

## EN BANC

[ G.R. No. 135524-25, September 24, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MANOLITO AGUSTIN, ACCUSED-APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

On automatic review is the decision of the Regional Trial Court of Paniqui, Tarlac, Br. 67, finding accused-appellant Manolito Agustin guilty of two (2) counts of rape and imposing on him for each crime the penalty of death. In addition, accused-appellant was ordered to pay the complainant P50,000.00 for each case as moral damages, P50,000.00 as exemplary damages, and to pay the costs. Complainant Marina Agustin is accused-appellant's one and only child. In her testimony in the trial court, she accused her father of raping her in their house located in Matalapitap, Paniqui, Tarlac, two times when she was 14 years old.

The facts of the case are as follows:

On February 12, 1997 at around 4:00 p.m., 14-year old Marina Agustin was alone cleaning their house located in Matalapitap, Paniqui, Tarlac, when her father Manolito Agustin arrived from work. Suddenly, Manolito placed Marina on the "*papag*," forced her to lie down and removed her shorts and panty. Then, Manolito removed his pants and brief, opened Marina's legs and inserted his penis into her vagina.<sup>[1]</sup>

Marina pleaded to her father not to rape her but her plea fell on deaf ears. After the forcible *coitus*, Manolito warned Marina not to report the matter to anybody, otherwise, he will kill her. Then, he left.<sup>[2]</sup>

On February 16, 1997, at around 6:00 p.m., Marina was alone and taking a bath when Manolito arrived home. Upon seeing her naked, Manolito approached Marina, embraced her and kissed her all over. Then, he forcibly made her lie down on the "*papag*" and inserted his penis into her vagina. Marina cried as she could not fight him. Thereafter, Manolito warned her not to tell anybody about what happened.<sup>[3]</sup>

Sometime in February, 1997, after Valentine's Day, Marina went to her maternal grandfather Benigno delos Reyes. She was crying. She told him that she was raped twice by her father. For fear that he might do something wrong to his son-in-law, Benigno just remained silent.<sup>[4]</sup> Marina then reported the sexual assault to a neighbor named Helen Estrella. The latter accompanied Marina to her grandfather Benigno. The latter asked Helen to accompany Marina to the authorities.<sup>[5]</sup>

At the police station in Paniqui, Tarlac, Marina executed a sworn statement.<sup>[6]</sup>

Thereafter, Marina was placed under the custody of the Department of Social Welfare and Development (DSWD).<sup>[7]</sup>

On February 20, 1997, at 3:00 p.m., Marina was examined by Dr. Alicia Castro after receiving a request from Senior Police Officer Amador Valerio, Officer-in-Charge of the Paniqui Police Station.<sup>[8]</sup>

On May 21, 1997, accused-appellant was charged with two (2) counts of rape under the following Complaints:

"Criminal Case No. 1256

"That on or about February 12, 1997, in Barangay Matalapitap, Municipality of Paniqui, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Manolito Agustin being then the father of complainant did then and there willfully, unlawfully and feloniously using force and intimidating (sic) have carnal knowledge of his daughter Marina delos Reyes Agustin who was then fourteen (14) years old.

"Contrary to law.

"Criminal Case No. 1257

"That on or about February 16, 1997, in Barangay Matalapitap, Municipality of Paniqui, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Manolito Agustin being then the father of complainant did then and there willfully, unlawfully and feloniously using force and intimidating (sic) have carnal knowledge of his daughter Marina delos Reyes Agustin who was then fourteen (14) years old.

"Contrary to law."

Upon arraignment on February 25, 1998, accused-appellant Manolito Agustin, duly assisted by counsel Atty. Bienvenido Perez, entered a plea of not guilty to both charges. Trial was conducted.

The prosecution presented the following witnesses: 1.) Private complainant Marina Agustin; 2.) Benigno delos Reyes, complainant's grandfather; 3.) Helen Estrella, a neighbor of complainant; and 4.) Dr. Alicia Castro, resident physician at the Tarlac Provincial Hospital, Department of Obstetrics and Gynecology, Tarlac, Tarlac.

Accused-appellant was presented as sole witness for the defense. He admitted that the complainant is his daughter with his wife Julieta delos Reyes Agustin and testified that his daughter was born on June 4, 1982.<sup>[9]</sup> He denied having carnal knowledge with his daughter on 12 February 1997. According to him, he was at work at Bascos in Carriedo, Paniqui, Tarlac, after which, he went to his father's house at Manaois, Paniqui, Tarlac. He slept there.

