

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERMIN IGAT, ACCUSED-APPELLANT.*G.R. No. 122097. June 22, 1998*

Ponente: BELLOSILLO, J.

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FERMIN IGAT, adjudged guilty of raping his 14-year old daughter, was sentenced to reclusion perpetua and ordered to indemnify her the sum of P50,000.00.[1] He now interposes this appeal from his conviction.[2]

Accused-appellant anchors his appeal for reversal of the judgment against him on the theory that the prosecution failed to establish his guilt with the quantum of proof required to overcome the constitutional presumption of innocence in his favor. Alternatively, he proposes that should his conviction be sustained Art. 27 of the Revised Penal Code be applied to him so that the reclusion perpetua imposed on him will have a duration of twenty (20) years and one (1) day to forty (40) years.

The facts: On 10 December 1990, between 6:30 and 7:00 o'clock in the evening, after Gresilda finished supper with her parents at Brgy. Dangkalan, Molinao, Aklan, her brother Richard arrived from a basketball game at nearby Brgy. Malandayon. He went straight to the kitchen and took his supper. While he was eating Richard was scolded by his father for coming late. Openiana, wife of Fermin and mother of Richard, took up the cudgels for her son. She told Fermin that Richard was already old enough to play basketball at his pleasure. Fermin resented her intervention. He got his bolo and sent Openiana and Richard scampering away. Richard spent the night at an aunt's place in Liloan, Malinao, Aklan, while Openiana went into hiding elsewhere and returned home only the following morning.

Meanwhile, during the exchanges between her parents, Gresilda retired to her room. A little later, after the noise had subsided and Gresilda had fallen asleep, she was suddenly awakened by someone mashing her body, particularly her breasts and sexual organ. Since it was dark she could only meekly ask who it was and the reply came in a familiar voice, "I, ne." It was her father.

Gresilda was dumb-founded. She could not do anything. Her father threatened to kill her if she made any false move. He covered her mouth with one hand and continued to mash her sensitive parts with his other hand. In no time, he removed her panties and placed himself on top of her. With his libido now approaching its threshold, if not precisely because of it, he sexually assaulted his daughter. Initially, he did not succeed; however, in due time, he was able to consummate the act with her who later claimed she suffered as a result excruciating pain in her vagina and abdomen. After satisfying his lust, the accused warned Gresilda never to squeal or he would kill her, together with her mother, brothers and sisters, if she disobeyed.

Left alone, sore and sorry, Gresilda put on her panties, now torn as a consequence of her misfortune. She remained pensive in her room. The next morning, Gresilda noticed blood in her underwear, or what's left of it, so she changed it. She saw her father wash her torn panties afterwards. She absented herself from school because she was in pain and her gait was impaired. When her mother returned home Gresilda refrained from narrating to her

the bestial acts done to her by her father. On 13 December 1990 Gresilda attended her classes but spoke nothing about the incident to her schoolmates. She did not report the matter to the police either.

On 12 January 1991 Gresilda was raped again by her father but she still remained mum about it as she was afraid of him. She had a sigh of relief however on 26 April 1991 when, without knowing what happened, her sister Teresa went to fetch her in Brgy. Dangkalan for a vacation in Manila. They left that same day for Brgy. Dumga, Makato, Aklan, where they stayed for two (2) days at the house of a certain Junior Trasmil before proceeding to Manila on 28 April 1991 aboard "M/V Doña Fatima" with Trasmil and one Jun dela Cruz. While at sea and unable to contain herself any further, Gresilda finally revealed to her sister what their father did to her.

Upon reaching Manila, Gresilda and Teresa conferred with their eldest sister Susan and their aunt Bernardita Igat on what to do with their father. On 7 May 1991 Teresa and Gresilda decided to return to Aklan to charge him in court.

On 8 May 1991 Gresilda had herself physically examined by Dr. Simeon A. Arce, Jr., of the Dr. Rafael S. Tumbokon Memorial Hospital. His medico-legal report was attached to her criminal complaint filed by her with the assistance of her eldest brother Gilbert Igat. On 19 June 1991 the corresponding Information was filed, docketed as Crim. Case No. 3368.

A careful evaluation of the evidence on record fails to disclose any compelling reason to disbelieve the facts established by prosecution witnesses Dr. Simeon Arce, Jr., Teresa and Richard Igat, and the offended party herself Gresilda Igat, who positively identified her father in open court as her ravisher.

The only defense accused-appellant could muster was denial after pleading not guilty to the charge. His version was that in the evening of 10 December 1990 he spent an uneventful night with his wife Openiana at her parents' house in Bgy. Dangkalan, Malinao, Aklan, together with their children Gresilda, Richard, Gilbert and Gliceria, who was with her husband Noel Vargas and two (2) children. Fermin denied having scolded Richard that evening of 10 December 1990 and having quarrelled with his wife Openiana and son Richard to the point of driving them out of the house with his bolo. He also denied having raped his own daughter, suggesting to the court that it was improbable to do so since Gresilda slept on the bamboo bed in the kitchen facing the door while Openiana was beside her with appellant on the other side near the sala, and in the adjoining room were Richard and Gilbert. The rest of the nipa house was occupied by Gliceria's family.

