

EN BANC

[G.R. Nos. 131830-34, September 03, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY MOSQUEDA, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

For automatic review^[1] by this Court is the joint decision^[2] dated 29 October 1997, of the Regional Trial Court of Iloilo City, Branch 31, in Criminal Cases Nos. 45522, 45523, 45524, 45525, 45526, 45527 and 45528, finding accused appellant Jimmy Mosqueda (hereafter JIMMY), guilty of seven counts of rape committed against his very own daughter and sentencing him to two terms of *reclusion perpetua* and the extreme penalty of death in each of the five cases.

JIMMY was charged with rape under seven separate complaints filed by her daughter Jaymen Mosqueda (hereafter JAYMEN) who was then only 9 years old when the first rape happened. The said incidents were allegedly committed on separate occasions, to wit: on or about March 1991, June 1991, June 1994, October 1994, November 1994, December 1994 and 27 May 1995. The accusatory portion of the complaints in Criminal Case Nos. 45522^[3] and 45523^[4] are similarly worded, except for the dates of the commission of the crime, viz.:

That on or about..., in the Municipality of Dingle, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, with deliberate intent, did then and there wilfully, unlawfully and feloniously have sexual intercourse with his daughter complainant/victim Jaymen Mosqueda who was nine (9) years of age.

CONTRARY TO LAW.

Likewise, the accusatory portion of the complaints in Criminal Case Nos. 45524^[5], 45525^[6], 45526^[7], 45527^[8] and 45528^[9] are similarly worded, except for the dates of the commission of the crimes, which read as follows:

That on or about ..., in the Municipality of Dingle, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, armed with a gun and bladed weapon, with deliberate intent and by means of threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter complainant/victim Jaymen Mosqueda who was 12^[10] years of age, against her will and without her consent.

CONTRARY TO LAW.

On 6 December 1995, JIMMY, with the assistance of counsel de oficio, entered a plea of not guilty in each of the seven cases. Thereafter, the cases were consolidated and jointly tried.^[11]

The evidence for the prosecution is summarized by the Office of the Solicitor General (OSG) in the brief for the appellee as follows:

The complainant Jaymen Mosqueda is the daughter of appellant and Minda Mosqueda. They were residents of Brgy. Bungloy, Dingle, Iloilo, Jaymen has brothers and sisters, namely: James Mosqueda, 16 years old, June Mosqueda, 10 years old, Jane Mosqueda, 9 years old, and Christine Mosqueda, 8 years old at the time the cases were being tried. Jaymen also said that when she was sexually abused by her father in March 1991, her mother was in Kuwait as contract worker. Her eldest brother James was studying in Manila. James stayed with her aunts Weena Mosqueda and Editha Mosqueda. Jaymen and her two younger sisters and a brother were living with the appellant in their house in Brgy. Bungloy, (pp. 507, tsn, May 22, 1997)

Sometime in March 1991, complainant participated in a field demonstration as one of the muses in their school. On the night of that particular day, while she was sleeping, appellant holding a knife threatened her and proceeded to touch her breast and other parts of her body and told her not to tell anybody. Then appellant pointed the knife at her and she told him, "Father, I am your daughter," but her father warned her not to tell anybody. (pp. 8-10. Ibid.)

While appellant was touching her breast and other parts of her body, she pushed him away but she could not overcome his strength. While his father was doing all this, her younger brothers and sisters were sound asleep. After threatening her with a knife, appellant then placed the knife on the floor near her head. Appellant then made her hold his penis and proceeded to remove her shorts and panty. At first, she did not want to hold his penis but she was later forced to do so because he would not let her free. He then inserted his penis into her vagina because she felt pain. She tried to push him away but she could not because he was holding on to her and he was very forceful. While he was inserting his penis he was on top of her. He made a push and pull action. After which he went to sleep. Complainant cried. She did not tell anybody what happened to her because appellant threatened to kill her including her younger sisters, brother and paternal grandparents should she tell anyone. She wanted to send letters to her mother in Kuwait but appellant crumpled them. (pp. 11-15, ibid.)

