

EN BANC

[G.R. Nos. 147650-52, October 16, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO S. PEPITO, APPELLANT.

DECISION

PER CURIAM:

RODOLFO S. PEPITO was found guilty by the court *a quo* of three (3) counts of rape perpetrated against his own daughter Jelyn. For each count, he was sentenced to death and ordered to indemnify Jelyn P50,000.00 as moral damages and P25,000.00 as exemplary damages.^[1] This case is now before us on automatic review pursuant to law.

The prosecution built its case around the testimonies of five (5) witnesses: private complainant Jelyn Pepito, Medical Officer Dr. Efraim Collado, DSWD Social Worker Lilibeth Santos-Palini, accused's maternal half-brother Joseph Francisco, and accused's younger sister Jocelyn Bueno. Culled from their testimonies, Jelyn's calvary started when she was eight (8) years old. Born on 22 August 1980^[2] Jelyn is the eldest of seven (7) children of the accused Rodolfo S. Pepito and his wife Thelma Pepito. She lived with her parents, her three (3) brothers and three (3) sisters in Barangay Balani, Sen. Ninoy Aquino, Sultan Kudarat.^[3] They had a farm in Kalibuhan, Palimbang, Sultan Kudarat, which served as their family homestead.

Jelyn only reached Grade V. She was not able to finish her elementary education. Since she was eight (8) her father had already been molesting her, kissing her and playing with her breasts and private parts.^[4] This episode in her life was known to her mother who chose to ignore it out of fear of her father. He would threaten both of them with a gun.^[5] It was only when Jelyn was nearing her fifteenth (15th) birthday that her father finally consummated his sexual assault on her which continued until 30 August 1997.

In her supplemental sworn statement,^[6] Jelyn declared that of the many times her father abused her she could only remember vividly three (3) instances: on 26 July 1995 when she was raped by her father for the first time; on 9 June 1996 when she was raped during the birthday of her youngest sister Jemayde;^[7] and, on 30 August 1997 being the last time her father raped her.

Jelyn was only fourteen (14) when her father first sexually abused her. It happened in the evening of 26 July 1995 when her brothers Rino, Ronillo, Romy and sisters Jovelyn and Jonavie were sleeping with her inside their room in Barangay Balani, Sen. Ninoy Aquino, Sultan Kudarat, while her youngest sister Jemayde slept with their mother in another room. Jelyn was awakened when she felt somebody, whom she later recognized to be her father, touched her breasts and private parts. Jelyn

struggled and tried to awaken her brothers and sisters but the accused pushed them away from her and warned her not to move. He pinned down her hands and knees, covered her mouth with his hands and threatened to kill her when she attempted to shout.^[8] Thereupon, he ordered her to remove her underwear. When she refused he boxed her in the abdomen. After removing her underwear and short pants, he mounted her and inserted his penis by force into her vagina. Jelyn felt pain. The accused simultaneously massaged and sucked her breasts and made a push and pull movement above her for about five (5) minutes.^[9] After satisfying his lust, he got up and went to the other room to sleep with her mother. The following morning Jelyn confided to her mother what happened to her the night before. But her mother did not react accordingly for fear that the accused might kill them.^[10]

On 9 June 1996, birthday of Jelyn's younger sister Jemayde, the accused again sexually assaulted Jelyn who was then sleeping in the same room with her brothers Ronillo and Romy and sisters Jovelyn and Jonavie. Somebody turned off the light and entered the room. It was her father. He raised her T-shirt, removed her underwear and short pants, touched her breasts and private parts, spread her legs, mounted her and forcibly inserted his penis into her vagina. She resisted but her father held her on both hands. Jelyn again felt pain as her father did the push and pull movement on top of her.^[11] He warned her not to shout. With his gun, she could no longer resist him.^[12] After the accused was through with her, he returned to the other room which he shared with her mother. The following morning Jelyn tried to tell her mother again about the incident, but because of fear her mother could only advise her not to inform anybody about what happened to her.^[13]

In the evening of 30 August 1997, after coming from a four (4)-hour trip by foot to plant corn in Kalibuhan, Palimbang, with her mother and sister Jemayde, another incident happened.^[14] While sleeping beside her sister on the floor of their hut and about half a meter away from her mother, her father who was sleeping with her mother moved to her (Jelyn) side and without her consent removed her long pants and underwear. She pushed him away but he boxed her. It was so strong that it caused her to bump a post which rendered her unconscious. But before she blacked out, Jelyn was able to wake Jemayde up who bit and kicked their father who was in the act of sexually abusing Jelyn.

