

## EN BANC

[ G.R. Nos. 137753-56, March 16, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO ARDON, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

Before us for automatic review is the joint decision<sup>[1]</sup> of 25 November 1998 of the Regional Trial Court of Polomolok, South Cotabato, Branch 39, in Criminal Cases Nos. 316, 317, 318 and 319, finding accused-appellant Nilo Ardon (hereafter NILO) guilty beyond reasonable doubt of four (4) counts of rape committed against his daughter Jennilyn B. Ardon (hereafter JENNILYN) and sentencing him to suffer the penalty of *reclusion perpetua* for one count of rape and death for each of the remaining three counts.

These criminal cases stemmed from four separate informations filed against NILO. For the rape committed sometime in 1988 when JENNILYN was then 6 years old, NILO was charged with the crime of rape under Article 335 of the Revised Penal Code and was docketed as Criminal Case No. 316.<sup>[2]</sup> The information reads:

That sometime in 1988, at Sitio Salul, Barangay Palkan, Municipality of Polomolok, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there, by means of force and intimidation, willfully, unlawfully and feloniously have carnal knowledge of her daughter JENNILYN B. ARDON, then 6 years old.

For the two acts of rape committed on 11 October 1994 and the rape committed on 12 October 1994, when JENNILYN was 12 years old, Nilo was charged in three separate informations with qualified rape under Art. 335 of the Revised Penal Code as amended by R.A. 7659 and were docketed as Criminal Cases Nos. 317, 318 and 319, respectively.<sup>[3]</sup> Except as to the dates of the commission of the crime, the informations commonly alleged as follows:

That on or about -----, at Sitio Salul, Barangay Palkan, Municipality of Polomolok, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there, by means of force and intimidation, willfully, unlawfully and feloniously have carnal knowledge of her daughter JENNILYN B. ARDON, a 12 year old girl.

On 8 December 1994, NILO, duly assisted by counsel *de officio*, entered a plea of not guilty in each of the four cases.<sup>[4]</sup> Thereafter, joint trial of the cases proceeded.

The prosecution presented JENNILYN her mother, Jane Ardon; her uncle, Daniel

Jordan; and the examining physician, Dr. Porferio Pasuelo, Jr.

As summarized by the trial court, the version for the prosecution is as follows:

The evidence for the prosecution can be summarized by the testimony of the complainant Jennilyn Ardon who testified during direct examination on November 4, 1997, as follows: that she was born on May 13, 1982 at Barangay Palkan, Polomolok, South Cotabato, and when she was six(6) years old, she lived with her parents at Barangay Solon, Palkan, Polomolok, South Cotabato; that sometimes in 1988, at the age of six (6) her father, the accused in this case, abused her by kissing her neck and inserted one of his fingers to her vagina; that in the same year, her father again abused her by inserting his penis and able to penetrate the same successfully to her vagina; that she was not able to report these incidents immediately to her mother who was selling vegetables at General Santos City most of the time; that later of the same year she was able to bring to the attention of her mother the abuses done to her by her father but her mother would not believed her; that her father abused her every time her mother would not sleep in their house as she was busy selling vegetables in General Santos City; that she was sexually abused by her father since she was six (6) years old until she filed a case in court, that was from 1988 to October 12, 1994; that she was sexually abused twice-at about 7:00 and 8:00 o'clock in the evening of October 11, 1994 and the third one at 3:00 o'clock in the morning of October 12, 1994; that after she was sexually abused three time of the previous nights, she went to her grandfather to hide herself from her father; that when her uncle Daniel Jordan found her, she told everything about what had happened to her, and after which the same was relayed to her grandmother who called her parents; that when her parent appeared before her grandmother, they discussed what is the best for her father to put him on jail or not, but the decision reach was to put him on jail; and that because of such decision, she filed a complaint against her father and such complaint was duly recognized when it was presented to her which was subsequently marked as Exhibit "B" for the prosecution.

