

## EN BANC

[ G.R. No. 121212, January 20, 1999 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARTEMIO CALAYCA, ACCUSED-APPELLANT.**

### DECISION

#### **AUSTRIA-MARTINEZ, J.:**

A daughter was again allegedly raped by her own father, herein appellant Artemio Calayca, who is now facing a death sentence after having been found guilty of said crime in a Decision<sup>[1]</sup> dated June 13, 1995, rendered by the Regional Trial Court (Branch 24) of Cagayan de Oro City in Criminal Case No. 95-129.

Hence, this automatic review.

A rape charge was initiated by Neddy Calayca through a sworn complaint<sup>[2]</sup> with supporting affidavits and documents<sup>[3]</sup> filed with the Municipal Circuit Trial Court of Balingasag, Misamis Oriental on January 9, 1995. MCTC Judge Alfredo Cain found sufficient ground to prosecute the appellant for the crime of rape. This was the same finding of the Office of the Provincial Prosecutor of Misamis Oriental upon examination of the records of the preliminary investigation forwarded to it. Consequently, on March 21, 1995, the corresponding Information<sup>[4]</sup> was filed with the Regional Trial Court reading as follows:

#### "INFORMATION

"The undersigned Assistant Provincial Prosecutor II, upon sworn complaint of the offended party, Neddy Calayca, accuses ARTEMIO CALAYCA of the crime of RAPE, committed as follows:

That on or about the 29th day of January, 1994 at about 1:00 o'clock in the morning, more or less, at Barangay Solo, Municipality of Balingasag, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously and by means of force and intimidation, succeeded in having carnal knowledge (sexual intercourse) with her(sic) own daughter, Neddy Calayca, against her will and consent.

"CONTRARY TO and in VIOLATION OF Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.

"Cagayan de Oro City, Philippines, March 6, 1995.

"Asst. Provincial Prosecutor II"

When arraigned under the above-quoted Information, the appellant entered a plea of "Not guilty" to the crime charged. Trial on the merits ensued thereafter.

The evidence for the prosecution was anchored mainly on the testimony of 16-year old Neddy Calayca who, on May 2, 1995, narrated that at about 1:00 o'clock in the morning of January 29, 1994, she was sound asleep inside their house at Barangay Solo, Balingasag, Misamis Oriental when she was awakened by the weight of her father, herein appellant Artemio Calayca, who was already on top of her, naked and armed with a bolo. He forcibly undressed her, inserted his penis into her vagina and made a push and pull motion. Feeling the pain in her vagina, she resisted his onslaught by kicking and boxing him, telling him with bitter tears, "I wish you would die. You are a father without good morals."<sup>[5]</sup> But she was helpless to resist his lustful desire as he threatened her with a knife saying, "I will kill you if you will not agree."<sup>[6]</sup> After the sexual assault, she picked up her clothes, dressed up and was left weeping. She was then 15 years old when this incident happened.<sup>[7]</sup>

Neddy Calayca first thought of immediately filing a case against appellant but was prevented by his threat to kill her. She, however, reported her awful experience with the appellant to her relatives in Mambayaan. She informed them that even before the January 29, 1994 incident, appellant had sexually abused her many times. Her relatives, who were also afraid of appellant, merely advised her to sue him. She immediately went home in Solo because she feared her father. When she reached home, her eldest sister Betty Lani Calayca also arrived from Manila. Informed of the rape incident, Lani and Neddy decided to leave the appellant. The two then traveled to Don Carlos, Bukidnon and worked as servants of the mayor, thinking their father could no longer find them there. However, appellant was able to locate them. While in the house of the mayor, appellant harassed them, so Betty Lani had him arrested by the police.<sup>[8]</sup> While appellant was in jail, Neddy reported to the police authorities that he raped her. The police then took her sworn statement<sup>[9]</sup> on the rape incident. Thereafter, Neddy filed her complaint for rape against the appellant.

Betty Lani Calayca was 22 years old when she testified on May 18, 1995. She narrated that she was the eldest and Neddy was the second among the six (6) children of appellant. Their mother died when she was 9 and Neddy was 7. At 11, she left Balingasag for Manila where she stayed for 10 years. While in Manila, her aunt wrote that Neddy was sexually abused by the appellant and that she should come home. When she arrived home in Solo, she slept in the house of her father so she could observe him. That night, the appellant came to her and touched her body, but she quickly managed to get out of the house and stayed outdoors until morning. She then convinced Neddy to run away from home so they could avoid appellant. They went to Bukidnon to work, but their whereabouts was discovered by appellant, who then started to harass them. Undaunted by the appellant's threat, the two sisters reported to the authorities what Neddy suffered in the hands of appellant. Thus, his arrest.

