

EN BANC

[G.R. No. 122770, January 16, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
EDUARDO AGBAYANI Y MENDOZA, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

Nine years and four months ago this Court declared:

Rape is a nauseating crime that deserves the condemnation of all decent person who recognize that a woman's cherished chastity is hers alone to surrender of her own free will. Whoever violates that will descends to the level of the odious beast. The act becomes doubly repulsive where the outrage is perpetrated on one's own flesh and blood for the culprit is reduced to lower than the lowly animal. The latter yields only to biological impulses and is unfettered by social inhibitions when it mates with its own kin, but the man who rapes his own daughter violates not only her purity and her trust but also the mores of his society which he has scornfully defied. By inflicting his animal greed on her in a disgusting coercion of incestuous lust, he forfeits all respect as a human being and is justly spurned by all, not least of all by the fruit of his own loins whose progeny he has forever stained with his shameful and shameless lechery.

[1]

At the end of the day, after resolving this case of 14-year-old Eden Agbayani who charged her own father with rape committed in the sanctity of their rented room on 19 July 1994, this Court finds itself repeating this declaration.[2]

Before this Court on automatic review is the decision[3] of the Regional Trial Court of Quezon City, Branch 106, in view of the *death* penalty imposed by it for the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659.[4]

On 12 September 1994, the Station Investigation and Intelligence Division of the National Capital Region Command, Philippine National Police (PNP), endorsed to the Office of the City Prosecutor of Quezon City the complaint of Eden Agbayani (hereafter EDEN) for rape against her father, herein accused-appellant Eduardo Agbayani y. Mendoza.[5]

After appropriate preliminary investigation, a complaint[6] for rape signed by EDEN, assisted by her sister Fedelina Agbayani, and subscribed and sworn to before Asst. City Prosecutor Charito B. Gonzales, was filed against appellant with the Regional Trial Court of Quezon City on 27 October, 1994. The case was docketed as Criminal Case No. Q-94-59149, then set for arraignment, pre-trial and trial on 22 December

1994.^[7]

At his arraignment on 22 December 1994, appellant, assisted by Attys. Samuel Baldado and Edwin dela Cruz as counsel *de oficio*, entered a plea of not guilty.^[8] Upon agreement of the parties, trial on the merits immediately followed, with the prosecution presenting the first witness, Dr. Florante Baltazar, a Medico-Legal Officer of the PNP Crime Laboratory,^[9] who cross-examined by Atty. Baldado.^[10] On the succeeding dates of trial, the prosecution presented EDEN^[11] and SPO1 Salvador Buenviaje.^[12] During these hearings, however, appellant was represented by Atty. Arturo Temanil of the Public Attorney's Office.^[13]

On this part, the defense presented appellant, Adoracion M. Cruz, Fedelina Agbayani, as well as EN who identified her and Fedelina's affidavit of desistance,^[14] which was subscribed and sworn to before notary public Eranio Cedillo on 6 February 1995. Said affidavit reads as follows:

We, Eden Agbayani, 14 years old, complainant and Fedelina Agbayani, 19 years old, sister of Eden Agbayani, and presently residing at No., Phase 1, United Glorietta, Kaniogan, Pasig, Metro Manila, after having been duly sworn to in accordance with law do hereby depose and states [*sic*]:

That we are the complainant [*sic*] against our father, Eduardo Agbayani pending before this Honorable Court docketed as Criminal Case No. 59149;

That after evaluating the circumstance that lead [*sic*] to the filing of the instant case I formally realize that the incident between us and my father is purely family problem that arise from the disciplinarian attitude of our father;

That this resulted to family misunderstanding, hence we decided to formally forego this case and withdraw the same;

That I am executing this affidavit for purposes of finally withdrawing the instant case and therefrom requesting this Honorable Court to dismiss the case against our father.

This affidavit was executed freely and voluntarily.

As EDEN declared in open court what she said in her previous testimony and sworn statement were not true, the trial court held her in direct contempt of court, reasoning that her "intentional falsehood" was "offensive to its dignity and a blatant disrespect to the Court, and actually degrading [to] the administration of justice." Accordingly, the trial court ordered her "committed to incarceration and imprisonment within the period provided by law,"^[15] which penalty however was modified to a fine of P200.00 upon EDEN's motion for reconsideration.^[16]

On rebuttal, the prosecution had EDEN back on the witness stand. She retracted her affidavit of desistance and claimed that she had signed it under coercion by her mother and elder sister.

