

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIO FRANCISCO Y LOPEZ, ACCUSED-APPELLANT.*G.R. No. 136252. October 20, 2000*

Ponente: DAVIDE JR., J.

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In what seems to be a continuation of a dream so surreal, Marilyn Perez (hereinafter MARILYN), twelve years (12) old, woke up from her deep slumber between 10 p.m. and 11 p.m. of all nights of 25 December 1997, in their residence in barangay Sagrada Familia, Hagonoy, Bulacan, to find her alleged stepfather Julio Francisco (FRANCISCO), sucking her nipples and inserting his male organ into her private parts.[1] The bizarre situation assumed contemptible proportions by reason of the perverted intrepidity in which the dastardly deed was undertaken.

On that night, the family members slept side by side with each other on a single mat and under one mosquito net. MARILYN slept by the wall and beside her mother. On her mother's other side slept FRANCISCO. Beside FRANCISCO slept his daughter with Felicidad. About a meter away was MARILYN's brother. With these sleeping positions, FRANCISCO, as earlier detailed, was able to sexually violate MARILYN.[2]

MARILYN claimed that after the sexual transgression, FRANCISCO threatened her with a kitchen knife so as not to divulge the incident to anybody lest he kill her.[3] But MARILYN seemed to have gathered courage for she was able to tap (kalabit) her sleeping mother who woke up to find her husband atop her daughter. She heard her mother blurt out "Hey, why did you do that to my child? She is also your child! (Hoy, bakit mo ginalaw ang aking anak? Anak mo na rin iyan!).[4]

Mother and daughter went to the house of the former's sister Virginia and told her the story. From there, the trio proceeded to the barangay hall to lodge a complaint. FRANCISCO was later on brought to the police station where he was incarcerated.

FRANCISCO was subsequently indicted for rape under an information which reads as follows:

The undersigned Asst. Provincial Prosecutor, on complaint of offended party, Marilyn M. Perez, accuses Julio Francisco y Lopez of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code, as amended by R. A. 8353 otherwise known as "The Anti-Rape Law of 1997, committed as follows:

That on or about the 25th day of December, 1997, in the municipality of Hagonoy, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously, by means of force and intimidation, with lewd designs, have carnal knowledge of his stepdaughter, Marilyn M. Perez, 12 years old, against her will and without her consent.

Contrary to law.[5]

FRANCISCO was arraigned on 20 May 1998 before the Regional Trial Court of Bulacan, Branch 21 in Malolos, whereby he entered a plea of "Not Guilty." His case was docketed as Criminal Case No. 529-M-98. After the

mandatory pre-trial conference, trial on the merits ensued.

The prosecution first presented MARILYN who testified on matters tending to prove the above narration of facts. She also disclosed that the sexual molestation committed upon her by FRANCISCO on Christmas night of 1997 was not the first time. She revealed that since she was eight (8) years old she had been sexually assaulted for about five times already by FRANCISCO. She remembered that her mother started living in with FRANCISCO when she was about seven (7) years old. Her natural father was already dead at that time.

The prosecution also presented the mother of MARILYN, Felicidad Perez. She basically claimed that on the night in question, her daughter "touched (kalabit)" her which gesture woke her up. Felicidad then heard MARILYN say that FRANCISCO had lain on top of her. She then saw that FRANCISCO was indeed on top of her daughter who was silently weeping.[6] Felicidad asked FRANCISCO "why he placed himself on top of Marilyn when she thought all the while that he treated the girl as his own child." FRANCISCO remained silent.[7]

Felicidad also admitted that the Christmas night incident was not the first time that FRANCISCO sexually abused MARILYN. In fact, MARILYN had been telling Felicidad of the sexual molestations which occurred since the former was in Grade Two. Felicidad remained patient with FRANCISCO because their union produced a daughter. In fact, she had personally caught FRANCISCO in coitus with MARILYN when the latter was in Grade Two.[8] Felicidad claimed that FRANCISCO is her husband but admitted that they are not married.[9]

Felicidad's other testimonial evidence coincided with MARILYN's recital relative to FRANCISCO's arrest.