Before appellant could satisfy his lust, Jelyn regained consciousness. Their mother incidentally woke up and saw what he was doing to their daughter. Jelyn's mother attempted to come to her side but the accused threatened her with his gun. Her mother could not do anything. Her sister asked the accused what he was doing to Jelyn and he said that he was riding ("*sakay-sakay*") Jelyn. After his lechery, the accused lay down beside Jelyn but her mother pushed him and positioned herself between them. Jelyn was not able to sleep due to body pains caused by her father. But she had to keep the matter to herself because she was afraid of her father.^[15]

Sometime in November 1997 Jelyn's uncle, Joseph Francisco, maternal half-brother of her father and who frequently visited them in their house in Barangay Balani, noticed that Jelyn looked pale and oftentimes nauseated. Joseph found out later on through a "hilot" summoned by his grandmother that Jelyn was pregnant. He brought Jelyn to the Quijano Clinic in Tacurong, Sultan Kudarat, for pregnancy test^[16] and the result confirmed her pregnancy. On 6 December 1997 Jelyn

confided to her uncle the sexual abuses she suffered in the hands of her own father.
[17]

Joseph brought Jelyn back to Barangay Balani. On 11 December 1997 he entrusted her to her aunt Jocelyn Bueno, his half-sister. Forthwith they reported the sexual assaults to the Municipal Police of Sen. Ninoy Aquino and had them entered in the police blotter. Jocelyn revealed to the police that her brother, the accused, had even attempted to sexually assault her when she was still single although she was able to repulse him.

The accused was arrested on 16 December 1997.^[18] Eventually, the appropriate Information was filed against him in the Regional Trial Court of Isulan, Sultan Kudarat, for multiple rape.^[19]

Dr. Efraim Collado, Medical Officer V of the Municipal Health Office of the Municipality of Tacurong, testified that he examined Jelyn on 9 January 1998 and found that Jelyn was approximately in her sixteenth (16th) week of gestation. No further internal examination was necessary to prove the presence of lacerations as Dr. Collado felt that this was immaterial considering that the victim was already pregnant.^[20]

On 16 January 1998 her aunt Jocelyn Bueno brought Jelyn to the DSWD because her mother tried to convince them to withdraw the case and abort the pregnancy.
^[21] Jelyn and her aunt were met and admitted by Social Worker Lilibeth Santos-Palinis through Social Worker Melba Souribio of Tacurong, Sultan Kudarat.

On 24 March 1998 while under the custody of the DSWD, Jelyn gave birth to Angelo Ernesto Pepito who died the following day. According to Social Worker Santos-Palinis, Jelyn's mother was not supportive of the case against the accused.^[22]

During the arraignment on 25 September 1998, the trial court made the observation that the cases to be filed against the accused should be as many as there were incidents of rape committed instead simply of multiple rape. Thus, the prosecution moved to defer the arraignment of the accused in order to conduct further inquiry for the filing of the proper informations. Accordingly, the Information for multiple rape against the accused was amended to conform to the evidence. An amended Information (Crim. Case No. 2491)^[23] and two (2) additional Informations for rape (Crim. Case Nos. 2528 and 2529)^[24] were filed against the accused.

On 2 December 1998 the accused pleaded not guilty to each of the charges against him. On motion of the prosecution and the defense, a joint pre-trial and trial of the cases was granted. At the pre-trial, the defense admitted that private complainant Jelyn Pepito was the daughter of the accused Rodolfo S. Pepito and that Jelyn Pepito was only fifteen (15) years old when she was first raped by her father.

For the defense, only the accused Rodolfo S. Pepito and his wife Thelma testified. Rodolfo raised the defense of denial and alibi plus the fact that he could not sexually abuse his own daughter. He averred that for five (5) years since 1992 he lived in Sitio Puting Bato, Kalibuhan, Palimbang, Sultan Kudarat, while his family was left behind in Barangay Balani. He visited his family once or twice a year during the

fiesta on 10 January and the rice festival on 10 October. He confirmed the fact that it would take four (4) hours by walking to reach Barangay Balani from Kalibuhan, a distance of some thirteen (13) kilometers.

On the dates of the rapes charged against him, the accused claimed he was working in his farm. On 26 July 1995 he was in Kalibuhan and was not able to visit his family in Banali during said month. On 9 June 1996 he was also in Kalibuhan working in his farm. On 30 August 1997 he was still in Kalibuhan but his wife, together with their children Jelyn, Ronillo, Romy, Jovelyn and Jemayde and some of his nephews and nieces, was there with him to celebrate Ronillo's birthday. The party started at six o'clock in the evening and ended at midnight. He asserted that he could not have raped Jelyn at that time for there were many people with them and some of them even slept in their hut. He also maintained that his wife was not afraid of him. On the contrary, it was she who would chase him with a bolo every time she got mad at him. Furthermore, he claimed that his sister Jocelyn Bueno only concocted the rape tales as she harbored a grudge against him. When Bueno saw him at the police station after his arrest, she boxed and struck him on his shoulders shouting "because of my long grudge against you, I had already taken revenge against you."

