of the examining index finger. On separating the same disclosed and elastic and fleshly type hymen with shallow healing lacerations at 12 and 3 o'clock positions. The mucosal surface of the labia minora is inflamed.

"CONCLUSION:

"Subject is in non-virgin state physically.

"There are no external signs of recent application of any form of physical trauma noted during the time of examination.

"REMARKS:

"The original copy of this report is retained with this Unit for future reference."<sup>[3]</sup>

### **The Case for the Defense.-**

The accused claimed that on the night of 12 December 1996, he consumed one long bottle of Tanduay rum and a stick of cigarette which, according to a stranger who gave it, had a "soothing effect." He wanted to drown his worries because the land he had been tilling for sometime was about to be taken over by its owner. After doing away with the rum and the stick of cigarette, he felt like floating in the air. He had no recollection about his having supposedly entered the room of his daughter, let alone of having sexually abused her, that night. All he could remember was that he took supper with his children, drunk an entire bottle of Tanduay rum and smoked a stick of cigarette. He was certain, however, that he went to sleep at about nine o'clock in the evening, together with his two young daughters, while Violeta slept in the only other room of the house. When he woke up the following morning he was still wearing his long pants and his underwear.

He later learned that Violeta had been brought by her teacher to the DSWD and that her daughter was readying to file a complaint for rape against him. Fearing that people would harm him, the accused sought the advice of barangay councilwoman Nida Bacus who, in turn, accompanied him to the barangay captain. The latter forthwith brought him to the Punta Prinsesa police precinct where he was investigated. Eventually, the case was indorsed to the Philippine National Police Headquarters at Camp Sotero Cabahug, Gorordo Avenue, Cebu City, where he was kept under detention.

After a protracted trial, the Regional Trial Court, Branch 14, of Cebu City, rendered a decision on 15 October 1997 finding accused Carmelito S. Abella guilty beyond reasonable doubt of the crime of rape. The trial court handed down its judgment, thus:

"WHEREFORE, premises considered, the accused Carmelito Abella is hereby found guilty beyond reasonable doubt as principal of the felony of rape. In view of the attendant circumstances that he is the legitimate father of the victim and that the victim was under 18 years of age at the time he violated her, the accused is hereby sentenced to the supreme penalty of death, with the accessory penalties prescribed by law.

"The accused is also condemned to pay unto the offended party civil indemnity in the amount of P100,000.00.

"May God have mercy on your soul Carmelito Abella.

"SO ORDERED."<sup>[4]</sup>

In his appeal brief, accused-appellant would seek to ascribe to the court a quo the following errors allegedly committed by it, i.e., that-

"1. The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of rape.

"2. Assuming *arguendo* that accused-appellant indeed committed the crime charged, the trial court, nonetheless, erred in imposing upon him the supreme penalty of death."<sup>[5]</sup>

The claim of appellant that the trial court has erred in finding the accused guilty beyond reasonable doubt of rape is not tenable; on the contrary, the evidence for the prosecution sustains, with moral certainty, the guilt of the accused in the perpetration of the crime charged.

The defense here now asserts that while Violeta has declared that her father employed force against her, nowhere in her testimony, however, did she mention about having sustained any external injury or suffered bodily harm. Appellant fails to realize that he enjoys moral ascendancy and influence over Violeta, his own daughter, a circumstance that has been held to substitute for physical violence or intimidation in an indictment for rape.<sup>[6]</sup> The matter, it should be stressed, is to be viewed in the light of the perception and judgment of the victim at the time of the commission of the offense, rather than that of the malefactor.<sup>[7]</sup> At all events, the absence of any external sign or physical injury does not necessary negate the occurrence of rape,<sup>[8]</sup> proof of injury not being an essential element of that crime.<sup>[9]</sup>

Neither availing to appellant is his contention that it would have been improbable for the rape to take place considering the presence of the two younger sisters of Violeta just outside the bedroom. The crime of rape is not always done in seclusion. The Court has more than once observed that rape can be committed in a room adjacent to where the other members of the family might be or even in a room which the victim might be sharing with others.<sup>[10]</sup>

Appellant considers it rather strange that in the morning following the alleged rape, Violeta has not at all acted abnormally but that, in fact, she did her normal chores. It is not unusual, however, for a rape victim, immediately following the sexual assault, to conceal at least momentarily the incident. This attitude is understandable for a variety of reasons, such as because of great apprehension, a feeling of being completely lost or, like here, when the accused has moral ascendancy over the victim.<sup>[11]</sup> Indeed, different and varying degrees of behavioral responses, it is said, can be expected in the proximity of, or in confronting, an uncommon occurrence.<sup>[12]</sup> In any event, it is to be noted that Violeta did, in fact, report the incident to her teacher the day following the sexual assault.

The Court's attention has not been called to any dubious reason or improper motive on the part of Violeta that would have made her charge and testify falsely against appellant in so heinous a crime as rape. Violeta has had no record of sexual perversity to fabricate a story against her own father that could imperil his liberty or even his life.<sup>[13]</sup> Where no compelling and cogent reason is established that can explain that the complainant has been so driven as to blindly implicate an accused,

the testimony of a young girl of having been the victim of a sexual assault cannot be discarded.<sup>[14]</sup>

Violeta gave a vivid and credible account of her ordeal in the hands of her father. By then already 17 years of age, she testified:

"COURT INTERPRETER:

Please state your name and other personal circumstances.

"WITNESS:

VIOLETA ABELLA, 17 YRS. OLD, SINGLE, WORKING STUDENT, RESIDING AT GUADALUPE, CEBU CITY.

"x x x            x x x            x x x

"PROS. SOLIMA:

This witness Your Honor, is presented to prove that [s]he was raped by [her] own father.

"COURT:

You may proceed.

"PROS. SOLIMA: DIRECT EXAMINATION:

"Q Miss witness, how are you related to Carmelito Abella?

A My father.

"PROS. SOLIMA: DIRECT EXAMINATION:

"Q Is he inside the court room now?

"A Yes, sir.

"Q Will you please point to him?

"A The first man sitting.....

"INTERPRETER:

(Witness has pointed to the accused who responded to the name Carmelito Abella).

"COURT:

"Q By the way, Violeta what year are you in high school now?

"x x x            x x x            x x x