The trial court's summary of the evidence for the prosecution, with the references to the pages of the stenographic notes and exhibits deleted, is as follows:

The evidence adduced on the record shows that sometime in September of 1993 in Malolos, Bulacan, the accused was charged by his two daughters, FEDELINA and DODIMA AGBAYANI, [with] the crime of rape which case was raffled to the sala of Judge Danilo Manalastas fo Branch 7, Regional Trial Court, Bulacan. The case was, however, provisionally dismissed by said Judge after the complainants desisted from pursuing the same in May 1994. Eduardo Agbayani was thus consequently released from jail on July 13, 1994. Three (3) days thereafter, he began living with four (4) of his six (6) daughters, Fedelina, Eden, Diana, and Edina, in a rented room at 30-A Makabayan St., Bgy. Obrero, Quezon City.

The evidence of the prosecution, in part consisting of the testimonies of Complainant Eden Agbayani, Medico-Legal Officer, Dr. Florante Baltazar and SPO1 Salvador Buenviaje, shows that the above mentioned address, the complainant, Eden Agbayani, on the evening of July 19, 1994, was sleeping on the floor of the room with her father, the accused Eduardo Agbayani was awakened from her sleep by hands caressing her breast and vagina. She turned to discover that it was her father who was then molesting her. Frightened, she asked, "Tay bakit niyo po ginagawa sa akin ito, gayong kalalabas mo lang sa kulungan?" and threatened to kill her [sic]. The accused then proceeded to undress her. Thereafter he undressed himself and succeeded in having carnal knowledge with the complainant who could only cry helplessly. The complainant thereafter felt blood dripping from her vagina and felt pain.

The next day, or on July 20, 1994, the complainant informed her elder sister, Fedelina, of what had been done to her by her father. She was told not to worry as they would go to Bulacan to report the incident to Fiscal Caraeg of Bulacan, who had, the year before, handled the rape case filed by Fedelina and Dodima. Several attempts were made by her sisters, Fedelina and Eden to reach the said fiscal but it was only on September 9, 1994, that they were able to meet with him. Fiscal Caraeg of Bulacan reported the complaint to Judge Danilo Manalastas who reopened the previous provisionally dismissed case and issued a warrant of arrest against the herein accused.

With the assistance of police officers from Station 10 of the SIID in Quezon City, the accused was arrested on the same day at his residence at 30-A Makabayan St., Bgy. Obrero, Quezon City and was later brought to Malolos, Bulacan where he is currently detained. After the accused's arrest, Eden and Fedelina returned to Station 10 where they made individual statements before SPO1 Salvador Buenviaje narrating the events leading to and occurring after the incident of July 19, 1994.

The next morning, Eden was examined by Medico-Legal Officer and Chief of the PNP Crime Laboratory, Dr. Florante Baltazar, a colonel, who, accordingly, prepared the corresponding Medico-Legal Report.^[17]

Appellant put up the defense of denial and alibi. According to him, he could not have raped his daughter EDEN, because on 19 July 1994, he was in Barangay Victoria in Sual, Pangasinan, visiting his eldest daughter.^[18] He declared that EDEN charged him with rape because he had hit her with a belt after he caught her lying about her whereabouts on night. Then on 24 July 1994, she left their rented apartment and did not return anymore.^[19]

Adoracion Cruz corroborated appellant's alibi. She declared that on 17 July 1994, appellant requested her to take care of his children because he was going to Pangasinan to visit his sick father, returning home only on 21 July 1994.^[20]

The trial court gave full credence to the testimony of EDEN, who "appeared, during her entire testimonies on January 20 and May 4, 1995, coherent, candid and responsive;" further, it commended her "for her courage and her unwavering strength in the midst of the emotional and psychological strain and humiliation, not to mention the pressure and lack of moral support of her family, brought on by the filing of this case." It also ruled that EDEN did not voluntarily execute the affidavit of desistance, as it was procured "at the behest of her mother and sister for whom the sanctity of the family and the family's good name were more important than demanding punishment for whatever injury the complainant might have suffered in the hands of the accused." Besides, even assuming *arguendo* that no such pressure was exerted by her mother and sister, the trial court declared that it understood EDEN's moral predicament, *viz* for a child like EDEN, it was difficult to charge her own father with rape; insist on his punishment; and hereby inflict emotional stress and financial strain upon the members of her family, particularly her mother.

