

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO ERARDO, DEFENDANT-APPELLANT.

*G.R. No. L-32861. January 31, 1984*

Ponente: RELOVA, J.

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### RELOVA, J.:

Appeal from the decision of the then Court of First Instance of Occidental Mindoro, in Criminal Case No. R-31, convicting defendant-appellant Francisco Erardo of the crime of rape and sentencing him "to reclusion perpetua with the accessory penalties of the law, to support the offspring if any would be borne as a result of the rape committed, to indemnify the offended girl Emilia Erardo in the sum of TWO THOUSAND (P2,000.00) PESOS, without subsidiary imprisonment in case of insolvency and to pay the costs." (pp. 39-40, Rollo)

The complainant's version of the case has been synthesized in appellee's brief filed by the Solicitor General, thus:

"Emilia Erardo, the offended party in this case, for about a year prior to and up to the commission of the offense, was living with her father, herein appellant, Francisco Erardo, at barrio Mapaya, San Jose, Occidental Mindoro, (p. 3, tsn., April 2, 1970). At that time, the appellant who had been separated from his lawful wife, the mother of the offended party, was living with another woman Gertrudes Portillo, whom he had taken as a common-law wife (pp. 3-6, tsn., Ibid).

"On January 6, 1970, the offended girl, then fourteen years old, attended a dance at the house of a neighbor and returned home to sleep at about 12:00 midnight (pp. 5, 6, 11, 12, tsn., April 2, 1970). While she was asleep, she felt that somebody came near her feet raised her skirt and took off her panty, at the same time telling her, 'Huwag kang maingay kung gusto mong mabuhay.' (pp. 12, 34, 37, tsn., Ibid; Exh. 'B', p. 3, Folder of Exhibits). Thereafter, the man forced his penis into her vagina and because she was afraid as she has known that it was her father who was doing the act, she did not object nor make any outcry (pp. 12, 35-37, tsn., Ibid; Exh. 'B', p. 3, Folder of Exhibits). The following morning, her father admonished and threatened her not to report to anybody what had happened (p. 14, tsn., Ibid)

"After the rape was committed, the offended girl left the house of her father and lived with her mother Leonita Patricio in barrio Paclolo, San Jose, Occidental Mindoro to whom she confided that she was raped by her father (pp. 15, 16, tsn., April 2, 1970). In view of this information the girl's mother took the child to the police authorities (pp. 15, 16, tsn., Ibid) and she was investigated by Pat. Crispin Bautista who reduced her statement to writing (pp. 3, 4, tsn., April 3, 1970; Exh. 'B', Folder of Exhibits). Thereafter, Pat. Artates accompanied the girl to the Municipal Health Officer, Dr. Honrado Lara, who examined the girl's private parts. Dr. Lara's findings are embodied in the medical certificate which reads as follows:

"This is to certify that I have this day examined EMILIA ERARDO, 14 years old, single and residing in Mapaya, San Jose, Occidental Mindoro and found the following injuries:

'1. Laceration, hymen, right upper quadrant;

2. Laceration, hymen, left lower quadrant;
3. Laceration, hymen, right lower quadrant;
4. Presence of vaginal secretion along vaginal canal.

'In my opinion, a foreign body has penetrated the vaginal canal causing the above lacerations' (pp. 17-20, tsn., April 2, 1970; Exh. 'C', p. 12, Folder of Exhibits).

During the medical examination, Dr. Lara asked the offended girl what had happened to her and the latter answered that she was raped by her own father Francisco Erardo on January 6, 1970 at about 12:00 midnight (p. 32, tsn., Ibid). (Appellee's brief, pp. 2-4)

On the other hand, appellant's evidence was set forth in the decision of the trial court as follows:

"(1) Gertrudes Portillo -

That she is the common-law wife of the accused Francisco Erardo. That the offended girl, Emilia Erardo is her step-daughter who live with her and her common-law husband for one year prior to the commission of the alleged rape. That she has a small child about nine months old. That on January 6, 1970, the offended girl slept inside a room with her. That when offended girl arrived from a dance that evening of January 6, 1970, she was still awake. That the offended girl helped in cleaning the house, fetching water, getting fuel and in going to buy articles for their store. That in going to the dance, the offended girl had lady companions. That her common-law husband works as a carpenter in the house of her in-laws about a kilometer away from their home. That the offended girl did not tell her anything about the alleged rape. That no extraordinary thing happened in the evening of January 6, 1970.

