

EN BANC

[G.R. Nos. 134288-89, January 15, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MELCHOR ESTOMACA Y GARQUE, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

Accused-appellant, Melchor Estomaca y Garque, was charged by his daughter, Melita Estomaca, of five counts of rape, committed on different occasions, before the Regional Trial Court of Iloilo, Branch 38, and docketed as Criminal Cases Nos. 43567, 43568, 43569, 43570 and 43571.

During the arraignment on June 15, 1994, accused-appellant entered a plea of guilty to Criminal Cases Nos. 43568 and 43571, and a plea of not guilty to Criminal Cases Nos. 43567, 43569 and 43570.

Trial ensued with respect to Criminal Cases Nos. 43568 and 43571. The criminal complaint subject of Criminal Case No. 43568 reads:

"That sometime in the month of December, 1993, in the Municipality of San Joaquin, Province of Iloilo, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his superior strength, abuse of confidence and trust, he, being the father of the undersigned, with deliberate intent and by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with (sic) the undersigned who, at that time, is 15 years of age.

"CONTRARY TO LAW."^[1]

while Criminal Case No, 43571 reads:

"That on or about March 6, 1994, in the Municipality of San Joaquin, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the undersigned complainant, with deliberate intent and by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse of the undersigned, who, at that time, is 15 years of age.

"CONTRARY TO LAW."^[2]

On July 15, 1994, the trial court rendered judgment finding accused-appellant guilty beyond reasonable doubt of the crimes charged and sentencing him to suffer the penalty of *reclusion perpetua* in Criminal Case No. 43568 and death in Criminal Case

No. 43571. He was also ordered to indemnify the private complainant the sum of P50,000.00 in each case.^[3]

The cases were brought to this Court for automatic review and docketed as G.R. No. 117485-86. On April 22, 1996, judgment was rendered setting aside accused-appellant's conviction, the decretal portion of which reads:

"WHEREFORE, the judgment of the court *a quo* in Criminal Cases Nos. 43568 and 43571 convicting accused-appellant Melchor Estomaca y Garque of two crimes of rape is hereby **SET ASIDE**. Said cases are **REMANDED** to the trial court for further and appropriate proceedings, with instructions that the same be given appropriate priority and the proceedings therein be conducted with deliberate dispatch and circumspection.

"SO ORDERED."^[4]

On August 30, 1996, the records of the case were returned to the trial court.^[5] However, with the inhibition of Judge David A. Alfeche, Jr., Presiding Judge of the trial court, Criminal Cases Nos. 43568 and 43571 were referred to Branch 67 of the Regional Trial Court of Guimbal, Iloilo and re- docketed as Criminal Cases Nos. 024(97) and 025(97), respectively.

Accused-appellant, assisted by counsel, was arraigned anew on November 26, 1997, where he entered a plea of not guilty to both criminal complaints. Thereafter, the two cases were tried jointly.

The prosecution's evidence revealed that Melita Estomaca, was born on July 21, 1972^[6] to accused-appellant and Nenita Ruelo, Sometime in December of 1993, at about 11:00 in the evening, Melita was in their house at Barangay Tiolas, San Joaquin, Iloilo, sleeping on the floor with her brother Nicolas and accused-appellant. Suddenly, she felt somebody touching her breast and forehead. When she woke up, she saw accused-appellant who told her to go back to sleep. Thereafter, accused-appellant removed her shorts and panty, laid on top of her and inserted his penis in her vagina. Melita struggled but accused-appellant boxed her on the stomach which rendered her unconscious. She did not report the incident to her mother because accused-appellant threatened to kill her mother and brother.

The incident was repeated on March 6, 1994. Melita was about to sleep when accused-appellant started fondling her breast. She pleaded with her father to stop but the latter continued. She kicked him but accused-appellant punched her on the stomach which rendered her unconscious. Thereafter, accused-appellant succeeded in satisfying his lust.^[7]

Unable to take the abuses of her father, Melita finally narrated the incidents to her mother, Nenita who confronted accused-appellant but the latter maltreated her. Melita left their house and stayed at her grandmother's house in Nueva Valencia, Guimaras. Accused-appellant followed her and asked her to go home, but Melita refused. It was at this instance when Melita narrated to her grandmother her ordeal. Criminal complaints were filed against accused-appellant.^[8]

Melita was brought to Dr. Shiela D. Gumabong, Rural Health Physician of Nueva Valencia , Guimaras, for medical examination which revealed the following findings:

"EXTERNAL EXAMINATIONS:

"Breast, fully developed, hemispherical in shape, slightly soft in consistency, areola brownish in color with nipples prominent and protruding.

"No evidence of contusion, hematoma or abrasion in external body surfaces.

"INTERNAL EXAMINATIONS:

"Pubic hair grown and slightly abundant; labia majora and minor are coaptated.

"Hymenal opening shows an old laceration with scar formation at 3:00 o'clock and 9:00 o'clock position on the face of the watch. Hymenal orifice admits 2 fingers with moderate resistance. Vaginal rugosities are present and prominent. Vaginal canal is moderately tight.

"Speculum examination: Cervix closed, well formed, pinkish in color. Uterus not enlarged.

