

FIRST DIVISION

[G.R. No. 114387, March 14, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO DEVILLERES, ACCUSED-APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

Incestuous rape is probably the most odious, atrocious and perverted crime against womanhood. It is repugnant to the common standards and basic norms of decency and morality in a just and civilized society.

Accused-appellant Alejandro Devilleres denies succumbing to the throes of bestial lust, claiming that his 15-year old daughter was only avenging herself for the beatings he had inflicted on her.

In an Information filed by the Provincial Prosecutor of xxx on July 23, 1991, accused-appellant was charged with the crime of rape under Article 335 of the Revised Penal Code before the Regional Trial Court of xxx, Branch xxx,^[1] committed as follows:

"x x x on or about the 18th day of April, 1991, at about 4:00 dawn, more or less, at xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd design, and while his wife was away fetching water, by means of force, threats and intimidation using a scythe and a gaff, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with her (sic) 15-year old daughter, AAA, against her will and consent."^[2]

To the above charge, the accused pleaded not guilty. Notwithstanding his plea and after due trial, the court a quo convicted him of the crime charged. The decretal portion of its Decision^[3] states:

"WHEREFORE, in view of all the foregoing, the Court finds accused ALEJANDRO L. DEVILLERES guilty beyond reasonable doubt of the crime of rape as defined by Art. 335 (as amended) of the Revised Penal Code and hereby sentences him to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay AAA the amount of P15,000 as indemnity and to pay the costs."

The Facts

Evidence for the prosecution consisted of testimonies of three witnesses, while for the defense only that of the accused. Their testimonies were accurately summarized by the trial court in its Decision as follows:

"1. Dr. xxx, M.D., resident of xxx, whose expertise as witness was admitted by the defense, identified the living case report she had made (Exhibit A). She told the Court (TSN: Cruz, 12 December 1991, pp. 2-6) AAA went to her for physical examination because, said AAA, she was raped by her father. She found two healed lacerations in AAA's hymen, one at 3 o'clock, the other at 7 o'clock. It was possible that these injuries were the result of sexual intercourse.

On cross, she said it was also possible for hymenal lacerations to be caused by jumping, running, horseback riding or masturbation. Her examination of AAA was made on 12 June 1991, and AAA had told her that she was raped on 18 April 1991. Finding the lacerations to be healed, she could not tell when the lacerations were inflicted.

AAA had also told Dr. xxx that she had been raped 'many times' before 18 April 1991 by her father.

2. Complainant AAA, then 15, single, baby sitter, resident of xxx, and elementary school graduate, testified (12 December 1991, pp. 6-15, direct), thus, in brief:

She had three brothers and five sisters. The oldest is BBB, who had not been living with the family but with her paternal grandfather since BBB's childhood. The second child, CCC, was dead. She, AAA, was next to CCC. She was the oldest among the children who were living with her father and mother in the same house on 18 April 1991. She and her four younger sisters, 6, 4, 3 and 2 years old were still living with their parents.

Her father, a farmer, was Alejandro Devilleres (identified by her in court), 41 years old, and her mother was DDD, 36. She read(s) magazines, such as movie periodicals, she went to movies and watched television. She had been baby-sitting in xxx. She identified as hers the complaint (Exhibit B) and her signature therein (Exhibit B-1).

On 18 April 1991, at 4 in the morning, she was in their house with her younger sisters and their father, while their mother was fetching water at that time. Her mother had awakened her and told her that she was fetching water, because her mother 'used to take a bath in the morning'.

Her sisters were sleeping beside her, but soon she noticed her father already beside her, pointing a gaff on her neck. He told her not to make any noise, and he removed her pants and, next, her panty. Then he touched the top of her vagina, and she felt afraid. (At that time she had not yet been menstruating, but she already had a growth of pubic hair, which was what her father touched). 'I did not say any word,' she told the Court, 'because if I moved, he would kill me.' How did she know that he would kill her? She said, 'He was pointing a gaff on my neck.' His father removed his shorts. Then he placed himself on top of her, and 'my father inserted his penis to my vagina'. She knew it was his penis 'because it is very painful.' After 15 minutes of his penis inside her vagina, he removed his penis and put on back his shorts, and he walked away toward his father's house.

