

EN BANC

[G.R. No. 127904, December 05, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ESTEBAN VICTOR Y PENIS, ACCUSED-APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

This is an automatic review of the Decision^[1] of Branch 95 of the Regional Trial Court, Quezon City, finding accused-appellant Esteban Victor y Penis guilty beyond reasonable doubt of qualified rape in Criminal Case No. Q-96-67322 and sentencing him to suffer the penalty of death and to pay private complainant Marilyn Corpuz Villanueva the amount of P50,000.00 for moral damages; and of acts of lasciviousness in Criminal Case No. Q-96-67323 and sentencing him to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional* in its minimum period, as minimum, to four (4) years and two (2) months of *prision correccional* in its medium period, as maximum, and to pay the offended party the amount of P120,000.00 for moral damages.

The criminal complaint for qualified rape filed against accused-appellant, docketed as Criminal Case No. Q-96-67322 alleges that:

The undersigned accuses ESTEBAN VICTOR y PENIS, STEP-FATHER, of the crime of Rape, committed as follows:

That sometime in May 1996 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undress said Marilyn Villanueva, a minor, 13 years old, *step-daughter*; and put himself on top of her, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.^[2]

The criminal complaint for acts of lasciviousness filed against accused-appellant, docketed as Criminal Case No. Q-96-67323 alleges that:

The undersigned accuses ESTEBAN VICTOR y PENIS, STEP-FATHER, of the crime of ACTS OF LASCIVIOUSNESS, committed as follows:

That on or about the 5th day of August 1996 in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the undersigned complainant, a minor, 13 years of age, *step-daughter*; by then and there mashing (sic) her private parts, with lewd design and against her will.

CONTRARY TO LAW.^[3]

At the arraignment, accused-appellant with the assistance of a counsel *de parte*, entered a plea of not guilty. The cases having been consolidated, joint trial thereupon ensued.

The prosecution presented two (2) witnesses: private complainant Marilyn Villanueva and Dr. Rosaline O. Cosidon, the Medico-Legal Officer of the PNP Central Crime Laboratory of Quezon City.

Marilyn testified that she was 13 years old at the time she was raped by accused-appellant. She further stated that accused-appellant was jobless; worse, he was usually drunk. He eked a living as a scavenger. He and her mother, Julieta Corpuz, lived together as husband and wife in a house constructed on a lot located at Phase IV, Urban Poor, Payatas, Quezon City owned by Pinong dela Cruz. The couple had no children of their own. However, she and her sister Rachel, being Julieta's daughters by Rodrigo Villanueva, from whom Julieta was separated, and Jovet, accused-appellant's son by another woman, lived with accused-appellant and Julieta. The latter oftentimes maltreated her. Although Marilyn considered accused-appellant as her stepfather, she called him "*Kuya*."

In May 1996, while Julieta was out of the house, accused-appellant, armed with a knife, gained entry into Marilyn's room,^[4] pointed his knife at her and warned her not to shout or run; otherwise, he would run after her. Petrified, Marilyn just stayed put. Accused-appellant then took off Marilyn's clothes and immediately removed his clothes. He then pinned Marilyn to the floor and placed himself on top of her. Accused-appellant held her legs, spread them apart, inserted his penis into Marilyn's genitalia and proceeded to make the pumping motions of the sexual act.^[5] He kissed Marilyn on her lips and mashed her breasts as he ravished her. Marilyn felt an excruciating pain on her genitalia and pushed accused-appellant back, but to no avail.^[6] She begged for mercy and said "*Kuya huwag po, masama yan*" (please don't do it, it's bad) but her entreaties fell on deaf ears. Satiated, accused-appellant dismounted but warned Marilyn not to tell a word about the incident or else he would kill her.^[7] Afraid that accused-appellant would make good his threats, not to mention his invariable presence in the house since he was a boozier and jobless, Marilyn kept her silence.