The trial court likewise gave full faith to the sworn statement (Exhibit "E") of Fedelina Agbayani.

Turning to the defense of appellant, the trial court found his alibi wholly self-serving, and characterized the testimony of Adoracion Cruz unworthy of belief. As to appellant's claim that EDEN filed the complaint because of a grudge against him, the trial court found this "incredible, if not totally absurd," for:

The complainant is an innocent girl of tender years who is likely to possess such vindictiveness and death of conscience as to concoct such a malicious and damaging story. The complainant appeared, during her entire testimonies on January 20 and May 4, 1995, coherent, candid and responsive. Her retraction on March 16 was sufficiently explained to this Court the seriousness of the injury upon the person and dignity inflicted upon by the accused.... Even assuming *argumenti gratia* that the complainant would indeed lodge a complaint against her father solely on account of an altercation with him, it is highly unlikely that the complainant would concoct a charge which would damage her and wreck havoc on her family's reputation, destroy the household peace and subject her father, the accused, to a grave punishment which by dent of express of law, can obliterate him from the face of this earth. Indeed, to uphold the defense's proposition would be stretching the imagination too far, if not to the extreme.

The trial court finally found that appellant employed on EDEN force or intimidation by virtue of his moral ascendancy over her and his threat that he would kill her if

she reported the incident to anyone.

Accordingly, the trial court, applying Section 11 of R.A. No. 7659 which imposes the penalty of death when the victim is under eighteen years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or common law spouse of the parent of the victim, rendered judgement against appellant, to wit:

WHEREFORE, considering all the foregoing, judgment is hereby rendered finding the accused, EDUARDO AGBAYANI, GUILTY beyond reasonable doubt of the crime of RAPE committed against complainant, Eden Agbayani, his minor daughter. This Court as a consequence thereof, hereby imposes upon him the supreme penalty law R.A. 7659. Further, Accused is hereby ordered to pay the complainant, Eden Agbayani, the sum of P75,000.00 as damages, with all the necessary penalties provided for by law without subsidiary imprisonment, however, in the event of insolvency and to pay the costs.

Let the entire records of this case be forwarded to the Supreme Court on automatic review.

SO ORDERED.

On 26 May 1995, appellant, through his new counsel *de parte* Attorneys Froilan V. Siobal and Domingo Floresta, filed a Motion for New Trial^[21] on the ground that serious irregularities prejudicial to his substantial rights were committed during the trial, viz., the failure of the counsel *de officio* to: (a) present at trial the Barangay Captain of Barangay Obrero, Quezon City, who would have testified, on basis of his certification attached to the motion, that there was a house bearing No. 30, Makabayan St., in his barangay, but that there was no such place as 30-A Makabayan St. of said barangay, which was the address given by EDEN; (b) consider the futility of Adoracion Cruz's testimony; (c) present private complainant's mother and sister Fedelina on sur-rebuttal to testify as to the circumstances which brought about the execution of the affidavit of desistance; and (d) cross examine complainant and the police investigator exhaustively. He further alleged that his counsel *de officio* was never prepared during all the scheduled hearings, worse, even waived the presence of appellant after the third witness for the prosecution was presented. He also averred that the trial court used its inherent power of contempt to intimidate private complainant.

In their Comments/Opposition to the Motion for New Trial,^[22] the public and private prosecutors alleged that there were no such irregularities; neither was there new and material evidence to be presented that appellant could not, with reasonable diligence, have discovered and produced at the trial and which if introduced and admitted at trial would probably change the judgment of the court.

In its Order^[23] of 31 July 1995, the trial court denied the motion for new trial being devoid of merit and for not being within the purview of Sections 1 and 2, Rule 121 of the Rules of Court.

In his Appellant's Brief filed before this Court, appellant contends that the trial court erred in: (a) denying his motion for new trial; and (b) holding that the prosecution