"CONCLUSION: 1. No extra-genital injuries noted
2. Physical Virginity Lost."^[9]

For his defense, accused-appellant denied the charges levelled against him, testifying thus:

"ATTY. TIONGCO:

"Q You are accused by Melita Estomaca on raping her five (5) times on five (5) separate occasions, are those accusations true?

"A No, Sir.

"Q Melita Estomaca while in the witness stand testified before this Honorable Court that you boxed her in the stomach in order to rape her, is that true?

"A No, Sir.

"ATTY. TIONGCO:

That would be all, Your Honor, with the witness."^[10]

His testimony was corroborated by his wife Nenita and son Nicolas, who both testified that they were never informed by Melita of the rapes and had learned of the incident only through the radio news broadcast.^[11] Nicolas likewise vowed that it was impossible for accused-appellant to rape Melita because he was sleeping between the two.^[12]

On April 29, 1998, the trial court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused, MELCHOR ESTOMACA Y GARQUE guilty beyond reasonable doubt for the crime of Rape and hereby sentences him as follows:

- "1. In Criminal Case No. 024(97) penalized under Article 335 of the Revised Penal Code and sentence him to suffer a penalty of Reclusion Perpetua and to indemnify the offended party, Melita Estomaca, the sum of P50,000.00
- "2. In Criminal Case No. 025(97) penalized under Article 335 of the Revised Penal Code as Amended by Paragraph 7, Section 11 of Republic Act No. 7659, otherwise known as An Act to Impose the Death Penalty on Certain Heinous Crimes and sentence him to suffer the penalty of DEATH and to indemnify the offended party, Melita Estomaca, the sum of P50,000.00.

"Costs against the accused in both cases.

"SO ORDERED."^[13]

In convicting accused-appellant, the trial court gave weight to Melita's testimony and rejected accused-appellant's denial, ratiocinating, thus:

"Accused did not care to explain his whereabouts in the hours and dates mentioned in the two criminal complaints. He did not bother to advance any serious, credible or well-founded motive or reason why his own daughter charged him of the heinous crime of RAPE. Yes, the records of the proceedings are bereft of any evil motive why Melita Estomaca should charge his father of rape. There was no effort on the part of the accused to impute ill or evil motive on the complainant. The record is bare of any evidence to show any improper motive on the part of the victim to charge her own father of such a very serious crime that is punishable by death. The legal conclusion therefore, is that the testimonies of the victim, Melita Estomaca is worthy of full faith and credit."^[14]

Accused-appellant now comes to this court assailing the above decision, arguing that the trial court erred in convicting him and sentencing him to suffer the penalty of reclusion perpetua and death. He contends that the testimonies of Nenita and Nicolas negate the claim of Melita that force or intimidation was used for him to have carnal access to her.

Such contention deserves no merit.

Melita's failure to shout or offer tenacious resistance did not make voluntary her submission to the criminal acts of the accused-appellant.^[15] We have, time and again, ruled that in rape committed by the father against the daughter, violence or intimidation need not be proven because of the former's moral ascendancy and

influence over the latter.^[16] Being the father, accused-appellant exercises moral and physical ascendancy over Melita which could be sufficient to cow her into submission to his bestial desire.^[17] Moreover, evidence shows that Melita resisted the efforts of accused-appellant. In fact, in the March 1994 incident, Melita kicked accused-appellant. Her resistance, however, proved futile. On the other hand, Nicolas' failure to hear any commotion during the sexual assaults may be attributed to the fact that at the time of the rapes, it is possible that Nicolas was in deep slumber and not awakened by the resistance offered by the latter against her father.

Accused-appellant likewise asserts that the testimony of Melita is incredible, full of improbabilities and inconsistent with human experience. He specifically points to the following: (a) it was impossible for accused-appellant to rape Melita in the presence of his son who was sleeping between them; (b) Melita continued to sleep with accused-appellant and her brother despite the alleged assault on her honor; (c) Melita did not report the incident to her mother and brother; and (d) Melita did not make any attempt to escape.

Again, we find the above contentions unmeritorious.

In a prosecution for rape, the complainant's credibility becomes the single most important issue and when the testimony meets the test of credibility, an accused may be convicted solely on the basis thereof.^[18] Thus, the testimony of the offended woman standing alone can be the basis of conviction if such testimony meets the test of credibility.^[19]

We have carefully read the testimony of Melita and finds the same to be truthful and credible. Her narration of the December 1993 incident is convincing:

"Q Miss Witness, on December, 1993 at about 11:00 o'clock in the evening, you said that you were sexually abused by your father, sometime on December, 1993 at about 11:00 o'clock in the evening. Could you tell the Court what specific date was that on December that you were sexually abused by your father?

"A I cannot remember the date but it was before Christmas day.

"Q Could you tell us where were you in the evening, say around 11:00 o'clock in the evening of December, 1993 while you were sexually abused or raped by your father?

"A Yes, I was at our house at Tiolas.

x x x
x x x

x x x

"Q Was there any unusual incident that happened at that month of December, 1993 at around 11:00 o'clock in the evening?

"A Yes, sir.