

## FIRST DIVISION

[ G.R. No. 102018, August 21, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY GABAYRON, ACCUSED-APPELLANT.**

### D E C I S I O N

**HERMOSISIMA, JR., J.:**

There is no crime more atrocious in human experience than the rape of a girl by her very own father. Yet, despite the vile and repugnant nature of this crime, it has, sadly, become prevalent, if not rampant, in our society.

Jerry Gabayron was charged with the crime of rape before Branch 21 of the Regional Trial Court of Imus, Cavite, in an information<sup>[1]</sup> which reads as follows:

"That on or about November 11, 1987, in the Municipality of Dasmariñas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with lewd design, did, then and there, wilfully, unlawfully and feloniously, undress, abuse and have sexual intercourse with his own daughter, Summer C. Gabayron, a minor under twelve years old girl(sic) against her will, to the damage and prejudice of said Summer C. Gabayron.

CONTRARY TO LAW."

The evidence, as summarized by the trial court, tends to show the following:

"The people's evidence indicates that the accused and his wife, Remedios Cesista, have three children, namely, Summer, Dawn--- both female--- and Winter--- a male. The accused's family used to live at Block 25, Lot 13, San Manuel, Bagong Bayan, Dasmariñas, Cavite.

On October 5, 1986, accused and his wife separated from bed and board. The two daughters of accused were left with him while Winter went with his mother.

One day in November of 1987, the accused came home drunk. Accused went to Summer's bedroom, undressed her, kissed her, and tried to insert his penis into Summer's vagina. Summer cried due to pain. The accused stayed on top of Summer for about 5 minutes. (TSN, March 11, 1991, pp. 4-7) The accused repeated such beastly acts several times more up to 1989.

At the start of the sexual abuse in November, 1987, Summer was below

12 years old as she was born on January 15, 1976 (Exhs. "C" & "C-1").

Summer did not relate immediately the fate she suffered at the hands of her father because she was threatened (Id., Id., p. 9). She only reported what happened to her after more than one year."

During the arraignment on February 27, 1991, accused-appellant pleaded not guilty to the crime charged. On March 11, 1991, Summer Gabayron, together with her mother Remedios, executed an affidavit of desistance. However, the trial court, considering that the crime charged is statutory rape, did not approve of the same, but instead required that the testimony of the victim be made in a full-blown trial. Trial ensued thereafter.

The prosecution presented Summer Gabayron as its lone witness. In her testimony, Summer disclosed that her grandmother, her father, her Aunt Gina and her siblings all lived with her in the same house since her parents separated. They all slept in the same room but later, she and her sister Dawn were transferred to a separate room. The following is her testimony, viz:

"DIRECT EXAMINATION:

Summer Gabayron - testifying with the aid of an interpreter.

ASST. PROS. HERRERA-Do you know the accused, Jerry Gabayron?

**A** Yes, sir.

**Q** Why do you know him?

**A** He is my father,sir.

**Q** On November 1, 1987, do you remember if there was anything unusual that happened to you and your father?

**A** Yes, sir.

**Q** Will you kindly tell the Honorable Court what was that unusual incident that happened?

**A** He repeated what he did to me; he undressed me like an attempted rape.

**Q** Where did this incident take place?

**A** In our house, sir.

**Q** In Dasmariñas, Cavite?

**A** Yes, sir.

**Q** Will you kindly tell this Honorable Court how did he undress you?

**A** It happened during that night he went home drunk and then he went to my bedroom, undressed me, kissed me on my lips and then downward and took off my panty.

**Q** After doing all those things, what happened next, if anything happened?

**A** He tried to insert his organ into mine but it was very painful so, I cried in pain. Then, he stopped, sir.

**Q** How far was he able to insert his organ that you felt the pain?

**A** I do not know, sir, how far it went, but I felt the pain.

**Q** So what you want to tell this Honorable Court was that his organ was able to reach a part of your organ, that's why you felt the pain?

