

## EN BANC

[ G.R. Nos. 138720-21, March 19, 2002 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCELO ESUELA, ACCUSED-APPELLANT.**

### D E C I S I O N

**KAPUNAN, J.:**

Before us for automatic review is the joint decision, dated 14 April 1999, of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63 in Criminal Cases No. RTC '97-168 and RTC '97-169, finding accused-appellant Marcelo Esuela guilty beyond reasonable doubt of two (2) counts of rape committed against his stepdaughter Maricel A. Hilboy and sentencing him to suffer the penalty of death for each count.

These criminal cases stemmed from two separate informations filed against accused-appellant Marcelo Esuela for the acts of rape committed sometime in 1995 and 1996 when Maricel A. Hilboy was 13 years old. The informations for both cases are as follows:

Crim. Case No. RTC '97-168:

x x x

That on or about 12:00 o'clock midnight sometime in the year 1995 at Barangay Tamban, Municipality of Tinambac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused willfully, unlawfully and feloniously, with grave abuse of confidence, being the stepfather of Maricel A. Hilboy, with lewd designs and by means of force and intimidation have sexual intercourse with the said private complainant, a 13-year old minor, against her will and without her consent as evidenced by a medical certificate marked as Annex "A" hereof, to the damage and prejudice of said Maricel A. Hilboy.

ACTS CONTRARY TO LAW.

Naga City, for Calabanga, Camarines Sur, January 22, 1997.

Crim. Case No. RTC'97-169:

x x x

That on or about 12:00 o'clock midnight of December 14, 1996 at Zone 6, Barangay Tamban, Municipality of Tinambac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused willfully, unlawfully and feloniously, with grave abuse of

confidence, being the stepfather of Maricel A. Hilboy, with lewd designs and by means of force and intimidation have sexual intercourse with the said private complainant, a 13 year old minor, against her will and without her consent as evidenced by a medical certificate marked as "Annex A" hereof, to the damage and prejudice of said Maricel A. Hilboy.

ACTS CONTRARY TO LAW.

Naga City, Philippines, January 22, 1997.<sup>[1]</sup>

On April 4, 1997, accused-appellant Marcelo Esuela, duly assisted by counsel *de officio*, entered a plea of not guilty in both cases. Thereafter, joint trial ensued.

Testifying for the prosecution, Maricel A. Hilboy, then 14 years old, declared that she was born on January 5, 1983.<sup>[2]</sup> Accused-appellant Marcelo Esuela was her stepfather<sup>[3]</sup> being the common-law husband of her mother, Concepcion Abadesa.

Maricel recalled that on December 14, 1996 at around 12:00 o'clock midnight, she was sleeping inside their house when she was awakened and found out that she was already naked.<sup>[4]</sup> Accused-appellant Esuela was already on top of her, inserting his penis into her vagina. She felt pain but she could not shout because Esuela's hand was covering her mouth.<sup>[5]</sup> Before dismounting, accused-appellant warned her not to tell her mother about what happened; otherwise, he would inflict physical injuries upon her. Thereafter, accused-appellant Esuela left her, and she just kept on crying.<sup>[6]</sup> She also testified that her stepbrothers and stepsisters were sleeping near her but they were not awakened while the rape was taking place.<sup>[7]</sup> Her mother was sleeping on the other part of the house.<sup>[8]</sup> She did not report the incident to her mother because of accused-appellant's warning.<sup>[9]</sup>

Maricel also testified that the incident in 1996 was the second time that she was raped by accused-appellant. The first incident happened in 1995. She could not remember all the details of the first rape incident that transpired in 1995 but she could remember that accused-appellant kept on kissing her and that he inserted his penis into her vagina.<sup>[10]</sup> She reported the incident to her mother but she could not remember what the response of her mother was.<sup>[11]</sup> Eventually, she told her teacher, Gemma Olarve, of what transpired.<sup>[12]</sup>

Dr. Goito Froyalde, the Municipal Health Officer of Tinambac, Camarines Sur, testified that he conducted an internal and physical examination on Maricel A. Hilboy on December 17, 1996.<sup>[13]</sup> His examination revealed lacerations in Maricel's vagina at 12:00 o'clock and 6:00 o'clock positions, which could be caused by penetration of a penis.<sup>[14]</sup> He concluded that the patient was no longer a virgin.<sup>[15]</sup>

Gemalil Buenaobra, a Social Worker from DSWD Center for Girls in Pangpang, Sorsogon, Sorsogon, testified that Maricel was her client at DSWD. Maricel's problem was the alleged rape incident, as well as the maltreatment that she suffered from the hands of her stepfather. Maricel told her that the perpetrator of the crime was accused-appellant.<sup>[16]</sup> In the course of the individual counseling sessions with Maricel, she also found out that it was very difficult for the latter to

relate her feelings. She asked Maricel to write a letter and draw in order to elicit some information from the latter and she discovered that Maricel was frustrated because of her family and her hatred for her stepfather.<sup>[17]</sup> The rape incident was a traumatic experience for Maricel and it affected her behavior, making it difficult for her to get along with others.<sup>[18]</sup>

