

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO MASCARIÑAS, ACCUSED-APPELLANT.

*G.R. No. 144034. May 28, 2002*

Ponente: BELLOSILLO, J.

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### **BELLOSILLO, J.:**

Found guilty of raping his nine (9)-year old daughter and sentenced to death by the court a quo as well as to indemnify his victim P75,000.00, accused-appellant Mario Mascariñas now comes to us still insisting on his innocence.

Private complainant Maries Mascariñas testified that at the time of the rape she lived with her family of seven (7) in a tiny shack in Suarez, Iligan City. She claimed that it was in this one (1)-room hut where she was first molested by her father, accused-appellant Mario Mascariñas. She narrated that when she was nine (9) her father placed his finger inside her vagina. Appalled by what her father did, she left home and sought shelter in the house of a neighbor. Her mother though fetched her and took her back home.

Maries' first attempt to run away from home did not dissuade her father from further molesting her. Soon, he touched her again by placing his finger inside her vagina as he did before. Once more, Maries left home and stayed in the house of a classmate somewhere in the city market. A few days later her mother came for her and brought her home.

The cycle of abuse would be repeated over the next two (2) years with Maries fleeing from home every time her father would sexually violate her. She finally left for good at the age of eleven (11), a few months after her father forced himself upon her.

As narrated by Maries, sometime in July 1994 her mother Jesusa and her sister Iosa took her youngest sister Sigarettes to the hospital as the infant was gravely ill. Maries was left home with her father and younger siblings Perla and Chip. On the very same night after her mother and sister left, Maries was awakened by her father who ordered her to undress. She pleaded for mercy but her father refused to listen to her. She wept and even became numb as her father mounted her and placed his penis in between her thighs. His attempt to completely penetrate her however failed thus he retreated and went back to sleep.

The following night was dreadful for Maries. She laid herself on the floor beside her siblings who were already asleep, and quickly covered herself with a blanket hoping that it would quell her father's lust. But late into the night her expectation failed her. Her blanket offered her no protection after all. Her father, armed with a knife, brandished it before her face as he ordered her to undress. Her determination to resist him soon weakened at the sight of the knife, thus she opted, albeit most unwillingly, to succumb to his sexual desire. Jesusa's arrival from the hospital afforded Maries some relief as she thought it would keep her father at bay and free her from his assault. She was wrong.

Several months later, while Maries was taking care of Sigarettes, she accidentally injured the infant's back. This

enraged accused-appellant who punished Maries by biting her hands in front of Jesusa and her siblings. Afterwards, he dragged her inside the house and bit her breast and licked her vagina.

Fearing that her misfortune would repeat itself once more, Maries packed her few belongings and left home. To fend for herself she worked as a housekeeper for one of their neighbors. Later, she left their employ and stayed with another neighbor who took pity on her. After a few weeks she was accompanied by her benefactor to Pagadian City where she worked in another household.

While working in Pagadian City she fell ill and was taken to the hospital where she was diagnosed with peptic ulcer. As her employer could not provide for her medical needs she was referred to the Department of Social Welfare and Development (DSWD) which took her into custody.

Following her discharge from the hospital the DSWD's Lingap Center became her new home. Her story of sexual abuse was recorded and her psychological well-being attended to by the center's social workers. Under the auspices of the center Maries successfully completed her elementary education in 1998.

When she was in first year high school, her deep-seated resentment against her father continued to nag Maries. She confided to her counselor her desire to prosecute him for rape. Maries was asked to wait until the end of the schoolyear after which she was taken back to Iligan City where she was medically examined preliminary to her filing a complaint for rape. After having herself examined, where healed hymenal lacerations at one o'clock and ten o'clock positions were noted,[1] Maries filed a complaint for rape against her father, accused-appellant Mario Mascariñas.[2]

Accordingly an Information for rape was filed against accused-appellant.[3] The Information was amended with the supplementary allegation that private complainant Marie Mascariñas was "his (accused-appellant's) daughter who is a minor." [4] Shortly after, accused-appellant was apprehended.

The defense of accused-appellant was sheer denial. He swore that no unusual incident transpired on that fateful night sometime in July 1994 and attributed the charge for rape to his daughter's avenging nature. According to him, Maries was a stubborn child whom he and his wife would often chastise as part of their filial obligation. Maries though took it against them and ran away. He averred that the story of sexual abuse offered by Maries should not be taken as conclusive in view of the fact that he has another teenage daughter, Iosa, who has not charged him with rape.[5]

His wife Jesusa echoed his sentiments against Maries. According to Jesusa every time Maries was scolded the latter would secretly leave home and stay with one of their neighbors. As her husband was working, she was tasked with the twin duties of fetching her and admonishing her for her unruly behavior. This brought her endless grief and humiliation such that when Maries left home for Pagadian City she did not follow her anymore. She saw her daughter in Iligan City sometime in 1996 and with the assistance of a neighbor persuaded her to come home. But before leaving, Maries asked her permission to return to Pagadian City so that she could get her salary from her employer. Maries never returned.

