

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROBERTO PALERO Y DELOS SANTOS, ACCUSED-APPELLANT.***G.R. No. 138235. May 10, 2001*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-138235/>**PER CURIAM:**

Despite the number of like cases elevated to this Court and their increasing frequency, the members of this Tribunal never cease to be appalled at the perversity and depravity each new case of incestuous rape brings. The figures could well be staggering but perhaps more jolting still are undeniable plights of numerous yet unknown victims which have yet to reach the courts. Fortunately, the case of herein private complainant will not be among the pageless incidents.

The proliferation of incestuous rape of minors, a crime which scrapes the bottom of the barrel of moral depravity is a revolting phenomenon.[1] For every girl such as Gigi Palero who has had the opportunity to knock into the portals of the courts to seek justice, approximately a hundred more suffer in silence. Indeed, one may ask - does the seemingly god-fearing attitude and parental tenderness that characterize the Filipino persona, a mere veneer for the more sinister aspect of personality?

Gigi Palero was born on 18 July 1982 to accused-appellant Roberto Palero y De los Santos and Estrella Bañas Palero both from Barangay Caglilig, Municipality of Tinambac, Camarines Sur. Roberto Palero supported his family by fishing, gathering shrimps and making copra. Sometime in the month of May 1996, the exact date Gigi could no longer recall, about eight o'clock in the evening, the members of the Palero household, as was their wont, were already in bed for the night. Gigi and her sisters -Geraldine aged 2 years old and 6 months, Mary Jane 9 years old and Ginalyn 6 years old - were sleeping side by side on a floor mat in the same room with their father. The Palero boys - Roberto and Ronnie who usually would sleep outside the room - were at the movies. Estrella Palero, their mother, was at that time in Manila. An older half-sister, Gemma, born to Estrella Palero and her first husband, was also away. During the night, at an unknown hour, Gigi was roused from her slumber when she felt her underwear being removed by her father. Accused-appellant then removed his shorts, laid on top of the terrified child, and inserted his penis into her vagina. Crying, she struggled but her two hands were pinned down by accused-appellant. She was told not to make any noise. Gigi could not estimate just how long her father remained in her. All she could remember was that he was meanwhile making push and pull movements (nag-irad). While Roberto Palero writhed in ecstasy, his young daughter suffered in excruciating pain of a virgin's initiation into the carnal world. Her younger sisters slept in the deep slumber of the innocents, completely oblivious to the nefarious deed being committed but a few feet away. The appetites of his loins sated, Roberto Palero left Gigi and returned to his far-end corner of the room and resumed sleeping. Putting on her underwear, private complainant stayed awhile but afterwards brought a flashlight and proceeded downstairs to urinate. While urinating, the young girl felt sharp twinge and saw blood in her discharge. Extremely worried, she went back upstairs to sleep.

Unluckily for Gigi Palero, the assault on her virtue was but the beginning of similar other incidents yet to come. Again, one evening, Roberto Palero undressed his daughter and satisfied his lust. With one hand on the mat, and

his other hand touching his organ, accused-appellant made "irad." Gigi could only cry in pain.

At still another time, in the copra kiln located in the hinterlands of barangay Cagliliog, he once more came into her. The Palero property, which was planted with coconut trees, could be reached from the Palero residence after a one-hour boat ride. In the premises was a copra kiln where the coconut harvest was dried. Accused-appellant brought Gigi and her brother to help him with the farm work. When night fell, Roberto Palero told his son to go home ahead, leaving accused-appellant and Gigi to spend the night at the copra kiln. That night, while she was about to sleep, accused-appellant got some medicine, massaged her, and removed her panty and her skirt. He then undressed himself, laid on top of his daughter and hastily took her. Although her memory was somewhat hazy on the exact dates, private complainant was certain that her father succeeded in forcing himself upon her approximately three times in the same coconut kiln area. As always, accused-appellant subdued his daughter with intimidating threats and repeatedly warned her not to tell anyone about it.