**A** Yes, sir.

**Q** How old are you?

**A** :Fifteen, sir.

**Q** What is your birthday?

**A** January 15, 1976, sir.

**Q** And this happened on November 1, 1987?

**A** Yes, sir.

**Q** Now, after you cried in pain, what happened next?

**A** He did not continue sir, and then, he went down and the next day, it's as if nothing happened.

**Q** A while ago, you said that he attempted to repeat what he had done before. Do you want to tell this Honorable Court that this was not the first time that he did this thing, trying to have sexual intercourse with you?

**A** Yes, sir, he did it for so many times, not only twice.

**Q** After this incident in November, 1987, was there another time?

**A** That's not the last time because I remember that it happened again on January 14, the day before my birthday, but I cannot remember the year.

**COURT** This year, not last year?

**A** I think it was 1989, I cannot remember.

**COURT** But after January 1, 1987?

**ASST. PROS. HERRERA:** Yes, your Honor.

**Q** Do you have any document to show that you were really born on January 15, 1976?

**A** Yes, sir.

**Q** You said that after this January 1, 1987 incident, your father tried to repeat or to do again what he tried to do in 1987. Now, after that time, did you have occasion to approach any doctor to have yourself examined?

**A** When I told my mother what happened, it was only at that time that she let me be examined by a doctor.

**Q** When did you tell your mother?

**A** It was two years after the incident because I kept quiet.

**Q** Where were you examined?

**A** At NBI, sir.  
In all those times that your father... I will withdraw that question, your Honor.

**Q** In connection with this January 1, 1987, how long did he stay on top of you before he finally resisted or withdrew?

**A** About five minute, sir.

**COURT** Cross.  
CROSS EXAMINATION  
ATTY. CAJIGAL: Madam Witness, you remember the first time that your father attempted to abuse you?

**A** After the separation of my father and my mother, it was months after that separation the first time it happened.

**Q** Do you remember when your father and mother separated?

**A** October 5, 1986, Ma'am.

**Q** And that happened in your own house, Madam Witness?

**A** Yes, Ma'am, in our house in Cavite.

**Q** Aside from you and your father, who are living in that house?

**A** My grandmother, my other siblings, my Tita Gina.

**Q** Who is sleeping with you in your own room?

**A** At first, we were sleeping in the same room, but later on, we were transferred to a separate room, my sister and me.

**Q** How about your auntie, where does she sleep?

**A** In the other bedroom, Ma'am.

**Q** What about your grandmother?

**A** Also in the separate room, Ma'am.

**Q** In the same room where your tita was sleeping?

**A** No, sir, in another room.

**Q** Why, your house is composed of how many rooms?

**A** Three bedrooms, Ma'am.

**Q** And, your father has a separate room?

**A** He was sleeping on the floor outside the bedroom.

**Q** Now, the following day, did you relate to your Tita and to your grandmother what happened?

**A** No, Ma'am.

**Q** Why?

**A** Because he was threatening me, Ma'am.

**Q** What did your father do to make you feel that you were threatened?

**A** He told me not to relate what happened to anybody because he will get mad at me.

**Q** And you became afraid?

**A** Yes, Ma'am.

**Q** But, your father did not tell you that he will kill you if you reveal that to someone else?

**A** No, Ma'am.

**Q** Why did it not occur to you to seek refuge to your mother?

**COURT:** Are you trying to prove that she consented to it? Even is she consented, that is statutory rape.

**A** I did not tell her because when they separated I did not know where my mother transferred.

**Q** Now, Miss Summer, you parents are separated, is it not?

**A** Yes, Ma'am.

**Q** And, as a matter of fact, they have separated when the instant case was filed against your father?

**A** Yes, Ma'am.

The medico-legal report<sup>[2]</sup> (Exh. "B") presented by the prosecution states these findings:

#### **"General Physical Examination:**

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory. Breast developed, hemispherical, doughy. Areolae, light brown, measures 0.8 cm. in diameter.

No extragenital physical injuries noted.

#### **Genital Examination:**

Pubic hair, fully grown, moderately dense. Labia majora and minora, coaptated. Fourchette, moderately tense. Vestibular mucose, pinkish. Hymen, thick, wide, intact. Hymenal orifice admits a tube 1.5 cm. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.

#### **Conclusions:**

1. No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.
2. Hymen intact and its orifice small (1.5 cm.) as to preclude complete penetration of an average-sized, adult, male organ in full erection without producing hymenal injury."