Marilyn's ordeal, however, was not the last. Accused-appellant continued to torment her day by day by persistently kissing her and touching her private parts. All she could do was cry and suffer in silence. To avoid further encounters with accused-appellant, Marilyn resorted to frequenting the back of their house and staying thereat for hours just sitting.^[8] Marilyn later mustered enough courage to tell her mother that she had been sexually abused and subjected to lascivious acts by accused-appellant. Instead of helping her daughter, Julieta simply told Marilyn to avoid her *Kuya* Esteban.^[9] Marilyn was flabbergasted.

On August 5, 1996, at about 11:00 a.m., accused-appellant and Marilyn were alone in the house. Accused-appellant again touched Marilyn's private parts, kissed her on the lips, smashed her breasts, and touched her thighs and legs.^[10] Marilyn recoiled with anguish as accused-appellant abused her. Unable to bear accused-appellant's satyric acts, Marilyn ran away from home and went to her sister Raquel, who was then working as housemaid of a certain Pinong dela Cruz.^[11] Marilyn related to him her traumatic ordeals at the hands of accused-appellant. Dela Cruz took pity on Marilyn and accompanied her to the police station where she reported accused-

appellant's sexual assault and lascivious acts on her.^[12] It turned out that accused-appellant himself abused not only Marilyn but Raquel as well.

On August 7, 1996, Marilyn, assisted by Remedios Jasmin and Hope Bernardes of the Department of Social Welfare and Development (DSWD), executed an Affidavit-Complaint^[13] before SPO1 Nido Gevero of the Central Police District Command, Quezon City, narrating her ordeals at the hands of accused-appellant. She likewise declared in said affidavit-complaint that she was 13 years old.

Dr. Rosaline O. Cosidon, the Medico-Legal Officer of the Central Crime Laboratory of the Northern Police District Command in Quezon City, testified that on August 6, 1996, she conducted a genitalia examination on Marilyn and that she prepared and signed Medico-Legal Report No. 1178-96 containing her findings on said examination, thus:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with dark brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is absence of growth of pubic hair. Labia majora are full, convex and gaping with the pinkish brown labia minora presenting in between. On separating the same, disclosed an elastic, fleshy-type hymen with deep, healed laceration at 3 o'clock position and shallow healed laceration at 5 and 7 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma at the time of examination.

Vaginal and peri-urethral smears are negative for gram-negative diplococci and spermatozoa.

She further testified that the deep healed lacerations in the hymenal area could have been caused by a blunt instrument such as an erect hard penis.

The prosecution and accused-appellant stipulated in open court that Marilyn was 13 years old when the offenses were committed and on the basis of said stipulation, the Court dispensed with the presentation by the prosecution of her birth certificate.

Accused-appellant testified in his behalf. He denied having raped Marilyn, and by way of avoidance, testified that he and Julieta Corpuz were married; that she had three daughters by another man, namely Marife, 21 years old, Raquel, 17 years old and Marilyn, 13 years old; and that in May 1996, and even before that, Marilyn and her other sisters were staying in the house of their aunt in Valenzuela, Metro Manila because of their studies.^[14] He averred that there was no occasion in the past that

Marilyn ever visited him and Julieta in their house at Payatas as Marilyn was so busy attending to her summer classes as a Grade 1 pupil at the public school in Valenzuela.^[15] He could not have abused Marilyn because he considered and treated her as a stepdaughter.^[16] He insisted that he loved her only as a stepdaughter and even gave financial support for her education.^[17] He also claimed that his relationship with his stepdaughters, especially Marilyn, was good.^[18] He denied having subjected Marilyn to acts of lasciviousness and averred that he could not have perpetrated the same because Marilyn was residing with her sister Raquel, who was employed in Quezon City.^[19] As to why Marilyn filed the charges against him, accused-appellant explained that this was Marilyn's way of getting back at him for scolding her in the past for arriving home very late at night.^[20] He further testified that Marilyn was no longer a virgin because she was raped in 1995 by a certain Mon Oliva, a third cousin of his mother.^[21] Accused-appellant undertook to adduce in evidence his marriage contract with Julieta Corpuz but never did.