The young girl bore her agony in silence until much later when her elder half-sister, Gemma Palero, arrived from Manila. Gigi confided to Gemma her predicament. Gigi's hesitation to tell her mother, who under natural circumstances would have been the child's best ally, was explained by her as so stemming from resentment due to the neglectful attitude of Estrella Palero towards her children. Gigi recalled that when her elder half-sister Gemma had reported to Estrella the same indignity committed against her person by accused-appellant, Estrella expressed disbelief, a reaction, it turned out, she would also exhibit when confronted about Gigi's own defilement. Indeed, throughout the trial, Estrella Palero stood by her husband's side and even tried to discredit her daughter at the witness stand.[2]

The findings of Salvador Betito, Jr., the doctor who had conducted the physical examination at the request of the investigating municipal trial court judge, showed that the already-widened vaginal orifice of the victim would readily admit two fingers with least resistance, a fact that must have been caused by the insertion into the vagina of a foreign object or a male organ. A healed lacerated wound on the victim's upper arm was explained by private complainant as having been inflicted by her father.

For reasons not disclosed at the trial, private complainant fell into the custody of the Department of Social Welfare and Development ("DSWD"). The DSWD assisted private complainant in pursuing the case against her tormentor and in extending rehabilitative therapy for her trauma. Oscillada recalled that in one role-playing activity which required private complainant to reveal her feelings, Gigi Palero, in reference to her disbelieving mother, expressed grudge but exhibited happiness that her half-sister Gemma gave credence to her story. When asked to draw the picture of the person she hated the most, private complainant, with all the fury of a 13-year old, portrayed Roberto Palero as the devil.

On 28 August 1996, an Information, charging accused-appellant with rape, was filed by the Office of the Provincial Prosecutor -

"The undersigned 1st Assistant Provincial Prosecutor of Camarines Sur upon sworn complaint filed by Gigi B. Palero which is hereto attached accuses Roberto Palero y de los Santos of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 committed as follows:

"That on or about the month of May 1996 at barangay Cagliliog, Municipality of Tinambac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with Gigi B. Palero, a 13-year old, his own daughter against her will and the offended party suffered damages."[3]

Accused-appellant pled "not guilty" to the indictment.

At the trial, the account of private complainant was straightforward and unequivocal -

"Q. Can you please tell us what was that incident was all about?

"A. We were all sleeping, then he went to the place where we were sleeping and then he removed my panty.

"Q. Where were you sleeping, Gigi Palero?

"A. In our bedroom beside my brothers and sisters.

"xxx xxx xxx

"Q. Was it day time or nighttime?

"A. Nighttime, sir.

"Q. Who were present inside your house during that night?

"A. Only my three sisters.

"Q. What about your brothers?

"A. They went out to see a movie.

"xxx xxx xxx

"Q. After your father had removed your underwear, what if anything happened, next?

"A. He laid down on top of me.

"Q. What did he wore, if anything?

"A. Shorts and then he also removed his shorts.

"Q. So after he removed his shorts and laid on top of you, what if anything happened next?

"A. And then he inserted his penis to my vagina.

"Q. What, if anything did you feel?

"A. It was painful, sir.

"Q. By the way, during that time when your father inserted his penis to your vagina, where were his hands if at all located?

"A. He was holding my two hands.

"Q. Can you please demonstrate to us Gigi how your father was holding your hands?

"INTERPRETER:

"A. The witness demonstrating how her hands were held by her father during the rape incident by using as a medium the interpreter as the victim and then herself as the accused. The right hand of the accused holding the left hand of the victim and his left hand holding the right hand of the victim.

"PROS. CU:

"Q. At that instance, was your father saying anything to you, if he was saying anything to you?

"A. Yes, sir.

"Q. What did he tell you?

"A. That I don't make noise.

"Q. During that time, were you crying already?

"A. Yes, sir.

"xxx xxx xxx

"Q. By the way, where were your sisters then?

