

THIRD DIVISION

[G.R. No. 103134-40, November 20, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PHILIP C. TAN, JR., ACCUSED-APPELLANT.

DECISION

FRANCISCO, J.:

Before us is another tragic desecration of human dignity committed no less upon a child on the verge of womanhood, perpetrated by her very own stepfather and inflicted thru seven (7) abominable non-consensual acts of sex called rape.

Based on complaints filed by 16-year old complainant Annabelle Degay assisted by her mother Filomena Tan, wife of appellant Philip Tan, Jr., the latter was charged in fifteen (15) separate informations for raping complainant, appellant's own stepdaughter.^[1] These informations contained identical language except as to the dates of the rape incidents as well as the means employed by appellant. Ten (10) of these informations used the phrase "by the use of the knife." The rest used the phrase "while she was then in a state of unconsciousness as she was soundly sleeping." Said informations read as follows:

"That on or about (the dates) at Lubas, Municipality of La Trinidad, Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather and even adopter of the herein complainant and offended party, (*by means of force, violence, intimidation, and by the use of a knife or while she was then in a state of unconsciousness as she was soundly sleeping,*) willfully, unlawfully and feloniously succeeded in having carnal knowledge or sexual intercourse with said complainant and offended party Annabelle Degay y Salioan against her will.

"That, in the commission of the offense, the aggravating circumstance of relationship is present, the accused being the stepfather and adopter of the offended party. Also, the aggravating circumstance of nighttime is present as the accused committed this offense during the night to facilitate its accomplishment."^[2] (Italics ours)

When arraigned, appellant pleaded not guilty. After trial, the Regional Trial Court (RTC) of Benguet convicted appellant of seven (7) counts of rape committed on the nights of July 12, 13, 25, 28, 29 and August 7 and 11 of 1989 upon the person of complainant. The dispositive portion of the judgment of conviction states:

"WHEREFORE, the accused Philip C. Tan, Jr. is hereby found guilty beyond reasonable doubt of the crimes of rape on seven (7) counts under Criminal Cases Nos. 89-CR-0724, -0725, -0730, -0732, -0733, -0734, and -0738, as defined and penalized under Article 335 of the Revised

Penal Code, and taking into account the attendance of two aggravating circumstances, the said accused is hereby sentenced to suffer the maximum allowable penalty of seven (7) successive imprisonments of reclusion perpetua, and to indemnify the complainant, Annabelle Degay in the amount of P100,000.00; and to pay costs; however, said accused is hereby found not guilty of the crimes charged in Criminal Cases Nos. 89-CR-0726, -0727, -0728, -0729, -0731, -0735, -0736, and -0737 for lack of evidence.

SO ORDERED."^[3]

Appellant directly appeals his conviction to this Court arguing that the trial court erred in giving credence to the testimony of prosecution witness and in finding him guilty beyond reasonable doubt of 7 counts of rape.

The factual milieu of the 15 charges as stated in the respective briefs of both appellant and appellee which are materially and substantially patterned from the factual findings of the trial court, ably supports the conclusion that appellant's conviction is indeed based on proof beyond reasonable doubt. We quote with approval the "Counterstatement of Facts" from the Solicitor-General's Brief,^[4] the same being supported by evidence on the record:

"Annabelle Degay, the daughter of Felomina Tan by another man, was three (3) years old when Felomina married on July 12, 1976 appellant Philip Tan, a widower with four children by his first wife (October 23, 1989, tsn, pp. 4). The appellant, whom Annabelle considered as her real father, was a carpenter by profession and Felomina, a weaver at Narda's Handicraft in La Trinidad, Benguet, with working hours that consisted of two shifts that alternated every two weeks: one shift from 4:00 p.m. to 12:00 midnight, and the other from 7:00 a.m. to 4:00 p.m. (Ibid., tsn, pp. 8-10).

"Annabelle was a sixteen year-old high school student at the San Jose High School in Poblacion, La Trinidad, Benguet, at the time of the rape incidents (Ibid., tsn, p. 11).

"Around 7:00 o'clock in the evening of July 12, 1989, Annabelle was at home in Lubas, km. 5, La Trinidad, Benguet, together with her stepsisters Jennifer (21 years old), Annalyn (14) her half sister Emily (daughter of appellant and Annabelle's mother) and appellant, Philip Tan, Jr. The mother of Annabelle, Felomina, was then on a night shift duty. After dinner, Annabelle and her stepsister Jennifer, upon appellant's orders, massaged him as they usually did every night, for about an hour and a half; appellant was lying down, wearing only his briefs, and in this position, they would see his penis and he would let his feet touch Annabelle's and Jennifer's private parts (Ibid., tsn, pp. 10-13). After they had massaged all parts of appellant's body, Annabelle and Jennifer were ordered by appellant to go to sleep (Ibid., tsn, p. 15).