During the cross-examination, the private complainant testified in this manner: that when she was fingered for the first time her mother was harvesting coffee and when she arrived home, she did not tell what had happened to her as she was threatened with death by her father if she would report the same to her mother; that after she was raped by her father in 1988 she had already reported the matter to her mother who would not believed her as she wants evidences; that her father usually had sexual intercourse with her when she was gathering firewood or while weeding their vegetable garden; that sometimes she would pretend to have stomachache so that she can refused to go with him whenever she will be invited to go somewhere else; that her father boxed her on her stomach and manhandled her many times whenever she refused to go with him; that it was to her uncle Junior to who she reported the matter on October 12.

The private complainant further testified during the cross- examination that she was six ( 6) years old when her father started raping her and

the last time she was sexually abused was when she already twelve (12) years old; that she got married three (3) years after her father sexually abused her; that her main reason in filing the case against her father was because she was being manhandled and sexually abused by him; that her mother decided to have her father arrested after her grandmother had talked to her, and that was the time when her mother believed in her; that before the 1988 incident, her father was already cruel not only to her but also to her brothers and sisters and even to her mother where he would sometimes placed a bolo on her neck; and that because of the physical harassment and cruelty of her father, she hated him so much and even aspired that he will be sent to death as she was very sure that she was really sexually abused from 1988 to 1994.

On redirect examination the private complainant explain to the Court that what she meant of the word abuse is that her father kissed her breast, inserted his fingers and later on his penis to her vagina and afterwards has a sexual intercourse with her. She testified that her father had a sexual intercourse with her twice on October 11, 1994 and another on October 12, 1994. She also testified that when her father raped her in 1988, she reported the matter to her mother as well how she was raped by her own father.

On January 6, 1998, the prosecution presented another witness in the person of Jane Ardon, 36 years old, housekeeper and a resident of Barangay Palkan, Polomolok, South Cotabato, who took the witness stand and testified as follows: that she was the mother of the complaining witness Jennilyn Ardon and the legal wife of the accused in this case; that she had seven (7) children with the accused and the complainant is the eldest, that she was the one who assisted Jennilyn in filing the aforesated criminal cases against her own father; that when Jennilyn Ardon reported to her that she was being raped by her father sometime in 1988, she was hesitant to confront her husband because she was afraid that her husband might hack her with a bolo as the latter usually have it with him while sleeping; that there was an occasion she was being manhandled and even tried to be hacked with a bolo by her husband; that these cases were filed against her husband by her daughter with her assistance because her daughter ran away and would not come home as she was being raped by her own father.

On cross-examination by the opposing counsel, witness Jane Ardon gave the following testimony: that the caused why she was allegedly hacked by her husband in 1994 was because her husband got mad at her when she reprimanded him for mauling their daughter Jennilyn; that she did not believe her daughter immediately when she reported that she was sexually abused by her own father as she had not seen any evidence; that she was convinced that her daughter is telling the truth when she saw her panty with blood stain under their bed and considering that she was not yet menstruating at that time; that as the breadwinner of the family, she slept with her mother at the barrio that evening her daughter was manhandled by her husband; that it was only her children and their father who were sleeping inside their house; that her husband kept on mauling and manhandled their daughter because she was always going

out; that at first she did not entertain what her daughter told her, but she was convinced later on when she knew that her daughter would stowaway everytime she would go to General Santos City; and that her husband was no longer communicating with her except through letters.

During the redirect examination of the aforesaid witness, she said that she once visited her husband at the Provincial Jail and she was threatened that he would escape from prison and kill all of them. She also made mention that the contents of the letter sent to her by her husband.

Likewise, on recross-examination same witness testified that one of the contents of the letter is that her husband was asking for forgiveness and telling her why she sided in favor of her daughter who is sinful. In said examination she promised to bring to court the letter on the next scheduled hearing of the cases.

On January 13, 1998, the mother of the complainant who is also a witness in this case was recalled in the witness stand for the sake of identifying the birth certificate of Jennilyn Ardon, her daughter, who was born on May 13, 1982, and after identifying the same it was marked as Exhibit "C" for the prosecution.

The next witness presented by the prosecution was Daniel Jordan, 45 years old, married, farmer, a resident of Barangay Palkan, Polomolok, South Cotabato. The tenor of his testimony was that her niece, Jennilyn Ardon, told him that she was sexually abused by her father and was asking that justice would be afforded to her. Thereafter, she brought her niece to the Lupon Tagapamayapa where her mother, uncle and grandfather were summoned by Nilda Española, a Lupon Member. After which it has been agreed upon that Nilo Ardon be arrested by the police, while he, together with her niece and her mother, went to the police station to file a complaint and to have her niece underwent a medical examination.