"A. Beside me, sir.

"Q. What were they doing?

"A. They were all fast asleep.

"Q. For how long did your father lay on top of you?

"A. I don't know, sir, but it took a long time.

"xxx xxx xxx

"Q. So at that time when the penis of your father was inside your vagina, what if anything was he doing?

"A. He was making push and pull movement while his penis was inside my vagina (nag-iirad).

"PROS. CU:

"Nag-iirad", making push and pull movement.

"xxx xxx xxx

"PROS. CU:

"Q. And what happened to you?

"A. I was crying and then I laid down.

"Q. For how long did you lie down?

"A. After I wore my underwear, I immediately laid down.

"xxx xxx xxx

"PROS. CU:

"Q. Did you try to resist your father Roberto Palero at the time when he laid on top of you?

"A. Yes, sir.

"Q. What if anything did you do?

"A. I was pushing him sir, but he was very strong.

"Q. So what time did you wake up the following day, Gigi Palero?

"A. I woke up early in the morning, sir.

"Q. Did you report the matter to your mother?

"A. No, sir.

"Q. Why, where was your mother at that time?

"A. She was not inside our house.

"Q. Where was your mother?

"A. She was in Manila.

"Q. How about that incident when that incident that happened, where was your mother?

"A. She was not inside our house. We were the only ones inside our house.

"xxx xxx xxx

"Q. Was that incident repeated again?

"A. Yes, sir.

"xxx xxx xxx

"Q. So have you have the occasion to be with your father in the coconut plantation when your father was making copra?

"A. Yes, sir. He was bringing me along.

"Q. Where is this located, Gigi?

"A. In our place in the mountain.

"Q. In what barangay?

"A. Barangay Caglililog.

"Q. Is this in Tinambac?

"A. Yes, sir.

"Q. So do you recall what time were you brought by your father there?

"A. We go there early in the morning.

"Q. And how long did you stay there?

"A. Usually, we don't go home and he just sent back my brother, I and my father stayed overnight.

"Q. And do you recall what month was that?

"A. I could no longer remember.

"Q. Do you still recall what year was that?

"A. 1995.

"Q. Do you recall whether there was any unusual incident that happened between you and your father on that night?

"A. Yes, sir.

"Q. What did he do?

"A. Similar thing that he did to me, sir.

"Q. You mean he removed again your underwear?

"xxx xxx xxx

"Q. So what particular thing did he do?

"A. During that time when I was sleeping, he got some medicine and then when he arrived, he massaged me and then after a while, he already undressing me.

"Q. Was he able to undress you.

"A. Yes, sir.

"xxx xxx xxx

"Q. What particular clothing was removed from you?

"A. My skirt and my panty.

"Q. After your father had removed your underwear and skirt, panty and palda, what if anything did he do next?

"A. And then he also undressed.

"Q. What did he do next?

"A. Then he laid on top of me, sir, and inserted his penis to my vagina.

"Q. What again did you feel?

"A. Always painful.

"Q. While the penis of your father was inside your vagina, what movement if anything was he doing?

"A. He was making push and pull movement.

"Q. For how long?

"A. All I know it took a long time.

"Q. What happened after that?

"A. And then he stood up, and he wore his underwear and then he left me crying then after a while I urinated and it was again very painful.

"Q. Now was this incident which you have just narrated to us repeated again?

"A. Yes, sir, in the mountain.

"Q. For how many times?

"A. Three (3) times in the mountain.

"Q. And that was in 1995?

