

EN BANC

[G.R. Nos. 135511-13, November 17, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ENRICO MARIANO, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

Rape is an abhorrent crime that taints the purity and dignity of its victims, especially children, often reducing them to mere shells of what used to be their happy and spirited selves. The man who rapes his own child strips himself of the love and respect due him as a father and a human being. Being thus a slave of his prurient desire, he is reduced to a level lower than beasts. He is no more than a soulless husk and deserves to forfeit his place in human society.

Before us on automatic review^[1] is the joint Decision^[2] dated August 3, 1998 of the Regional Trial Court of San Pablo City, Branch 32 in Criminal Cases Nos. 10343-SP, 10344-SP and 10345-SP finding Enrico Mariano guilty beyond reasonable doubt of three (3) counts of rape committed against his own daughter, Jenalyn F. Mariano, and sentencing him to suffer the supreme penalty of death for each count of rape.

The facts as borne by the record are as follows:

Jenalyn F. Mariano was born on August 14, 1982^[3] to herein accused- appellant Enrico Mariano, a driver and laborer, and Catalina Fernandez, a domestic helper and babysitter in London, since August 1992.^[4]

One night a few weeks after Jenalyn's mother left for London on August 9, 1992, then ten year-old Jenalyn was at home with her father, herein accused-appellant, and her brother, Ronald, in a rented house at Block 14, Lot 24, NHA, Barangay Sto. Angel in San Pablo City. While accused-appellant was drinking gin, he called both Jenalyn and Ronald and ordered each to drink a glass of gin. Since accused-appellant look irritated at them and both were afraid of their father who would spank them for no apparent reason, they drank gin as ordered. Accused-appellant then told them to sleep in the "*sala*." As instructed, they slept on a mat in the "*sala*". Accused-appellant joined them and slept between Jenalyn and Ronald. Jenalyn fell asleep immediately.^[5]

At ten o'clock later that night, Jenalyn was stirred from her deep slumber by the movements of accused-appellant. Jenalyn was shocked to see her father naked. He was kneeling in front of her and his penis was touching her vagina. She no longer wore her panty. Accused-appellant's hands were mashing her pre-pubescent breast and he was forcibly introducing his penis in her vagina. Jenalyn struggled hard against accused-appellant, trying to remove accused-appellant's hands and to move aside his legs. She desperately tried to remove his penis from her vagina but

accused-appellant was stronger and persistent. Accused-appellant was able to insert a portion of his penis in Jenalyn's vagina. Due to the intense pain, Jenalyn cried. Then, accused-appellant removed his penis from Jenalyn's vagina and masturbated. Jenalyn covered herself with a blanket and tried to sleep but was unable to do so at once, not only for fear that accused-appellant might rape her once more but likewise because she felt unbearable pain in her vagina.^[6]

At around seven o'clock the next morning, Jenalyn woke up. She saw accused-appellant was beside her fast asleep. She got up, went to the toilet and urinated. Her vagina was still painful and she cleaned and washed her vagina. Jenalyn did not tell anybody about what accused-appellant did to her because she was afraid of him since every time accused-appellant was drunk he would warn them that he might kill them next to the others he killed before.^[7]

The second rape occurred in September 1996 while Jenalyn was living with her aunt, Sonia M. Flor, accused-appellant's older sister, and her aunt's two children at Block 14, Lot 27, NHA, Barangay Sto. Angel in San Pablo City. At that time, accused-appellant was likewise staying there. Accused-appellant and Jenalyn occupied the extension room located at the back of Sonia's house.^[8]

One night in September 1996, at around ten o'clock in the evening, at accused-appellant, who was very drunk, ordered Jenalyn to sleep in the extension room. Jenalyn obeyed her father as he was already drunk and she was afraid to cross him. Accused-appellant once again said the names of persons he killed. Jenalyn was only half-asleep as she was afraid that accused-appellant might rape her again. Accused-appellant took off his pants when he came into the room. Wearing his brief only, he laid down on the folding bed where Jenalyn lay. He smoked a cigarette and placed a knife on a table.^[9]

