

SECOND DIVISION

[G.R. No. 108604-10, March 07, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FEDERICO A. BURCE, ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

As the government cheers the sizeable contributions to the national coffers of overseas workers of all kinds through their dollar remittances, it cannot remain oblivious of the dire consequences visited upon the families who are left behind.

Part of the concomitant measures being undertaken to make government initiatives gender-responsive should be the conducting of a study to determine, not merely the economic, but the social and moral effects of the enforced estrangement between spouses and between-parents and their children.

One such deplorable consequence acknowledged by the Department of Social Welfare and Development and other agencies engaged in the task of looking after the welfare of the deprived, underprivileged, abused and exploited sectors is the growing incidence of immorality within the family left behind. Even the media trumpet instances of marital infidelity where the spouse left behind seeks solace in the arms of another, dissipating the hard-earned wages of the one who suffers privations in foreign lands in order to provide the loved ones back home the amenities he denies to himself/herself. Worse, because of its increasing frequency, is incestuous rape engendered by the absence of a mother who entrusts her minor children to a husband who, in moments of weakness unleashes his wild sexual impulses on a daughter who, more often than not, due to her tender age and innocence, is utterly unaware that the man she respects as her father is nothing but a sex maniac. Such odious and despicable sexual deviance inevitably leads, not only to the betrayal of the victim's honor, shatters her spiritual and emotional well-being and physical integrity, but as well to the disintegration of their family. How long can our society countenance such inglorious breakdown in the moral fabric of our nation and the breakup of families in its effort to boost the national income!

The facts of the instant case are a reprise of countless others, many of which may never form part of our jurisprudence for truth to tell, conservative, tradition-bound Maria Claras in our midst would still prefer to suffer silently in shame than expose their ignominy to the cruel, probing public eye.

Appellant Federico A. Burce married AAA in 1975^[1] when AAA was already heavy with their first child, BBB.^[2] Their daughter, CCC, was born on August 10, 1976.^[3] In 1987, AAA was employed as a staff nurse at the xxx Hospital in Saudi Arabia.^[4] Since then, she would take a yearly vacation, usually in the months of May or June, which she spent with her family. She left her children in the care of her

husband who plied his trade as a goldsmith at home. From time to time, AAA's mother, DDD, who was residing in xxx, would visit the children.^[5]

On November 10,*1990, when she was a fifteen-year old, second year high school student of xxx and her family was residing at xxx, CCC was invited by a female classmate who was celebrating her birthday to watch a show and to eat out with their group. She spent the afternoon with them and arrived home at around 7:00 o'clock in the evening. Since their father was not yet home, she and BBB had supper and thereafter, retired for the night.

Her father, appellant Burce, arrived home at around 11:30 that same evening. CCC heard him instructing her brother to call for her. When she came out of her room, appellant beat her brother and sent him to sleep. In her affidavit dated September 2, 1991 before the Municipal Judge of xxx, CCC stated that upon seeing her, appellant asked her where she had been but before she could answer, he banged her head against the wall and told her that she was flirting ("nagtataray").^[6]

Later, appellant came knocking at CCC's door. As soon as she opened it, appellant held her arms and made her lie down on the bed. Appellant locked the door and warned her not to report "the matter" to anyone; otherwise, he would kill her. Then appellant removed CCC's pants, t-shirt, sando, bra and panty. All the while CCC resisted him and tried to extricate herself from her father's grip. However, appellant boxed her stomach. Weakened, CCC asked him, "Why are you doing this to me? I am your daughter." Appellant, who was reeking with alcohol, said nothing but kissed her breast and raped her ("pinagsamantalahan po niya ako").