Dr. Manuel Aves of the Bulacan Provincial Crime Laboratory Office was also called to the witness stand to confirm the medical findings he made after conducting a physical examination on MARILYN on 29 December 1997. Dr. Aves stated that his findings revealed that "there were multiple [hymenal] healed lacerations at 12, 3, 4, 6, 9 and 10 o'clock with abrasions and swelling." He concluded that said results manifested recent sexual manipulations.[10]

For its part, the defense first presented accused FRANCISCO. He denied the accusation and gave the excuse that he was sleeping on the night and time in question. He rationalized that his wife, furious at his failure to adequately provide for the family needs aggravated by the fact that she had to earn money during the Christmas season, concocted the malevolent scheme.

He then admitted that he had been living with Felicidad without the benefit of marriage which relationship produced a daughter who was already eight (8) years old.[11] He also testified that MARILYN lived with the sister of Felicidad and only visited the family.

The defense also presented Benigno Mercado who admitted that FRANCISCO was his uncle. He claimed that he visited FRANCISCO at the Hagonoy Municipal Jail when the investigation was being conducted. He heard MARILYN state that "there was no penetration, only touching by the accused." He later admitted on cross-examination that he did not hear the entire declarations of MARILYN.[12]

Both MARILYN and FRANCISCO took the witness stand again as rebuttal witness and sur-rebuttal witness, respectively.

In its decision of 28 October 1998, the trial court[13] convicted FRANCISCO. The trial court believed the testimony of MARILYN that she was sexually violated by accused FRANCISCO on the night of 25 December 1997. The trial court considered the testimony of MARILYN's mother to have strengthened the girl's testimony. The positive identification of FRANCISCO and Dr. Aves' findings or physical evidence likewise "jibed and confirmed" MARILYN's testimony "giving no reason to doubt that there was consummation of the sexual

intercourse."

Against the damning evidence of the prosecution, the trial court considered the defense's denial a "self-serving negative evidence x which cannot stand against the affirmative testimonies of prosecution witnesses." The trial court also brushed aside the insinuation of the defense that it was physically impossible for FRANCISCO to commit the crime given the sleeping positions of the protagonists, his alleged physical infirmity and MARILYN's disclosure on cross-examination that "her shorts and underwear were rolled down half-way above the knee and her legs were spread for about one and one-half (1½) feet only."

For the trial court, the first pretext had been amply refuted by the declaration of MARILYN that she woke up to find FRANCISCO sucking her nipples and inserting his male organ into her vagina and supported by the mother's testimony that she saw her husband on top of MARILYN. Besides, the trial court added, rape can be committed in the most unlikely places. Further, FRANCISCO had on five previous occasions successfully imposed his evil intentions upon MARILYN which could have "emboldened him to throw caution into the winds" and to once again impose his lechery on the girl that Christmas night. The trial court also rejected FRANCISCO's alleged physical defect considering that it did not hinder him from working as a fisherman and in siring a daughter with Felicidad. As to the third alleged exculpating reason, the trial court declared that the fact that the shorts and underwear were not completely removed from the legs or that the legs were just one and one-half feet apart was not sufficient obstacle to a person bent on perpetrating a criminal act. The trial court observed that "[i]t is conceded from human experience that (under said circumstances) sexual intercourse would be difficult, but (not) physically impossible if we consider that the victim was initially asleep and when awakened, she was not in a position to resist." It is also likely that MARILYN did oversleep given her tender age.

The trial court also noted the inconsistencies and contradictions in the testimony of MARILYN, but concluded that the same failed to override the sincerity and candor of the girl when she said she was raped for she said in effect all that has to be said on the occasion. The trial court then proclaimed that the presence of the special circumstance of relationship indicated in Section 11 of R.A. 7659 qualified the rape which necessitated the imposition of the death penalty. It found undisputed (1) MARILYN'S age, which was about twelve (12) years old at the time of the commission of the crime as evidenced by a birth certificate[14] and the lack of objection thereto by the defense; and (2) FRANCISCO's relationship with MARILYN as either that of a stepfather or common-law spouse of Felicidad by the defense's lack of objection to or denial of Felicidad's testimony that FRANCISCO is her husband.