[25]

Thelma Pepito, mother of Jelyn, testified that on 26 July 1995 and 9 June 1996 she and her seven (7) children were in Barangay Balani while her husband was in Kalibuhan working in their farm. Thus, her husband could not have raped Jelyn. On 30 August 1997 she went to Kalibuhan with Jelyn, Ronillo, Jovelyn and Jemayde to celebrate the birthday of Ronillo. Their children, including Jelyn, slept in their farmhouse. Her husband did not and could not have sexually abused Jelyn "because we were many in our house at that time." Thelma vehemently denied having been told by Jelyn that her father had raped her or that she had witnessed her husband sexually abusing Jelyn. She likewise declared that she was not afraid of her husband because it was even she who would run after him with a bolo.[26]

On rebuttal, the prosecution presented Jelyn anew. She declared that the accused was in their house in Barangay Balani on 26 July 1995 and stayed there for a week. On 9 June 1996 the accused was again in Barangay Balani and remained there for a week. Further, on 30 August 1997 she was in Kalibuhan to celebrate her brother Ronillo's birthday. It was true that there were visitors who attended the party but they all went home soon after.[27]

On 15 December 2000 the trial court found the accused Rodolfo Pepito guilty beyond reasonable doubt of three (3) counts of rape committed against his minor daughter Jelyn and sentenced him to death for each count.

Appellant Pepito now contends that the trial court erred in convicting him of three (3) counts of rape as charged in three (3) separate Informations despite the existence of some form of consent on the part of the victim which necessarily created reasonable doubt on his guilt. He likewise claims that the trial court erred in imposing the death penalty.

In his first assigned error, appellant harps on the lack of resistance and struggle exerted by the private complainant during the three (3) occasions she was supposedly abused. He avers that he was able to succeed in placing himself on top

of Jelyn considering that as shown in the first and second incidents of rape, there was no tenacious objection on her part. He asseverates further that Jelyn could have kicked him or kept on struggling until such time that he would desist from his sexual assault or she could have shouted for help so that her brothers and sisters would be awakened. Her comportment showed a passive rather than determined resistance. Furthermore, he states that this is contrary to the rule that the offended party in rape cases must put up some resistance to protect her chastity, not only at the initial stage of the assault but during all the time that the dastardly act is being done to her. He gauges such actuation as tantamount to consent, thus making his conviction for three (3) counts of rape erroneous.

We are not persuaded. Such theory of appellant is unavailing, as it is belied by the testimony of Jelyn that she struggled against his sexual advances by trying to shout and attempting to awaken her siblings who were with her in the room. Undoubtedly, such resistance negates consent. Besides, it is highly inconceivable that Jelyn would simply yield to the bestial desires of her own father had not her resistance been overpowered. Contrary to appellant's contention, failure to shout or offer tenacious resistance does not make voluntary the victim's submission to his criminal acts considering that he was her father who has great moral ascendancy over her.

Resistance is not an element of rape and the absence thereof is not tantamount to consent.^[28] Threat or intimidation employed by rapists against their victims, especially when they are minors (in this case the rapist's own minor daughter) is such as to easily force the latter into submission. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter yields herself against her will because of fear for her life and personal safety.^[29]

In the case at bar, it is convincing that a girl below the age of eighteen (18), especially one in Jelyn's circumstances, would perceive the threats on her to be especially intimidating. Intimidation is addressed to the mind of the victim and, being subjective, its presence cannot be tested by any hard-and-fast rule but should instead be viewed in light of the victim's perception and judgment at the time of the commission of the crime.^[30] In any event, it is worthy to note that appellant exercised moral ascendancy over her. He was her father and the man of the house. Thus, it was not hard for him to frighten her and for her to easily give in.

In review of rape cases, we have been guided by certain precepts. *First*, an accusation of rape can be made with facility. It may be difficult to prove, but it is even more difficult for the accused, though innocent, to disprove. *Second*, the complainant's testimony must be scrutinized with extreme caution. This principle finds its basis in the very nature of the crime where usually only two (2) persons are involved. *Third*, the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[31]

We have delved through the records of the case, especially Jelyn's testimony, and we find no reason to doubt that she was telling the truth when she declared that her father had raped her. No young girl, indeed, would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than an earnest desire to seek justice.^[32] This holds true