

EN BANC

[G.R. No. 130607, November 17, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RUSTICO RIVERA Y PALACIO, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

The focus of this review by the Court is to examine whether or not the constitutional presumption of innocence accorded to an accused has been sufficiently overcome by the State in the case at bar enough to sustain the judgment of the trial court finding the indictee guilty beyond reasonable doubt of qualified rape and thereby imposing upon him the death penalty. This Court, in this automatic review of the case, concludes affirmatively.

The Information filed against the accused in Criminal Case No. 778-M-95 of the Regional Trial Court ("RTC"), Branch 7, of Malolos, Bulacan, was to the following effect:

"INFORMATION

"The undersigned Asst. Provincial Prosecutor, on complaint of the offended party, **Alphamia A. Rivera, 10 years of age, under oath accuses Rustico Rivera y Palacio, father of the offended party, of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code**, committed as follows:

"That on or about the 16th day of May, 1995, in the municipality of Calumpit, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously, by means of force, intimidation and with lewd design have carnal knowledge of one Alphamia A. Rivera, his daughter, a minor, of 10 years of age, against her will and without her consent.

"Contrary to law.

"Malolos, Bulacan, June 23, 1995."^[1]

When arraigned on 09 August 1995, the accused, assisted by counsel *de oficio*, entered a plea of not guilty. The trial ensued shortly after the arraignment.

The Case for the prosecution.-

Alphamia Rivera, the private complainant, testified that she was born on 16 August 1984, the eldest among the three children of herein accused Rustico Rivera and

Amalia Rivera. The family resided in a small house, in Gatbuca, Calumpit, Bulacan. At about 1:30 in the afternoon of 16 May 1995, Alphamia, her younger sister Nina Joy and her younger brother Rustan were lying on a wooden bed (*papag*) momentarily being put to sleep by their father. Moments later, the accused slightly touched Alphamia's back with his finger ("*kinakalabit po niya ako*"^[2]). He then abruptly removed her short pants and panty, mashed her breast and licked her vagina. He rolled out a mat ("*banig*") on the floor and brought Alphamia down from the raised "*papag*." Against her will, he spread her legs while crouching on top of her until she felt the slight painful penetration inside her. She did not bleed but saw a "urine-like" fluid being later discharged from the penis of her father.

Alphamia did not divulge the incident to anyone because of fear of her father who threatened to choke her if she were to tell on him. Her mother subsequently found out about the matter when Nina Joy related the story to her Ate Mary Anne (a cousin) who, in turn, told her Tita Lyn of it. It turned out that Nina Joy witnessed the bestial act done to her older sister by their father and merely pretended to be asleep ("*nagtutulug-tulugan lang pala siya*"^[3]) at the time. Responding to questions from the trial judge, Alphamia said that prior to 16 August 1994, there were already instances when she would be sexually molested by her father. Her father would touch her vagina with his fingers and his penis or mash and kiss her breasts.

Dr. Fe Mesina, the Medical Health Officer of Calumpit, Bulacan, who conducted a physical examination on Alphamia on 17 May 1995, came out with a medical report. The document disclosed:

"MEDICO-LEGAL REPORT

"General Data:

"ALPHAMIA RIVERA Y. ALIWALAS, ten (10) years old, female child and or resident of Fatbuca, Calumpit, Bulacan.

"Alleged Case:

"Rape

"Date, Time and Place of Commission:

"May 16, 1995 at about 1:30 p.m. more or less, inside their residence.

"Requesting Party:

"SPO Ernesto T. Deogracias, PNP, Calumpit.

"Date, Time and Place of Examination:

"May 17, 1995 at 11:00 p.m. at MHO's clinic.

"Findings:

"General Survey:

"Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory, afebrile female, Filipino child.

"Extra-genital Examination:

"No abnormal findings

"Genital Examination:

"No pubic hair

Labia Majora and minora-coaptated. Fourchette-congested and very tender to touch.

"Hymen - Thick with old, healed laceration at 3 o'clock and 5 o'clock positions, congested and very tender to touch.

"Hymenal Orifice

"Examining fingers could not be inserted due to pain and tenderness.

"Cervical smear was taken and sent to laboratory for examination.

"Respectfully submitted,

"(SGD.) FE P. MESINA, M.D.
Municipal Health Officer."^[4]

Elaborating, Dr. Mesina stated at the witness stand that the lacerations at 3 o'clock and 5 o'clock positions in the victim's hymen could have been caused by the forceful introduction of a hard throbbing penis into the private part (vulva) of the victim. The tenderness and swelling of the portions around the hymen or the labia majora and labia minora that did not correspond to the old lacerations indicated that there was a recent "attempt to introduce a hard penis only a day before (the) examination."^[5] Only the tip of the penis apparently penetrated the hymen and did not reach the cervical canal which could have otherwise inflicted new lacerations.

Nina Joy Rivera, the 9-year old sister of Alphamia, when called to the witness stand, narrated how her father molested her sister ("*kinakalabit ang Ate ko*"^[6]). She saw her father inserting his hand inside the dress of her Ate on her left breast. After a while, he removed her Ate's lower apparel, licked her vagina, and separated her thighs. Her Ate resisted but he persisted. Nina was awake and only feigning sleep. She would close her eyes whenever her father appeared to glance at her until she finally got up and said "Daddy, *iihi* po ako."^[7] She noticed, while she was urinating, that a pillow was placed to cover the hips and genital area of her sister.

