

EN BANC

[G.R. No. 122764, September 24, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO PEREZ, ACCUSED APPELLANT.**

D E C I S I O N

REGALADO, J.:

Before us for automatic review is the decision^[1] of the Regional Trial Court, Branch 32, Calbayog City, Samar^[2] Criminal Case No. 1899 convicting accused-appellant Ernesto Perez, also known as Erning, of the felony of rape committed against his stepdaughter, sentencing him to the supreme penalty of death, and ordering him to pay his victim the amount of P50,000.00 as moral damages and the costs of the criminal action.

On the basis of a complaint^[3] subscribed by Maribel Perez, an information was filed in the court *a quo* against appellant for allegedly raping Maribel, his stepdaughter. The indictment alleges:

That on or about the 21st day of February, 1994, at about 9:00 o'clock in the evening, at Barangay Ilo, Municipality of Sta. Margarita, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with (sic) MARIBEL PEREZ against her will; that in the commission of the said offense, the accused acted with grave abuse of confidence, he being the stepfather of the complainant, by enticing her to leave their house located at 159 J. Fegiras (sic) St., Sampaloc, Manila and was brought to Barangay Ilo, Sta. Margarita, Samar where the above-mentioned offense was committed.^[4]

On being duly arraigned, appellant pleaded not guilty to the accusation against him.^[5] Thereafter, a full-blown trial was conducted in the court below, wherein the People and appellant were afforded full opportunity to establish their respective versions of the criminal charge.

Under meticulous examination by the public prosecutor and appellant's counsel *de oficio*, complainant Maribel candidly and innocently related in open court the circumstances surrounding the rape, together with the unfortunate antecedents which culminated in its commission.

According to Maribel,^[6] appellant brought her to Samar from their residence in Sampaloc, Manila sometime in February 1994, supposedly to separate her from her siblings who were drug users or addicts. Maribel was only thirteen years old then. Appellant is her stepfather, he being the second husband of her mother, Anaclea de

la Cruz. When they arrived in Samar, they stayed in the house of the spouses Raul and Nida Nieva at *Barangay Ilo* in the town of Sta. Margarita.

While appellant and the Nievas were drinking in the kitchen on the night of February 21, 1994, complainant proceeded to the bedroom to sleep. The kitchen, wherein the Nievas would be spending the night was about one arm's length away from the bedroom.

At around nine o'clock that evening, Maribel was awakened by the presence of someone pulling down her panties. Complainant soon realized that it was appellant who was removing her underwear. Appellant spread her legs, went on top of her and started thrusting his genital organ toward her private parts. Complainant cried in pain when appellant's penis penetrated into her vagina. To stifle Maribel's outcries, appellant covered her mouth with his hand and warned her that he would box her if she again shouted or resisted his bestial advances.

Faced with that threat, complainant no longer struggled against appellant as he continued with his lechery. After a while, appellant withdrew from Maribel and masturbated in front of her. Semen, which complainant later naively referred to as water, was thereafter ejaculated by appellant toward her vagina. Eventually, appellant proceeded to sleep beside the victim.

The following morning, Nida Nieva asked Maribel why she was crying the night before. After complainant revealed to Nida the sexual assault committed by appellant, the two immediately went to the *capitan* of *Barangay Ilo* and then to the police headquarters of Sta. Margarita to report the incident. On the same day, Maribel was brought to the Calbayog District Hospital for physical examination.

Dr. Flora M. Rosales^[7] examined Maribel on February 22, 1994 and found a fresh laceration on her hymen at a 3 o'clock position. She later explained before the trial court that said laceration could have been caused by the insertion of a male sex organ within twenty-four hours prior to the examination.

Maribel, on her part, recounted in vivid detail the antecedents which led to her coming to Samar and the facts of the rape committed against her, as hereinbefore narrated. She explained that she was able to identify appellant as her assailant due to the illumination coming from the light on the electric post outside the house.