Although there was no light in her room, CCC recognized her father by the light emanating from outside her window. Appellant was then wearing pants and t-shirt which he took off after making her lie down. After raping her, appellant left the room, leaving CCC crying. She put on her clothes and stayed in bed. Because of appellant's threat to kill her, she could not tell anyone about her ordeal.^[7]

The rape committed that Saturday night caused CCC to bleed. There was blood on her undergarment which she washed away next morning. On Monday, CCC had to absent herself from school because she had fever; her whole body was aching and her legs were numb. Appellant sent BBB to buy medicine but CCC had fever for three days.^[8]

That was not the only time the lecherous father committed rape against his daughter. The dastardly act was perpetrated six times more - on November 25, 1990, December 3, 1990, December 15, 1990, January 4, 1991, January 28, 1991 and February 10, 1991. After each act of rape, CCC would mark the date on the calendar with an "X".^[9] She later transferred the dates on a page of her diary/prayer book^[10] because she vowed that when her mother arrived, she would tell her what her father had done to her.^[11]

There was a discernible pattern to the repeated sexual violations of CCC by appellant. At around midnight when he would come home drunk, he would knock at her door on the pretext that he wanted to get something from her room but after she opened the door, he would force himself upon her. The second time he raped

her on November 25, 1990, appellant entered the room fully clothed but after forcibly removing CCC's clothes, he undressed himself, touched her breasts and mounted her. CCC again resisted her father's advances but her strength proved no match to his. Her brother who was in his room could have heard her cry but must have thought that their father was manhandling CCC as he usually does for no reason at all.^[12]

On the third sexual assault on December 3, 1990, appellant used the same excuse in entering her room ("laging ang dahilan niya ay may kukunin sa aking kuwarto"). To satisfy his lust, appellant slapped CCC when she fought back. He forced her to open her thighs and inserted his organ into hers and she felt something wet coming out of his private part.^[13]

The incident was repeated a fourth time on December 15, 1990. Enraged because she could not understand why appellant was molesting her when she was his own child,^[14] she, however, felt helpless to ward off her father's assaults.

On January 4, 1991, CCC and her grandmother returned to xxx from xxx. She begged her grandmother not to leave her and her brother but the former had to leave that day. At midnight, using the same excuse that he wanted to get something from her room, appellant succeeded in making CCC open the door. Appellant took her hands and when she resisted, he twisted her wrist and forced her to lie down on the bed. Once again, she protested saying, "Why are you doing this to me when I am your daughter?" Much as she wished to, CCC could not shout because he threatened to kill her. Appellant was wearing only his briefs then. While he held her hands, appellant removed his briefs. After removing her underwear, appellant touched her breast, kissed and bit her nipple and then inserted his organ into hers. Again, she felt something sticky on her groin. His carnal desire, having been spent, appellant stood up and went to the sala as CCC cried while putting on her clothes.^[15]

In the evening of January 28, 1991, CCC, apprehensive that her father would again rape her hurriedly went to the sala when she heard his knock. Appellant, however, forced her to approach him. Instead, she ran behind a piece of furniture but he overtook her and forced her to lie down on the sofa. As CCC resisted, appellant held her arms and pulled her towards her room where he slapped her "right and left." Weakened, CCC could do nothing but cry as her father again forced himself on her.

The seventh rape was committed on February 10, 1991. That night, BBB opened the door of their house when appellant arrived home. When CCC was awakened, she heard appellant asking for food from her brother. After eating, appellant told BBB to go to sleep. When CCC noticed that he was drunk, she became frightened. As she suspected, her father again knocked at her door, and gained entrance on the pretext that he would get something. Although she tried to run away, he chased her, pulled her by her hair and succeeded in repeating his bestial act.

In spite of the seven forced sexual encounters with her father, CCC was not impregnated. She later explained that she did not take pills to avoid pregnancy because she did "not know anything about such things."^[16]

BBB testified that his father was always mad at them for no reason at all, such that

he developed a phobia toward him. Although during the November 10, 1990 incident, BBB heard his sister's plea for mercy ("pagmamakaawa") in the adjacent room, he thought their father was only "hurting" CCC. He heard such cries of his sister not only on that day but "several times after."^[17]

On July 30, 1991, CCC's mother, AAA, arrived in Manila from Saudi Arabia. Appellant and their two children met her at the airport. The following day, they arrived in xxx. Because appellant told AAA that he had financial obligations to his customers, the latter gave him three thousand dollars (\$3,000.00). Shortly after her arrival, AAA found out that every morning, after taking a bath, appellant would go out on the pretext that he would settle his obligations but he would come home drunk at night. Several times, people would look for him to ask him to make an accounting of his debts but AAA would answer that she had already given him money for that purpose.^[18]

On August 7, 1991, AAA and appellant went back to Manila to get her baggage. DDD, AAA's mother, was left with their children in xxx. It was then that CCC finally found the courage to confide in her grandmother about her ordeal. The latter was so furious that she could not help crying. She told CCC that they should tell AAA when they reached xxx.^[19]

