

## EN BANC

[ G.R. No. 131475-76, October 14, 2002 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARCELO CALISO,  
APPELLANT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

For twice raping his teen-aged daughter, Marcelo Caliso, appellant, was sentenced to suffer the penalties of death in Criminal Case No. 717 and *reclusion perpetua* in Criminal Case No. 716 by the Regional Trial Court (RTC), Branch 46, Larena, Siquijor in a joint Decision dated September 10, 1997.

Hence this automatic review.

On September 13, 1994, two separate informations were filed with the said RTC charging Marcelo Caliso with rape, committed as follows:

#### Criminal Case No. 716

"That on or about the second week of July 1993 at 12:00 o'clock noon, at *barangay* Campalasanan, Municipality of Lazi, Siquijor, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there by means of deceit, force, violence and intimidation, willfully, unlawfully and feloniously succeeded in having carnal knowledge with Joyce C. Caliso, his daughter, against her will."<sup>[1]</sup>

#### Criminal Case No. 717

"That on or about the 15th day of February 1994 at 12:00 o'clock noon, at *barangay* Campalasanan, Municipality of Lazi, Siquijor, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there by means of deceit, force, violence and intimidation, willfully, unlawfully and feloniously succeeded in having carnal knowledge with Joyce C. Caliso, his daughter, against her will."<sup>[2]</sup>

Upon arraignment, appellant Caliso pleaded not guilty to the crimes charged.<sup>[3]</sup> Thereafter, joint trial ensued.

The evidence adduced by the prosecution shows that Joyce C. Caliso, born on January 19, 1979, is the third child of Francisca Catian Caliso and appellant Marcelo Caliso. Joyce lives with her parents and her siblings Aileen, Sherwin, Renee and Marcelo, Jr. in a one-storey house in Capalasanan, Lazi, Siquijor. They sleep in the living room.<sup>[4]</sup> Appellant works on a farm half a kilometer away from their house.

Sometime in the second week of July 1993, appellant and Joyce, then 14 years old, were alone in their house. Her mother, Francisca, and sister Aileen were in Manila.

Her brothers Sherwin and Renee went fishing, while Marcelo Jr., her youngest brother, was playing outside the house. At around 11:00 o'clock in the morning, Joyce, clad in a t-shirt and a skirt, was in the kitchen. Suddenly, appellant took a bolo and a *garote* from the kitchen, seized Joyce and pulled her to the living room where he aimed the bolo at her abdomen and ordered her not to shout. He pushed her to the floor and pulled her skirt. Frightened, she cried as he took off her panty and placed himself on top of her. He placed the *garote* on the floor beside him and then removed his shorts. At this moment, she described how she was ravished by appellant: "I felt something was inside my vagina, and my father kept on moving."<sup>[5]</sup> "It was painful below"<sup>[6]</sup> as "he took my womanhood."<sup>[7]</sup>

Afterwards, appellant stood and warned Joyce not to tell anybody what transpired, otherwise, he will kill her. She retrieved her underwear and continued crying. While walking towards the little storage room to change her underwear, she noticed fresh blood in her private part. When her brother Sherwin arrived in the afternoon, she refrained from mentioning anything about the incident.<sup>[8]</sup>

Subsequently, appellant ravished her again several times but she could no longer recall the exact dates.<sup>[9]</sup>

On February 15, 1994, at around 12:00 o'clock noon, appellant instructed her to accompany him to the well in order to fetch water. On their way, they passed by a hut in the farm. Suddenly, he pulled her inside the hut. She tried to resist but he threatened to kill her. Thereupon, he forcibly pushed her to the floor, causing her to fall on her back. She helplessly watched him as he unsheathed a bolo from his waist. Then he aimed it at her stomach and removed her skirt and panty. He then took off his shorts and brief with one hand, while pointing the bolo at her with the other hand. Next, he placed himself on top of her, making push and pull movements. She kept on crying.<sup>[10]</sup> After satisfying himself, appellant warned her not to tell her brothers and sisters.

Minutes later, Joyce fetched water from the well, while appellant remained inside the hut. Then she proceeded directly to their house and told her mother Francisca, sister Aileen and brother Sherwin about her harrowing experience. Her mother wept and said nothing. Incidentally, Aileen disclosed that she had also been molested by her father.<sup>[11]</sup>

On February 20, 1994, at around 5:00 o'clock in the afternoon, Joyce, Aileen and Sherwin fled from their house as their father was tending the farm. They went to the residence of their mother's sister, Lourdes Catian Lomongo, in Poblacion, Maria, Siquijor and informed her about appellant's sexual offenses. She advised them to institute rape charges against him, which Joyce did.<sup>[12]</sup>

Joyce submitted herself for physical examination by Dr. Evelyn Cortes-Retana of the Siquijor Provincial Hospital. The doctor revealed that Joyce had "healed lacerations of the hymen at 6:00 o'clock position" and that there was "ease" when two (2) fingers were inserted through her vagina.<sup>[13]</sup>