Complainant was nine (9) years old when appellant sexually abused her in March, 1991. Her birth certificate (Exhibit "B") shows her birthdate as March 3, 1982. She was in Grade II when she was abused. Appellant knew her classmates and teachers so she did not tell them what happened to her. After the incident, appellant encouraged her to join school activities. However, he scolded her for making friends in school or going out with them. Appellant fetched her from school and he would scold her thinking that she was having a boyfriend. (pp.15-18, ibid.)

In June, 1991, when complainant's mother was still in Kuwait, her elder brother still in Manila and while living with appellant and younger brother and sisters, appellant again sexually abused the complainant in the same house where the first sexual abuse was committed. Complainant was then nine (9) years old. (pp. 19-21, *ibid.*)

It was about 9:00 o'clock in the evening, shortly before the opening of classes when appellant woke her up, pointed a gun at her and threatened not to tell anybody. Despite her plea not to molest her because she is his daughter, appellant continued to rape her, first by touching her breast and different parts of her body. She tried to push the appellant but she could not overcome his strength. Appellant forced her to hold his penis, removed her shorts and panty, placed himself on top of her and inserted his penis into her vagina. He made a push and pull movement while his gun was on the floor. Appellant was then drunk so after satisfying himself he went to sleep. Again she did not tell anybody what happened because she was afraid appellant might kill her. (pp. 21-26, *ibid.*)

Sometime in June, 1994, they transferred to the house of her paternal grandmother located in Barangay Bungloy because their house was destroyed by storm. Only complainant, her younger brother and sisters, her father and paternal grandfather and grandmother were living in said house. She used to sleep with her two sisters and brother together with her grandmother in one bedroom. Her father was sleeping in another room. Her mother was still in Kuwait and her eldest brother was still in Manila. Later, her father asked her to transfer to his bedroom. When she refused to transfer, appellant wounded her left wrist with a knife causing it to bleed. Hence, she was compelled to transfer to her father's room. In her father's room, they slept on one bed with her sister Christine. (pp. 26-30, *ibid.*)

Complainant also stated that she had her first menstruation in April, 1994. She was twelve (12) years old then. (p.27, *ibid.*)

One night in June, 1994, inside her father's bedroom, appellant again threatened her with a knife, removed her shorts and panty and told her not to shout. Nevertheless, she shouted, ""Lola, please help me." Her grandmother came but she could not get inside because the room was locked. Besides, appellant told her not to meddle for after all complainant is his daughter. Christine was crying. She was holding complainant's hand. Jimmy, what if your daughter got pregnant?" But accused refused to listen and proceed[ed] to satisfy his lust. He inserted his penis into her vagina. She tried to push him away but she could not do so because her father was strong. Christine continued crying. Complainant could see her sister because of the light coming from a kerosene lamp located in the sala. Christine was five (5) years old when this happened. (pp. 30-34, *ibid.*)

According to the complainant, the walls dividing the rooms in her grandmother's house do not reach the roof. Thus, the kerosene lamp could partly illuminate their room. This enabled her to see her father's

face though not very clearly. She was very sure that it was his father who was on top of her because of his voice. Like in the previous incidents, she did not tell anybody what happened. Although her grandmother knew about what appellant was doing, she too was afraid. Her grandfather, however did not know what is happening to her, since he was sleeping in the other room. (pp. 35-37), *ibid.*)

One night in August, 1994 during Jaymen's menstrual period, accused again abused her at gunpoint, pulled off her shorts and panty. She tried to hold on to her shorts but she could not overcome his strength. Appellant mashed her breast, put himself on top of her and raped her. Appellant inserted his penis into her vagina and made a push and pull movement. Appellant placed the gun behind their bed. This time Christine was six (6) years old. While her father was on top of her, she asked for help from Christine, hence, she rode on accused's back and keep on boxing his back. He pinched Christine causing her to cry. She knew that her father's gun was just near her head but she was afraid to get it. While her father was having sex with her, Jaymen pushed him but did not succeed. Considering that she was menstruating, she felt the pain in her vagina out of which blood came out that spilled all over her body and on the bed. She transferred to another room later but her father forcibly entered and took her back. (pp. 37-44, *ibid.*)