The last witness for the prosecution was Dr. Angelita A. Enopia, a physician at the

Balingasag Medicare Hospital, Misamis Oriental. She declared that on January 3, 1995 she conducted a pelvic examination<sup>[10]</sup> on the private complainant, who informed her that she was raped by her own father even when she was only seven (7) years old, and the last time was in January, 1994. Dr. Enopia noted that there were healed lacerations in the hymen of Neddy at 3, 4, 6, 7 and 9 o'clock positions. She likewise found that there was a thickening of the hymen which was indicative of frequent sexual intercourse.<sup>[11]</sup>

Appellant Artemio Calayca, on the other hand, did not deny the imputation of her daughter Neddy Calayca that he raped her in the early morning of January 29, 1994. All that he testified to was that he was a widower in 1998 and has six (6) children by his late wife, two of whom he identified as Neddy, the private complainant, and Betty Lani. He claimed that Neddy was only nine (9) years old when his wife died. The private complainant stayed with him together with his five other children, while Betty Lani stayed with his (appellant's) brother at San Juan, Misamis Oriental. Betty Lani and Neddy left his house on August 19, 1993. They took his savings from the proceeds of the sale of his pig in the amount of P5,000.00. He then looked for his two daughters and found them at Bocboc, Don Carlos, Bukidnon. When he asked them why they took his money, his two daughters did not say a word, forcing him to slap them.<sup>[12]</sup>

The defense did not present any other witness nor any documentary evidence.

A judgment convicting the appellant of the crime charged and imposing upon him the penalty of death was rendered by the trial court in a Decision dated June 13, 1995, the decretal portion of which states:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused ARTEMIO CALAYCA guilty beyond reasonable doubt as principal of the offense of rape defined and penalized by Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act 7659. Consequently, he is hereby sentenced to suffer the extreme penalty of death, the private offended party being below 18 years of age (as she was 15 years of age at the time of the incident) and the accused being her parent, the same to be executed by electrocution as the facilities for gas poisoning is not yet provided by the Bureau of Prisons. In addition, accused is hereby ordered to pay the private offended party, Neddy Calayca, the sum of P50,000.00.

"In view of the penalty imposed, let the whole record of the case including the evidence oral and documentary be forwarded to the Honorable Supreme Court, Manila, for automatic review. In addition, let the living body of the accused be committed to the New Bilibid Prison, Muntinlupa, Metro Manila.

"SO ORDERED."

Appellant now assails the judgment of conviction claiming that –

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT DESPITE ITS GLARING INCONSISTENCIES.

"II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF RAPE DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."<sup>[13]</sup>

Appellant hammers on the alleged inconsistencies in private complainant's testimony regarding the frequency of the commission of rape by appellant against her and the kind of weapon he used in forcing her to succumb to his bestial lust. More specifically, appellant pointed out that private complainant, at one instance, testified that he raped her for the first time on January 29, 1994,<sup>[14]</sup> and yet, she later declared that she was raped by him several times even before that date. Appellant further claims that private complainant likewise testified that he threatened her with a **bolo** when she tried to resist his bestial act on January 29, 1994,<sup>[15]</sup> but afterward she stated that it was a **knife** which appellant used to threaten her.<sup>[16]</sup>

These contradictory declarations by private complainant, appellant argues, "only cast doubts on her claim that she was raped by her father on January 29, 1994."<sup>[17]</sup>

Appellant's contention fails to persuade us.

We have ruled in numerous cases that an errorless recollection of a harrowing incident cannot be expected of a witness especially when she is recounting details of an experience so humiliating and so painful as rape.<sup>[18]</sup> Minor errors in the testimony of a rape victim tend to buttress, rather than weaken, her credibility since that would indicate that her testimony was not contrived.<sup>[19]</sup>

The alleged conflicting statements of private complainant is more imagined than real. Private complainant has made it clear in her testimony that even before the rape incident on January 29, 1994, appellant had raped her several times. Thus, she testified:

"Q - Did you inform them (private complainant's relatives) that your father will kill you if you will inform them?

"A - Yes.

"Q - What was their reaction?

"A - When I told them that **my father raped me several times**, they feel bad.

"COURT

**Before January 29, 1994 your father used to have sexual intercourse with you?**

"A - **Yes, sir.**

ATTY. FELICIA

What was the comment of your relatives when you told them that you were raped by your father several times?

"A – They commented that my father is a pig."<sup>[20]</sup> [emphasis supplied]

But whether the rape committed on January 29, 1994 was the first or just one in the series of rapes is, to our mind, immaterial in the prosecution of appellant for the rape he committed on said date, although this particular telling circumstance of habitual sexual abuse convincingly shows the appellant's perversity to commit the crime of rape.

Also, the seeming confusion by private complainant on the kind of weapon used by appellant to threaten her does not belie the fact of the commission of rape by him against her on January 29, 1994. Moreover, when the trial court clarified with private complainant what exactly was the weapon used by appellant, she made a definite declaration that it was a knife, not a bolo, thereby removing any confusion as to this matter, to wit:

"FISCAL KHO

"Q – After you saw the knife that your father was holding, what did you feel?

"A – I was afraid.

"COURT

"Q – **We will clarify, was it a bolo or a knife?**

"A – **A knife.**

"Q – **Not a bolo?**

"A – **No, sir.**

"FISCAL KHO

"Q – How long is that knife?

"A – About this long (witness demonstrated, counsels agreed to a 6 to 8 inches in length).

"Q – With that length, does that include the handle?

"A – Yes, including the handle."<sup>[21]</sup> [emphasis supplied]

The inaccuracy in private complainant's description of the weapon used is insignificant and understandable. To a young and naïve girl, there is not much difference between a bolo and a knife since both weapons are sharp and deadly. What is important to consider is that the weapon was **effectively** used by appellant to **intimidate** private complainant into submission to his dastardly act.

Notwithstanding these minor flaws in the testimony of private complainant, the