The trial court also discarded as not fatal to the prosecution's cause, the absence in the Information of the exact words that "offender FRANCISCO is the stepfather of 12-year old MARILYN or common-law spouse of the parent of the latter" so as to explicitly constitute the qualifying circumstance of relationship mentioned in Section 11 of R.A. 7659. Thus, the dispositive portion reads as follows:

Wherefore, all premises considered, the Court resolves that the prosecution has successfully undertaken its burden to prove the guilt of accused Julio Francisco y Lopez beyond reasonable doubt. For having violated Article 335 of the Revised Penal Code, as amended by Republic Act 7659 with the attendant circumstance that "the victim is under eighteen (18) years of age and the offender is a x x x stepfather, x x x or the common-law spouse of the parent of the victim", accused Julio Francisco y Lopez is hereby found GUILTY of the crime of Rape as charged. Absent any circumstance that could mitigate the commission thereof, he is hereby sentenced to suffer the Supreme Penalty of Death by lethal injection.

In line with established jurisprudence, the said accused is also ordered to indemnify the offended party Marilyn Perez in the sum of P50,000.00 for moral damages.

With costs against the accused.

SO ORDERED.[15]

In view of the penalty imposed, the case is brought on automatic appeal to this Court pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R. A. 7659.

In his Appellant's Brief, FRANCISCO attributes to the trial court as errors (1) its finding that his guilt was proven beyond reasonable doubt, (2) in giving credence to the inconsistent and incredible testimonies of the prosecution witnesses, (3) in rejecting the defense's exculpatory evidence, and (4) in imposing the death penalty despite the erroneous allegation in the information of the special qualifying circumstance of relationship.

FRANCISCO then specifies the following testimonial inconsistencies and contradictions as undermining the credibility of the prosecution witnesses and the possibility of the crime having been committed:

- MARILYN was not sure whether she tapped her mother before or after FRANCISCO went on top of her.
- She was uncertain whether her undergarments and shorts were removed or merely rolled-down the middle of her thighs.
- She also equivocated on whether she was completely undressed when her mother found FRANCISCO in a coitus position atop her.
- She claimed to have seen a whitish sticky substance discharged from FRANCISCO's penis although she said that the lights were off and the penis was being inserted into her when she awakened.
- She claimed that FRANCISCO was wearing shorts with buttons while her mother claimed he was clad in briefs.
- She said FRANCISCO asked her to masturbate him after he ejaculated - a claim that cannot be substantiated with true to life experience.

FRANCISCO also insists on the absence of the qualifying circumstance of relationship considering that he was never married to Felicidad, hence he could not be the stepfather of MARILYN. He was merely the common-law spouse of Felicidad which detail was not alleged in the information, hence he could not be convicted of qualified rape and be meted out the death penalty, all in consonance with the Court's ruling in *People v. Dimapilis*.^[16]

The Office of the Solicitor General counters, however, that the inconsistencies do not prove that the rape was not committed nor do they depreciate the probative value of the overwhelming proofs adduced by the prosecution of the fact of rape. MARILYN's positive identification of FRANCISCO and her testimony that he was sucking her nipples and inserting his private parts into hers when she woke up on the date in question, as corroborated by the other evidence of the prosecution particularly the medical findings of genital swelling and abrasions, proved beyond reasonable doubt the guilt of FRANCISCO. The defense of denial failed to overcome this clear and foregone conclusion.

The Office of the Solicitor General, however, agrees with FRANCISCO that there is no qualified rape and opines that the case falls squarely with or is similar to *People v. Dimapilis*. It respectfully recommends the modification of the assailed decision with the reduction of the penalty from death to reclusion perpetua. We affirm

FRANCISCO's conviction.

