

EN BANC

[G.R. No. 129054, September 29, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX BARTOLOME, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

This is an automatic review of the decision rendered by Branch 19 of the Regional Trial Court of Cagayan de Oro City in Criminal Case No. 95-118 imposing upon accused-appellant Alex Bartolome the supreme penalty of death for raping his daughter.^[1]

Herein appellant Alex Bartolome was charged with the crime of rape on the basis of a complaint filed by Elena Gorra Bartolome, allegedly committed as follows:

That on or about March 9, 1995, at about 10:00 o'clock in the evening, more or less, at Zone 2, Patag, Cagayan de Oro City, and within the jurisdiction of this Honorable Court, the above-named accused, who is my (sic) own father, did then and there wilfully, unlawfully and feloniously have carnal knowledge with complaint-victim, ELENA BARTOLOME Y GORRA, accused forcing himself sexually on the latter, a 16 year old minor against her will.

Contrary to and in Violation of Article 335 of the Revised Penal Code.

City of Cagayan de Oro, March 13, 1995.^[2]

Appellant entered a plea of not guilty at his arraignment on April 5, 1995^[3] and trial on the merits thereafter proceeded.

The inculpatory facts, as borne out by the record and documented by page references to the transcripts of stenographic notes taken at the trial, were synthesized by the Office of the Solicitor General in this wise:

Private complainant Elena Gorra Bartolome is the daughter of appellant Alex Bartolome and Alma Gorra. She was born on July 31, 1978 in Patag, Cagayan de Oro City and is the fourth child of the spouses Bartolome. Elena lived in Patag until she was ten (10) years old when the whole family left for Sto. Tomas, Davao del Norte where complainant's mother, Alma Gorra, worked as a cook for a Cuban national. While they were in Davao, appellant left his family and returned to Cagayan de Oro. Later, appellant returned to them in Davao and reconciled with her mother. However, after her mother became pregnant, appellant again left them and went back to Cagayan de Oro. Soon he developed the habit of traveling to and from Davao and Cagayan de Oro every now and then

(TSN, Nov. 15, 1995, pp. 5-9, E. Bartolome).

On October 30, 1993, when Elena was fourteen (14) years old, appellant went back to Davao. At that time, Elena was six (6) months pregnant with her child (by) her boyfriend. Jockery Polo. Thence, her mother suggested to Elena that she had better go with appellant to Cagayan de Oro City where she could give birth and at the same time visit her grandmother (appellant's mother). Appellant being her father, Elena agreed to her mother's proposition (Id., pp. 9-10, 22).

On November 1, 1993, Elena and appellant took a bus and left Davao. They stayed overnight and slept in San Francisco, Agusan del Norte. The following day, they proceeded to Cagayan de Oro, arriving there about 7:00 A.M. Elena immediately visited the graves of her grandmother, her sister and cousin (Id., pp. 10-11)

On the night of November 2, 1993, Elena asked her grandmother where she could sleep. Her grandmother answered that she would sleep with her in her room together with Elena's cousins. But appellant protested and told Elena to sleep instead with him since she was pregnant and her cousins might hit her belly. Besides, appellant added, he was alone in his room. Elena's grandmother prodded her to just sleep with appellant, lest the latter would go wild. Since appellant was her father, Elena slept beside him in the latter's room. It was then nine o'clock in the evening more or less.

Later, while Elena was lying down, the right side of her body facing the wall, she noticed that a hand was placed on top of her breast then slipped down towards her vagina. Knowing that it was appellant's hand and kept on kicking her feet but appellant punched her on the left side of her hip. After which, appellant took off his briefs and removed Elena's underwear and ordered Elena to move closer to him. Appellant thereupon placed himself at the back of Elena, inserted his penis to her vagina and had sexual intercourse with her. After the sexual intercourse, appellant wiped his penis with the towel placed around his neck and went downstairs to drink water. Elena was left in the room crying. From that time on, appellant raped his daughter every week with an interval of two (2) days for each rape. The same continued until 15 or 16 days before Elena delivered her child on January 23, 1994. Despite the foregoing fact however, Elena did not tell her grandmother of her ordeal because of appellant's threat to kill her and kick her belly (Id., pp. 11-25).

Subsequently, about a week after Elena had given birth to her child, appellant again raped his daughter. Elena was then inside her grandmother's room lying down on bed with only a napkin on her vagina because her organ was still bleeding because of her delivery. Appellant removed the napkin and went on top of Elena and had sexual intercourse with her. On this occasion, Elena asked appellant why he was doing it to her when she was his daughter. He replied to just shut up since he was missing her mother. Elena at that time suffered tremendous pain as she had just given birth to her child (Id., pp. 25-28).

On March 9, 1995, between 9:00 to 10:00 in the evening, appellant again wanted to have sex with Elena while they were inside his room. As a pretext, appellant pushed Elena's child, as a result of which her elbow hit the child who then cried. Elena then hit the lock of the trunk (cavan) waking up her grandmother who asked what was happening. Appellant pretended to wake Elena up and scolded her for not attending to her child. Appellant then went down and got a pipe and hit Elena at her left hip. Afterwards, appellant got a piece of cloth, lowered his brief down to his knees and removed Elena's underwear. He then stretched Elena's legs, bent his body and licked her vagina for about three or four times. Appellant then rode on top of Elena, inserted his penis into her vagina, and made push and pull movements as he panted. When appellant noticed that he was about to have an orgasm, he pulled out his organ and discharged his seminal fluid on the base of Elena's vagina. After that, appellant got the piece of cloth and wiped Elena's vagina as well as his organ. Appellant then gave the cloth to Elena and instructed her to wipe her vagina with it so that she would not get pregnant (Id., pp. 28-32).