The wobbly version of the defense was attempted to be augmented with the equally flawed testimonies of Noel Vargas, Juanito Iscala a neighbor, and Primilin Narciso who presented class records showing that Gresilda was not marked "absent" from her class on 11 December 1990.

In the high-profile case of *People v. Echegaray*,^[3] involving the incestuous rape by a father of a hapless daughter, we had occasion to observe thus -

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 (cited cases omitted).

Like the 15-year old Ronalyn in *People v. Magpantay*^[4] who was thrice raped by her own father, the victim in the case at bar, Gresilda, could not have been easily convinced to have herself physically examined and thereafter

undergo the ordeals of a public trial and testifying against her own father if she was not motivated by her desire to seek justice. Citing *People v. Caballes*,^[5] we held in *Magpantay* that -

Given complainant's naivete and inexperience in matters of sexuality, it was improbable that she would fabricate matters about the rapes committed against her person and concoct lies against her own father, knowing fully well the seriousness of such charges, even granting that she harbored abhorrence for his ways, and run the risk of subjecting herself to humiliating and embarrassing scrutiny wrought by a public trial.

By *Gresilda's* own testimony, the rape committed by her father was the first time ever that she had known a man carnally, a new experience which should have been attended by mutual love, romance and passion for a young Filipina like her. Hence, it is not without reason that, as she recounted in court how her father had forced her to have sex with him, certain inconsistencies and contradictions would surface. In this regard we reiterate our view expressed in *People v. Tumala, Jr.*^[6] -

Error-free testimonies cannot be expected most especially when a witness is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion. The court cannot expect a rape victim to remember all the ugly details of the appalling outrage, particularly so since she might in fact be wishing to forget them.^[7]

The Court believes in the story of *Gresilda*. As observed by the trial court, she was in tears when she related how she was raped and positively identified her father as the perpetrator of the dastardly act.^[8] Her assertions were "direct, positive, straight-forward and candid x x x that she was raped by her father in the evening of December 10, 1990, in the manner and form narrated by her."^[9] Moreover, there is nothing in the record from which to conclude that *Gresilda* had ill motives to falsely testify against her own father. The testimony of a rape victim is credible where she has no motive to testify falsely against the accused^[10]who, incidentally and unfortunately, is her own father.

The defense attempted to discredit *Gresilda* on the following points: (a) that she contradicted herself when she stated during her direct testimony that her father placed a bolo on her neck to prevent her from shouting, while on cross-examination she said that her father did not carry a bolo when he entered her room to rape her; (b) that according to the medico-legal officer, *Gresilda's* hymenal tear could have just been a week old at the time of examination so that the sexual intercourse must have occurred while *Gresilda* was with Junior Trasmil in his house or in Manila; and, (c) that *Teresa Igat* could not be a competent witness since she was "possessed" by an "evil spirit" and was undergoing treatment by a "medico" in the person of Junior Trasmil.

A careful perusal of *Gresilda's* cross-examination readily shows that she did not categorically state that her father was not carrying a bolo when he entered her room. Thus -

Cross-Examination by Atty. A. Iligan;

x x x x

Q: And in fact you did not notice your father enter the room where you were sleeping?

A: No.

Q: And you also did not notice when he was allegedly mashing your sex organ that he carried something?

A: I do not know if he is (sic) carrying something.

Q: The reason is because it was very dark that night?

A: Yes.^[11]

It was during the direct examination that Gresilda testified in no uncertain terms that her father placed a bolo on her neck and covered her mouth as he warned her not to shout, then vividly recalled how he removed the bolo on her neck and placed it beside her before he raised her housedress, removed her panties and forcibly inserted his penis into her vagina.[12] Thus, the contradiction referred to by the defense is obviously nonexistent. Similarly, the insinuation that the rape happened while Gresilda was with Trasmil by virtue of Dr. Arce's description of Gresilda's hymenal tear being "fresh or within a week tear" distorted the testimony of the examining physician as a whole. He only used the phrase "fresh or within a week tear" to differentiate an old hymenal tear that had no bleeding with the edges being well-rounded and without any congestion from a fresh one.[13]

With respect to Teresa's testimony, it was presented merely as a corroborative evidence. It is of no moment that Gresilda allegedly told Teresa to withdraw the complaint after the prosecution had already rested[14] because even an affidavit of desistance or a pardon by the offended party cannot justify the dismissal of the complaint for rape considering that the pardon should have been made prior to the institution of the criminal action.[15]

Of utmost significance is the basic principle that in rape cases the gravamen of the offense is sexual intercourse with a woman against her will or without her consent. The medical certificate issued by Dr. Arce showed an old hymenal tear, 9:00 o'clock in location, which could have happened at the time alleged by the victim. This complements Gresilda's claim that her father had sexual intercourse with her without her consent. She had consistently, emotionally and convincingly narrated at the trial how his father intimidated her so as to leave her with no other option but to meekly submit to his lust. In a recent case[16] we laid emphasis on the different facets of intimidation relative to rape cases -

Intimidation in rape cases is not calibrated nor governed by hard and fast rules. Since it is addressed to the victim and is therefore subjective, it must be viewed in light of the victim's perception and judgment at the time of the commission of the crime. It is enough that the intimidation produced fear -- fear that if the victim did not yield to the bestial demands of the accused, something far worse would happen to her at that moment. Where such intimidation existed and the victim was cowed into submission as a result thereof, thereby rendering resistance futile, it would be the height of unreasonableness to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of intimidation, then offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary (cited cases omitted).

