

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ENRIQUE COLOMA Y AQUINO, ACCUSED-APPELLANT.***G.R. No. 95755. May 18, 1993*

Ponente: MELO, J.

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The court of origin tersely depicted the shocking episode of Marita Coloma's torment for eight harrowing years as constant sexual prey of her natural father. In pronouncing his perdition, the trial court described accused-appellant Enrique Coloma as worse than a wild beast who "has no place in a civilized society" (p. 23, Rollo), a perception which accused-appellant seeks to erase via the appeal before us on the theory that his daughter assented to the sexual conjugations.

Ten meters from her parents' home in Sitio Mitura, Barangay San Vicente, Urdaneta, Pangasinan is a store where Marita slept with her 6-year old sister on the night of July 7, 1988. At around 11 o'clock that evening, Marita was disturbed in her slumber when her father entered the store, placed a bolo to her throat to cow her into submission, and whispered, "Whether you like it or not I will have sexual intercourse with you tonight".

Because of the ominous presence and demeanor of the father, the daughter followed the order to remove her panties. After her nipples were sucked for about five minutes, Enrique mounted Marita's torso and drove his penis into her daughter's vagina until he reached orgasm. The next day, she packed her belongings and left for Manila to visit a friend. Later, she went to her aunt in Quezon City to whom she confided her ordeal. Her aunt promised to observe the behavior of Marita's father as soon as they return to the province.

When Marita's brother died sometime in August, 1988, she went back to the province and together with her aunt, Marita reported to the barangay authorities what her father did to her and gave a sworn statement to the police. The physical examination conducted on Marita's private parts thereafter revealed that her hymen was ruptured and the vagina easily admitted two fingertips.

The incident that occurred on July 7, 1988 was not the first sexual encounter with her father because she had been abused for three times a week even while she was barely thirteen years of age.

Enrique Coloma was detained pending trial and wrote nine letters to Marita asking for forgiveness. One letter of apology reads:

Marites my daughter,

Hope to our Lord the Creator that you will be happy and of good health upon receipt of my letter, if you want to know my situation here, plenty of hardship, hunger, torment and mosquitoes I suffered inside the jail, I accepted it because it is my faith, so that if there's a pity left for your father I am asking you now my daughter Marites to forgive me. I promise to our Lord God not to commit wrong anymore to you my children.

Marites my daughter, tell me what you want me to do so that your mind will be enlighten. Day and night I pray to our Lord that you will forgive me to what I have done to you. I want to serve you my children especially to

your mother and your younger brothers and sisters. I promise that while I am still living I will serve my children but if I'll remain in jail I can not fulfill my promise to serve you. I repeat my daughter to have mercy on me forgive me now because I can no longer afford to sleep in cement with many mosquitoes. I am mentally disturb to what I have done to you, day and night I cried repenting my daughter, if you have plans with Lading I am glad to inform you now that I want him to marry you now.

Asking for mercy from you,

Tatay

(p. 3, Decision; p. 21, Rollo)

In narrating her distress, Marita mustered enough courage to express her suppressed longing to denounce her father despite repeated threats to her life prior to and after every sexual contact. She looked at her father as a cruel man who intimidates her and her suitors as well. Amidst these accusations, the father offered a general denial and insisted that during the night in question, it was her daughter who opened the door and enticed him to enter the store. According to accused-appellant, the lovemaking was disrupted by a peeping Tom and so he merely returned home to sleep.

To lessen the impact of her daughter's revelation, the father related to the court a quo that Marita was a willing partner in their previous sexual encounters. When asked how the alleged incest started, the father disclosed that on one occasion, and while his wife was not in the house, he and Marites lay beside each other and that he was lured into committing the forbidden when Marita placed her legs over his body.

But the magistrate below was not swayed by this rat-at-play-while-the-cat-is-away version, thus:

. . . To lend credence to his story is to insult the Filipino women whose virtue of passivity, reservedness and high level of morality is universally acclaimed. It is unthinkable that a young girl, as the herein complainant, would seduce her father, much less unabashedly call him to have sex with her, an act that would put to shame even prostitutes or women of loose morals. Nor would this Court believe his denial of having carnal knowledge of his daughter in the evening of July 7, 1988 in the light of his admission that he had prior sexual congresses with her, a confirmation of complainant's testimony that accused had repeatedly raped her since she was barely thirteen years old until that fateful evening of July 7, 1988.

What is more, accused had expressly admitted his guilt and had sought forgiveness from complainant and her aunt, Nenita Natividad, as per his letters (s)he sent to them while he was in jail. The letter[s] were not disowned by accused perforce he is deemed to have admitted authorship thereof.

