

EN BANC

[G.R. Nos. 137766-67, November 27, 2002]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ILADIO
CARALIPIO, APPELLANT.**

DECISION

PANGANIBAN, J.:

Once again, the Court is faced with a death penalty improvidently imposed by the trial court, because of its utter failure to apply the well-settled rule that in prosecutions for incestuous rapes, the minority of the victim must not only be alleged in the information but also be proven beyond reasonable doubt. Thus, this Court again exhorts trial judges to be more careful and prudent in imposing the death sentence.

The Case

For automatic review before this Court is the January 21, 1999 Decision^[1] of the Regional Trial Court (RTC) of Bauang, La Union (Branch 67) in Criminal Cases Nos. 2030 and 2031, convicting Iladio Caralipio of two (2) counts of qualified rape and imposing upon him the penalty of death. The dispositive portion of the appealed Decision reads as follows:

"WHEREFORE, judgment is hereby rendered finding the accused ILADIO CARILIPIO guilty beyond reasonable doubt of the crime of RAPE as charged in both Information (Criminal Cases Nos. 2030 and 2031), aggravated by the fact that the same was committed by the accused who is the father of the complainant, he is hereby sentenced to suffer the supreme penalty of DEATH in each count, as provided for under R.A. No. 7659; to pay the complainant Salome Caralipio the sum of P100,000.00 as damages, plus all the accessory penalties provided by law, without subsidiary imprisonment in case of insolvency and to pay the cost.

SO ORDERED."^[2]

In two (2) separate Informations both dated August 6, 1997, appellant was accused of raping his daughter as follows:

Criminal Case No. 2030

"That sometime in the middle part of the year 1995, in the Municipality of Bauang, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter SALOME C. CARALIPIO then 13 years old, against the latter's will and consent, to the damage and prejudice of said offended party."^[3]

"That on or about the 15th day of March 1997, in the Municipality of Bauang, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter, SALOME C. CARALIPIO, sixteen (16) years old, against the latter's will and consent, to the damage and prejudice of said offended party."^[4]

During his arraignment on May 13, 1998, appellant, with the assistance of his counsel *de officio*,^[5] pled not guilty. After trial on the merits, the RTC rendered the assailed Decision.

The Facts

Version of the prosecution

The Office of the Solicitor General (OSG) narrated the alleged sexual transgressions against the victim as follows:

"A. The rape in the night of May 1995:

"1. Complainant Salome Caralipio, then fourteen years old, lived in a small hut in a mountainous area located at Barangay Guerrero, Bauang, La Union. She lived with her parents, appellant Iladio Caralipio and Estrellita Caralipio, and her three younger brothers. At night, it was customary for them to sleep in a row side by side, thus: appellant placed himself at one end of the row, beside him was his wife Estrellita, then Salome's youngest brother, Salome herself, and next to her, her two other brothers."

"2. Sometime in the month of May 1995, the sleeping arrangement was altered. Though the family members continued to sleep beside each other, Salome no longer slept between her brothers but found herself occupying the space at the other end of the row previously occupied by her two brothers. The new sleeping arrangement was as follows: appellant occupied one end of the row, then his wife Estrellita, Salome's three brothers, and, on the other end, Salome herself.

"3. One night in May 1995, Salome was roused from sleep as her body was aching. Upon opening her eyes, she saw her father, appellant Iladio Caralipio, lying beside her. He was totally naked and, with a bolo poked at Salome, was mashing her. Salome saw that she was no longer wearing her panty and, upon touching her sex organ, found it was bloodied.

"4. While appellant continuously mashed Salome, the latter cried. Her mother Estrellita heard her cries and asked her why he was crying. Appellant replied that he had kicked Salome. Apparently satisfied by appellant's answer, Estrellita went back to sleep. He threatened Salome that he will kill her, her mother and her siblings if she did not keep silent about the whole incident. Salome, terrified by her father's threats, did not report the sexual abuse.

"5. The following day, Salome was again abused by appellant. Estrellita was not in the hut at the time because she was ordered by appellant to sleep in the house of Salome's grandmother. The sexual abuse continued for some time, especially during those times when Estrellita was in Manila to take care of her grandchildren. On several occasions, appellant made Salome drink 'cortal and bitter medicines' because he did not want her to get pregnant.

"B. The rape of March 15, 1997:

"1. In March 1997, Salome's older sister Veronica, who had been working and living in Manila since 1995, was staying in her parents' hut at Barangay Guerrero, Bauang, La Union. She came home as she had completed her employment contract in Manila as an electronic production operator and she had to accompany her nephew to Bauang. Moreover, she had to attend Salome's graduation from high school.

"2. On the night of March 14, 1997, Veronica, Salome, their three brothers, and Veronica's niece and nephew slept side by side. Appellant slept in the kitchen which was adjacent to the sleeping area. At around two o'clock in the early morning of March 15, 1997, Salome was awakened when she felt a bolo poked at her neck. It was appellant. He told her to keep quiet or he would kill her. Appellant removed Salome's panty and then took off his brief. Appellant inserted his penis into her vagina. While he was inside her, appellant made 'pumping' movements, mashed and kissed Salome's breasts and kissed her on the lips and neck. Salome felt excruciating pain in her vagina and breasts. Salome cried.