Appellant^[8] denied the charge against him and claimed that nothing felonious happened on the night of February 21, 1994. He testified that he slept on the terrace near the stairs of the Nieva house at 9 o'clock in the evening of February 21, 1994. On that same night, Raul's brother, Lito, together with his four children, came and spent the night in the house of the Nievas.

Because the house is small, the four daughters of Lito slept with appellant on the terrace while Raul, Nida, Lito and Maribel slept in the bedroom. When appellant arose at midnight to urinate, he was surprised to see Maribel lying and sleeping beside him on the terrace. Appellant proceeded to the river nearby, where he urinated and then went back to sleep beside Maribel.

In the morning of the following day, Maribel told appellant that she was having her

menstruation. Like a good father, appellant. claims that he gave complainant money to buy sanitary napkins.

Appellant admitted that he married Anacleta de la Cruz in a civil ceremony before a judge when Maribel was only five years old. He treated Maribel as his own child and provided for her support. When asked for complainant's age, he answered at she was thirteen years old. He went to Samar on February f994 to visit Raul, the son of his *kumadre* Maria Nieva. He brought Maribel along with him because he wanted to keep her away from the two other sons of his wife who were drug addicts.

He surmised that Maribel probably suspected him to be her assailant because he was the one lying beside her when she woke up in the morning. He gave no other reason or explanation why she would impute to him such a heinous and capital offense.

To impeach the credibility of Maribel, the defense presented Rodolfo Francisco,^[9] a detention prisoner who came to know appellant at the Municipal Jail of Sta. Margarita. Francisco declared that while he was sweeping the floor near the investigation room of the police headquarters on February 23, 1994, he heard Maribel denying before the Chief of Police of Sta. Margarita that her father raped her. He also heard her saying that appellant was just being suspected by the people in *Barangay* Ilo as the rapist who attacked her.

On February 13, 1995, the presiding judge of the lower court conducted an ocular inspection^[10] of the *locus criminis* and ascertained the presence of the electric post near the Nieva house as testified to by Maribel. In the course of his inspection, he also asked the present occupant of the house, Francisca Cajurao, and a barangay councilor, Jovito de los Santos, a number of questions seeking clarification of some matters concerning the crime.

Finding the testimony of complainant credible and trustworthy, the trial court declared appellant guilty beyond reasonable doubt of the charge lodged against him. Since Maribel was less than eighteen years of age at the time of the rape and her attacker is her stepfather, appellant was condemned by the lower court to suffer the death penalty.

After a conscientious review of the records and an objective evaluation of the evidence, we agree with the lower court that Maribel is indeed telling the truth. The trial court drew its conclusion from the direct, positive and categorical assertions made by complainant on the witness stand on the material occurrences of the criminal incident. Her testimony palpably bears the, earmarks of truth and jibes with the material points involved.

Maribel did not waver during her testimony when asked by the judge a quo, the public prosecutor and the defense counsel to describe how she was sexually abused. Her detailed narration before the lower court was given in a straightforward and candid manner. We have heretofore concluded that a rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.^[11]

Moreover, when the testimony of a rape victim is simple and straightforward,

unshaken by a rigid cross-examination and unflawed by any inconsistency or contradiction, as in the present case, the same must be given full faith and credit. [12] Maribel's testimony gives no impression whatsoever that her story is a mere fabrication. If her story had only been contrived, she would not have been so composed and consistent throughout her entire testimony in the face of intense and lengthy interrogation. [13]

We also note that her account of the rape in her affidavit [14] during the investigation by the police and her testimony during the trial are concordant with each other. There is no material deficiency or substantial inconsistency between such testimony and affidavit of Maribel. Furthermore, being young and immature, the testimony of this complainant deserves full credence. [15]

It has long been firmly settled that an unmarried teenage lass would not ordinarily file a complaint for rape against anyone if it were not true. [16] We repeat once again that a woman would not admit that she has been raped, make public the offense, allow the examination of her private parts, undergo the trouble and humiliation of public trial, and endure the ordeal of testifying to all its sordid details if she had not in fact been raped. [17] It is her instinct to protect her honor. [18]