On August 23, 1991, AAA and her daughter went to xxx to offer mass in thanksgiving apparently for blessings received from AAA's employment abroad. After mass, CCC asked her mother if she was still going back to Saudi Arabia. Seeing her daughter crying, AAA inquired if she had a problem. It was then that CCC unburdened herself to her mother. AAA almost collapsed from the shocking revelation. Her mother told her to control herself because the law should take care of the matter^[20] and advised her to consult a lawyer. AAA had a brother who was a policeman but fearful lest he might take drastic steps, she consulted her friends on who to approach for the problem.^[21] She did not confront appellant because of the threat to her daughter's life and possibly to herself as he usually came home drunk.^[22]

On September 2, 1991, AAA accompanied her daughter to the xxx Hospital in xxx where Dr. xxx conducted a physical examination on CCC. He found "incomplete, healed, hymenal laceration(s) at 1, 2, 5, 7, 8, & 9 o'clock position(s)." The laboratory examination yielded negative result for sperms.^[23]

On that same day, BBB, AAA, CCC and DDD executed affidavits before the xxx municipal judge.^[24] BBB and CCC narrated the incident which occurred on November 10, 1990.^[25] AAA related how her daughter revealed in church her defloration at the hands of her father.^[26] On the other hand, DDD swore that from November 1990 until August 1991, when she would visit her grandchildren, she would find an intoxicated appellant who would shout at his children and even at her, and how her granddaughter finally disclosed to her on August 7, 1991 that she had been raped repeatedly by her own father.^[27]

After the preliminary investigation conducted by the municipal judge, a warrant of arrest was issued against appellant and bail for his provisional liberty was fixed at P30,000.^[28] On September 3, 1991, appellant was arrested.^[29] On September 6,

1991, the municipal judge issued a resolution narrating the rape incident of November 10, 1990, found probable cause that appellant committed the crime and forwarded the case to the Office of the Provincial Prosecutor.^[30]

While he was in detention, appellant wrote his son three letters. In his first letter dated September 9, 1991, appellant begged BBB to visit him because it was lonely in jail and that he always remembered BBB, AAA and CCC. He asked BBB to forgive him ("sana naman ay patawarin mo na ako").^[31] Appellant's second letter sent the following day reiterated his plea for his son's visit and that BBB should forgive him for all the wrongs he had done his family as he was regretting everything that he had done against them ("pinagsisisihan ko lahat-lahat ng aking pagkakamali").^[32] In his third letter, appellant asked BBB to visit him and to bring him clothing. Furthermore, he begged BBB to encourage his mother to talk to him before she left for Saudi Arabia.^[33]

Appellant also wrote his wife the following letter:

"9/12/91

Dearest Neng,

Kumusta na kayo riyan. Sana naman kahit wala ka nang pagtingin sa akin bilang iyong asawa, ako'y iyong kaawaan na. Padalhan mo man lamang ako ng gamit dito, kagaya ng short pants, colgate, sabon, T-shirts, brief, tuwalya, unan, kumot at sapatos at kung mayroon man lamang diyan na coffee at asukal. Alam mo naman na wala man lamang nag-aasikaso sa akin dito. Napakahirap ng buhay dito sa loob ng billangguan (sic), kailangan pakisamahan mo lahat ng kapwa mo bilanggo. Humihingi at kung iyong mamarapatin na sana ako ay iyong maunawaan at makapagpanibagong-buhay. At kung maaari sana, bago ka umalis papuntang Saudi, ay makausap man lamang kita sa huling pagkakataon.

Kung bukal sa iyong kalooban na ang maging tadhana ay ang nandito ako sa loob ng kulungan, ay aking tatanggapin kung anuman ang kapalaran na naghihintay sa akin.

Hanggang dito na lamang at ipaabot mo na lamang ang aking pangungumusta kina Rico at Retchie, lalong-lalo na sa iyo.

'I missed you all'

Always loving you,
Nong
P.S.

Kung maari sana ay padalhan mo xx ako ng kahit pambili-bili ko man lamang ng aking gamot. Pakilagay na lamang ng mga gamot sa bag.

Same"^[34]