

## FIRST DIVISION

[ G.R. No. 119074-75, January 22, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DANILO PACISTOL Y LIM, DEFENDANT-APPELLANT.**

### D E C I S I O N

**VITUG, J.:**

In two separate complaints, both dated 27 July 1993, Danilo Pacistol y Lim, alias "Danny Pilay," was accused of rape by 10-year old Marilou H. Montalbo, assisted by her grandfather, Gaudencio M. Hinay, one complaint being docketed as Criminal Case No. 2265, and the other as Criminal Case No. 2266. The information in Criminal Case No. 2265, read -

"That on or about the 2nd day of July 1993 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Marilou Montalbo y Hinay, a minor ten (10) years of age, without her consent and against her will.

"CONTRARY TO LAW."<sup>[1]</sup>

The information in Criminal Case No. 2266 contained basically the same allegations as above except for the date of the commission, i.e., on 06 July 1993, of the second offense.<sup>[2]</sup>

The accused pleaded, "not guilty" to the two felonies. The defense waived the pre-trial conference.

The prosecution presented its evidence.

Marilou H. Montalbo, a 10-year old, grade two pupil at the Banaba Elementary School, and her 12-year old brother, Jonathan, lived with their grandfather, Gaudencio Hinay, and his second wife, Maria Hinay, in Magnolia Street, Armel Subdivision, Banaba, San Mateo, Rizal, just across the compound of the Philippine Benevolent Missionaries Association ("PBMA"). A typical day in the family would see Gaudencio leaving the house in the early morning for work, Maria remaining at home, and Marilou attending her 12:00 noon to 5:00 p.m. school classes. It was their daily routine until misfortune befell the family.

In the morning of 02 July 1993, a Friday, Maria went shopping at the Marikina market. She left Marilou at home playing with Carol, a classmate and a neighbor. After Carol had left and while Marilou was alone sitting on a chair, "Danny," the accused, came by, approached Marilou and offered her a piece of candy. Danny

himself unwrapped the item, placed it in her mouth and told her to take it. A short while later, he dragged Marilou to a grassy place nearby. He pushed her down, took off his pants and briefs, and removed Marilou's T-shirt, bloomers and panty. He succeeded in forcing himself upon Marilou. His lust satisfied, he dressed up and left. When she was back home, Maria noticed that Marilou was pale. Soaked in a basin were Marilou's bloodstained bloomers and panty. When Maria asked about the bloodstains, Marilou simply answered that she fell (nadapa).<sup>[3]</sup>

A few days passed. Maria saw the accused following Marilou as she walked to school. Maria, however, did not give much thought to it. She had no inkling that on that day, 06 July 1993, the second assault on Marilou's virtue would take place. Like before, Marilou was dragged to a grassy area and subjected to the same sexual ordeal by the accused. When it was over, the accused left but not before threatening his young victim with death if she were to tell on him. Feeling dejected, Marilou dressed up and walked away.

Marilou kept to herself what she had been through until she, on the evening of 18 July 1993, at the insistence of her grandparents who suspected that something was wrong, revealed to them the two incidents against her honor. Gaudencio could not sleep that night. He kept on thinking about what the family should do. He was afraid that the family would have its share of ridicule, at least of embarrassment, from the community. He also feared that the police might not take appropriate action. Ultimately, on the advice of Marilou's teacher, a certain Mrs. Adeva, to whom the incident was related in connection with the grandparents' request to have the child transferred to another school, the family decided to bring the culprit to justice. Gaudencio, Maria and Marilou first went to the Gonzales Hospital in Concepcion, Marikina, which referred them to the Rodriguez Hospital, a government hospital, and then later to Camp Crame, Quezon City, where Marilou was finally examined.

In Medico-Legal Report No. N-1126-93, dated 26 July 1993, prepared by Dr. Jesusa Nieves who conducted the medical examination, the following findings were disclosed:

"GENERAL AND EXTRAGENITAL:

"Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

"GENITAL:

"There is absence of pubic hair. Labia majora are full, convex and gaping with the pinkish brown labia minora presenting in between. On separating the same are disclosed a swollen and markedly congested urethra and a fleshy-type and markedly congested hymen with shallow healed lacerations at 3 and 6 o'clock. External vaginal orifice does not admit the tip of the examining index finger.