We also find her prompt report of the crime to the authorities, and her persistent efforts to have appellant brought to justice, as convincing indications that she has been truly wronged. A complainant's act in immediately reporting the commission of rape has been considered by this Court as a factor strengthening her credibility. [19]

Finally, the willingness of Maribel to face police investigators and to submit to a physical examination is a mute but eloquent testimony of the truth of her charge against her own stepfather. If she had merely been prodded to relate a fabricated story to build up that serious charge, she would have recoiled at the possibility of being caught in prevarication, inexperienced as she was in such matters. She would have been deterred by the grave consequences of such willful falsehoods which could easily be unmasked by the medical findings that she would be made after a thorough examination of her body. [20]

Appellant nonetheless questions before us the credence accorded by the trial court to Maribel and seeks to overturn the case established against him by the prosecution in the court below. He insists that the trial court should have doubted the unbelievable testimony of complainant which contains narrations of facts contrary to human experience, thus negating Maribel's claims of having been raped by him.

Catalogued from appellant's brief, [21] these are the supposedly unusual and queer circumstances: (1) if appellant merely wanted to rape Maribel, he could have easily raped her in Manila with its abundance of hotels and motels, rather than go to the trouble of taking her to Samar; (2) it was unusual for appellant not to ejaculate inside Maribel's vagina if his purpose was to satisfy his lust; (3) it was impossible for appellant to rape Maribel because the house of the Nievas was small and overcrowded, with the spouses sleeping only one arm's length away from them; (4) considering that distance between them, the spouses should have been awakened by Maribel's cries; and (5) for the same reason, Maribel could have easily sought the

assistance of the spouses, especially since only a curtain separated the bedroom and the kitchen.

The above litany of arguments conjured by appellant does not persuade us. Suffice it to say that his contentions do not necessarily lead to the conclusion that no rape was committed or that he was not the one who raped Maribel. The elements of the rape and the identity of the malefactor were adequately proven beyond moral certainty by the testimony of Maribel, not to mention the admissions of appellant himself.

We find undeserving of any consideration the first and second assertions of appellant. Their hypothetical and self-serving nature destroys their viability. They beg for a conclusion without providing the premises which, whether from behavioral science or from settled jurisprudence, would support his claim of improbabilities.

Only appellant can give the answer to his own assumptions which, sad to say, he did not present during the trial. While we can hazard some rationalizations, we decline from doing so lest we also be guilty of speculation. As we have earlier ruled, this Court is not tasked to delve into the workings of the mind of the accused and to determine why he did not previously rape his victim even if he could have done so^[22] and, in a manner of speaking anent the instant case, why he opted out when he could have stayed in.

The fact that the rape took place in a room not far from the Nievas does not diminish the credibility of Maribel. The nearby presence of people in a certain place is no guarantee that rape will not and cannot be committed.^[23] Up to now, there is no rule that rape can be committed only in seclusion.^[24]

We reiterate the dictum, drawn from judicial experience, that lust is no respecter of time and place. Rape, we have often held, can be committed even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping.^[25] Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. Rape was held to have been committed in the same room while the rapist's spouse was asleep, or in a small room where other family members also slept.^[26]

Whether or not the sleeping Nievas were awakened by the cries of Maribel and why they did not help her will not and cannot affect complainant's credibility. As maintained by the public prosecutor and correctly sustained by the trial court, Maribel is incompetent to know whether Raul and Nida were awakened by her crying.^[27] Be that as it may, the questioning of Maribel by Nida the following morning indicates that she was awakened by and heard the cries of Maribel. But why she did not help complainant is again foreign to Maribel's perception, and would be pure conjecture for us to deal with.

Maribel's failure to shout or seek the assistance of the nearby spouses cannot also yield the inference that no rape was committed. It will be recalled that when complainant began to cry, appellant covered her mouth with his hand and uttered some menacing words.^[28] With those threats in mind, it becomes easy to