The issues raised herein primarily dealt with the credibility of the prosecution witnesses particularly MARILYN. FRANCISCO harps on the inconsistencies and contradictions in the statements of MARILYN and her mother which allegedly cast serious doubt on their credibility and the fact of the crime having been committed. It is, however, jurisprudentially settled that findings of the trial court on the credibility of witnesses are entitled great weight on appeal unless cogent reasons are presented necessitating a reexamination, if not a disturbance of the

same; the reason being the former is in a better and unique position of hearing first hand the witnesses and observing their deportment, conduct and attitude.[17]

A careful scrutiny of the records reveals no cogent reason requiring a disturbance of the trial court's findings. We agree with the trial court in affording full credit and merit to MARILYN's testimony that she was raped. The medical findings conclusively support the testimonial evidence of rape. Besides, when a woman says that she has been raped, she says in effect, all that is necessary to show that she has indeed been raped.[18]

We likewise affirm the trial court's conclusion that FRANCISCO's impugment of the prosecution's evidence failed to destroy the prosecution's case. The inconsistent and conflicting statements averred to in the Appellant's Brief are not entirely irreconcilable with or even material to the fact of rape.

Whether MARILYN tapped or touched her mother before or after the rape is inconsequential. The truth is MARILYN reached out to her mother in an attempt to wake her up and discover the disgusting deed being perpetrated by her common-law husband. On the averment that MARILYN prevaricated on whether her undergarments and shorts were completely taken off or were merely rolled halfway down her thigh is again trifling. Either situation could not have prevented a perverse and lecherous mind from unleashing its lust on a hapless girl. Further, it is jurisprudentially recognized that lust is no respecter of time and place and may be committed even inside cramped quarters.[19]

The other averred incredulous claims of MARILYN (seeing a whitish sticky substance discharged by FRANCISCO even though the lights were off and being required to masturbate FRANCISCO after the fact of rape) and Felicidad (observing FRANCISCO as clad in briefs) refer to irrelevant and trite matters that, it is reiterated here, do not and could not disparage the credibility of the prosecution witnesses to the extent of invalidating the entire prosecution's case. For truth be told, the defense's efforts to shred the threads of coherence and congruity that firmly bind the prosecution's case appear futile, foolish and nugatory.

This Court thus discards the defense of denial interposed by FRANCISCO. In so doing, we resort once again to the primordial doctrinal predication, whose sagacity and truth remain as constant as the progression of the years in which it has been applied, that denial, like alibi, as an exonerating justification is inherently weak and if uncorroborated regresses to blatant impotence. A mere denial, just like alibi, constitutes a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[20]

A careful scrutiny of FRANCISCO's other pretexts like the imputation to Felicidad that she concocted the rape charge in reprisal of his alleged inability to satisfactorily provide for the family needs discloses the frivolity of the defense's cause. On that specific item, however, we decree that it is unnatural for a parent, more so, a mother to use her offspring as an instrument of malice or retribution if it will subject her child to the humiliation, disgrace and even stigma attendant to the prosecution of rape, if she were not motivated solely and rightly by the desire to incarcerate the person responsible for the child's defilement if the same is not true.[21] Felicidad precisely wanted FRANCISCO behind bars because motherly concerns prevailed over a love gone errant. She had already caught him previously sexually molesting MARILYN and had known of the other sexual abuses he committed which acts she had condoned but not the abomination committed on Christmas night right next to her. In fact, FRANCISCO should be held culpable for these previous acts of lechery if proven in separate cases.

In sum, it is clear that the prosecution persuasively discharged its onus of proving the guilt of FRANCISCO beyond reasonable doubt. Despite this affirmation of the trial court's judgment of conviction, we, nonetheless, agree with FRANCISCO's contention and that of the Office of the Solicitor General that the death penalty cannot be imposed.