The defense, on the other hand, presented the lone testimony of appellant. He denied raping his daughter Joyce. He recounted several incidents portraying her as a liar and a girl of ill temperament and loose morals, thus:<sup>[14]</sup>

1. In April, 1993, Joyce asked permission from her parents to attend a dance party at Cangaya, Lazi, Siquijor. Her parents consented. She returned home past 10:00 o'clock in the evening, telling her mother that there is a man following her and that he loves her.
2. On May 11, 1993, Joyce again went to a dance party at Cangaya, Lazi and returned home at around 11:30 in the morning of the next day. Instead of scolding her, appellant merely expressed relief that she passed the night at Boyong. Appellant was apprehensive she might encounter drunk people on her way home.
3. On May 24, 1993, Joyce attended another dance party with her father's consent. She came home at dawn of the next day. She told him that she actually arrived early in the morning but had lost her way because she had to go back and forth looking for her handkerchief. He told her to go to sleep, assuring her that he will search for the handkerchief himself. And so he did. Along the way, he noticed a white cloth on the grass and took it. To his surprise, it was Joyce's panty with her name on it. Upon his instruction, his wife confronted Joyce about that underwear, and the latter cried. When he confronted her, she merely said that "he need not worry because she is already big" and that "he cannot interfere with whomever she loves." In the afternoon of that day, he went inside their hut in the farm to rest. Suddenly, he felt someone about to strike him with a hammer. He woke up in time to parry Joyce's blow, losing his two teeth in the process and breaking a third one. Although he was angry, he did not punish Joyce as it was not his nature to do so.
4. On July 12, 1993, Joyce's younger sister Renee said that she does not want to be like her older sister who attends fiestas and dances, does not come home early and leaves her panty along the road. Angered by such remark, Joyce tried to strike Renee with a knife. Appellant was able to parry Joyce's thrust, but he was hit on his knee.
5. On February 11, 1994, Joyce's youngest brother Marcelo, Jr. spilled a plate of rootcrop. Joyce became furious and immediately struck him with a knife. Again, appellant was able to parry the blow with his foot but he sustained an injury on his lower leg.

Appellant further testified that he "cannot afford to take a bath with his own blood."

[15] He surmised that Joyce filed the rape charges against him because he refused to grant her request to sell their house and lot so the family could engage in business. He rejected her request because the tax declaration of the property is not in his name and that he cannot sell the property without the consent of his brothers and sisters. [16]

Francisca Caliso, Joyce's mother, refuted appellant's testimony, describing his story as pure lie. The truth is her husband often maltreated her and their children. He always carries a bolo wherever he goes. Contrary to his claim that Joyce hit him with a hammer causing his teeth to fall, Francisca declared that he actually had bad teeth which he himself pulled. She also stressed that Joyce loves her younger brother Junior so much that she will never harm him as claimed by appellant. Moreover, in controverting her husband's testimony that Joyce filed the rape charges

because of his refusal to sell the house and lot, Francisca declared that he does not own any property.<sup>[17]</sup>

On September 10, 1997, the trial court rendered judgment,<sup>[18]</sup> the dispositive portion of which reads:

"WHEREFORE, finding the accused MARCELO CALISO guilty beyond reasonable doubt of two (2) counts of Rape, he is hereby sentenced to suffer the following penalties:

a) **Reclusion perpetua** or imprisonment for a minimum period of Thirty (30) Years in Criminal Case No. 716;

b) **Death penalty** in Criminal Case No. 717 as mandated under Section 11 of Republic Act No. 7659; and

c) To indemnify the offended party, Joyce Caliso, the amount of Fifty Thousand Pesos (P50,000.00) in each case or One Hundred Thousand Pesos (P100,000.00) in all by way of moral damages, and the amount of Twenty Five Thousand Pesos (P25,000.00) in each case or a total of Fifty Thousand Pesos (P50,000.00) by way of exemplary damages but without subsidiary imprisonment in case of insolvency.

"The Clerk of Court is hereby directed to transmit the complete records of these cases to the Honorable Supreme Court within fifteen (15) days from today for automatic review, the same being a capital offense.

"SO ORDERED."

Appellant Marcelo Caliso ascribes to the court below this lone error:

"THE TRIAL COURT MANIFESTLY ERRED IN CONVICTING ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."<sup>[19]</sup>

Article 335 of the Revised Penal Code provides that a person commits rape by having carnal knowledge of a woman under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented.

By its very nature, rape is normally committed away from public view and without witnesses around save the perpetrator and the victim themselves.<sup>[20]</sup> Thus, the lone testimony of a rape victim, by itself, is sufficient to warrant a judgment of conviction if found to be credible.<sup>[21]</sup> A person accused of a crime may be convicted, not on the number of witnesses against him, but on the credibility of even one witness who is able to prove his guilt beyond a shadow of doubt.<sup>[22]</sup>

In the present case, appellant contends that Joyce's testimony is not credible. While she testified that he raped her in September 1993, she later claimed that it took place in July 1993.