Concepcion Abadesa, mother of Maricel, testified that her daughter was born on January 5, 1983.<sup>[19]</sup> Maricel's father was Vicente Hilboy but they separated. She and accused-appellant lived together in 1986 and they had four (4) children, three of whom are alive.<sup>[20]</sup> It was Maricel's teacher, Gemma Olarve, who told her that Maricel was abused by accused-appellant.<sup>[21]</sup> She confronted her daughter and the latter admitted that she was raped by accused-appellant. She quarreled with accused-appellant, after which she went to report the incident to their barangay captain, Socorro Cabral. <sup>[22]</sup>

In the presence of Cabral, accused-appellant at first denied but eventually admitted that he raped Maricel. Accused-appellant promised that the incident would not be repeated.<sup>[23]</sup> Concepcion further testified that she consulted her mother about the matter and at first, they thought of having the incident recorded in the police blotter. However, they changed their minds because nobody would take care of the three (3) children since she was jobless and accused-appellant was the only breadwinner of the family.<sup>[24]</sup>

For the defense, Natividad Esuela, mother of accused-appellant, testified that her son and Concepcion lived together as husband and wife but separated in 1994 because they quarreled. Accused-appellant started living with her in their house at Zone 6, Tamban, Tinambac, Camarines Sur which was quite far from the house of Concepcion. Her son was working as a porter and he would usually go out early in the morning and return home at three o'clock in the afternoon.<sup>[25]</sup>

Accused-appellant Marcelo Esuela denied the accusations against him.<sup>[26]</sup> He testified that at midnight of December 14, 1996, he was sleeping in the house of his parents at Zone 6, Tamban, Tinambac, Camarines Sur. With him were his mother, two (2) small sisters and brother Cris.<sup>[27]</sup> He further testified that he and Concepcion were live-in partners but they parted ways in 1994 because of misunderstanding about money and the meddling of his in-laws in their lives.<sup>[28]</sup> He declared that Maricel was not living with them during his cohabitation with Concepcion but with his in-laws whose house was about 200 meters from their house.<sup>[29]</sup>

On 14 April 1999, the trial court rendered its decision, the dispositive portion of which read:

WHEREFORE, in view of the foregoing, the prosecution having proved the guilt of the accused beyond reasonable doubt in both cases, accused Marcelo Esuela, is found guilty of the offense of rape. Applying the above-quoted law, the rape cases having been committed in the year 1995 and December 14, 1996, accused Marcelo Esuela is hereby sentenced to suffer the following penalties:

1. In Crim. Case No. RTC '97-168, he is hereby sentenced the penalty of death and to indemnify the private complainant Maricel Hilboy the amount of P75,000.00;
2. In Crim. Case No. RTC '97-169, he is hereby sentenced the penalty of death and to indemnify the private complainant Maricel Hilboy the amount of P75,000.00. The indemnification of P50,000.00 has been increased by the Supreme Court in People vs. Victor, G.R. No. 127903; July 9, 1998 to P75,000.00;
3. He is further ordered to pay the cost.

SO ORDERED.<sup>[30]</sup>

The decision is now before this court for its automatic review.

Accused-appellant raised this lone assignment of error before the Court:

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ALLEGE IN THE TWO (2) INFORMATIONS THAT ACCUSED-APPELLANT IS THE COMMON-LAW SPOUSE OF THE VICTIM'S MOTHER.<sup>[31]</sup>

Clearly, accused-appellant does not question the decision of the trial court insofar as his guilt is concerned. Nevertheless, this Court still painstakingly reviewed the records of the cases to determine whether the guilt of accused-appellant has been proved beyond reasonable doubt. Unfortunately for accused-appellant, the Court could not find any reason to reverse his conviction.

It is apparent that the trial court arrived at its finding after a careful assessment of the evidence presented, foremost of which was the testimony of the victim in open court. As a rule, we do not disturb the findings by the trial court on the credibility of witnesses since the trial court is in a better position to pass upon the credibility of witnesses. The trial judge was able to personally evaluate the witness's manner of testifying, and from there reach a studied opinion as to her credibility.<sup>[32]</sup>

Maricel categorically testified:

X X X

Q     You said that something happened to you. Now, I call your attention whether you recall where were you? On December 14, 1996?

A     Yes, sir.

Q     Where were you?

A     I was inside the house sir.

Q     What were you doing at around 12:00 midnight?

A     I was sleeping sir.

PROS. CU:

Q Were you awakened?

ATTY. TAYER:

Objection your Honor. Leading.

COURT:

Sustained. Reform.

PROS. CU:

Q What happened if anything while you were sleeping?

A Yes, sir.

ATTY. TAYER:

We would like to strike out the answer because it was not responsive to the question.

COURT:

Strike that out.

(The question was repeated to the witness by the interpreter.)

WITNESS:

A I was awakened to find out that I was already naked without my panty and my dress.

Q So when you were awakened noticing that your panty was already been undressed, what if anything transpired next?

A He was already on top of me sir.

Q You said that somebody was on top of you, who was that person if you recognize him?

ATTY. TAYER:

I think that the question is not proper your Honor. The translation is not someone but he.

Witness:

A Marcelo Esuela.

PROS. CU:

Kindly point at Marcelo Esuela if he is around?