"A. Yes, sir, in the year 1995."[4]

Taking the witness stand, accused-appellant denied the accusations, claiming that his wife, Estrella, was never away from home. When evening fell and the family retired for the night, he was positioned between Estrella and the wall at the far end of the room. Beside his wife was the youngest child, Geraldine. Gigi slept at the opposite

side of the room together with her sisters Mary Jane and Gina. Accused-appellant said he could not have committed the dastardly act against his daughter by the copra kiln as she was never there to assist in the work. Asked about the healed lacerations found on the arm of the victim, accused-appellant admitted having caused them but explained that he did so only to discipline his daughter. Gigi allegedly incurred the corporal punishment after his nine-year old daughter, Mary Jane, reported having caught Gigi and her boyfriend by the name of Domingo Valenzuela, a frequent visitor, embracing and kissing each other inside the room of their house.[5]

When further queried about what could have motivated Gigi to turn against him, accused-appellant pointed to his stepdaughter Gemma who, sometime in June 1996 after returning home from Manila, had demanded her share of an unspecified piece of land but she was refused. Accused-appellant speculated that Gemma, in anger, could have turned to Gigi Palero in order to get even with him.

On 26 February 1999, the Regional Trial Court, Branch 63, of Calabanga, Camarines Sur, promulgated its decision, finding accused-appellant Roberto Palero guilty beyond reasonable doubt of the crime of rape and meting upon him the penalty of death -

"WHEREFORE, in view of the foregoing, the prosecution having proved the guilt of the accused beyond reasonable doubt, accused is hereby found guilty of the crime of rape filed against him. The rape having been committed on May 1996, and applying the above-quoted provision of Republic Act No.7659, accused Roberto Palero is hereby sentenced to the penalty of death and to indemnify the private complainant, Gigi Palero the amount of P50,000.00 and to pay the cost."[6]

In the instant automatic appeal to the Court, accused-appellant raised a lone assignment of error -

"THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE UNDER ARTICLE 335 OF THE REVISED PENAL CODE AS AMENDED BY REPUBLIC ACT 7659"[7] -

questioning the veracity of the account of private complainant and asserting that the court a quo erred in giving undue reliance thereon.

Accused-appellant theorizes that a wisp of a girl, such as private complainant, consumed with thoughts of revenge for the corporal punishment inflicted on her, has decided to go through the inconvenience of getting herself estranged from her family, to stay at the unfamiliar surroundings of the DSWD Center for Girls, to concoct a story of her defilement embellished with elaborate details, to bear the humiliation of being subjected to physical examination and undergo the rigors of a public trial, and to have her father suffer in prison. These speculations certainly invite incredulity and give too much credit to an unusual cunning of a mere 13-year old provincial lass.

Rape, indeed, is hard to prove and even harder to disprove. It is no less true when both protagonist and antagonist live under one roof and are expected, under societal norms, to conduct themselves with the affinity and intimacy befitting those of close consanguinity. In incestuous rapes, the ties that bind the family are also the same ties that gag its members to a conspiracy of silence. While the option of seeking justice could vindicate her rights, the choice would nevertheless lead to the paradoxical consequence of wrecking the family and the family honor with the stigma that societal taboo such as incestuous rape brings. This no-win situation is often the reason why victims of incestuous rapes would rather bear than not their degradation in obscurity. For the brave few who do come forward and bear the burden that accompany such a choice, it can rightly be assumed that they do so for no greater reason than to seek justice. Thus, the testimony told at high personal cost cannot easily be ignored by bare denial. Understandably, the self-serving version of an accused cannot prevail over the positive assertion of the victim.

In a prosecution for rape, the complainant's credibility becomes the single most important issue and, when her testimony meets the test of credibility, an accused may be convicted solely on the basis thereof.[8] Surely, the

account of the victim, detailing the sexual assault on her, can only be given by one who has been subjected to it.[9] The tears that accompany her story told at the witness stand would indicate that her account can satisfy the verity born out of human nature and experience.[10] The victim's actions are oftentimes overcome by fear rather than by reason, and it is this fear, springing from an initial assault, that the perpetrator hopes to build a climate of psychological terror, a terror that is magnified by incestuous rape.[11]

Even more, matters affecting the credibility of a witness are best addressed by the trial judge, and unless it is shown that he has plainly overlooked certain facts of substance which, if considered, might affect the result of the case, his assessment on the credibility of the witness is close to being conclusive on an appellate tribunal.[12]

The allegation that the complaint against accused-appellant could only be but private complainant's way of merely getting back at him for the punishment administered to her is too flimsy to be belabored.