"CONCLUSION:

"Subject is in non-virgin state physically.

"There are no external signs of recent application of any form of violence."<sup>[4]</sup>

In the afternoon of 25 July 1993, two policemen invited Gaudencio to the police station where he identified the accused. Gaudencio was asked to fetch his granddaughter. At the police station, Marilou, trembling, pointed her finger at Danilo when asked who had raped her. Still later, ten persons were made to line up. Pat. Alberto asked Marilou the second time who had raped her. Again, she pointed at the accused.

According to SPO2 Richard Salvador, Chief of the Intelligence and Investigation Section of the San Mateo Police, at around five o'clock in the afternoon of 25 July 1993, he was with an informant in *Barangay* Banaba, San Mateo, Rizal, conducting a surveillance operation in a bid to apprehend "suspected rapist Danny Pilay." Acting on an information that Danny had just alighted from a tricycle and that he had gone straight to his house, SPO2 Salvador proceeded to the suspect's residence. SPO2 Salvador informed Danny that he was named a suspect in a rape case. Invited to the police station, Danny went with SPO2 Salvador voluntarily. At the police station, Danny was referred to the investigator on duty, SPO2 Manuel Alberto. SPO2 Salvador left the station but briefly returned to witness a police line-up in which the victim singled out Danny as the person who had raped her. SPO2 Salvador executed a statement on the arrest and identification of the accused.

On 29 July 1993, Gaudencio was at home when David Nuñez, a municipal councilor, arrived driving a car. Vic Sanchez, Gaudencio's neighbor, accompanied Councilor Nuñez. The latter told Gaudencio that he was authorized by the accused's parents to settle the case. Gaudencio refused the offer of compromise.

At around three o'clock in the afternoon of 01 August 1993, a taxicab and a jeep pulled over near Gaudencio's house. On board the taxicab were Elvira P. Telmo, sister of the accused, and her husband. Alighting from the other vehicle was Sgt. Garcia. The group must have first dropped by the house of Vic Sanchez because the latter was with them when they called on the Hinays to try to persuade Gaudencio to "settle" the case.

Shortly after the filing of the case, the Hinay spouses, fearing for their safety, relocated their residence to the PBMA Chapter compound. According to Maria, the family feared Ronnie, a soldier and Danilo's brother-in-law, who frequently came visiting. On 27 July 1993, Marilou was transferred to the care of Create Responsive Infants By Sharing ("CRIBS").

The defense interposed denial and *alibi*.

Thirty-year old Danilo Pacistol y Lim, an electronic technician residing at Lot 3-A, Atis St., Roxas Subdivision, Banaba, San Mateo, Rizal, claimed to be a God-fearing and well-respected resident of the place. On 02 July 1993, Danilo was in the house of his brother-in-law, Nelson Surayo, in Marikina. He had been there with his wife and son since the afternoon before helping in the food preparation for the death anniversary of his father-in-law. On 06 July 1993, he was working near Sta. Lucia in Cainta in the house of the daughter of a certain Mr. Cruz. He had been working there since the first week of June until 22 July 1993. He would leave his house at around 6:00 or 6:30 in the morning and come home at past 6:00 in the afternoon.

Danilo had gone to the house of the victim once or twice before. He knew her and her grandfather who used to be a fellow employee working for the same company. He surmised having been accused the rapist because of a grudge the grandparents of the victim had against him. Some of his "gangmates," notably Bimbong Obregon and the Cabaya brothers, stabbed and mauled Eddie Nicol, who, like Gaudencio Hinay, was a member of the "PBMA."

In the afternoon of 25 July 1993, between 5:00 and 6:00 o'clock, Danilo was apprehended by SPO2 Salvador. He was accompanied at the police station by a friend, Basilio Garcia. When Marilou's grandfather arrived, he pointed at him and said, "*Iyan nga, iyan nga.*"<sup>[5]</sup> After the grandfather had left to fetch the complainant, Danilo was advised that he was being charged with rape. No lawyer was with him at the time. Arriving with the girl about thirty minutes later, the grandfather, pointing at Danilo, yelled, "*Iyan ba, iyan ba ang gumahasa sa iyo?*"<sup>[6]</sup> The girl did not answer. The grandfather repeated the question two more times but the girl remained silent. Momentarily, the two went outside the room. When they returned, the girl was asked the same question. This time, she nodded her head slowly. The investigator started asking the girl some questions. When asked two or three times whether Danilo was her rapist, the girl did not answer but when her grandfather held her by the shoulders, she, finally, "nodded her head."<sup>[7]</sup>

Ramon Balonias, who was at the time a trustee-detainee at the police station, became a "cellmate" of Danilo. According to Balonias, he was lined up with nine other persons during the victim's identification of Danilo. When the girl was unable to identify the alleged rapist, her grandfather forced her to point to Danilo as the culprit.