Again, one night in October, 1994, appellant had sexual intercourse with complainant in the same room of her grandmother's house in Bungloy. Jaymen and her sister Christine were embracing each other when her father came, separated them and raped her. Christine stood up and returned to where Jaymen was despite the fact that Christine was gripping her hand and crying, appellant continued to rape her in the presence of Christine. The following morning, neither she nor Christine ever told anybody about the incident, the previous night. She shouted for help from her grandparents, but they did not go inside the room even though they knew that her father was raping her because they too were afraid. One time she saw accused pointing a gun at her grandparents. She said her father has no firearm license. Her father is a farmer and he used to plow the ricefield of her grandfather. (pp. 44-45, *ibid.*)

In November, 1994 while her father was already in bed complainant and Christine were preparing to go to bed, appellant approached her, pointed a gun at her, telling her that if ever she would tell her aunts what he was doing to her, he would kill her. She asked: what if I get pregnant?" appellant merely assured her that she would not get pregnant. Then appellant again raped her by inserting his penis into her vagina. Appellant made a push and pull movement for fifteen minutes. She said she tried to push her father but she failed. She felt the pain when her father inserted his penis into her vagina although she did not know or feel if anything or any fluid had entered her vagina. This time Christine was lying down and crying. Christine did not box him anymore. Complainant said, her father was drunk this time and while raping her he placed his gun above their heads. After consummating his sexual desire, appellant went back to where he was sleeping. Complainant and Christine embraced each other and cried. She also shouted for help from her

grandparents, but appellant told them not to meddle because she is his daughter. Although her grandparents as well as her younger sister knew of what his father was doing to her, they were afraid to squeal because according to them there was no sufficient evidence. (pp. 46-49, *ibid.*)

It was evening after Christmas in 1994 when appellant again sexually abused the complainant inside the same room. He scolded her when she refused to remove her shorts and panty. She pleaded not to rape her because she is his daughter. He assured her that she would not get pregnant. He also told her that he could see her mother's face on her. She told him: "I am not mother." Nonetheless, appellant persisted with his bestial act. This time he placed his gun over their heads. While holding and clicking the gun, he removed her shorts and panty. Christine was watching while her father was raping her. Christine reacted by calling her "Ne," but her father told Christine to shut up. Nene is complainant's nickname. (pp. 50-51, *ibid.*)

After removing her shorts and panty appellant placed himself on top of her, inserted his penis into her vagina and made a push and pull movement. Complainant knew that his father's penis was inside her vagina because she felt the pain. She did not also tell anybody about this incident because he threatened to kill her. (pp. 51-52, *ibid.*)

In the evening of May 27, 1995, before complainant left for Manila, where her aunt intended to enroll her in first year high school, appellant who was then under the influence of liquor, again, abused her. At gun point and in the presence of Christine, appellant started to touch her breast and the different parts of her body, pulled off her shorts and panty, inserted his penis into her vagina and made a push and pull movement. Complainant pushed her father but he was very strong. While pointing the gun at her, appellant warned complainant that if ever she would tell her aunt Editha, he would kill them all. Her aunt Editha was in her grandmother's house this time attending to the latter who was sick and had to be brought to Manila. Appellant for unknown reasons also pointed a gun at her eldest aunt who was then at her grandmother's house. Her eldest brother James also arrived. After the incident, complainant went to Manila ahead of her grandmother. She was accompanied by her cousins Diday and James. (pp. 53-54, *ibid.*)

The people in the house knew of this incident as she was crying, but they were not sure what was happening because according to them there was no evidence. (p. 55, *ibid.*)

While in Manila she stayed with her aunts Weena and Editha at San Isidro, Pasay City. Later, however, her aunts transferred to Camella Homes. Complainant stayed in Manila for only two (2) months when her aunts discovered that she was pregnant. Her aunts asked her who is the father of her child and she told them that it was appellant.

She said she no longer called him father after appellant had committed these bestial acts. After a brief huddle, her aunts decided to send her back to Iloilo City in order to file a complaint against the appellant.