"3. All the while, Veronica was awake because she could not sleep and, at about two o'clock in the morning, she saw appellant taking off his pants and shirt in the kitchen. Then, she saw him focus a flashlight on them. Appellant went near Salome, took off her panty and mounted her. Veronica closed her eyes. She felt something moving at her right side and heard Salome crying. She felt Salome kick her but Veronica did not help her sister. Veronica cried helplessly. Ten minutes later, she fell asleep.

"4. Veronica spoke to Salome about what appellant did. Salome admitted to Veronica that appellant had been sexually abusing her. Veronica went back to Manila to report everything to their mother. After Salome's graduation on April 2, 1997, they reported the incident to the police.

"5. Salome was examined by Dr. Parado, the Municipal Health Officer of Bauang, La Union. Dr. Parado found that Salome's vagina had old healed lacerations at the three o'clock and six o'clock positions and that Salome was no longer a virgin. He testified that said lacerations could have been caused by a blunt instrument like an erect penis."^[6] (Citations omitted)

Version of the Defense

For his part, appellant wrote his version of the facts in this manner:

"The accused denied the accusations against him and claimed that he could not have raped his daughter since he was no longer capable of

erection as a result of the medications he was taking for his tuberculosis. At the time he was arrested until five months thereafter, he did not fully understand the accusations and charges against him since these were not explained to him by his counsel. It was also the tenor of his testimony that he was not allowed to have a counsel of his own choice in violation of his constitutional rights. Finally, Iladio alleged that the false accusations filed against him could ha[ve] been instigated by his in-laws and may ha[ve] been motivated by the desire of his family to get back at him for having hurt them on certain occasions.

"The second witness for the defense was Dr. Emilio Figueroa who testified that his physical examinations of the accused's genitals revealed that it was normal but recommended further tests which were not conducted."

[7] (Citations omitted)

Ruling of the Trial Court

The trial court believed the testimony of the victim and ruled that "the evidence of the prosecution invites acceptance and credence. The records furnish no indication which would justify a contrary reception. The demeanor of the victim and her witnesses exhibited adherence to the truth even under the searching examination of the counsel for the defense. x x x." It added "that the testimony of a rape victim is credible where she has no [improper] motive to testify against the accused."

Further, it observed that "the testimony of the accused suffer[s] from suspicions and doubts as to probability and probity. Apparently, as a last glimpse of hope to save himself, accused claims that he [was] incapable of erection at the time of the alleged commission of th[ose] incestuous acts. The physical examination conducted by the doctors of the Ilocos Regional and Medical Center belies this allegation. His wife['s] testimony on rebuttal clearly convinced the [c]ourt that definitely this claim of impotency belied his pretenses of sainthood. His demeanor and actuation at the start of the trial of these cases up to its termination was clearly observed by the [c]ourt. It deserves no credence and credibility." [8]

Hence, this automatic review. [9]

The Issues

Appellant submits the following assignment of errors for the consideration of this Court:

"I

The court *a quo* erred in convicting the accused notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt.

"II

The court *a quo* erred in giving credence to the incredulous and unbelievable testimony of the alleged victim.

"III

The court *a quo* erred in not allowing the accused an opportunity of availing a counsel of his own choice.

The court *a quo* erred in convicting the accused in Criminal Case No. 2030 notwithstanding the failure of the prosecution to allege the approximate date of the rape.”^[10]

In fine, the alleged errors may be classified into three: (1) sufficiency of the prosecution’s evidence, (2) violation of the right of appellant to choose his own counsel, and (3) failure to allege the exact date of the rape. The fourth issue that shall be discussed by this court *motu proprio* is the propriety of the penalty imposed.

The Court’s Ruling

The appeal is partly meritorious.

First Issue:

Sufficiency of the Prosecution’s Evidence

The First Rape Charge **(Crim. Case No. 2030)**

Appellant argues that the prosecution failed to prove the act of sexual intercourse insofar as the first charge is concerned (Crim. Case No. 2030). He maintains that the victim could not have possibly known what was actually done to her, considering that she was asleep at the time of the alleged rape incident. If at all, her testimony merely established that appellant had mashed her body and nothing more.

We agree. The testimony of complainant with respect to the May 1995 charge was insufficient to establish beyond reasonable doubt any actual sexual intercourse. She testified that when she woke up, her father was already mashing her breasts, and her vagina was bloodied and aching. She suspected that he had had carnal knowledge of her. However, she could not have known for sure if he had raped her because, by her own testimony, she was not awake at the time of the alleged sexual defilement. She testified as follows:

“Q: Now, that night of May, 1995, while you were sleeping, will you please tell the Court if there was unusual incident that happened?

A: I was sleeping then I woke up because I felt pain over my body then I found out that my father was lying beside me.

Q: What else did you notice?

A: I noticed that I have no more panty and when I touched my vagina I found out there was blood.

Q: Now, you said that your father was beside you. When you were awoken[ed], will you please tell the Court what was your father doing?

A: He was mashing my body, sir.