Nelson Surayo, brother-in-law of Danilo, supported the latter's alibi. A resident of Exequiel, Concepcion, Marikina, Metro Manila, Surayo affirmed that it would take about forty-five minutes to reach appellant's residence in Banaba, San Mateo, from his own residence considering that one still had to take a tricycle after alighting from a passenger jeepney. On 01 July 1993, he went to see Danilo to remind him of the death anniversary of Surayo's father. Danilo and his wife promised to attend the affair. In the afternoon of 01 July 1993, the couple arrived in Surayo's house where they stayed until 5:00 o'clock in the afternoon of 02 July 1993.

Leticia Cruz Domingo of 109 Dragon St., Midtown Subdivision, Phase 2, Marikina, swore that on 02 July 1993, as well as on 06 July 1993, Danilo was in her residence working. She was certain about it because, although she resided in Cubao, she would, however, go to her Marikina house every afternoon to personally hand over the P200 daily pay of Danilo.

Ronnie Telmo, a retiree from military service and married to Danilo's sister, admitted having gone to the residence of Gaudencio Hinay to settle the case. Although he did not believe that his brother-in-law could have committed the crime, he, nevertheless, wanted to help in settling the case. Unfortunately, however, his efforts failed.

The trial court was not persuaded by the defense put up by the accused and, on the basis of the evidence presented to it by the prosecution, held him guilty of the crime

charged. It found it "amusing" that the defense still had doubted the victim's identification of Danilo as the perpetrator of the crime considering that the complainant "had positively identified the accused during her direct and cross examinations by both counsel for the prosecution and the defense, x x x, not just once, x x x, but several times x x x."<sup>[8]</sup>

The Court concluded:

"WHEREFORE, judgment is hereby rendered by this Court finding accused DANILO PACISTOL Y LIM alias DANNY PILAY, guilty beyond reasonable doubt of the crime of rape in both cases and is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua in each case and to pay the amount of P60,000.00 in each case as indemnity."<sup>[9]</sup>

In this appeal, appellant raised the following assignment of errors, to wit:

"I. The trial court seriously erred in admitting and in heavily relying on evidence of accused's alleged 'Identification' by the private complainant notwithstanding the fact that said evidence was obtained after the illegal arrest of the accused and during a police line-up where the accused was not informed of his right to counsel or to be provided the assistance of counsel.

"II. The trial court grossly erred in finding against the accused on the basis of evidently tutored and concocted statements of the private complainant and witnesses for the prosecution.

"III. The trial court gravely erred in convicting the accused without giving due weight to the defense of the accused.

"IV. The trial court seriously (erred) in finding the accused guilty despite the absence of definitive finding that it was accused who raped the private complainant and that the laceration found on her vagina was caused by a male sexual organ."<sup>[10]</sup>

The Court acknowledges that a rape charge can be made with facility; that rape may be hard to prove but much more difficult for the accused, although innocent, to disprove; that the prosecution cannot draw strength from the weakness of the defense; and that, above all, the testimony of the complainant must be scrutinized and evaluated with deliberate caution.<sup>[11]</sup> Normally, it is only the victim who can identify the culprit by the very nature of the crime, one which, almost always, is committed in seclusion.<sup>[12]</sup> The credibility of the rape victim should thus be beyond reproach.

In this case, the prosecution, in the view of the Court, has creditably discharged its function in seeking to prove its case against the accused.

Although barely ten years of age, Marilou so unflinchingly pointed at appellant as the person who twice sexually assaulted her. At the police station, SPO2 Richard Salvador testified that Marilou singled out appellant in a police line-up, thus:

"Q. Will you describe that police line-up?