

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
QUIRICO EGASTA ALBARICO, ACCUSED-APPELLANT.***G.R. Nos. L-38339-41. October 10, 1980*

Ponente: AQUINO, J.

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Quirico E. Albarico appealed from the decision dated December 14, 1973 of the Court of First Instance of Leyte, Baybay Branch VIII, convicting him of three crimes of rape, sentencing him to reclusion perpetua for each rape and ordering him to pay the victim, his daughter, Carmen Albarico, an indemnity of twenty thousand pesos (Criminal Cases Nos. B-317, B-336 and B-337).

The judgment of conviction was based on the daughter's testimony. She was born on July 17, 1955. She resided with her parents in Barrio San Juan, Mahaplag, Leyte. At around nine in the morning of March 17, 1971, the fifteen-year-old Carmen happened to be alone with her father in the house. Her mother, Jovita Galenzoga, was attending to the carabao.

Carmen went to sleep. Sometime thereafter, she was awakened because her father had removed her panty. She immediately stood up and tried to leave the room but Quirico held her and boxed her on her right cheek. She became unconscious.

When she regained consciousness, she was already flat on the bed, with her arms and legs spread out. She felt pains in her private organ. She discovered that her father had consummated carnal intercourse with her because blood was coming out of her private organ and there was a whitish substance therein which she believed to be her father's semen.

She confronted her father, asked him why he had abused her and told him that she would report the outrage to her mother. Quirico did not deny that he had sexual congress with her. In a bellicose manner, he warned her that if she reported the incident to her mother all the members of the family would be killed.

Carmen did not inform her brother Pedro, whose house was about five meters away from her house, of what her father had done to her because she knew that Pedro was in the field. When her mother returned to the house at about half an hour later, she was not able to tell her that she had been ravished because everytime she approached her mother, her father went near them.

Carmen testified that three days later or in the morning of March 20, she was again abused by her father in their farm or in the field in Barrio San Juan which was quite far from their abode. She went with her father to the farm in spite of his beastly behavior towards her because if she did not accompany him, he would get mad.

It was while she was removing the weeds from their camote farm that Quirico unexpectedly and violently pushed her down and removed her panty. When she tried to stand up, Quirico drew a hunting knife, placed himself on top of her, mashed her nipples, kissed her and inserted his organ into her private part.

Again, she was afraid to reveal to her mother the abuse committed by her father because he had threatened to kill the person to whom she would disclose the incident and he also threatened to kill her mother.

Carmen further testified that in the middle of April, 1971 she was again abused by her father Quirico in their farm. She was intimidated into going with him to the farm and because of fright, she was not able to report the incident to her mother.

More than two years later, or in July, 1973, her father assaulted her and her mother. Quirico was detained in the municipal jail and charged in the municipal court with lesiones leves. He pleaded guilty. (Quirico was convicted by the municipal court in the two cases of slight physical injuries and sentenced to 31 days' imprisonment in one case and to ten days' imprisonment in the other.)

Her father's detention in jail gave Carmen the chance to apprise the town mayor that her father had sexually abused her. Carmen explained that she kept silent for a long time about her father's abuses because of his threat to liquidate her family if she squealed. She said that she felt deeply aggrieved and dishonored as a woman because of the wrong perpetrated by Quirico against her.

Carmen's complaint for rape against her father was filed in the municipal court on July 13, 1973 (Exh. B). It was supported by the affidavits of her mother and her sister-in-law, Fidela Empuesto. The three testified at the preliminary investigation conducted by the municipal judge.

The physician, who examined Carmen, certified that she was no longer a virgin; that her vaginal orifice admits two fingers and that there were scar tissues at the opening of her vagina due to the laceration of her hymen which took place a long time ago (Exh. A).

The mayor testified that Quirico had raped not only Carmen but also his other daughter, already married, and his daughter-in-law and that during a confrontation in the jail between those victims and Quirico the latter threatened to kill all of them if he had the chance.

Quirico testified in his defense. He denied that he had abused his daughter Carmen and that she went with him to their farm. He intimated that Carmen lost her virginity because she used to attend dances accompanied by some boys.

He insinuated that the rape charges were filed because he maltreated his wife and daughter for their refusal to allow him to enter his house when he returned from Barrio Malinao. He implied that the rape was not probable because his parents resided with him and his two sons used to visit him in his house.

Gorgonio Albarico, the father of the accused, corroborated the latter's testimony. Gorgonio testified that he resided with Quirico from 1968 to 1973 and that his granddaughter Carmen did not complain to him that she was wronged by her own father.

In convicting Quirico of three rapes, the trial court held that as between the positive declarations of the victim and the mayor, on one hand, and the denial of the accused, on the other, the imputations of the complainant should be given more credence.

The trial court also invoked the well-known observation that an unmarried woman would not have the courage and the temerity to tell a story of defloration, allow the examination of her private part and thereafter undergo the ordeal of a public trial if she is not motivated by an honest and sincere desire to bring the rapist to the bar of justice so that the proper punishment can be imposed upon him.

Hence, the trial court concluded that the guilt of the accused was established beyond reasonable doubt.

The accused in this appeal contends that the prosecution's evidence is insufficient to support a conviction, that complainant's testimony should not be given credence and that the trial court should have weighed the evidence adduced during the trial.

These contentions, which were competently answered by the Solicitor General in his brief, are devoid of merit because the decision itself shows that the trial court painstakingly evaluated the evidence and rationalized its conclusion that the denials of the accused and the exculpatory declaration of his father cannot prevail over the clear and convincing testimony of the girl and the town mayor.

We hold, after a conscientious perusal of the record, that the trial court did not err in rendering the judgment of conviction.

The rapes committed by the accused were not attended by the qualifying circumstances mentioned in the last four paragraphs of article 335 of the Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111. (See *People vs. Segura*, 60 Phil. 933; *Ordoño vs. Daquigan*, L-39012, January 31, 1975, 62 SCRA 270.)

The trial court correctly imposed the penalty of reclusion perpetua for each rape. The bestiality exhibited by the accused and his moral perversity justify his isolation from his family and the rest of civilized society which condemns incestuous as well as forcible sexual intercourse.

WHEREFORE, the trial court's judgment is affirmed. In the service of the three penalties of reclusion perpetua, the forty-year limit fixed in article 70 of the Revised Penal Code should be observed. Costs against the appellant.

SO ORDERED.

Barredo, (Chairman), Fernandez,[*] Abad Santos, and De Castro, JJ., concur.
Concepcion, Jr., J., is abroad.

[*] Fernandez, J., was designated to sit in the Second Division.

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