

EN BANC

[G.R. No. 144428, August 06, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JUAN M. ROSARIO,
APPELLANT.**

D E C I S I O N

PER CURIAM:

A father who rapes his very own daughter desecrates not only her purity and her trust, but also the mores of society he is expected to uphold. By forcing his odious bestial instincts on his daughter, he loses all respect due him as a human being.

Before us for automatic review is the Decision^[1] dated June 26, 2000, of the Regional Trial Court, Branch 57, San Carlos City, in Criminal Case No. SCC-3281, finding Juan M. Rosario, appellant, guilty of the crime of rape and imposing upon him the supreme penalty of death.

The Information^[2] against appellant reads:

"That on or about the 8th day of April, 2000, at around 1:00 o'clock in the morning at [REDACTED], and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation and with lewd design, did then and there, willfully, unlawfully and feloniously, have sexual intercourse with the offended party AAA, **13 years old daughter of the accused** against her will and consent.

"Contrary to Article 335 of the Revised Penal Code."

Upon arraignment, appellant pleaded "not guilty"^[3] and trial on the merits ensued. The prosecution presented three witnesses, namely: AAA, the victim; Dr. Maria Salome G. Romero, who examined the victim; and [REDACTED], the victim's aunt.

The evidence for the prosecution reveals that AAA was born on September 4, 1986 to appellant and [REDACTED].^[4] They live in [REDACTED]. On April 8, 2000, at around 1:00 o'clock in the morning, while AAA was sleeping in her room, she was suddenly roused from sleep by the weight of appellant on top of her. She was shocked and felt she had no more panty. Then she felt pain in her private part as he inserted his penis in her vagina. Despite her plea for him to stop, he continued molesting her until he was able to satisfy his savage urge.^[5]

After that harrowing incident, appellant left and returned to the master's bedroom as she heard the closing of the door. She then wore her panty, rushed to her grandmother who was sleeping upstairs and told her she was raped by her father. Upon her grandmother's instruction, she went to the house of her aunt [REDACTED]

██████████, a high school teacher, who accompanied her to the police and later, to the Pangasinan Provincial Hospital for medical examination.^[6]

Dr. Maria Salome G. Romero, senior resident of the Obstetrics-Gynecology Department of the Pangasinan Provincial Hospital in bolingit, San Carlos City, testified that she physically examined the victim on April 8, 2000, at 4:00 o'clock in the morning. She confirmed the Medico-Legal Certificate^[7] she issued on April 8, 2000 stating that the victim's hymen has old partial lacerations at 6:00 o'clock, 9:00 o'clock and 3:00 o'clock positions which could have been caused by an injury previously sustained by the victim or by the insertion of a man's private part. She also disclosed that sperm cells were present in the victim's vaginal canal.^[8]

Appellant vehemently denied that he raped his own daughter. He testified that in the evening of April 7, 2000, he was in his house at ██████████. He and his wife slept at around 10:30 or 11:30 o'clock in the evening in their bedroom. Then at around 12:30 midnight, he heard barking of the dogs, so he went out and focused his flashlight at the gate. He did not see anybody but the dogs continued barking. Thereafter, he went back to his bedroom and slept. He was awakened again at 4:00 o'clock in the morning when his daughter Odessa entered their bedroom and asked him about the whereabouts of his other daughter AAA and Jenny, adopted daughter of appellant's mother.^[9] He went to AAA's room but she was not there. So he told Odessa that probably AAA might have already opened the store as it was Saturday. He went back to sleep but was awakened again by Odessa, informing him that the policemen and his brother-in-law, Robert Fernandez, were looking for him. They brought him to the police headquarters and informed him that her daughter AAA charged him with rape. He denied the accusation and explained that he whipped his daughter as she was hardheaded,^[10] the reason why she denounced him.

On cross-examination, he admitted that while he was in jail, he wrote a letter^[11] to his mother asking for forgiveness, thus:

"NANAY,

NAY PARANG AWA NYO NA, PATAWARIN NYO AKO, AT AKOY LULUHOD SA INYO NA HIHINGI NG PATAWAD. WAG NYO SANANG MAWASAK AT MAG-KALAYO KAMI NG PAMILYA KO AT ANAK PLS! LANG NAY, PARANG AWA NYO LANG ALANG-ALA SA MGA APO NYO. BIGYAN NYO AKO NG ISA PANG PAGKAKATAON UPANG MAG-BAGONG BUHAY. NAY WALA AKONG IBANG IPINAGDARASAL KUNG HINDI KAYO NA SANAY PATAWARIN NYO AKO. HINDI PA HULI ANG LAHAT.

PLS LANG NAY, LULUHOD AKONG HIHINGI NG TAWAD SA INYO.

NAY, PUNTAHAN NYO AKO RITO NGAYON ARAW NA ITO PARANG AWA NYO NA AT NALALAPIT NA ANG PAGHUSGA AKIN NG HUKOM. NAY WAG NYO SANA AKONG BIGUIN SA HINIHINGI KONG ITO.

