

EN BANC

[G.R. No. 139447, July 23, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO APAREJADO, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

In rape cases, the victims' scars cannot be seen and their wounds will never heal. Their dignity and self-worth inevitably and, oftentimes, irreparably suffer. Their pain may vanish in time and their tears may eventually dry up but their lives will never be the same again. Memories of their cruel fate will haunt them the rest of their life. The tragedy and suffering are compounded in cases of incestuous rapes as they involve a serious breach of trust and destroy the very foundation of society --- the family.

In the case at bar, the victim of abuse was nine (9) year old GINA APAREJADO, the aggressor being her own father, accused FRANCISCO APAREJADO. Provincial Prosecutor Alberto Alforte originally charged the accused with rape in an **Information, dated June 28, 1996,**^[1] thus:

"That sometime at Barangay Buri, Municipality of Mandaon, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own daughter, Gina Aparejado against her will and consent.

CONTRARY TO LAW."

During his arraignment on October 16, 1996, accused, duly **assisted by his counsel**, pled not guilty. On **January 6, 1997, before the case could be scheduled for trial**, an **amended Information** was filed with leave of court by Prosecutor Danilo Ontog **to specify the approximate date of the commission of the offense and the age of the victim**, thus:^[2]

"That on or about the **fourth week of February 1996** at Barangay Buri, Municipality of Mandaon, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge with his **9 year old** daughter GINA APAREJADO against her will.

CONTRARY TO LAW."

No objection was raised by the accused. Accordingly, the trial court admitted the amended Information ruling that the amendment referred only to matters of form.

[3] The initial trial of the case was held on May 22, 1997, four (4) months after the amendment of the Information.

The prosecution evidence disclose that MRS. MARLYN ESPINOSA, an employee of the Department of Social Welfare and Development (DSWD) in Sorsogon, was instrumental in the arrest of the accused. She learned about the sexual abuse in the Aparejado household when Violeta Aparejado, one of her wards under the protective custody of the DSWD, revealed to her that she was molested by her father, accused Francisco Aparejado, at the age of fourteen while living under his care. Violeta also informed her that she has two (2) younger sisters, Gina and Evelyn, who were still living with the accused. She expressed her apprehension that her siblings might be suffering the same fate in the hands of the accused.

Marlyn conducted a social investigation at Brgy. Igang, Masbate, Masbate – the last known address of the Aparejados. Collateral information gathered from the neighbors of the Aparejados revealed that Gina was likewise being sexually abused by the accused and that the family has transferred their residence to Brgy. Buri, Mandaon, Masbate.

To verify the information she received, Marlyn, together with Violeta, proceeded to the 504th PNP CIC at Camp Bony Serrano, Masbate, on February 22, 1996. They sought the assistance of SPO1 AMABLE EQUIZA in the follow-up investigation of the case. SPO1 Equiza immediately took action. He took the statement of Violeta at the police station. He inquired from Violeta how many times the accused violated her. Violeta replied that she could no longer recall because the accused would rape her everytime her mother and siblings were not in the house. She said that the sexual assaults stopped only when she ran away from their house. She stayed for a while in the house of a certain Inday and later transferred to the DSWD in Masbate.

The revelations of Violeta triggered further police investigation. On February 24, 1996, SPO1 Equiza, Marlyn and Violeta located the house of the accused in Brgy. Buri, Mandaon, Masbate. SPO1 Equiza requested Marlyn and Violeta to go to the accused's house and talk to Gina first. He did not accompany the two as he was apprehensive that the accused might not allow them to talk to Gina. Moreover, his extensive experience in police work has taught him that a guilty suspect will try to escape at the sight of police authorities.

Marlyn and Violeta talked to Gina in private. Gina, the nine-year old unschooled sister of Violeta, confirmed that she has been repeatedly abused by the accused. She has been abused by the accused even while they were residing in Brgy. Igang. She slept with the accused and her brothers at night. Her mother, Zenaida, has long left their house as she was constantly beaten up by the accused and has been residing in Manila. [4] Gina likewise revealed that a few days before, the accused sexually assaulted her in their house. He took off her panty and laid on top of her. He thrust his penis into her organ causing her intense pain. All she could do was weep. After the coitus, accused threatened her with harm should she tell anyone about the incident.

Marlyn and Violeta reported to SPO1 Equiza about Gina's revelations. SPO1 Equiza accompanied Marlyn and Violeta back to accused's house but did not identify himself as a police officer. Violeta then asked accused's permission if they could bring Gina to the poblacion, in Mandaon, on the pretext that she would buy Gina a dress. The accused acceded. When they arrived in Mandaon, SPO1 Equiza had Gina's complaint

for rape recorded in the police blotter. SPO1 Equiza then conducted a preliminary investigation where Gina personally affirmed in writing the sexual abuse she suffered in the hands of the accused a few days earlier. Thereafter, SPO1 Equiza, Marlyn and Violeta accompanied Gina to Dr. Luis Aguirre, Municipal Health Officer of Mandaon, for medical examination.^[5] The examination revealed that Gina's hymen suffered multiple, healed lacerations. Her organ also admitted easily the introduction of fingers. Microscopic examination of her vagina likewise showed the presence of dead spermatozoa which proved not only penile penetration of Gina's organ but also the ejaculation by a male organ.^[6]

On the basis of the result of the medical examination and the sworn statements of Gina, Marlyn and Violeta, the police officers assisted Gina in filing a criminal complaint for rape against the accused at the Municipal Circuit Trial Court (MCTC) of Mandaon. Subsequently, police authorities arrested the accused by virtue of the warrant of arrest issued by MCTC Judge Silvestre Aguirre.

Months later, upon the request of Prosecutor Ontog, the police officers took an additional sworn statement from Gina who was unschooled and did not know how to tell the date and time. The additional statement was needed to fix the nearest approximate date of the crime and to enable the prosecutor to amend the original Information. From the statement of Gina, the police authorities placed the date of the crime on the fourth week of February, 1996. Gina recounted that she was last molested by the accused a few days before Marlyn came to their house on February 26, 1996. The latter date was established in the sworn statements of Marlyn and SPO1 Equiza.^[7]

After the prosecution formally offered its evidence and rested its case, accused's counsel requested the trial court for the suspension of the proceedings as he would file a motion to have the accused undergo a mental examination. The trial court gave accused's counsel ten (10) days within which to file his motion in writing. The same period was granted to the prosecutor to comment on the motion.

In his motion,^[8] dated September 26, 1997, accused's counsel formally requested the court to commission a government physician to conduct a mental examination of the accused on the ground that the accused was suffering from a mental disorder.

The prosecutor opposed^[9] the motion. He charged that the motion was purely dilatory and highly suspect for two (2) reasons: first, accused's counsel claimed mental disorder on the part of the accused only after the prosecution rested its case; second, the accused did not exhibit any unusual behavior during the trial as to suspect that he was mentally unstable.

In its Order, dated October 27, 1997, the trial court denied for the time being the motion for mental examination as no scintilla of evidence was presented by the defense counsel in support thereof. However, the trial court assured the defense that should it find, during the presentation of the accused's evidence, that the accused is suffering from mental disorder, it would motu proprio order the mental examination of accused.^[10]

Several settings were made for the presentation of accused's evidence but they were all cancelled. Finally, in the May 13, 1999 hearing, accused's counsel manifested that he would not present evidence for the accused. Instead, he requested for fifteen (15) days within which to submit a pleading that would acquit