

## FIRST DIVISION

**[ G.R. Nos. 122980-81, November 06, 1997 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JENELITO ESCOBER Y RESUENTO, ACCUSED-APPELLANT.  
D E C I S I O N**

**BELLOSILLO, J.:**

JENELITO ESCOBER Y RESUENTO was charged by his eleven-year old daughter Ma. Cristina Escobar in two (2) separate complaints for statutory rape on two (2) counts. He was convicted on both counts. He now comes to us for review of his conviction.

First, the facts. In the evening of 19 December 1993 while Ma. Cristina Escobar, daughter of the accused, was sleeping with her brothers Jenelito Jr. and Zeus and sister Jennylen, the accused Jenelito Escobar Sr. arrived home drunk. He roused Ma. Cristina and told her to turn off the light. He also asked her to transfer to his bed. She obeyed. She did not know what was to come. Her father removed her panty, kissed her, then proceeded to violate her honor. Cristina, now on the throes of an incestuous assault, could only cry in utter disbelief. She tried her best to parry off the sexual advances of her father but it was futile. Her resistance was no match to his physical strength. More, he had moral ascendancy over her. He forcibly inserted his penis inside her vagina (niyogyog 'yong ari niya)<sup>[1]</sup> with intermittent pumping motions until he ejaculated (may lumabas na tubig na malagkit).<sup>[2]</sup> After his lechery, the accused left Cristina.

The deeply perturbed Cristina went back to her brothers and sister and tried to sleep. She could not believe her father could do that to her. When she woke up the following morning, she felt an excruciating pain in her vagina. However her fear prevented her from disclosing the incident to her mother Lourdes Escobar because her father warned Cristina not to squeal.

In the evening of 22 December 1993 the accused Jenelito again arrived home drunk. Cristina was already asleep. But with his characteristic perversion and wickedness the accused managed for the second time to force himself on Cristina. After removing her panty, kissing her, he inserted his penis again (pero maliit lang po)<sup>[3]</sup> inside her vagina where he later ejaculated with a "white sticky substance" spurting from his penis. She could only push her father with what little strength she could muster in her tender years. When she urinated she again felt the burning pain in her vagina. But she had to remain steadfastly quiet for fear her parents would quarrel violently.

It is the contention of the defense that the lower court gravely erred in finding the accused guilty of raping his eleven-year old daughter on the 19th and 22nd of December 1993. Specifically, the defense invokes certain circumstances showing the innocence of the accused -

First. Cristina visited the accused in jail and wrote him a letter exculpating him of his wrongdoings.

Second. She did not tell her mother that she wrote her father for fear that her mother would get mad and quarrel with him.<sup>[4]</sup>

Third. Mat Ranillo Escobar, brother of accused Jenelito, testified that he often witnessed Jenelito and his wife Lourdes quarrelling as his house was only three (3) houses away. In fact, Lourdes would also have violent spats with Teria Escobar, mother of the accused.<sup>[5]</sup>

Fourth. Jenelito Escobar Jr., brother of Cristina, denied that his father raped his sister Cristina on the nights of 19 and 22 of December 1993 because they were out caroling and that considering their relative sleeping positions it was impossible for his father to rape his sister Cristina. He said that his father would sleep on one side with Jennylen, Zeus, Cristina and him on the other side, in that order.<sup>[6]</sup> Jenelito Jr. also testified that he would have known if Cristina woke up that evening of 19 December 1993 because they were sleeping side by side and "malikot siyang matulog" or she would move too often while asleep.<sup>[7]</sup> He also told the court that his mother, Lourdes Escobar, started to have a live-in partner in July 1995 by the name of Ariston Olario.<sup>[8]</sup> Obviously sympathizing with his father, Jenelito Jr. insisted on the innocence of the accused thus -

Q: Why are you crying?

A: Masama ang loob ko, sir.

Q: Will you please tell the court why you are not feeling good, why you feel resentment, against whom? Why?

A: Because my father is now in prison because of my mother when everything is not true, sir.

Q: What is not true?

A: That my sister was raped, sir.

Q: Of course, you do not know whether your sister was raped on December 19, 1993 in the evening, you did not sleep in the house of your father, is that correct?

A: I slept there, sir.<sup>[9]</sup>

Fifth. The accused claimed that on the night of 19 December 1993 he was at the house of Claro Estrera from 7:00 p.m. to 12:00 p.m. to check the television set of the latter, and that on 22 December 1993 he was again in the house of Claro from 7:00 p.m. to 12:30 a.m. to repair the same set.<sup>[10]</sup>

Sixth. Claro Estrera substantially corroborated the testimony of accused-appellant that the latter was in his (Claro) house on 19 and 22 December 1993 working on the latter's television set from 7:00 p.m. to 11:00 p.m. on 19 December 1993 and from 7:00 p.m. to 12:00 midnight on 22 December 1993.<sup>[11]</sup> Claro also stated that he clearly remembered what transpired on 19 and 22 December 1993 because he checked on the receipt of the materials he bought which Jenelito Sr. needed for the repair of his (Claro) television set.<sup>[12]</sup>

As may be gleaned from the above, it is the thesis of the defense that the complaint against Jenelito Sr. was filed because Lourdes Escobar wanted to separate from him; that she was not in good terms with the mother of the accused, Aling Teria; and, that he would spank Cristina every time he was drunk so that Lourdes wanted to teach him a lesson.

As found by the trial court, the reasons given by the defense were too weak and flimsy to drive the child or her mother to break the physical, emotional and spiritual bond between the child and her father and between the wife and her husband by the simple expedient of filing rape cases against him.<sup>[13]</sup>

In one case it was held that it was unthinkable for a ten-year old virgin to publicly disclose that she had been sexually abused, then undergo the trouble and humiliation of a public trial, if her motive were other than to protect her honor and bring to justice the person who had unleashed his lust on her.<sup>[14]</sup> In the instant case, Cristina was only eleven when raped by her own father. Also, as observed in another case,<sup>[15]</sup> the mother of the rape victim would not have filed the complaint out of sheer malice knowing that it would expose her own daughter to humiliation and public curiosity and which could send the father of her two children to prison for the rest of his life.

Apparently, appellant is oblivious of our ruling that it is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject her to embarrassment, and even stigma, as in this case.<sup>[16]</sup>

The defense seeks refuge in alibi. According to the accused, he was at the house of Claro Estrera on the dates and hours the rapes were supposedly perpetrated so that he could not have committed them himself, more so that his testimony was corroborated by Claro. But the trial court was hardly persuaded. If Jenelito was simply checking on the television set of Claro on the night of 19 December 1993 it could not have taken him three (3) hours to do the job. Moreover, it was highly improbable that on 22 December 1993 he had to do the same odd job for another three (3) hours. And we ask: why should the repairs be done at nighttime?

As regards the testimony of Jenelito Escobar Jr. that he was living at his father's house during the supposed sexual assault on his sister, the same could not with certainty be substantiated by the defense. At any rate, rape can be committed even in a house where there are many other occupants.<sup>[17]</sup> Crimes against chastity have been committed in various places which many would consider as likely inappropriate.<sup>[18]</sup> Why Jenelito Jr. testified in favor of his father is obvious. He is his father and he felt for him.

But alibi is a weak defense when unsubstantiated by credible and plausible testimonies. Positive identification of appellant as the rapist prevails over his defense of alibi.<sup>[19]</sup> He could not have been mistakenly identified by his own daughter. Because of their relationship, Cristina could not have erred in pointing to the accused because of the proximity of their relationship and their natural familiarity with one another.