

EN BANC

[G.R. No. 138235, May 10, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO PALERO Y DELOS SANTOS, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

Despite the number of like cases elevated to this Court and their increasing frequency, the members of this Tribunal never cease to be appalled at the perversity and depravity each new case of incestuous rape brings. The figures could well be staggering but perhaps more jolting still are undeniable plights of numerous yet unknown victims which have yet to reach the courts. Fortunately, the case of herein private complainant will not be among the pageless incidents.

The proliferation of incestuous rape of minors, a crime which scrapes the bottom of the barrel of moral depravity is a revolting phenomenon.^[1] For every girl such as Gigi Palero who has had the opportunity to knock into the portals of the courts to seek justice, approximately a hundred more suffer in silence. Indeed, one may ask - does the seemingly god-fearing attitude and parental tenderness that characterize the Filipino *persona*, a mere veneer for the more sinister aspect of personality?

Gigi Palero was born on 18 July 1982 to accused-appellant Roberto Palero y De los Santos and Estrella Bañas Palero both from Barangay Cagliliog, Municipality of Tinambac, Camarines Sur. Roberto Palero supported his family by fishing, gathering shrimps and making copra. Sometime in the month of May 1996, the exact date Gigi could no longer recall, about eight o'clock in the evening, the members of the Palero household, as was their wont, were already in bed for the night. Gigi and her sisters -Geraldine aged 2 years old and 6 months, Mary Jane 9 years old and Ginalyn 6 years old - were sleeping side by side on a floor mat in the same room with their father. The Palero boys - Roberto and Ronnie who usually would sleep outside the room - were at the movies. Estrella Palero, their mother, was at that time in Manila. An older half-sister, Gemma, born to Estrella Palero and her first husband, was also away. During the night, at an unknown hour, Gigi was roused from her slumber when she felt her underwear being removed by her father. Accused-appellant then removed his shorts, laid on top of the terrified child, and inserted his penis into her vagina. Crying, she struggled but her two hands were pinned down by accused-appellant. She was told not to make any noise. Gigi could not estimate just how long her father remained in her. All she could remember was that he was meanwhile making push and pull movements (*nag-iirad*). While Roberto Palero writhed in ecstasy, his young daughter suffered in excruciating pain of a virgin's initiation into the carnal world. Her younger sisters slept in the deep slumber of the innocents, completely oblivious to the nefarious deed being committed but a few feet away. The appetites of his loins sated, Roberto Palero left Gigi and returned to his far-end corner of the room and resumed sleeping. Putting

on her underwear, private complainant stayed awhile but afterwards brought a flashlight and proceeded downstairs to urinate. While urinating, the young girl felt sharp twinge and saw blood in her discharge. Extremely worried, she went back upstairs to sleep.

Unluckily for Gigi Palero, the assault on her virtue was but the beginning of similar other incidents yet to come. Again, one evening, Roberto Palero undressed his daughter and satisfied his lust. With one hand on the mat, and his other hand touching his organ, accused-appellant made "*irad.*" Gigi could only cry in pain.

At still another time, in the copra kiln located in the hinterlands of barangay Caglilig, he once more came into her. The Palero property, which was planted with coconut trees, could be reached from the Palero residence after a one-hour boat ride. In the premises was a copra kiln where the coconut harvest was dried. Accused-appellant brought Gigi and her brother to help him with the farm work. When night fell, Roberto Palero told his son to go home ahead, leaving accused-appellant and Gigi to spend the night at the copra kiln. That night, while she was about to sleep, accused-appellant got some medicine, massaged her, and removed her panty and her skirt. He then undressed himself, laid on top of his daughter and hastily took her. Although her memory was somewhat hazy on the exact dates, private complainant was certain that her father succeeded in forcing himself upon her approximately three times in the same coconut kiln area. As always, accused-appellant subdued his daughter with intimidating threats and repeatedly warned her not to tell anyone about it.

The young girl bore her agony in silence until much later when her elder half-sister, Gemma Palero, arrived from Manila. Gigi confided to Gemma her predicament. Gigi's hesitation to tell her mother, who under natural circumstances would have been the child's best ally, was explained by her as so stemming from resentment due to the neglectful attitude of Estrella Palero towards her children. Gigi recalled that when her elder half-sister Gemma had reported to Estrella the same indignity committed against her person by accused-appellant, Estrella expressed disbelief, a reaction, it turned out, she would also exhibit when confronted about Gigi's own defilement. Indeed, throughout the trial, Estrella Palero stood by her husband's side and even tried to discredit her daughter at the witness stand.^[2]

The findings of Salvador Betito, Jr., the doctor who had conducted the physical examination at the request of the investigating municipal trial court judge, showed that the already-widened vaginal orifice of the victim would readily admit two fingers with least resistance, a fact that must have been caused by the insertion into the vagina of a foreign object or a male organ. A healed lacerated wound on the victim's upper arm was explained by private complainant as having been inflicted by her father.