"Annabelle, Jennifer, Annalyn and Emily all occupied one of the three rooms in the house. Jennifer and Emily slept on the bed, while Annabelle and Annalyn slept on the floor (Ibid., tsn, p. 15). On that particular night

the lights in the house were out as the main switch was shut off from the master's bedroom occupied by the appellant (Ibid., tsn, p. 17). After about thirty minutes, Annabelle noticed the appellant enter their room (Ibid., p. 18). He slowly went near his stepdaughter Annabelle and embraced her, uttering, "It is cold." While uttering this, he forced Annabelle to take off her blanket (Ibid.). Wondering what her stepfather was trying to do and what his intentions were, Annabelle tried to fight back by struggling and kicking him; he was then in a straddling position. But he slapped her, pointed a kitchen knife on her right side, and boxed her thigh when she continued resisting (Ibid., pp. 19-22). It was at this point that Annabelle shouted at her stepsisters Jennifer and Annalyn to wake and help her. But no help was forthcoming from her stepsisters, however because Jennifer, though awake (as she could easily be awakened), pretended to be asleep (Ibid., tsn, p. 22).

"Annabelle continued struggling when appellant finally boxed her in the stomach, causing her to lose consciousness (Ibid., tsn, pp. 23-26). Annabelle started to fight back again, struggling until such time when appellant stood up and left the room (Ibid., tsn, p. 20). Annabelle, in tears, followed her stepfather, and in her anger, attempted to hit him. When she asked him why he did the bestial act to her, appellant replied, "Ay-ayam ngarud" (It's just a game) (Ibid., tsn, p. 27).

"Annabelle immediately took a bath in the bathroom and as she washed herself, she noticed blood and white slippery fluid flowing out from her vagina (Ibid., tsn, p. 30). When she came out of the comfort room, she saw the appellant looking at her and smiling. Scared, Annabelle ran to her room (Ibid., tsn, p. 31). She then changed her panty and clothes and cried (Ibid., tsn, pp. 31-32). Thereafter, she fell asleep.

"Annabelle woke up at 5:30 in the morning the following day, July 13, 1989, and started to cook rice. About fifteen (15) minutes later, appellant also woke up and went to her, warning that he would kill her and her mother should she tell the latter what happened between them (Ibid., tsn, p. 33). This scared Annabelle to no end because she knew that appellant was capable of maltreating her and her mother (Ibid.). Her stepsisters, too, when they woke up, acted as if nothing had happened the previous night (Ibid., tsn, p. 34). It was her mother, Felomina (who had returned at 2:00 o'clock in the morning from her night shift duty) who woke up and inquired why she had been crying the whole night and why there were lumps on her head. Annabelle did not say anything. Because of her silence, Felomina presumed that this was caused by appellant's having made unpleasant remarks at Annabelle again, or maybe had scolded or physically hurt her (January 23, 1990, tsn, p. 6).

"Annabelle did not go to school that day because her body was in pain, and she could not concentrate anyway (October 24, 1989, tsn, p. 38).

"In the evening of July 13, 1989, Felomina again worked on the night shift at the Narda's when after having dinner, appellant called Jennifer and Annabelle to massage him. After having massaged him for about an

hour, Annabelle and Jennifer proceeded to study their lessons while awaiting the arrival of Felomina. Appellant, however, ordered them to go to sleep (October 24, 1989, tsn, pp. 38-39).

"Around 10:00 o'clock, appellant opened the door of their room. Annabelle vainly tried to push the trunk of the door but appellant was able to get in. When she tried to awaken Annalyn who was sleeping beside her, appellant pushed her face to the floor (Ibid., tsn, p. 40). He then held Annabelle's hand and told her that they already did it before anyway (Ibid.). All of a sudden, appellant got hold of her hair and pushed her face to the floor (p. 40). Appellant then knelt down, rode on her back and bumped her head several times on the floor (Ibid., tsn, p. 40.). Annabelle tried to face him so she could fight back but appellant pulled her legs straight such that she fell on her back (Ibid., tsn, p. 41). Finally, to keep her still, appellant boxed Annabelle's stomach, which rendered her unconscious (Ibid., p. 42). When she regained consciousness, Annabelle found herself naked and again, white slippery fluid was flowing out of her vagina. By then appellant was no longer inside the room (Ibid., tsn, p. 42).

"Later that night, Annabelle opened the door for her mother who arrived from work. Felomina had noticed that her daughter had been crying, but when she inquired as to the reason why, Annabelle, who had borne in mind her stepfather's threats, just keep silent. Thereafter, Annabelle went to the comfort room to wash (Ibid., tsn, pp. 43-44).