After that she gathered all her clothes, she wanted to get away from home and she cried profusely in her room. Her mother came back. Her mother asked her why she

was crying and she told her mother that her father had molested her, describing the steps her father had taken -- removing her panty, touching her vagina and inserting his penis into her vagina and so on -- and her mother now cried and kept on crying. Her mother advised her to get away from their house. Since she did not have money, she went to her grandmother who gave her P80. CalrkyÓ

At her grandfather's house she told only her grandmother about what her father had done. Then on an ABC bus she left xxx and went to xxx, working as househelper at EEE's home. It was her employer in xxx, FFF, who had assisted her in filing the complaint against her father. 'I have lost all sympathy for my father,' she said. 'I have regarded him as long dead. I cannot forgive him for what he had done to me.'

On cross-examination, AAA said (TSN: Patalinghug, 23 March 1992, pp. 2-12; 24 March 1992, pp. 2-17) that she was an elementary school graduate of 1990 and that she turned 16 on 1 February 1992. Since 20 February 1992, she had been staying as househelper with Atty. xxx, private prosecutor in this case, at his house in xxx. Starting 22 April 1991 she went to xxx, upon invitation (on 19 April 1991) from her cousin GGG to join her as househelp (her first time as such) to EEE for half a month; then to xxx as a babysitter there, employed by HHH, whose house is near the municipal hall; then xxx in August 1991 (this time she had already reported the incident to the police) with III for six months; then finally to xxx -- municipalities all of xxx.

The incident happened on 18 April 1991, and she filed her complaint before the police on 1 June 1991. It took her this long to report the matter to the police because, in the intervening period, she was working which, to her, was more important. All this while her father was staying with her mother in xxx, a barangay of xxx some 15 kilometers from the poblacion.

She only stayed for half a month in xxx because her father personally fetched her because he wanted her to go back to xxx. He had been angry with her, and angrier when she refused to go back to xxx.

Like her mother, her grandmother (mother of her father) also cried when she related to her what had happened. The latter gave her P80. She had told her story only to them.

Although her direct testimony in court on 12 December 1991 was done in chambers, and she had mentioned that she was raped only once on 18 April 1991, she said, 'I did not narrate everything because I was ashamed.' She now said she had been raped not only on 18 April 1991 but also raped before that date, the other rapes done also by her father, 'I cannot remember anymore how many times, but many times . . . yes, sir, more than once . . . not four times, but only three times.' They were done in March 1991. She reported these March rapes neither to the police nor to her mother. She did not tell her mother about the three earlier rapes 'because my father would kill me.' But after 18 April 1991, 'I ceased to be afraid,' so she reported the matter to her mother. And she stopped being afraid 'because I already (had) escaped from our house.'

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She said that before the March rapes her father had been maltreating her, that is

why she came to be afraid of him always. Once he struck her with a broom on her cheek (which bore scars). It was HHH, her employer in xxx, to whom AAA confided what had happened to her (AAA), who assisted her in filing a complaint against her father with the police.

The family house in xxx had only one bedroom which the father and mother used as their own. The floor is of bamboo slats, and walls were also of bamboo and the roof was of coconut leaves. Her father was 'jobless, idle and lazy, not doing anything at all,' while her mother was doing some farmwork. Her father on days was always drinking tuba, secured from her grandfather.

3. Third witness was JJJ, then 59, married, farmworker, resident of xxx, testified (TSN: Ybañez, 19 May 1992, pp. 2-11) that he finished Grade 3 in schooling and that complaining witness AAA was his granddaughter, 'because the mother of AAA (named DDD) is my daughter.' He knew the accused Alejandro Devilleres (identifying the accused in the courtroom), who 'is my son-in-law' because Alejandro Devilleres 'is the husband of my daughter.'