After he smoked one cigarette, accused-appellant removed the pillows by Jenalyn's side and entered the mosquito net which covered Jenalyn's side of the bed. Accused-appellant took off Jenalyn's "*porontong*" shorts and panty and placed himself on top of her. Jenalyn wanted to call out for help but accused-appellant poked the knife at her. Accused-appellant then tried to insert his penis into her vagina. Jenalyn struggled and kicked accused-appellant. She felt accused-appellant's penis on her vagina. However, accused-appellant was not able to fully penetrate her, as Jenalyn's vagina was small. Accused-appellant stood up and masturbated until he ejaculated.^[10]

On February 2, 1997, Jenalyn was raped for the third time. Jenalyn and accused-appellant still stayed at the extension room of Sonia Flor's house. While Jenalyn and her two cousins, Abegail and Iris, were watching the Sunday noontime show ASAP, accused-appellant came home after a drinking spree and proceeded to the extension room. He summoned Jenalyn by whistling at her. Afraid of her father, Jenalyn went to him. Accused-appellant told Jenalyn to lie down on the folding bed and sleep. Jenalyn obeyed him since accused-appellant was drunk and she was terrified. Accused-appellant took off his trousers and placed his knife on top of the cabinet where he kept his clothes. Jenalyn tried to sleep but could not as accused-appellant was talking, telling her that he had already changed his ways and that "*malapit na akong mamatay*".^[11]

Clad only in his brief, accused-appellant took the knife on top of the cabinet and placed himself on top of Jenalyn. He took off Jenalyn's pants and panty and, with his brief lowered to his knees, tried to insert his penis into her vagina. As accused-appellant forced his penis into Jenalyn's vagina, she felt as though her sex organ was being broken or torn apart. Jenalyn struggled against accused-appellant and tried to kick him off. Her efforts proved futile as accused-appellant was very strong and he had a knife poked at her. Accused-appellant was not able to fully penetrate Jenalyn's vagina, as his sex organ was big. He then stood up and masturbated until he ejaculated.^[12]

No longer able to stand being defiled by her father, Jenalyn went to her aunt, Rosario Fernandez Concepcion, a sister of her mother, and confided to her aunt what accused-appellant has done to her. When Rosario asked Jenalyn why did she divulge the incidents only then, she answered that it was because she was afraid. Jenalyn's case was brought to the police who investigated her and took her statement.^[13]

On the basis of the sworn statement^[14] of Jenalyn F. Mariano, alleging that she was raped by accused-appellant on three (3) occasions, three (3) criminal complaints^[15] of rape under Article 335 of the Revised Penal Code, were filed on March 25, 1997 against accused-appellant before the Regional Trial Court of San Pablo City.^[16]

The criminal complaint for Criminal Case No. 10343-SP^[17] reads as follows:

That sometime in the month of August, 1992, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, being then the father of Jenalyn F. Mariano, a minor, ten (10) years of age having been born on August 14, 1982, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously had sexual intercourse with the said JENALYN F. MARIANO.

CONTRARY TO LAW.

Except as to the material dates of the commission of the crimes charged, that is, sometime in the month of September 1996 in Criminal Case No. 10344-SP^[18] and February 2, 1997 in Criminal Case No. 10345-SP,^[19] the identical criminal complaints for the two other criminal cases read as follows:

That (date of commission of crime charged), in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, being then the father of JENALYN F. MARIANO, a minor, having been born on August 14, 1982, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously had sexual intercourse with the said JENALYN F. MARIANO.

CONTRARY TO LAW.

When arraigned on September 16, 1997, accused-appellant, assisted by counsel *de officio*, pleaded "Not guilty" to each count of rape. Thereafter, joint trial on the merits ensued.

The prosecution presented evidence, which were drawn principally from the testimony of the victim, Jenalyn Mariano, tending to establish the above factual narration.^[20] Other prosecution witnesses were Felix Fernandez, the uncle of Jenalyn, testifying that Jenalyn revealed to him on February 17, 1997 that she was sexually abused by accused-appellant;^[21] and Dr. Marysol C. Cerda^[22] testifying on the medico-legal examination she performed on Jenalyn.