We agree that this case is similar to the factual settings of *People v. Dimapilis*. In the informations of the instant case and in *People v. Dimapilis*, the victims, who were below eighteen (18) years old, have been stated as the stepdaughters of accused-appellants; yet, the evidence indubitably show that accused-appellants are the common-law spouses of the victims' mothers.[22] In both instances, the victims' mothers are not married to accused-appellants. Both accused-appellants cannot therefore be considered as the respective stepfather of the victims, for that relationship presupposes a legitimate relationship, i.e., they should have been legally married to the mothers' victims. A stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring; or, a stepdaughter is a daughter of one's spouse by a previous marriage or the daughter of one of the spouses by a former marriage.[23]

But notwithstanding the unequivocal proof at the trial of this case and in *People v. Dimapilis*, of the special circumstance that accused-appellants were the common-law spouses of the victims' mothers, said relationship could not be considered as such because it was not specifically alleged in the information. Special qualifying circumstances indicated in the amendatory provisions of Section 11 of R.A. 7659 must be specifically pleaded or alleged with certainty in the information; otherwise the death penalty cannot be imposed.[24] to impose the death penalty on the basis of relationship, which has not been alleged in the information, would violate FRANCISCO's constitutional and statutory right to be informed of the nature and the cause of the accusation against him.[25]

With this favorable serendipity, FRANCISCO can only be convicted of simple rape where the proper imposable penalty is reclusion perpetua under the second paragraph of Article 335, now Article 266-A of the Revised Penal Code, in view of the amendments of R.A. 8353[26] and R.A. 7659. Nonetheless, this does not preclude this Court from imposing, in addition to the moral damages already decreed, civil indemnity in the amount of P50,000 which the trial court inadvertently omitted.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the decision of 28 October 1998 of the Regional Trial Court of Bulacan, Branch 21 in Malolos, in Criminal Case No. 529-M-98 convicting herein accused-appellant Julio Francisco y Lopez of qualified rape is hereby MODIFIED. As modified, accused-appellant is hereby declared guilty beyond reasonable doubt of simple rape as defined and penalized under the new Article 266-A of Revised Penal Code pursuant to R.A. No. 8353, sentenced to suffer the penalty of reclusion perpetua and ordered to pay MARILYN PEREZ the amounts of P50,000 as civil indemnity and P50,000 as moral damages.

Costs against accused-appellant.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] TSN, 6 July 1998, 1, 34.

[2] TSN, 6 July 1998, 7.

[3] Id. 8.

[4] Id. 9.

[5] Rollo, 6.

[6] TSN, 8 July 1983.

[7] Id., 3-4.

[8] Id. 6.

[9] Id., 2.

[10] TSN, 17 July 1998, 4.

[11] TSN, 23 September 1998 2-3.

[12] Rollo, 14.

[13] Per Judge Cesar M. Solis.

[14] Original Records (OR), 151. Marilyn was born on 24 May 1985.

[15] Rollo, 18.

[16] 300 SCRA 279 [1998].

[17] People v. Alvero, G. R. Nos. 134536-38, 5 April 2000, citing People v. Landicho, 258 SCRA 1 [1996]; People v. Villaviray, 262 SCRA 13, 18 [1996]; People v. Leoterio, 264 SCRA 698, 617 [1996]; See also People v. Antolin, G.R. No. 133880, 12 April 2000.

[18] People v. Gonzales G.R. No. 133859, 24 August 2000.

[19] People v. Docena G.R. Nos. 131894-98 20 January 2000, citing People v. Leoterio, 264 SCRA 608 [1996] and People v. Escala, 292 SCRA 48 [1998]. See also People v. Logarto and Cordero, G.R. Nos. 118828 & 119371, 29 February 2000.

[20] People v. Alvero, G.R. Nos. 134536-38, 5 April 2000.

[21] People v. Alvero, Supra note 20, citing People v. Silvano, G.R. No. 127356, 29 June 1999 and People v. Escobar, 281 SCRA 498 [1997].

[22] See also People v. Poñado, 311 SCRA 529 [1999].

[23] People v. Tolentino, 308 SCRA 485, 495 [1999].

[24] People v. Ferolino G.R. Nos. 131730-31, 5 April 2000.

[25] People v. Bartolome, G.R. No. 133987, 28 January 2000.

[26] Otherwise known as the Anti-Rape Law of 1997.

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