Amalia Rivera testified that she was not at home at the time of the incident but was attending a meeting at Dampol, Pulilan, Bulacan. She expressed how painful it was for her to later learn about it. She sought the advice of her relatives, before taking Alphamia to the police station in Calumpit, Bulacan, to lodge a complaint and then

to the office of the Municipal Health Officer to have her daughter medically examined. Her husband had meanwhile left for Tarlac, and it was during his 3-day absence that she had the case prepared to prevent him from absconding. When her husband returned on 20 May 1995, she had him promptly arrested by the police.

SPO3 Roberto Cristobal, the last witness to testify for the prosecution, was the police officer who took the written statements of Alphamia and Nina Joy and assisted in the arrest of the accused.

The Case for the Defense.-

The defense presented the accused Rustico Rivera himself and Dr. Dominick L. Aguda, medico-legal officer of the NBI, who conducted a second physical examination on Alphamia Rivera at the instance of the accused.

Rustico Rivera denied the accusation. He asseverated that at about 1:30 p.m. of 16 May 1995, his two daughters were in the house of his mother-in-law viewing television shows while he and Rustan (his son) were having a nap inside the house. The accusation against him, he said, was merely concocted by his mother-in-law who harbored ill-feelings against him and by his wife with whom he had frequent fights. The most recent quarrel of the couple occurred on 14 May 1995 after his wife herself had remarked that a jeepney driver was in love with her that caused him to lose his cool and to strike at her. Being then jobless, he was forced to continually ask for financial help from his relatives in Tarlac.

Dr. Dominick L. Aguda, medico-legal officer of the NBI, conducted a second physical examination on Alphamia Rivera on 21 January 1997 in his office in San Fernando, Pampanga, upon the request of the accused. His findings were contained in Living Case No. MG-97-04; viz:

"FINDINGS

"GENERAL PHYSICAL EXAMINATION:

"Height: 148 cms. **Weight:**

"Fairly nourished/developed; conscious, coherent, ambulatory subject. Breast, hemispherical, doughy, Areolae, brown, 2.5 cms. in diameter, Nipples, brown, protruding, 0.5 cm. in diameter.

"No extragenital physical injury noted.

"GENITAL EXAMINATION:

"Pubic hair - absent; Labia majora and minora, coaptated, Fourchette-V-shaped, tense. Vestibular mucosa, pinkish. Hymen-moderately thick, old, healed lacerated wounds; complete at 11* and incomplete at 3* and 5 o'clock position, corresponding to the face of a watch; Hymenal orifice admits a tube, 2.5 cms. in diameter. Vaginal walls, tight; Rugosities-prominent.

"CONCLUSIONS:

"1. There was no extragenital physical injuries noted on the body of the subject at the time of examination.

"2. Genital findings compatible with sexual intercourse with man on or about the alleged date of commission."^[8]

Dr. Aguda appeared before the trial court by virtue of a subpoena and presented as a hostile witness by the defense as his findings turned out to be unfavorable to the accused. Dr. Aguda testified that there was a healed hymenal lacerated wound at 11:00 o'clock position and old healed lacerated hymenal wounds incomplete at 3 and 5 o'clock positions. The healed lacerations could have been caused by entry of any object or possibly a genital organ of a human male. Any object more than 2.5 cm. in diameter could cause this lacerated wound in the hymen, considering the size of the victim's hymen of only 2.5 cm. in diameter.

Weighing the evidence adduced before it, the trial court, in a decision, promulgated on 06 August 1997, found for the prosecution. The court adjudged:

"WHEREFORE, judgment is hereby rendered finding accused Rustico Rivera y Palacio GUILTY beyond reasonable doubt of the crime of incestuous rape as defined and penalized under Section 11 (1) of Republic Act No. 7659 and he is hereby sentenced to suffer the penalty of DEATH, and to pay his victim, Alphamia A. Rivera, the sum of P50,000.00 as moral damages, plus the sum of P50,000.00 as exemplary damages.

"SO ORDERED."^[9]

In its brief filed for the accused, the defense raised the all too typical and encompassing assignment of errors in appeals of this nature, i.e., that-

"I. The trial court erred in not giving credit to the evidence for the accused-appellant.

"II. The trial court erred in convicting the accused-appellant and in imposing the death penalty."^[10]

The denial voiced out by appellant, the imputation of ill-motives on the part of his wife and mother-in-law, and the supposed frame-up against him are no match to the positive and categorical testimony of the prosecution witnesses, specifically that of the victim herself and her sister, Nina Joy, whose declarations are corroborated by the physical evidence testified to, in turn, by Dr. Fe Mesina and Dr. Dominick Aguda. It should indeed be highly inconceivable for such young and inexperienced girls as Alphamia, barely 11 years old, and her sister Nina Joy to both succumb to the making of a fabricated charge not just for a simple offense but a capital crime against their own father.^[11] Truly, they must have been impelled by a desire so strong as to let justice find its way.^[12] The Court is particularly impressed by the victim's testimony - that can only be described to be consistent, candid, and spontaneous-even under rigid examination.

"FISCAL:

"Q And after that, what did your father do?