After the above mentioned incident, Elena thought of going back to Davao and so she went to see her aunt from Iligan City, Annie Mangandato, who was in Patag to ask (for) money for her fare. Her aunt, who was not aware of her predicament, told appellant about Elena's plan. Appellant then confronted Elena why she was angry with him when appellant was not the first one to deflower her. Further, appellant threatened Elena that he would beat and hang her when her aunt got back to Iligan.

Finally, in the morning of March 10, 1995, Elena finally decided to tell her aunt who was about to go home to Iligan that she was being raped by her own father. As suggested by her aunt, Elena went to the barangay captain of Patag and reported that appellant sexually molested her. Later, Elena went to the police station in Carmen, Cagayan de Oro City and also reported the rape. She was then advised by the attending police woman to proceed to the provincial hospital for medical examination. (Id., pp. 40-88).^[4]

On the part of the defense, appellant admitted having had sexual intercourse with his own daughter. However, he claims that they were living together as husband and wife and their sexual encounters are all consensual.

On January 16, 1997, the trial court rendered its decision convicting appellant of the crime charged with the following disposition.

WHEREFORE, the court pronounces accused guilty beyond reasonable doubt of the crime of rape of his own daughter, Elena Bartolome, and so hereby imposes upon him the supreme penalty of death. He is also ordered to pay the cost and to indemnify Elena the sum of P50,000.00.

Pursuant to law, the court hereby orders the City warden of Cagayan de Oro to ship the accused without delay to the National Penitentiary.

SO ORDERED.^[5]

The conviction of herein appellant is now being assailed on the sole ground that the lower court erred in holding that Elena Bartolome was raped by appellant. It is the principal contention of appellant that the sexual intercourse between them is an act of two consenting adults notwithstanding the minority of the alleged offended party.

In support of appellant proposition, he claims that he did not force or intimidate his daughter into having sexual relations with him and, in fact, there was not struggle or outcry from the victim during the alleged rape on March 9, 1995 which is the subject of the present case. He also seeks to capitalize on the failure of the victim to immediately report the sexual abuses committed against her despite countless opportunities to do so. Such failure, appellant contends, renders doubtful the truth of her accusation.

Appellant's arguments are not at all persuasive and, much less, credible. Contrary to his claim, the prosecution sufficiently and convincingly established that appellant did have carnal knowledge of the victim through force and intimidation. The victim testified that:

A. On march 9, 1995 he wanted to have sex with me again and then he pushed the child and when he pushed the child my elbow hit the child and the child cried and I hit the lock of the trunk (cavan) and it made my grandmother to (sic) wake up and said, "what's that Alex" and my father told me, "wake up Elena, you have a baby and you don't know how to take care of him. Look at that now. And he went down and g(o)t a pipe and hit me with that pipe."^[6]

Furthermore, even if there was absence of force, the apparent submission of herein victims does not indicate consent. She had been repeatedly abused by her father for more than a hundred times. On the occasion of all those rapes, appellant inflicted upon her bodily injuries and continuously threatened to kill her. Considering the strength and the moral ascendancy of her father, the victim obviously knew that any opposition or resistance on her part would be futile. It must be emphasized that in this type of incestuous rape, the degree of force or intimidation need not be the same as in other cases of rape where the parties involved have no relationship at all with each other, because the father exercises strong moral and physical control over his daughter.^[7]

Also, the fact that the victim did not resist appellant by struggling or shouting for help does not rule out force and intimidation.^[8] The threat alone coming from her father, a person who wielded such moral ascendancy, was enough to render her incapable of resisting or asking for help.^[9]

Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to embrace of her rapist because of fear.^[10] As we have ruled in *People vs. Bayani*,^[11]

[I]t must be emphasized that force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired results, all consideration of whether it was more or less irresistible is beside the point. So must it likewise be for intimidation which is addressed to the mind of the victim and is therefore subjective. Intimidation must be viewed in the light of the victim's perception and

judgment at the time of the commission of the crime and not by any hard and fast rule. It is therefore enough that it produces fear -- fear that if the victim did not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident. Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol. And when such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of continuing intimidation, then offering none at all would not mean consent to the assault so as to make the victim's participation in the sexual act voluntary.

Furthermore, even assuming that force or intimidation had not been actually employed, the crime of rape was nevertheless committed. The absence of violence or offer of resistance would not be significant because of the overpowering and overbearing moral influence of the father over the daughter which takes the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship with the victim.^[12]

In a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter substitutes for violence or intimidation. That ascendancy or influence necessarily flows from the father's parental authority, which the Constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.^[13]

Appellant's theory that he and his daughter are living together as husband and wife is obviously incredible. Said contention, as ruled in the case of *People v. Matrimonio*,^[14] "is an affront to Filipino values and an assault on the intelligence; it offends sensibilities. The story could only be concocted by a morally corrupt and mentally depraved sex maniac."

It is hard to believe that a daughter would simply give in to her father's lascivious designs had not her resistance been overpowered.^[15] No daughter in her right mind would voluntarily submit herself to her own father unless there was force or intimidation, as sexual act between a father and a daughter is extremely revolting.^[16]

Even the failure of the victim to immediately report to the authorities the repeated assault on her virtue by her father cannot be taken against her. Such delay does not necessarily detract from her credibility nor negate the commission of the rape. The delay and initial reluctance of a rape victim to make public the assault on her virtue is neither unknown nor uncommon. It is not an unexpected reaction of a woman to keep a secret, at least momentarily, the dishonor brought to bear on her and to suffer alone in her misfortune rather than be the subject of embarrassment, public scrutiny, pity or ridicule. More so is this true in the case at bar where the rapist is the victim's own father.^[17]