When he was confronted during the cross-examination, he testified in this manner: that accused Nilo Ardon and Jean Ardon, before they got married, they eloped and were accepted only by their parents after they returned; that he had no bad feeling with the accused ever since except at present; that he was accustomed in helping his barriomates in bringing cases to the police and even to the court without receiving any compensation; and that he has ten (10) children and as harvester, tuba gatherer and farmer was his means of livelihood.

As early as July 14, 1997, Dr. Porferio Pasuelo Jr., married, Municipal Health Officer of Polomolok, South Cotabato, was presented by the prosecution who testified on the medical examination conducted by him on Jennilyn Ardon last October 27, 1994 in connection with these cases filed against the accused Nilo Ardon. The medical certificate or medical examination of Jennilyn Ardon was ordered marked as Exhibit "A" for the prosecution.

In the above-stated medical certificate of Jennilyn Ardon, Dr. Proferio Pasuelo, Jr. explained his findings, to wit: (1) Healed Laceration 3 o'clock and 9 o'clock; (2) Easily admits the physician's forefinger. He said that in his first findings it means that there was a forced penetration on the vaginal opening of the child, while on his second findings he testified that there were repeated insertion on the vaginal opening of the child.<sup>[5]</sup>

On his part, NILO relied solely on his testimony, offering bare denials to the inculpatory testimonies of the victim and the prosecution witnesses. He alleged that JENNILYN only concocted the charges because he whipped her for failure to obey his order not to go to the house of her maternal grandparents. He also imputed ill motive on the part of his parents-in-law who from the very beginning were against him. He claimed that his parents-in-law convinced JENNILYN to file these cases. In fact, both his wife and JENNILYN visited him in jail for several times and even promised him that they will withdraw the complaint against him. However, the promise was not fulfilled because his wife was already living with another man. NILO also presented the three letters he received from his wife while he was in jail.

The trial court giving full faith and credence to the testimony of JENNILYN convicted NILO of four counts of rape in its decision dated 25 November 1998. It characterized JENNILYN's narration of facts as "unbridled and unadulterated" and that she testified "in a forthright manner without the least hesitation." It ruled that the spontaneity of JENNILYN's testimony could not be discredited by NILO's mere denials. It rejected NILO's imputation of ill-motive on the part of JENNILYN, his wife and his parents-in-law. The dispositive portion of the decision<sup>[6]</sup> reads as follows:

Accordingly, on the foregoing considerations and in the light of the present law in force, this Court finds the accused Nilo Ardon guilty beyond reasonable doubt of four counts of rape, one rape committed sometime in 1988, two rapes committed in October 11, 1994 and another one rape in October 12, 1994. The rape committed sometime in 1988 is considered as statutory rape as the offended party was still six years old at the time the crime charged has been committed, and in view of the abolition of death penalty in the 1987 Constitution, the accused Nilo Ardon is hereby sentenced to suffer the penalty of *reclusion perpetua* in Criminal Case No. 316. For the three counts of rape under Criminal Cases Nos. 317, 318 and 319, said accused is hereby sentenced with the supreme penalty of DEATH for each of the three cases pursuant to Sec. 11 of R.A. 7659 which provides that where the victim of the crime of rape is under eighteen (18) years of age and the offender is, inter alia, the parent of the victim, the death penalty shall be imposed.

The aforesaid accused is further ordered to indemnify the offended party, Jennilyn Ardon, the amount of P50,000.00 as moral damages and P25,000.00 as exemplary damages in each cases filed against him and to pay the cost.

By reason of the imposition of the extreme penalty of death in Criminal Cases Nos. 317, 318 and 319, the cases are now before us for automatic review. The judgment in Criminal Case No. 316, where the penalty imposed is *reclusion perpetua*, will be considered to have been appealed to us despite absence of notice of appeal which was necessary pursuant to Section 3(c) of Rule 122 of the Rules of Court,