In due course, the trial court rendered a joint decision^[22] finding accused-appellant guilty as charged. The dispositive portion of the decision reads:

WHEREFORE, judgment is rendered in the following:

1. In Crim. Case No. Q-96-67322, the Court finds the accused, Esteban Victor y Penis, GUILTY beyond reasonable doubt of the crime of rape, defined in and penalized by Article 335 of the Revised Penal Code, as amended, and hereby sentences the said accused to suffer the penalty of DEATH. The accused is further ordered to indemnify Marilyn Villanueva the amount of P50,000.00, as moral damages; and 2. In Crim. Case No. Q-96-67323, the Court finds the accused, Esteban Victor y Penis, GUILTY beyond reasonable doubt of the crime of acts of lasciviousness, defined in and penalized by Article 336 of the Revised Penal Code and hereby sentences the said accused to suffer the indeterminate penalty of from six (6) months and one (1) day of prision correccional minimum, as the minimum penalty to four (4) years and two (2) months of prision correccional medium, as the maximum penalty. The accused is further ordered to pay Marilyn Villanueva the amount of P20,000.00, as moral damages.

The accused is ordered to pay the costs.

SO ORDERED.^[23]

The trial court imposed the death penalty on accused-appellant for the crime of rape in its qualified form on its finding that he was the stepfather of Marilyn, or the common-law husband of her mother, Julieta Corpuz.

In his Brief, accused-appellant contends that:

Re: Criminal Case No. Q-96-67322

I

THE TRIAL COURT ERRED IN IMPOSING THE EXTREME PENALTY OF DEATH DESPITE THE FACT THAT THE RELATIONSHIP OF THE ACCUSED

AND THE NATURAL MOTHER OF PRIVATE COMPLAINANT WAS NOT PROVED WITH CERTAINTY.^[24]

Accused-appellant avers that the trial court erred in imposing on him the death penalty on its finding that he was the stepfather of private complainant. He insists that the evidence on record shows that he and Julieta Corpuz, the natural mother of private complainant were merely live-in partners; they were not legally married. Accused-appellant points out that even the trial court found that he was merely the common-law husband of Julieta Corpuz. Even if he were the common-law husband of Julieta Corpuz, the death penalty could not have been lawfully imposed on him because what was alleged in the criminal complaint for rape as a special qualifying circumstance was that he was the stepfather of Marilyn Villanueva; however, the prosecution proved that he was merely the common-law husband of Julieta. Accused-appellant cites the decision of the Court in *People vs. Juan Manggasin*^[25] to fortify his contention. The Solicitor General, however, insists that the evidence on record shows that accused-appellant was the stepfather of private complainant. The Solicitor General points out that not only did private complainant declare that accused-appellant was her stepfather when she testified but accused-appellant also admitted in his testimony that he and Julieta Corpuz were married. Finally, the Solicitor General contends that accused-appellant cannot find solace in the decision of the Court in *People vs. Juan Manggasin*^[26] because the Court found and declared in said case that accused-appellant and the mother of the offended party were not legally married.

Article 335 of the Revised Penal Code, as amended by RA 7659, provides that the death penalty shall be imposed if the crime of rape is committed when the victim is under eighteen (18) years of age and the offender is a stepfather or the common-law spouse of the parent of the victim.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. xxx

The minority of the victim and her relationship to the offender is a special qualifying circumstance in the crime of rape and may raise the penalty for rape to the supreme penalty of death. Such circumstance must be alleged in the criminal complaint or information and proved conclusively and indubitably as the crime itself; otherwise, the crime shall be considered simple rape warranting the imposition of the lower penalty of *reclusion perpetua*.^[27]

In the case at bar, the criminal complaint in Criminal Case No. Q-86-67322 alleged the special qualifying circumstance of minority concurring with stepfather-stepdaughter relationship of accused-appellant and private complainant. It bears stressing that a stepfather-stepdaughter relationship presupposes a legitimate relationship - a valid marriage between the mother of private complainant and accused-appellant.^[28] And the best evidence to prove the marriage between accused-appellant and Julieta Corpuz, the mother of private complainant, is their marriage contract.^[29] However, the prosecution inexplicably failed to adduce in