

EN BANC

[G.R. No. 117472, June 25, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEO ECHEGARAY Y PILO, ACCUSED-APPELLANT.

D E C I S I O N

PER CURIAM:

Amidst the endless debates on whether or not the reimposition of the death penalty is indeed a deterrent as far as the commission of heinous crimes is concerned and while the attendant details pertaining to the execution of a death sentence remain as yet another burning issue, we are tasked with providing a clear-cut resolution of whether or not the herein accused-appellant deserves to forfeit his place in human society for the infliction of the primitive and bestial act of incestuous lust on his own blood.

Before us for automatic review is the judgment of conviction, dated September 7, 1994, for the crime of Rape, rendered after marathon hearing by the Regional Trial Court of Quezon City, Branch 104, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding accused LEO ECHEGARAY Y PILO guilty beyond reasonable doubt of the crime of RAPE as charged in the complaint, aggravated by the fact that the same was committed by the accused who is the father/stepfather of the complainant, he is hereby sentenced to suffer the penalty of DEATH, as provided for under RA. No. 7659; to pay the complainant Rodessa Echegaray the sum of P50,000.00 as damages, plus all the accessory penalties provided by law, without subsidiary imprisonment in case of insolvency, and to pay the costs."^[1]

We note, however, that the charge had been formulated in this manner:

"C O M P L A I N T

The undersigned accuses LEO ECHEGARAY Y PILO of the crime of RAPE, committed as follows:

That on or about the month of April 1994, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant his daughter, a minor, 10 years of age, all

against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW."^[2]

Upon being arraigned on August 1, 1994, the accused-appellant, assisted by his counsel de oficio, entered the plea of "not guilty."

These are the pertinent facts of the case as summarized by the Solicitor-General in his brief:

"This is a case of rape by the father of his ten-year old daughter.

Complainant RODESSA ECHEGARAY is a ten-year old girl and a fifth-grader, born on September 11, 1983. Rodessa is the eldest of five siblings. She has three brothers aged 6, 5 and 2, respectively, and a 3-month old baby sister. Her parents are Rosalie and Leo Echegaray, the latter being the accused-appellant himself. The victim lives with her family in a small house located at No. 199 Fernandez St., Barangay San Antonio, San Francisco Del Monte, Quezon City (pp. 5-9, Aug. 9, 1994, TSN).

*Sometime in the afternoon of April 1994, while Rodessa was looking after her three brothers in their house as her mother attended a gambling session in another place, she heard her father, the accused-appellant in this case, order her brothers to go out of the house (pp. 10-11, *ibid.*). As soon as her brothers left, accused-appellant Leo Echegaray approached Rodessa and suddenly dragged her inside the room (p. 12, *ibid.*). Before she could question the appellant, the latter immediately removed her panty and made her lie on the floor (p. 13, *ibid.*). Thereafter, appellant likewise removed his underwear and immediately placed himself on top of Rodessa. Subsequently, appellant forcefully inserted his penis into Rodessa's organ causing her to suffer intense pain (pp. 14-15, *ibid.*). While appellant was pumping on her, he even uttered: 'Masarap ba, masarap ba?' and to which Rodessa answered: 'Tama na Papa, masakit' (p. 16, *ibid.*). Rodessa's plea proved futile as appellant continued with his act. After satisfying his bestial instinct, appellant threatened to kill her mother if she would divulge what had happened. Scared that her mother would be killed by appellant, Rodessa kept to herself the ordeal she suffered. She was very afraid of appellant because the latter, most of the time, was high on drugs (pp. 17-18, *ibid.*). The same sexual assault happened up to the fifth time and this usually took place when her mother was out of the house (p. 19, *ibid.*). However, after the fifth time, Rodessa decided to inform her grandmother, Asuncion Rivera, who in turn told Rosalie, Rodessa's mother. Rodessa and her mother proceeded to the Barangay Captain where Rodessa confided the sexual assaults she suffered. Thereafter, Rodessa was brought to the precinct where she executed an affidavit (p. 21, *ibid.*). From there, she was accompanied to the Philippine National Police Crime Laboratory for medical examination (p. 22, *ibid.*).*

Rodessa testified that the said sexual assaults happened only during the time when her mother was pregnant. Rodessa added that at first, her mother was on her side. However, when appellant was detained, her mother kept on telling her: 'Kawawa naman ang Tatay mo, nakakulong' (pp. 39-40, ibid.).

