

## EN BANC

[ G.R. Nos. 137185-86, February 15, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
SALVADOR MACAYA Y FRANCISCO, ACCUSED-APPELLANT.**

### DECISION

**BELLOSILLO, J.:**

SALVADOR MACAYA y Francisco was charged with rape on 8 August 1994 in separate Complaints before the Regional Trial Court of Las Piñas City committed against Mercelinda Palacio in 1990<sup>[1]</sup> and Angelica Palacio in June 1994.<sup>[2]</sup> Angelica is the younger sister of Mercelinda.

The trial court found the accused Salvador Macaya guilty as charged. In Crim. Case No. 94-5356 he was sentenced to suffer the penalty of *reclusion perpetua* and to pay his victim Mercelinda Palacio P100,000.00 as indemnity plus costs. In Crim. Case No. 94-5357 he was meted the supreme penalty of death and ordered to pay his victim Angelica Palacio P100,000.00 as indemnity plus costs.<sup>[3]</sup>

Salvador Macaya, a bet collector in cockfights, met Lourdes de Vera sometime in 1987 in a pub where she was working. At that time, Lourdes was already separated from her husband Ricardo Palacio with whom she has two (2) daughters, then 3-year old Mercelinda<sup>[4]</sup> and 1-year old Angelica<sup>[5]</sup> both of whom joined her when she moved in with Salvador at 419 Saging St., CAA, Las Piñas City. Thereafter, Lourdes begot two (2) daughters with Salvador. After some time, Lourdes resumed working in the pub thus leaving Salvador behind to take care of the children whenever she was out.

The sexual ordeal of Mercelinda Palacio started in 1990 when she was only six (6) years old. It happened whenever her mother was out working. Salvador would lie on his back and place Mercelinda on top of his stomach. Then he would lick her nipples, make her hold his penis, and then insert his penis into her vagina.

Salvador also sexually molested Angelica. In June 1994 when she was only seven (7) years old, Angelica was awakened when Salvador removed her panty and inserted his forefinger into her vagina. He simulated the sexual act by making a push and pull movement in her vagina with his finger. He removed his T-shirt, pants and briefs, then covered himself with a blanket. He laid down on his back, placed Angelica on top of him and inserted his penis into her vagina until he ejaculated. Afterwards, he put his penis into her mouth and let her lick his semen which she described as "*parang gatas na maalat*."

When Mercelinda and Angelica finally revealed to their mother their sexual experiences with Salvador, Lourdes immediately brought her daughters to the Fort Bonifacio police station to file their Complaints.

The medico-legal examination conducted on 29 July 1994 at the Philippine National Police crime laboratory showed that Mercelinda suffered a recent injury on her genital organ, deep healed lacerations thereon at 3 o'clock and 6 o'clock positions, and her *labia minora* was congested.<sup>[6]</sup> The examining physician opined that the lacerations could have been caused by the forcible entry of a hard blunt object or a fully erect male organ. On the other hand, Angelica's hymen remained intact and still in a virgin state. The *labia majora* of her sex organ was full, convex and coaptated while her *labia minora* was slightly congested,<sup>[7]</sup> which according to the physician could have been caused by a finger or penis.

In his defense, 51-year old Salvador Macaya claimed he could not have raped Mercelinda and Angelica since he treated them as his own children. He submitted that the charges were instigated by Ricardo Palacio, their natural father, because Lourdes rejected his offer of reconciliation.

Sustaining the high credibility of the young victims, the trial court found for the prosecution and convicted the accused accordingly.

Accused-appellant argues against his conviction for raping Mercelinda. He claims that the Complaint failed to mention the precise date of the commission of the crime but merely stated "sometime during the year 1990." Concerning his other conviction, he argues that the Complaint of Angelica charges him only with simple rape such that the proper penalty is not death but *reclusion perpetua*.

Accused-appellant deserves his conviction for both crimes. In the language of a child of tender age, Mercelinda narrated her misfortune that started way back in 1990 in the hands of the person who, instead of leading her towards a bright future as her surrogate father, submerged her in a pit of pain and humiliation -

Q: Will you please read the words found in number 15 (of her police statement).

WITNESS

*x x x x T - Pag naiwan kayo sa bahay at natutulog na ano ang ginagawa ninyo ni Angelica?*

*S - Pinapahawakan ni Daddy Salvador sa akin ang titi niya.*

Q: Do you still remember if this statement of yours happened?

A: Yes, sir.

Q: What other things does your Daddy Salvador ask you to do aside from holding his penis?

A: He let me stayed (sic) on top of him x x x x

Q: How about number 17, will you please read it?

WITNESS

*x x x x T - Anu-ano ang mga ginagawa niya sa iyo?*

*S - Dinidilaan ni Daddy Salvador ang didi ko, hinahawakan iyong pipi ko at pinapahawakan iyong titi niya.*

- Q: All those things, Daddy Salvador did all those things to you?  
A: Yes, sir x x x x
- Q: Did your Daddy Salvador actually put his penis inside your *pipi*?  
A: Konti lang po x x x x
- Q: But he usually did that at night when you were already in bed?  
A: Yes, sir.
- Q: And you don't remember how many times? It was not only once?  
A: Yes, many times x x x x
- Q: Were you hurt when he tried to put his penis inside your vagina?  
A: Yes, sir x x x x
- Q: You x x x x used the word "*kantot*," can you tell us what do you understand by the word "*kantot*?"

WITNESS (Witness could not answer and, at this juncture, she shed tears).

- Q: x x x x When you said "*kantot*," was it not that your Daddy Salvador inserted his penis into your vagina, is that what you mean by "*kantot*?"  
A: Yes, your honor x x x x<sup>[8]</sup>

What accused-appellant subsequently did to his younger victim, who thought he was her real father, was even more obnoxious. Perhaps if only the court had a choice, it would rather not require Angelica to recount her disgraceful ordeal and spare her the agony of recalling details as vulgar as these -

- Q: Now, did your father do something to you when you were sleeping on that night of June 1994?  
A: Yes, sir.
- Q: What did he do to you?  
(Witness just whispered her answer. It could not be heard and at this juncture, she started to cry).
- Q: Did you see him removing his pants?  
A: Yes, sir x x x x
- Q: Did he put his penis over and above you or inside your vagina?