Accused-appellant harps on the fact that the presence of his other children in the same room where the rape he has been accused of is supposed to have been committed makes the accusation against him improbable. This argument fails to convince, there being no rule that rape can be perpetrated only in seclusion; indeed, it has been said that rape regards neither time nor place in its commission.[13]

The evidence would show that private complainant was born on 18 July 1982 that would mean that she was 13 years old, short of 2 months before her 14th birthday, when raped in May of 1996 by her own father. No less than Ma. Alona Clavo Delloro, the registration officer of the municipal registrar's office of Tinambac, Camarines Sur, taking the witness stand, presented the birth certificate of Gigi Palero indicating that, truly, private complainant was born to Roberto Palero and Estrella Palero on 18 July 1982, thereby corroborating the testimony of private complainant that she was 13 years and 10 months old when raped sometime in May 1996 for which he was indicted. Even accused-appellant himself conceded to his being the father of private complainant, a fact likewise testified to by private complainant.

Article 335 of the Revised Penal Code, as amended by Republic Act 7659, states:

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

"(1) when the victim is under eighteen (18) years and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim."

The testimony of Gigi Palero would show that the young girl was repeatedly raped by the accused-appellant several times from 1995 to 1996. The Information, however, charged Roberto Palero only with one count of rape committed by him in the month of May 1996. The trial court was thus correct in meting accused-appellant a single punishment. State prosecutors might be reminded to be more circumspect in seeing to it that informations correspond to the evidence they might have in their hands.[14]

With respect to the civil liability imposed by the trial court, the award of civil indemnity should be increased from P50,000.00 to P75,000.00 in line with prevailing jurisprudence. For her shame, as well as mental anguish, fright, serious anxiety, besmirched reputation, moral shock and social humiliation which rape necessarily cause to the offended party, Gigi Palero should also be entitled to recover moral damages[15] which, conformably with current jurisprudence, should be placed in the amount of P50,000.00.[16]

WHEREFORE, the decision of the Regional Trial Court, Branch 63, of Calabanga, Camarines Sur, finding herein accused-appellant Roberto Palero guilty of the crime of rape and sentencing him to suffer the penalty of Death, is **AFFIRMED** with the modification that the civil indemnity awarded to Gigi Palero is increased to P75,000.00 and

that moral damages of P50,000.00 be additionally, as it is hereby also, awarded to her.

Four Justices of the Supreme Court maintain their position that the law, insofar as it prescribes the death penalty, is unconstitutional; nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty could thereby be imposed.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

Quisumbing, Buena, Ynares-Santiago, and De Leon, Jr., JJ., no part (abroad).

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[1] People vs. Sangil, Sr., 276 SCRA 532.

[2] For her failing to subsequently appear for cross-examination, however, her testimony was subsequently stricken off the records.

[3] Rollo, p. 18.

[4] TSN, 10 December 1995, pp. 8-26.

[5] Upon cross-examination, accused-appellant admitted not having confronted Domingo Valenzuela or Jocelyn Abendan for the purported transgression against his daughter's chastity.

[6] Rollo, p. 86.

[7] Rollo, p. 60.

[8] People vs. Gagto, 253 SCRA 455, People vs. Pasayan, 261 SCRA 558.

[9] People vs. Dimapilis, 300 SCRA 279.

[10] People vs. Gecomio, 254 SCRA 82.

[11] People vs. Melivo, 253 SCRA 347.

[12] People vs. Excija, 258 SCRA 424.

[13] People vs. Fuertes, 296 SCRA 602.

[14] People vs. Ramirez, 266 SCRA 335.

[15] People vs. De Guzman, 265 SCRA 228.

[16] People vs. Laray, 253 SCRA 654.

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