When Jesusa learned that Maries had filed a complaint for rape against her husband she immediately confronted her. But Maries was unflinching and even justified her actions.[6]

After trial, the court a quo sustained the prosecution and found accused-appellant Mario Mascariñas guilty of raping his minor daughter Maries Mascariñas. As Maries was only eleven (11) when she was raped, accused-appellant was sentenced to death and to indemnify private complainant P75,000.00.[7]

Upon automatic review, accused-appellant assails his conviction by insisting on his innocence. He reiterates his

contention that Maries instituted this complaint for rape because she harbored deep resentment against his quick and heavy hand. Further, he avers that it strains credulity for him to have raped only Maries and not his other daughter Iosa. Such conduct, he argues, would be contrary to human nature and could only invite disbelief. Lastly, assuming arguendo that he indeed raped his daughter, the trial court erred in imposing upon him the penalty of death inasmuch as the Information failed to allege the exact age of Maries at the time of the rape.[8]

We find the motive imputed by accused-appellant against his daughter Maries highly outrageous. Indeed, mere disciplinary chastisement is not strong enough to make daughters in a Filipino family invent a charge that would not only bring shame and humiliation upon them and their families but also bring their fathers into the gallows of death.[9] Even when blinded by hatred and consumed with revenge it requires a certain degree of psychological depravity for a young woman of tender years to concoct a story which would subject her to a lifetime of gossip and scandal among neighbors and friends.[10]

Maries' steadfast account of the rape both on direct and cross-examination is replete with details that coincide on material points. She was emphatic when she testified that her father failed to penetrate her on his first try but succeeded the following night. No more eloquent evidence of rape is necessary in light of that narration coming from the victim herself. Moreover, her testimony when taken together with that of the medico-legal officer and DSWD representative who guided her throughout those trying times paints a convincing picture of the whole sordid incident.

Accused-appellant also harps on Iosa's muteness on the subject of sexual abuse. He seizes on his eldest daughter's silence and uses it to counter the prosecution's bid to portray him as a satyr masquerading as a father. To say the least, his argument is non sequitur and merely emphasizes the depth of his degeneracy. His conviction, therefore, must stand.

The state policy on incestuous rape is clear and unmistakable - life is to be made forfeit under certain circumstances. Thus, under par. (1), Art. 335, of The Revised Penal Code,[11] the penalty of death shall be imposed when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In the present case, although the age of Maries was satisfactorily established with the presentation of her baptismal certificate,[12] accused-appellant argues against the imposition of the death penalty due to the failure of the Information to specifically alleged the exact age of Maries at the time of the commission of the rape.

We find merit in accused-appellant's argument. The allegation in the Information that Maries was his minor daughter is as a matter of law insufficient to alert him as to the exact nature of the rape imputed to him. To do so would be to allege a conclusion of law to which the plea of not guilty joins no issue. Its effect is the same as alleging negligence without specifying the facts constituting such want of care or prudence. In the instant case, the exact age of the victim should have been asserted. Furthermore, the term minority is too technical to satisfy the pleading requirement that acts alleged as crime must be averred in a manner that a person of common understanding would understand the offense being charged. Certainly stating the words fifteen (15) years old, for example, in the information would signify something more familiar than the word minority could achieve. We accordingly modify the Decision of the court a quo.

Conformably with existing jurisprudence, we award moral damages in the amount of P50,000.00 without need of proof.[13] Exemplary damages in the amount of P25,000.00 should also be imposed to deter other fathers with similar perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters.[14] Finally, on account of the failure of the Information to allege the age of Maries, this Court is constrained to reduce the

penalty imposable upon accused-appellant for the ignoble act he had perpetrated from the supreme penalty of death to reclusion perpetua.

WHEREFORE, the Judgment of the court a quo finding accused-appellant Mario Mascariñas guilty of incestuous rape and sentencing him to death and to indemnify his minor daughter Maries Mascariñas the amount of P75,000.00 as civil indemnity is MODIFIED. Accused-appellant is found GUILTY of simple, not qualified, rape and is sentenced instead to reclusion perpetua and to pay the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages, plus the costs of suit.

**SO ORDERED.**

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

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[1] Exh. "B;" Original Records, p. 4.

[2] TSN, 13 July 1999, pp. 1-89.

[3] See Note 1, p. 1.

[4] Id., p. 17.

[5] TSN, 7 October 1999, pp. 1-37.

[6] TSN, 9 November 1999, pp. 1-11.

[7] Decision penned by Judge Valerio M. Salazar, RTC-Br. 6, Iligan City; Rollo, pp. 24-35.

[8] Id., pp. 60-75.

[9] *People v. Tabugoca*, G.R. No. 125334, 28 January 1998, 285 SCRA 312.

[10] *People v. Lopez*, G.R. No. 129397, 8 February 1999, 302 SCRA 669; *People v. Melivo*, G.R. No. 113029, 8 February 1996, 253 SCRA 347.

[11] As amended by RA 7659 which took effect on 31 January 1994. The rape in the present case was committed sometime in June 1994, long before R.A. No. 8853, which classified rape as a crime against person, took effect.

[12] Her baptismal certificate states that she was born on 14 January 1983 to the spouses Mario Mascariñas and Jesusa Macahito; Exh. "A;" See Note 1, p. 40.

[13] *People v. Bismonte*, G.R. No. 139563, 22 November 2001; *People v. Del Mundo*, G.R. No. 132065, 3 April 2001; *People v. Paraiso*, G.R. No. 131823, 17 January 2001; *People v. Ruiz*, G.R. No. 132369, 29 June 1999, 309 SCRA 487.

[14] *People v. Treta*, G.R. Nos. 134451-52, 14 March 2001; *People v. Francisco*, G.R. No. 135200, 7 February 2001; *People v. Lao*, G.R. No. 117092, 6 October 1995, 249 SCRA 137.

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