"In the evening of July 15, 1989 appellant drank liquor with his friends in the house (Ibid., p. 49). When his friends left, they ate supper and thereafter, Annabelle and Annalyn massaged him (Ibid., tsn, p. 50). Afterwards, when they went to study, appellant ordered them to go sleep. Not long thereafter, appellant entered their room. Annabelle attempted to block the door but appellant was able to enter by force (Ibid., tsn, pp. 50-51). At this juncture, Annabelle screamed which prompted Jennifer to inquire from her "Daddy" what he was doing. At this point, Annabelle embraced Annalyn but appellant pulled her and slapped her face. Then he left (Ibid., tsn, p. 51).

"In the evening of July 25, 1989, when Felomina worked on the night shift from 4:00 p.m. to 12:00 midnight, appellant entered Annabelle's room and boxed her several times until she felt weak. Then, he removed her pants, t-shirt and panty, and pushed her to the floor. He then removed his underwear and started mashing her breasts and kissing her. She could only struggle and push and kick him, but to no avail. Appellant was able to successfully insert his penis into her vagina. After having performed this bestial act on his stepdaughter, appellant proceeded to his own room. Annabelle noticed that while slippery fluid again flowed from her vagina (Ibid., tsn, pp. 56-60).

"On July 28, 1989, after he was massaged, appellant ordered Annalyn to buy milk. When she returned, appellant ordered her and Emily to go to sleep (Ibid., tsn, pp. 60-62). Thereafter, appellant prepared milk for himself, Jennifer and Annabelle. Annabelle noticed, however, that the

glass of milk that was prepared for her tasted bitter such that she requested Jennifer to exchange her milk with hers. She was prevented from doing so by the appellant, however. Thus, she pretended to drink the milk since she intended to throw it away later. When she tried to do so, however, appellant scolded her and threatened that if she threw it, something ill would happen to her (Ibid., tsn, p. 62). Because of the threat, she was forced to drink the milk; she fell asleep soon thereafter (Ibid., tsn, p. 63). When she woke up, she realized that appellant had sexual intercourse with her for she found herself naked and noticed that her vagina was slippery again (Ibid., tsn, pp. 63-64). She immediately stood up to wash herself in the bathroom. When she returned to her bedroom she could not sleep anymore (Ibid., tsn, p. 64). The following day, much as she wanted to finally tell her mother (who again asked her why she had bruises on her face and head) what had happened to her, she never attempted to do so for she did not know how (October 24, 1989, tsn, pp. 65-66).

"In the evening of July 29, 1989, the appellant and his friends had a drinking spree inside their house (Ibid., tsn, pp. 68-69). When his friends left, appellant entered the room which Annabelle was sharing with his stepsisters (Ibid., tsn, p. 69). She tried in vain to stop the appellant from coming inside by pushing the door against him (Ibid.). When he was able to enter, appellant immediately embraced her tightly such that her efforts to kick him were to no avail. Irritated by her struggles, appellant hit Annabelle's head and boxed the right side of her stomach, causing her to lose consciousness (Ibid., tsn, p. 69). When she regained consciousness, she was already naked and her pants and panty were at the floor near her feet. White slippery fluid was also flowing from her vagina. (Ibid., tsn, pp. 69-70; October 30, 1989, p. 3).

"On August 7, 1989, Felomina again worked on night duty. When supper was prepared, appellant volunteered to cook the shrimps which he had bought earlier. The viand was bitter but appellant forced Annabelle to eat it (Oct. 30, 1989, tsn, pp. 4-5). Thereafter, they were ordered to immediately to go to sleep (Ibid., tsn, p. 5). Instead of going to sleep, Annabelle went to the toiler to wash her clothes. Appellant, however, knocked at the door and ordered her to go to sleep (Ibid., tsn, p. 5). Annabelle complied since she also became sleepy, but instead of sleeping at her usual space on the floor, she slept on top of the trunk near the place where their clothes were hanged (Ibid., tsn, pp. 5-6). Later, appellant entered the room but not finding her on the floor, he switched on the light. Appellant got mad when he saw Annabelle sleeping on top of the trunk and demanded why she had to sleep there (Ibid., tsn, p. 7). As she meekly stood up, appellant immediately embraced Annabelle (Ibid.). She struggled to resist his advances but appellant pushed her head to the floor, causing her to lose consciousness. Appellant, thus, succeeded in having carnal knowledge of her (Ibid., tsn, pp. 7-9).

"Again, on August 11, at 9:30 p.m., appellant entered Annabelle's room while she and her stepsisters were sleeping. She woke up when appellant had removed her blanket and was embracing her. She kicked him, but he boxed her many times and hit her head on the floor, causing