When Rodessa was examined by the medico-legal officer in the person of Dra. Ma. Cristina B. Preyna,[3] the complainant was described as physically on a non-virgin state, as evidenced by the presence of laceration of the hymen of said complainant (TSN., Aug. 22,1995, pp. 8-9). "[4]

On the other hand, the accused-appellant's brief presents a different story:

"x x x the defense presented its first witness, Rosalie Echegaray. She asserted that the RAPE charge against the accused was only the figment of her mother's dirty mind. That her daughter's complaint was forced upon her by her grandma and the answers in the sworn statement of Rodessa were coached. That the accusation of RAPE was motivated by Rodessa's grandmother's greed over the lot situated at the Madrigal Estate-NHA Project, Barangay San Antonio, San Francisco del Monte, Quezon City, which her grandmother's paramour, Conrado Alfonso gave to the accused in order to persuade the latter to admit that Rodessa executed an affidavit of desistance after it turned out that her complaint of attempted homicide was substituted with the crime of RAPE at the instance of her mother. That when her mother came to know about the affidavit of desistance, she placed her granddaughter under the custody of the Barangay Captain. That her mother was never a real mother to her.

She stated that her complaint against accused was for attempted homicide as her husband poured alcohol on her body and attempted to burn her. She identified the certification issued by the NHA and Tag No. 87-0393 (Exh. 2). That the Certification based on the Masterlist (Exh. 3) indicates that the property is co-owned by accused and Conrado Alfonso. That Rodessa is her daughter sired by Conrado Alfonso, the latter being the paramour of her mother. That Conrado Alfonso waived his right and participation over the lot in favor of the accused in consideration of the latter's accepting the fact that he is the father of Rodessa to simulate the love triangle and to conceal the nauseating sex orgies from Conrado Alfonso's real Wife.

Accused testified in his behalf and stated that the grandmother of the complainant has a very strong motive in implicating him to the crime of RAPE since she was interested to become the sole owner of a property awarded to her live-in partner by the Madrigal Estate-NHA Project. That he could not have committed the imputed crime because he considers Rodessa as his own daughter. That he is a painter-contractor and on the

date of the alleged commission of the crime, he was painting the house of one Divina Ang of Barangay Vitalis, Parañaque, Metro Manila (Exh 4). The travel time between his work place to his residence is three (3) hours considering the condition of traffic. That the painting contract is evidenced by a document denominated 'Contract of Services' duly accomplished (see submarkings of Exh. 4). He asserted that he has a big sexual organ which when used to a girl 11 years old like Rodessa, the said female organ will be 'mawawarak.' That it is abnormal to report the imputed commission of the crime to the grandmother of the victim.

Accused further stated that her(sic) mother-in-law trumped-up a charge of drug pushing earlier and he pleaded guilty to a lesser offense of using drugs. The decretal portion of the judgment of conviction ordering the accused to be confined at the Bicutan Rehabilitation Center irked the grandmother of Rodessa because it was her wish that accused should be meted the death penalty.

Accused remain steadfast in his testimony perorating the strong motive of Rodessa's grandmother in implicating him in this heinous crime because of her greed to become the sole owner of that piece of property at the National Housing Authority-Madrigal Project, situated at San Francisco del Monte, Quezon City, notwithstanding rigid cross-examination. He asserted that the imputed offense is far from his mind considering that he treated Rodessa as his own daughter. He categorically testified that he was in his painting job site on the date and time of the alleged commission of the crime.