During his confinement, accused Alejandro, through a member of the CAFGU, requested him to visit him (accused) in the municipal jail of xxx. So he went to jail to see Alejandro who asked forgiveness from him (witness) and who 'told me to convince AAA to release him in jail.' But he did not accept his request for forgiveness and 'AAA did not agree because he had done an evil act on her.' He recalled that after the Court adjourned the hearing of this case on 23 & 24 March 1992, he and the accused met outside the courtroom: 'Alejandro kissed my hand, and again, asked forgiveness from me,' but he refused him. Why? 'I cannot accept his (request for) forgiveness because AAA has still many younger sisters, and I am afraid that Alejandro Devilleres would also do to the other girls in the family what he had done to AAA.' AAA had five sisters, all younger than she, her next younger sister being nine years old, then followed by the six-year-old.

Yes, he had a talk with his daughter, DDD, regarding this matter. According to DDD, her husband Alejandro had sent her a letter requesting her to help him, because he said 'he could not endure the jail.' But she said 'she cannot help her husband because her husband is guilty.'

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SOLE DEFENSE witness, accused himself, Alejandro Devilleres, then 41, resident of xxx and a sixth grader, told the Court (TSN: Ybañez, 28 July 1992, pp. 2-12) that he had nine children, oldest 20 years old and youngest one year old. She (sic) said complainant AAA was her (sic) daughter. He was asked, 'Did you rape AAA?' He answered, 'No, sir.' And she (sic) was asked, 'So if you did not rape your daughter, why has your daughter charged you for raping her?' And he answered: 'AAA filed this case of rape against me because I always beat her because she is naughty.' Why 'naughty'? Accused explained, 'She is stubborn. She refuses to follow my directions.' Was her naughtiness enough reason to beat her up repeatedly? He said, 'Yes, necessarily.'

He admitted that his wife, AAA's mother, was pregnant on 18 April 1991. During this pregnancy of his wife's did the urge for sexual intercourse so build up inside of him

that he could not satisfy himself because of his wife's pregnancy? He answered, 'I did not do it.'

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In the evening of 18 April 1991, after he had come home from the farm he learned that AAA had left for xxx and he didn't know why she went there.

He said there were 10 in the family living in their 20-foot-by-12-foot house, which has only one bedroom where AAA and her younger sisters slept. He and his wife slept in the 'sala.'

On 18 April 1991, AAA slept in the bedroom; that night he slept in the sala."^[4]

In giving credence to the evidence for the prosecution and in convicting the accused, the court *a quo* ratiocinated:

"Despite minor discrepancies in her testimony which, in the view of the Court, is tolerable after a cautious scrutiny of its quality, complainant, as a whole showed no signs of insincerity in manner and behavior. The Court was impressed by her unburdening of what had happened to her not to anyone else but to her own mother. x x x

If mere entry by the penis of the labia (lips) of the female organ without rapture of the hymen is sufficient to warrant conviction for consummated rape (as consistently ruled and again echoed in *People v. Hangdaan*, L-90035, 13 September 1991) . . . if the slightest penetration is sufficient to consummate rape, then with more reason is there consummated rape where, as complainant AAA evenly described it, her father 'inserted his penis into my vagina . . . (and) it was very painful' (TSN: Cruz, 12 December 1991, p. 11).

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Force and intimidation are not limited to physical force. It includes the moral kind such as fear (*People v. Bugtong*, G.R. 75853, 31 January 1989). Moral intimidation may result from the exploitation of moral ascendancy and influence by the accused, such as in herein case where the culprit is the very own father of the young victim (*People v. Robles* G.R. 53569, 23 February 1989). A smug statement in his own testimony illustrates vividly the moral ascendancy the accused had always been exercising over his daughter AAA, in that he always beat AAA because she was 'naughty and stubborn, refuses to follow directions,' and her naughtiness was already 'enough reason' for him 'necessarily to beat her repeatedly' (TSN: Ybañez, 28 July 1992, p. 4).

Under the circumstances, the Court must only disregard disparities in details that merely obscured but did not falsify the fact that Alejandro L. Devilleres had really raped his own daughter, AAA. The Court likewise feels horrified having this accused Alejandro L. Devilleres -- a father, then 40 years old (at the time of rape), who had a 35-year-old wife, whom he had known since she was 16, this father who had sired nine (9) children by said wife -- still perpetrating on his own flesh and blood, his own daughter, such an outrageous deed. It is not incorrect to say that insatiable lust