Accused-appellant, however, testified that on February 16, 1997, he did abuse

Marina by inserting his finger in her vagina.<sup>[10]</sup> His desire was caused by his longing for his wife who left him six (6) months before February 1997.<sup>[11]</sup>

Accused-appellant claimed that the complaint was filed by his daughter because of the orders/instructions of her grandfather who was interested in appropriating his house and lot.<sup>[12]</sup>

On August 27, 1998, the trial court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, finding accused guilty beyond reasonable doubt of the crime of incestuous rape, the Court hereby sentences accused Manolito Agustin:

"1. For Criminal Case No. 1256 - to suffer the penalty of DEATH; and

"2. For Criminal Case No. 1257 - to suffer again the penalty of DEATH,

both by lethal injection; he is further ordered to pay complainant P50,000.00 for each case as moral damages; and P50,000.00 as exemplary damages and to pay the costs.

"SO ORDERED."

Hence, the present automatic review. Accused-appellant now raises the following issues:

"I

"The trial court erred in convicting the accused of the crime of rape despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

"II

"On account of the admission by the accused that he fingered his daughter, the trial court should have convicted him for the lesser offense of acts of lasciviousness."

In support of the first assigned error, accused-appellant contends that contrary to the allegations in the complaint, the complainant testified that her father did not have any difficulty in satisfying his evil desire and that nothing was presented to prove or show that accused forced or intimidated his daughter in having sexual intercourse with him.

Accused-appellant avers that the allegations of the complainant that the first sexual intercourse lasted for one (1) hour without any interruption is highly incredible.

Accused-appellant also points out that the findings in the medical report and the testimony of the examining physician contradicts rather than strengthens the allegations of the prosecution.

Accused-appellant also assails as conflicting the testimonies of the prosecution witnesses with regard to the date of the second rape (whether February 14 or 16) and the date (whether February 20 or 21) when private complainant confided to her grandfather and to her neighbor that she was raped by her father.

The Court finds the first assigned error to be without merit.

Carnal knowledge took place under circumstances of force and intimidation for in rape committed by a father against his own daughter, the former's moral ascendancy over the latter substitutes for violence or intimidation.<sup>[13]</sup> As held in one case,

"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."<sup>[14]</sup>

As to the accused-appellant's averment that complainant's allegation that the first sexual intercourse lasted for one (1) hour, is incredible, suffice it to state that the same is a mere estimate. What is material is that the accused-appellant indeed had carnal knowledge of the complainant.

The issues posed by accused-appellant on the results of medical examination of the private complainant deserve scant consideration because a medical examination is not indispensable in a prosecution for rape.<sup>[15]</sup> In fact, there could be a finding of rape even if the medical examination showed no vaginal laceration.<sup>[16]</sup> Moreover, the examining physician testified that it is possible that the victim was sexually abused.<sup>[17]</sup>

Besides, it is settled that when a woman, more so if she is a minor, says that she has been raped, she says, in effect, all that is necessary to constitute the commission of the crime, and this rule applies with more vigor when the culprit is the father of the victim.<sup>[18]</sup>

As to the alleged conflicting testimonies of the prosecution witnesses, on the date of the second rape, suffice it to state that accused-appellant testified that he fingered his daughter on February 16, 1997 which jibes with the complainant's claim that the second rape occurred on February 16, 1997. As to the alleged conflict on the date when complainant reported the matter to her neighbor, the same is a minor inconsistency which is not an element of the crime of rape.

The Court finds complainant's testimony as well as those of the other witnesses for the prosecution, positive, credible and convincing. The same could not be said of accused-appellant's testimony. His claim that the charges were filed against him because complainant's maternal grandfather was interested in his house and lot is

hard to believe. This claim of accused-appellant is even negated by the fact that the victim's grandfather was not even the one who accompanied the victim to the authorities to report the incident because he was so angry he might do something wrong to accused-appellant.

On the second assigned error, accused-appellant alleges that on account of his admission that he fingered his daughter, the trial court should have convicted him for the lesser offense of acts of lasciviousness. According to accused-appellant, that he just fingered his daughter was amply supported by the result of the complainant's medical examination, that the complainant's vagina did not sustain gross deformities, the introitus admitted only one (1) finger; the cervix was closed; and no sperm was recovered.

This Court is not convinced.

The following testimony of the accused-appellant shows that he was not telling the truth, and the improbability of his claims that he merely fingered his daughter, considering that his daughter was already naked and his admission that, during that time, he was longing for his wife who left him six (6) months before the incident. His carnal lust could not possibly be sated without doing the sexual act. Accused-appellant testified:

"Q But you required her to undress?

"A No, sir.

"Q What was she wearing then when you fingered her?

"A She was wearing t-shirt, sir.

"Q How about her underwear?

"A She was wearing shortpants, sir.

"Q Will you kindly demonstrate how you were able to finger your daughter with her underwear on?

"A I removed her shortpants for a while, sir.

"Q Including her panty?

"A Yes, sir.

"Q And she was naked below while you were fingering her?

"A She had, (sic) sir.

"x x x x x x x x

"Q And your daughter was not resisting?

"A No, sir.

"Q Despite the fact that your daughter was not resisting all you have done was to finger her, is that what you want to tell the Honorable Court?

"A Yes, sir.

"Q And no more?

"A No more, sir.