Mrs. Punzalan was presented as third defense witness. She said that she is the laundry woman and part time baby sitter of the family of accused. That at one time, she saw Rodessa reading sex books and the Bulgar newspaper. That while hanging washed clothes on the vacant lot she saw Rodessa masturbating by tinkering her private parts. The masturbation took sometime.

This sexual fling of Rodessa were corroborated by Silvestra Echegaray, the fourth and last witness for the defense. She stated that she tried hard to correct the flirting tendency of Rodessa and that she scolded her when she saw Rodessa viewing an X-rated tape. Rodessa according to her was fond of going with friends of ill-repute. That (sic) she corroborated the testimony of Mrs Punzalan by stating that she herself saw Rodessa masturbating inside the room of her house."^[5]

In finding the accused-appellant guilty beyond reasonable doubt of the crime of rape, the lower court dismissed the defense of alibi and lent credence to the straightforward testimony of the ten-year old victim to whom no ill motive to testify falsely against accused-appellant can be attributed. The lower court likewise regarded as inconsequential the defense of the accused-appellant that the extraordinary size of his penis could not have insinuated itself into the victim's vagina and that the accused is not the real father of the said victim.

The accused-appellant now reiterates his position in his attempt to seek a reversal

of the lower court's verdict through the following assignment of errors:

"1. THE LOWER COURT FAILED TO APPRECIATE THE SINISTER MOTIVE OF PRIVATE COMPLAINANT'S GRANDMOTHER THAT PRECIPITATED THE FILING OF THE CHARGE OF RAPE, HENCE IT ERRED IN HOLDING ACCUSED GUILTY AS CHARGED.

2. THE COURT BELOW OVERLOOKED THE FACT THAT THE HEALED LACERATIONS AT 3 AND 7 O'CLOCK COULD NOT HAVE BEEN DUE TO THE PUMPING OF THE PENIS OF ACCUSED TO THE VAGINA OF PRIVATE COMPLAINANT, HENCE IT ERRED IN HOLDING THAT ACCUSED COMMITTED THE CRIME CHARGED, NOTWITHSTANDING VEHEMENT DENIAL.

3. THE COURT A QUO WHIMSICALLY IGNORED THE DEFENSE OF ALIBI THAT ACCUSED WAS IN PARAÑAQUE ON THE DATE AND TIME OF THE IMPUTED CRIME HENCE, IT ERRED IN HOLDING THAT ALIBI IS NOT SUSTAINABLE IN THE CASE AT BAR."^[6]

Considering that a rape charge, in the light of the reimposition of the death penalty, requires a thorough and judicious examination of the circumstances relating thereto, this Court remains guided by the following principles in evaluating evidence in cases of this nature: (a) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused though innocent to disprove; (b) In view of the intrinsic nature of the crime of rape where only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) The evidence for the prosecution must stand and fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense."^[7]

Anent the first assigned error, no amount of persuasion can convince this Court to tilt the scales of justice in favor of the accused-appellant notwithstanding that he cries foul insisting that the rape charge was merely concocted and strongly motivated by greed over a certain lot situated at the NHA-Madrigal Estate Housing Project, Barangay San Antonio, San Francisco del Monte, Quezon City. The accused-appellant theorizes that prosecution witness Asuncion Rivera, the maternal grandmother of the victim Rodessa, concocted the charge of rape so that, in the event that the accused-appellant shall be meted out a death sentence, title to the lot will be consolidated in her favor. Indeed, the lot in question is co-owned by the accused-appellant and Conrado Alfonso, the live-in partner of Asuncion Rivera, according to the records of the National Housing Authority (Exh. "3"). The accused-appellant would want us to believe that the rape charge was fabricated by Asuncion Rivera in order to eliminate the accused-appellant from being a co-owner. So, the live-in partners would have the property for their own.^[8]

We believe, as did the Solicitor-General, that no grandmother would be so callous as to instigate her 10-year old granddaughter to file a rape case against her own father simply on account of her alleged interest over the disputed lot.^[9]

It is a well-entrenched jurisprudential rule that the testimony of a rape victim is