For reasons not disclosed at the trial, private complainant fell into the custody of the Department of Social Welfare and Development ("DSWD"). The DSWD assisted private complainant in pursuing the case against her tormentor and in extending rehabilitative therapy for her trauma. Oscillada recalled that in one role-playing activity which required private complainant to reveal her feelings, Gigi Palero, in reference to her disbelieving mother, expressed grudge but exhibited happiness that her half-sister Gemma gave credence to her story. When asked to draw the picture of the person she hated the most, private complainant, with all the fury of a 13-year

old, portrayed Roberto Palero as the devil.

On 28 August 1996, an Information, charging accused-appellant with rape, was filed by the Office of the Provincial Prosecutor -

"The undersigned 1st Assistant Provincial Prosecutor of Camarines Sur upon sworn complaint filed by Gigi B. Palero which is hereto attached accuses Roberto Palero y de los Santos of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 committed as follows:

"That on or about the month of May 1996 at barangay Cagliliog, Municipality of Tinambac, Province of Camarines Sur, 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 carnal knowledge with Gigi B. Palero, a 13-year old, his own daughter against her will and the offended party suffered damages."^[3]

Accused-appellant pled "not guilty" to the indictment.

At the trial, the account of private complainant was straightforward and unequivocal -

"Q. Can you please tell us what was that incident was all about?

"A. We were all sleeping, then he went to the place where we were sleeping and then he removed my panty.

"Q. Where were you sleeping, Gigi Palero?

"A. In our bedroom beside my brothers and sisters.

"xxx xxx xxx

"Q. Was it day time or nighttime?

"A. Nighttime, sir.

"Q. Who were present inside your house during that night?

"A. Only my three sisters.

"Q. What about your brothers?

"A. They went out to see a movie.

"xxx xxx xxx

"Q. After your father had removed your underwear, what if anything happened, next?

"A. He laid down on top of me.

"Q. What did he wore, if anything?

"A. Shorts and then he also removed his shorts.

"Q. So after he removed his shorts and laid on top of you, what if anything happened next?

"A. And then he inserted his penis to my vagina.

"Q. What, if anything did you feel?

"A. It was painful, sir.

"Q. By the way, during that time when your father inserted his penis to your vagina, where were his hands if at all located?

"A. He was holding my two hands.

"Q. Can you please demonstrate to us Gigi how your father was holding your hands?

"INTERPRETER:

"A. The witness demonstrating how her hands were held by her father during the rape incident by using as a medium the interpreter as the victim and then herself as the accused. The right hand of the accused holding the left hand of the victim and his left hand holding the right hand of the victim.

"PROS. CU:

"Q. At that instance, was your father saying anything to you, if he was saying anything to you?

"A. Yes, sir.

"Q. What did he tell you?

"A. That I don't make noise.

"Q. During that time, were you crying already?

"A. Yes, sir.

"xxx xxx xxx

"Q. By the way, where were your sisters then?

"A. Beside me, sir.

"Q. What were they doing?

"A. They were all fast asleep.

"Q. For how long did your father lay on top of you?

"A. I don't know, sir, but it took a long time.

"xxx xxx xxx

"Q. So at that time when the penis of your father was inside your vagina, what if anything was he doing?

"A. He was making push and pull movement while his penis was inside my vagina (nag-iirad).

"PROS. CU:

"Nag-iirad", making push and pull movement.

"xxx xxx xxx

"PROS. CU:

"Q. And what happened to you?

"A. I was crying and then I laid down.

"Q. For how long did you lie down?

"A. After I wore my underwear, I immediately laid down.

"xxx xxx xxx

"PROS. CU:

"Q. Did you try to resist your father Roberto Palero at the time when he laid on top of you?

"A. Yes, sir.

"Q. What if anything did you do?

"A. I was pushing him sir, but he was very strong.

"Q. So what time did you wake up the following day, Gigi Palero?

"A. I woke up early in the morning, sir.