PLS. NAY PATAWARIN NYO AKO SA LAHAT NG KASALANAN KO.

PLS! PUNTAHAN NYO AKO RITO. PLS! LANG NAY.

PARANG AWA NYO NA.

MAHAL KITA NAY.

BOY"^[12]

On June 26, 2000, the trial court rendered its Decision convicting the appellant of incestuous rape under Article 335 of the Revised Penal Code. The dispositive portion reads:

"WHEREFORE, the Court finds the accused Juan Rosario guilty beyond reasonable doubt of incestuous rape under Article 335 of the Revised Penal Code as mandated by Sec. 11 of R.A. No. 7659 and hereby imposes upon him the supreme penalty of death by lethal injection and shall indemnify his daughter AAA, the victim herein, P75,000.00 as civil indemnity, P25,000.00 as moral damages. P25,000.00 as exemplary damages and to pay the costs.

"SO ORDERED."^[13]

Hence, this appeal based on the following lone assignment of error:

"THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH BEYOND REASONABLE DOUBT THAT HE WAS INDEED THE PERPETRATOR OF THE CRIME CHARGED."^[14]

Appellant argues that during the alleged incident, the place was dark, hence, AAA could not have recognized and identified the rapist. She pointed to him as the perpetrator because she heard the sound of the door of his bedroom closing after the rapist left her room.

The Solicitor General counters that the victim was able to recognize the appellant as the rapist since he is her father. Besides, the criminal act took sometime, affording her ample opportunity to identify him. Clearly, the fact that she heard the door to her parents' room closed after the incident is not the only basis why she was able to recognize appellant.

After a careful evaluation of the parties' evidence, we affirm the trial court's finding that the prosecution has proved the guilt of appellant beyond reasonable doubt. AAA testified in a straightforward, candid and convincing manner which leaves no room for doubt that she was in fact ravished by her own father, thus:

"PROS. TAMINAYA

Q Sometime in the evening of April 7, 2000 where did you sleep?

A In my room, sir.

Q Do you have a companion?

A None, sir.

Q Now, when you slept on the night of April 7, 2000 alone in your room, on the early dawn of April 8 at around 1:00 o'clock in the morning, can you remember of any unusual incident that happened?

A Yes, sir.

Q What is that unusual incident?

A **I was raped by my father, sir.**

Q How were you able to feel that you were raped?

A While I was asleep, and when I woke up, I felt that there was somebody on top of me and I also felt that I have no more panty at that time, sir.

Q When you felt that something heavy on top of you and that you have no more panty, what else did you feel?

A I felt pain in my private part, sir.

Q What did you feel that caused the pain in your private part?

A **Because my father inserted his penis on my vagina, sir.**

Q **What did you tell your father when you felt that he inserted his penis in your vagina?**

A **I told him, stop it, stop it father, because it's painful, sir.**

Q **What did your father tell you when you told him about it to stop because it is painful?**

A **None, sir, he just struck me on my thigh.**

Q **After your father struck you on your thigh what did your father do?**

A **He went on until his sperm cell came out, sir.**

Q What did you feel when the sperm cell was released by your father?

A It was sticky.

Q **After the release of the sperm cell by your father, what did your father do?**

A **He left my room and went back to my parents' room, sir.**

Q **How did you come to know that your father proceeded to the room of your mother?**

A **Because of the sound of their door, sir.**

Q What did you do when your father left you?

A I wore my panty and I rushed to my grandmother, sir.

Q What is the name of your grandmother?

A Ibay, sir.

Q Where is the room of your grandmother?

A Upstairs, sir.

Q What did you tell your grandmother?

A I told her that my father raped me, sir.

Q What did your grandmother tell you?

A That I will go to my aunt, sir.^[15]

x x x

Q When you reached the front of the house of your aunt at Barangay Quezon, what did you do?

A I reported to her, sir.

Q What did you report to your aunt?

A That I was raped by my father, sir.

Q What did you aunt [REDACTED] tell you?

A That we will report the incident to the police authorities, sir.

Q You want to tell the Honorable Court that it was on the same early dawn of April 8, 2000 that you and your aunt reported to the police what your father did to you?

A Yes, sir.

Q So you and your aunt were the ones who reported the matter to the police?

A Yes, sir.^[16]

x x x

Q After reporting to the police that you were raped by your father, where did you proceed?

A In the hospital, sir.

Q You want to tell the Honorable Court that Provincial Hospital in San Carlos City in Bolingit?

A Yes, sir.

Q What did they do there to you?

A They examined me, sir.

x x x^[17]

Q If your father, whom you claimed you asked him to stop but still insisted in raping you until his sperm cell was released is now in the Court room, will you be able to identify him?

A Yes, sir.

Q Will you kindly stand up and point to him.

INTERPRETER

Witness pointed to Juan Rosario, the accused.