In any event, in a rape committed by a father against his own daughter, as in this case, the former's moral ascendancy or influence over the latter substitutes for violence or intimidation (cited cases omitted).

Appellant further tried to discredit Gresilda's version by enumerating certain instances which he regarded as contrary to human experience. He argued that a rapist cannot hold his penis with two (2) hands while committing the crime, and that a victim cannot possibly afford to attend school the following day if she suffered some bleeding on account thereof. Furthermore, he wondered why Gresilda failed to immediately report the rape if it was true, and insisted that it was improbable that he raped her given the limited area of their nipa house with several occupants at the time of the supposed incident.

There is a stark indication in appellant's brief that he has a strong inclination to misconstrue the facts as presented by the prosecution. Gresilda withstood the cross-examination regarding the use of both hands by her father in inserting his penis into her vagina by explaining that initially her father was frustrated but after sometime he succeeded while on top of her. Thus, we can safely assume that in the course of Fermin's attempts to force his penis into Gresilda's vagina he could have freed one hand or even both hands until he finally consummated the act. Whether he held his penis with both hands to penetrate Gresilda, or whether Gresilda went to school on 11 December 1990 and delayed the reporting of the sexual assault were simply minor matters too trivial to affect the

prosecution's case for rape.[17]

The bottom-line remains that the assertions of Gresilda as to the facts prior to and after the incident were positively corroborated by her brother Richard and her sister Teresa. The witnesses of Fermin could only come up with negative testimonies which are of lesser value for the reason that he who denies a certain fact may not remember exactly the circumstances on which he bases his denial.[18] The trial court even found the testimonies of the defense witnesses as studied, deliberate, rehearsed and somehow biased in favor of the appellant. We have no reason to disagree. Appellant's bare denial cannot overcome the categorical testimony of Gresilda, the victim.[19]

Quite telling is the fact that appellant lost no time in fleeing Aklan province after learning about the rape charges against him. He offered no plausible explanation for his precipitate departure. Hence, his flight is a clear indication of his guilt.

On the claim of accused-appellant that the duration of his imprisonment of reclusion perpetua be twenty (20) years and one (1) day to forty (40) years, suffice it to state that the crime was committed on 10 December 1990 or long before RA No. 7659 took effect on 31 December 1993, hence, there was as yet no cause for confusion as to whether reclusion perpetua as a penalty was indivisible or not. Art. 27 of the Revised Penal Code, before its amendment, provided -

ART. 27. Reclusion perpetua. - Any person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for thirty years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon (underscoring supplied.)

WHEREFORE, the appealed decision finding accused-appellant FERMIN IGAT guilty of raping his 14-year old daughter Gresilda Igat, sentencing him to reclusion perpetua and to indemnify her in the amount of P50,000.00 is AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Decision penned by Judge Pepito T. Ta-ay, RTC-Br. VII, Kalibo, Aklan.

[2] Accused-appellant erroneously appealed to the Court of Appeals which certified the case to this Court in view of the penalty involved.

[3]G.R. No. 117472, 25 June 1996, 257 SCRA 561, 569-70.

[4]G.R. Nos. 113250-52, 14 January 1998.

[5]G.R. Nos. 93437-45, 12 July 1991, 199 SCRA 152, 164.

[6]G.R. No. 122100, 20 January 1998.

[7]People v. Jimenez, G.R. No. 97222, 28 November 1995, 250 SCRA 349, 356-35

[8]RTC Decision, pp. 20-21; Rollo, pp. 39-40.

[9]Id., p. 22.

[10]See Note 1, p. 371, citing People v. Matamorosa, 231 SCRA 509, 515 (1994), and People v. Cabilao, 210 SCRA 326 (1992).

[11]Id., 20 September 1991, p. 9.

[12]Id., 19 September 1991, p. 8.

[13]Id., 16 September 1991, p. 8.

[14]Id., 20 June 1994, pp. 5-6.

[15]People v. Entes, G.R. No. 50632, 24 February 1981, 103 SCRA 162, 167.

[16]People v. Agbayani, G.R. No. 122770, 16 January 1998.

[17]People v. Esquela, G.R. No. 116727, 27 February 1996, 254 SCRA 140, 145.

[18]People v. Dones, G.R. No. 108743, 13 March 1996, 254 SCRA 696, 708.

[19]People v. Taneo, G.R. No. 117683, 16 January 1998.

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