Dr. Marysol C. Cerda testified that on February 17, 1997, she was then a doctor of the San Pablo City District Hospital. She examined Jenalyn at around 9:15 in the evening. The examination revealed that Jenalyn's hymen admitted one finger with ease and that it bore old healed lacerations at 2 o'clock, 5 o'clock, 7 o'clock and 9 o'clock. She declared that the lacerations could have caused by penetration by the opposite sex, excessive exercises, accident, or trauma.^[23]

For his part, accused-appellant denied the accusations against him^[24] and, interposed the defense of alibi. He claimed that in August 1992 he was in hiding at the house of his compadre in Gasan, Marinduque because of threats to his life for having killed persons in San Pablo City^[25] and from 1995 to August 1997 he stayed with one Alma Flores in Brgy. Cupang.^[26] He strongly manifested that Jenalyn filed the rape cases against him after he learned from Sonia, his sister, that Jenalyn drank liquor in school.^[27]

Sonia M. Flor testified for the accused-appellant and corroborated accused-appellant's contention that he was not in San Pablo City in 1992 as he was in hiding somewhere else due to the commission of two homicides^[28] nor was he there in the year 1996 and 1997 since accused-appellant was not sleeping at her (Sonia's) house.^[29] On cross-examination, Sonia Flor said that she could not say that Jenalyn fabricated the cases since she was not with them all the time. She confirmed, however, that whenever accused-appellant visits his children, instead of showing love to them, he always mauled them and maltreated them.^[30]

Weighing the evidence against the accused-appellant, the trial court convicted accused-appellant of the crimes charged in its decision dated August 3, 1998,^[31] the dispositive portion of which reads:

IN VIEW OF THE FOREGOING considerations, the accused is hereby pronounced guilty beyond reasonable doubt of three (3) counts of rape in the three (3) Criminal Informations cited above and for the consequences of his acts said accused ENRICO MARIANO is hereby sentenced to suffer the capital punishment of DEATH in three (3) counts and to pay the costs. Accused Enrico Mariano is ordered to pay Jenalyn F. Mariano the sum of P500,000.00 as moral and exemplary damages.

SO ORDERED.^[32]

Accused-appellant assigns a lone albeit encompassing error^[33] in his brief, to wit:

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION DESPITE INSUFFICIENCY OF THE EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Accused-appellant once again denies culpability for the alleged rapes of his daughter Jenalyn. He claims that the testimony of Jenalyn lacks the element of truthfulness and is not in accord with natural human experience^[34] as shown by the shifting testimony of Jenalyn as to how she was allegedly raped by the accused-appellant, regarding the penetration of accused-appellant's penis in her vagina and the presence of the knife.^[35] He submits that it is hard to imagine that the incident would occur in that one mat where the complainant's brother was also sleeping and still her brother was not awakened despite her testimony that she struggled with her father.^[36] The appeal is devoid of merit.

Time and again this Court has held that when it comes to the issue of credibility, this Court ordinarily defers to the assessment and evaluation given by the trial court for only the trial court has the unique opportunity to observe that elusive and incommunicable evidence of the witness' deportment on the witness stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case.^[37] Only when such assessment is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence will the appellate court depart from the trial court's factual conclusions.^[38] None appears in the subject Criminal Cases Nos. 10343-SP, 10344-SP and 10345-SP.

This Court's own thorough review of the declaration on the witness stand of complainant Jenalyn Mariano is very typical of an innocent child whose virtue has been violated.^[39] Jenalyn's spontaneous emotional breakdowns^[40] while recounting the nightmare she endured at the hands of her father are visible pictures of her credibility. She testified:

ATTY. QUINTOS

Q On August 19, 1992 where were you residing?

A At Block 14 Lot 24 NHA, Brgy. Sto. Angel, San Pablo City.
xxx xxx xxx

Q Sometime in [sic] that date do you remember if there was any [sic] unusual incident that happened to you?

A Yes, sir.

Q Will you tell the Court what was that incident?

A A few weeks after my mother had left and one night when my father was drinking alone.
xxx xxx xxx

COURT

What is that unusual incident that you are telling?

A He called for me and my brother [sic] and instructed us