

EN BANC

[G.R. No. 146468, November 13, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROQUE ABELLANO, ACCUSED-APPELLANT.

D E C I S I O N

Per Curiam:

Roque Abellano was charged with the rape of his minor daughter, Analyn, in an Information that reads as follows:

"That sometime in the month of September, 1998, at nighttime, at Sitio Inangmaharang, Barangay Nagotgot, Municipality of Manito, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own daughter, Analyn Abellano, 14 years of age, against her will and consent to her damage and prejudice."^[1]

The prosecution's evidence^[2] shows that one night in September 1998, inside appellant's house at Sitio Inangmaharang, Barangay Nagotgot, Manito, Albay, Analyn Abellano, the fourteen (14) year old daughter of appellant,^[3] while sleeping beside her two younger sisters, was rudely awakened when she felt the hands of somebody removing her shorts. By the light coming from a kerosene lamp inside the room, she saw that it was her father removing her shorts. Analyn tried to repulse his advances by boxing, elbowing and kicking him. But he subdued her resistance as he was strong and threatened to kill her. He fondled her breast and kissed her. Appellant then shed his short pants, laid on top of her and forced his erect penis inside her vagina. After gratifying his lust, appellant again threatened to kill Analyn if she would report the matter to anybody. Analyn was subjected to the same sex ordeal "almost every night" for the month of September 1998.^[4] She was able to summon the courage to reveal the rapes to her older sister sometime in October or November 1998.^[5]

Dra. Lily Melrose P. Camara (medico-legal officer) physically examined Analyn. The test results showed that: "The external vagina orifice offers no resistance. The orifice refers to the outer part of the vaginal canal. No resistance was observed, meaning when I inserted my index finger [these was] hardly no resistance. It was easy to insert my index finger and virgin sized vaginal speculum. (sic) x x x."^[6]

The defense evidence came from the lone testimony of the appellant Roque Abellano, 55 years old, widower, farmer and a resident of Inangmaharang, Manito, Albay. He only finished Grade 2 and does not know how to read but can sign his name. His wife died eight (8) years ago. He has seven (7) children, Analyn being the

fifth. Analyn, her older brother Arnulfo, and her two other younger sisters lived with him in their house at Inangmaharang. He was the one supporting them. The appellant admitted living with Analyn and her two other younger sisters the whole month of September, 1998 at their house at Inangmaharang. He denied that he raped Analyn at nighttime in September of 1998. He could not offer any explanation why Analyn charged him with rape.^[7] He said he was not cruel to her but kind and loving.^[8]

The trial court convicted the accused and imposed on him the death penalty, viz:

“WHEREFORE, premises considered, judgment is hereby rendered sentencing the accused to suffer the extreme penalty of death. Having committed the crime with graver perversity, he is hereby ordered to indemnify the minor victim the amount of P75,000.00 pursuant to recent jurisprudence; to pay the amount of P50,000.00 for moral damages for the trauma and mental sufferings undergone by the minor victim and to pay the minor victim the additional amount of P20,000.00 representing exemplary damages, to serve as an example for the public good.”^[9]

Thus, this automatic review. In his Appellant’s Brief, appellant posits only one assignment of error, to wit:

“THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.”

In support of said assignment of error, appellant ^[1] points to contradictions in the testimony of Analyn, ^[2] bewails her long delay in reporting the rape case, and ^[3] demands that the rape victim must show that she has been “bodily violated, forcibly and against her will, and has brought the matter to the authorities out of righteous indignation.”^[10]

We affirm the conviction.

I

More specifically, appellant contends that Analyn gave two (2) different versions of the distance between her and her two (2) younger sisters while she was being raped. In her direct examination, she said her sisters were beside her; on clarificatory question by the trial judge, she answered that her sisters “were quite far ...” hence, she could not elbow them to call their attention when she was being raped.

Appellant is clutching at straws. The answer of Analyn that her two sisters “were quite far from her” should be understood in its proper context. She gave that distance to explain why she could not elbow her sisters to awaken them while she was being sexually assaulted by the appellant. Hence, “quite far from her” means they were not within the reach of her elbow and that is not inconsistent with her prior answer that her sisters slept beside her. Moreover, the exact distance between Analyn and her sisters is trivial and will not disprove the charge of rape committed by the appellant.

II

Appellant also argues that the long delay in reporting the rape should have created a doubt on the credibility of Analyn. He contends that Analyn was not always under his watchful eyes as she went to school everyday. Allegedly, she should have informed her brothers and sisters earlier about the rapes.

We are not persuaded. The one or two-month delay^[11] by Analyn in reporting the rapes should not be taken against her. She testified that her father threatened to kill her everytime she was abused.^[12] Beyond doubt, the threats compelled her silence. She was only fourteen (14) years old and without any protection from the appellant. She lived in the house of appellant with neighbors at a far distance.^[13] Her fear is understandable.

III

Appellant further argues that "because of the horrendous nature of the charge of rape, the victim must show that indeed she has been bodily violated, forcibly and against her will, and has brought the matter to the authorities out of righteous indignation."^[14]

Again, we reject this contention. In a rape committed by a father against his own daughter, the former's moral ascendancy over the latter substitutes for violence or intimidation.^[15] In truth, appellant used violence and intimidation to deflower Analyn. Analyn boxed, kicked and elbowed him to frustrate his assault.^[16] He threatened to kill her.^[17] She failed to stop his advances due to his strength. He was a farmer,^[18] too strong for a 14 year old girl. The report of Dra. Lily Camara, medico-legal officer, confirms the violation of Analyn's virginity.^[19]

IV

Appellant merely denied that he raped his daughter.^[20] Allegedly, he was very kind and loving to her.^[21] Hence, he could not explain why she charged him with rape.^[22]

It is hornbook doctrine that the positive and categorical testimony of a rape victim-daughter, identifying her own father as the one who sexually attacked her, prevails over his bare denial.^[23] No daughter will charge a father, especially a good father, with rape. The charge is not only embarrassing to the victim and the family. It means death to the head of the family. A father so charged cannot exculpate himself by a bare-bone denial.

V

The crime for which appellant was convicted in the trial court is rape, defined in its pertinent portions in Articles 266-A and 266-B, Revised Penal Code, as amended, thus:^[24]

"ART. 266-A. Rape; when and how committed. -Rape is committed.

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

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