"On cross-examination, she testified that she is the common-law wife of the accused for two years until the present. That the father of the offended girl is Francisco Erardo, her common-law husband. That Emilia Erardo left the house already and lived with her real mother, Leonita Patricio in Paclolo. That when she told her common-law husband that his daughter left already, the accused father did not say anything, nor did he make any attempt to get her back. That she talked with the defense lawyer before testifying.

"(2) Francisco Erardo. - (the accused)

"That he did not threaten his daughter. That his daughter Emilia Erardo, is no longer living with him at present, because she is now living with her real mother. That his daughter slept in a room; about 6 feet by 4 feet wide with bamboo flooring. That his daughter helped in going to buy articles for the store. That she had no companion in going to gather fuel or in fetching water. That he used to make plows. That re Exhibit 'B', he signed it without his knowledge or without reading it. That he was threatened by a policeman with karate blows on his breast and also on the face. That he did not report the threats, because he was afraid. That his legal wife wanted to get his daughter Emilia, but he refused, so his wife got angry with him, and promised to get even with him by any means. That he did not know if somebody was an admirer or suitor of his daughter, Emilia.

"On cross examination, the accused testified that the offended girl is his daughter with his legal wife, Leonita Patricio. That he took care of his daughter Emilia who was very obedient to him. That he is a strict disciplinarian, and his daughter Emilia always followed. That he whipped and chastised her sometimes. That Emilia was afraid of him, because he is her father. That her daughter left Mapaya (from the house of the common law wife) on February 26, 1970." (pp. 29-32, Rollo)

After going over the records of the case, We find that the guilt of the accused, as found by the trial court, has been established by the evidence beyond reasonable doubt. Counsel for appellant, however, in his brief, argues that the evidence shows that no force, violence, intimidation or threat was employed; that the identity of the appellant as

the perpetrator is very doubtful and has not been established by positive and competent evidence but deduced only on the conclusion of the alleged offended party that he must have been the one because there was no other male person in the house that dark night; that the contents of the extra-judicial confession (Exh. "D") are not true; that considering the evidence on record, it was impossible for him to commit the crime charged for the reason that complainant was sleeping with appellant's common-law wife, Gertrudes Portillo, and the latter's nine-month old baby inside a small room of only four (4) by six (6) feet; and that the charge was only concocted and initiated by his wife, Leonita Patricio, because of his refusal to return to her the custody of their daughter, Emilia.

We are not persuaded. In their written statement (Exhibit "B") given to the police and sworn to before the Municipal Judge, complainant Emilia P. Erardo said:

"6. T- Maari mo bang isalaysay any buong pangyayari?

S- Opo. Noon pong petsa 6 ng Enero 1970, humigit kumulang sa alas 12:00 ng gabi ako at mga ibang kasama ay galing sa isang sayawan sa aming kapit bahay. Nang dumating ako sa aming bahay ay agad akong pumasok sa aming cuarto at akoy nakatulog agad. Hindi nagtagal ay naramdaman kong may tumabi sa akin sa higaan at itinaas niya ang aking palda at inaalís niya ang aking panty at sinabi pa ng ganito 'HUWAG KANG MAGINGAY KUNG GUSTO MONG MABUHAY.' At nang maalis niya ang aking panty ay naramdaman kong pilit niyang ipinapasok ang kaniyang ari sa ari ko. Pagkaraan ng ilang sandali ay naramdaman kong mahapdi ang aking ari at masakit na masakit. Hindi rin nagtagal ay natapos na ang aking tatay at siya ay umalis na sa pagkakapatong sa akin. At kinabukasan ay sinabi niya sa akin ng ganito 'HUWAG DAW AKONG MAGSUSUMBONG KAHIT KANINO PAGKAT PAPATAYIN KITA.'" (p. 3, Record)

And assuming that force or intimidation had not been actually employed, the crime of rape was still committed. As aptly observed by the trial court, "the absence of violence and/or offer of resistance would not be necessary because it is the over-powering and overbearing moral influence of the father over the daughter that takes the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship with the victim. As shown by the testimony of the accused on cross examination, the said accused testified that his daughter (the victim) was always obedient to him, he being a strict disciplinarian, without the slightest compunction of using the whip in chastising her daughter when she did not follow him. That because of his over-powering moral influence and assertion over the young mind and body of his daughter, the latter was very much afraid of her father. This predicament, in the mind of the Court, explains the reasons why the offended girl did not give any outcry or offered any resistance when she was being raped." (pp. 35-36, Rollo) Indeed, considering complainant to be a shy, modest barrio girl of tender age who studied up to Grade III only, and whose will had been subjugated by a ruthless assertion of parental authority, it is hard to believe that complainant would have submitted to a sexual act by her own father if her will to resist had not been overpowered.

There is no merit in the claim that the identity of appellant has not been established by positive and competent evidence. Hereunder is complainant's testimony on this point -

"Q You said that the reason why you opened your legs was because you were afraid. How about when your 'palda' was being removed, what was the reason why you raised your buttocks?

A Because I was afraid sir.

Q How about when your panty was being removed, what was the reason why you raised your buttocks?

A I was also afraid, sir, so I raised my buttocks.

x x x x x x x x

FISCAL VIROLA:

Q Where was your father when you arrived home coming from the dance party?

ATTY. RAMOS:

If your Honor please, we never took this in the cross examination.

FISCAL VIROLA:

You took it.

COURT:

All right let her answer.

A He was inside the house, sir.

FISCAL VIROLA:

Q How long a time elapsed from the time you lay down to the time your 'palda' was being removed?

A I do not know how long, sir.

Q You said that you were threatened the following morning by your father, how did he threaten you? Will you tell the Court the words more or less?

A My father threaten me that he will kill me if I will complain.

Q What was your reply, if any?

A No, sir. I did not reply anything." (tsn., pp. 50, 51-52, April 2, 1970 hearing)

The above testimony only confirms the statement of the accused (Exhibit "D") given to the police wherein he admitted that he abused his own daughter on the night in question. Thus,

"6. T- Maari mo bang isalaysay ang buong pangyayari? -

S - Opo. Noon pong buwan ng Enero 1970, humigit kumulang sa alas 12:00 ng gabi habang natutulog ang aking anak sa aming cuarto na si EMILIA, at nakita kong nakalilis ang kaniyang baro at labas ang kanyang panty. Nang Makita ko sa gayong ayos ay nakalimot ako at ako ay nahiga sa tabi niya. Pagkahiga ko ay kinabig ko siyang patagilid at aking inililis ang kaniyang panty at aking ipinasok ang aking ari sa kaniyang ari.

7. T- Naipasok mo ba ang iyong ari sa ari ng iyong anak?

S- Naipasok ko po.

8. T- Ilang beses mo siya ginamit?

S- Minsan lamang po." (p. 5, Record).

Exhibit "D" was given by appellant long before the 1973 Constitution took effect in which case it cannot be said that the provisions of Article IV, Section 20, thereof on the right to remain silent and to counsel, and to be informed of such right during investigation, were violated. Likewise, the claim that he was maltreated into signing Exhibit "D" is untenable as there is no showing that he was treated by a physician concerning the alleged injuries or that he reported and complained to any authority, particularly the mayor and/or the municipal judge who had their respective offices in the same building where the Police Department was located.

Neither is the contention meritorious that the rape could not have been perpetrated because appellants common-law wife sleep in the same room. As stated above complainant did not make an outcry or put up a

determined resistance due to fear of her own father. It is not surprising therefore that the act could have been consummated in the same room where a sleeping common-law wife was.

Finally, appellant's pretention that the filing of the case was a mere concoction of his wife, Leonita Patricio, because of his refusal to give her the custody of their daughter, Emilia, is, to say the least, ridiculous. For, why would Leonita initiate this case when at the time it was instituted Emilia was already living with her. It is hard to believe that a mother would sacrifice her own daughter to tell a story of defloration, allow the examination of her private parts, and thereafter present her to be the subject of a public trial, if they (mother and daughter) were not motivated by an honest desire to have the culprit, who is Emilia's own father, punished.

WHEREFORE, the judgment appealed from is AFFIRMED, with the modification that the indemnity to complainant Emilia Erardo is hereby increased to Twelve Thousand (P12,000.00) Pesos. With costs.

**SO ORDERED.**

Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

Teehankee(Chairman), J., in the result.

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