The Court has no reason to doubt the veracity of complainant's testimony. She was tearful with trembling voice when she recounted her harrowing experiences with her father, indicative of a repulsive mind and seriously wounded feelings. There is nothing in the record to indicate any ulterior motive on the part of complainant, a young and unsophisticated girl, to trump-up a case of rape against her own father, a bestial act that would put to shame and public gossip not only herself but her whole family as well. No other motive could be perceived than what was testified to by complainant - that is - to seek the arrest and punishment of her father. It has been held that a young girl would not likely "concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by a desire to have the culprit apprehended and punished. No young Filipina of decent reputation would publicly admit that she had been criminally abused, unless that is the truth."

Under the evidence, the Court is morally convinced that indeed accused raped complainant on July 7, 1988. He employed force and intimidation to consummate his heinous act. Although complainant did not physically resist her father's lewd advances that ended up in coition, it was nevertheless against her will, afraid as she was to die, due to the bolo that was pressed on her throat. Thus she testified.

Q. Now, will you tell the Honorable Court why you did not resist the act of your father when the blade of the bolo was placed on your throat?

A. I am afraid to die, sir. (Tsn p. 16, May 30, 1989).

x x x x x x x x

Q. Because you did not struggle your sister was not awakened?

A. Yes, sir, because I was afraid."

(Tsn p. 44, May 30, 1989)

Moreover, accused's cruelty had been sowed into complainant's mind since she was thirteen years old which evidently had contributed to the consummation of every copulation without resistance albeit against her will. (pp. 4-5, Decision; pp. 22-23, Rollo)

The sole error supposedly overlooked by the court below, on which accused-appellant pins his hope for a possible reversal, rests on the supposition that his daughter collaborated to a level beyond the passivity of a woman who voluntarily accepted the inevitable (p. 12, Brief for Accused-Appellant, p. 38, Rollo).

In a span of eight years, the indifference of Marita to make a vehement outcry to each violacion de una mujer is a circumstance which accused-appellant utilizes to impress upon us the idea that Marita consented to every sexual intercourse prior to July 7, 1988 such that "complainant had learned to accept her fate and perhaps, even enjoyed the physical pleasure derived from the sexual abuse." But this premise ignores the fact that accused-appellant was essentially beckoned to respond for the lascivious acts he perpetrated principally on July 7, 1988 (p. 19, Rollo). Whatever passivity which Marita might have demonstrated by her failure to report the previous incidents involving her and accused-appellant has no legal significance to the prosecution of the alleged felony on July 7, 1988 since it is distinct from the misdeeds accused-appellant might have committed when he had coitus with his own daughter Marita since she was thirteen years old (People vs. Molero, 144 SCRA 397 [1986]).

A contrario, the focal factor to consider is whether the carnal knowledge on July 7, 1988 was accomplished within the purview of Article 335 of the Revised Penal Code. And on this score, Marita was categorical enough to say that the bolo kept dangling on her throat every time she was forced to submit to her father's prurient desire (TSN, May 30, 1989, pp. 11-18; 45; p. 5, Brief for Accused-Appellant) which threat persisted until the night in question (TSN May 31, 1989, p. 6). Verily, Marita recounted that she had to bear her traumatic experience in silence because she was afraid to die or be killed by her own father. Indeed, the kind of force or violence, threat or intimidation as between father and daughter need not be of such nature and degree as would be required in other cases, for the father in this particular instance exercises strong, moral, and physical influence and control over his daughter (People vs. Rinion, C.A., 61 O.G. 4422; 2 Reyes, Revised Penal Code, First Ed., 1977, p. 827; People vs. Carino, Sr., 167 SCRA 285 [1988]; People vs. Hortillano, 177 SCRA 729 [1989]). In People vs. Mabuna (G.R. No. 96441, November 13, 1992), Justice Regalado was most succinct in his observation:

In the instant case, the victim at the time of incident was a mere thirteen-year old girl and the one who raped her was her own father. Hence, even assuming that force or intimidation had not been actually employed, the crime of rape was nevertheless committed. The absence of violence or offer of resistance would not be significant because of the overpowering and overbearing moral influence of the father over the daughter which takes the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship with the victim.

Notwithstanding our jurisprudential policy on the insignificance of resistance from the victim if the offender exercises moral ascendancy over her, the cold assertions of Marita on the record disclose that the threat was

nonetheless imminent and rings true throughout:

COURT:

Q. When you were abused on July 7, 1988 and you did not make any protestation against your father does it mean to say that you were fully satisfied?

WITNESS:

A. No, Your Honor.

Q. But you did not make any move to resist and such act demonstrate that you like the advances of your father, is it not?

A. No, Your Honor.

Q. In the same manner when you were abused previous to July 7, 1988 you did not make any protest nor have you resisted the advances of your father because you believe and you felt unto yourself that you were satisfied?

A. No, I did not protest because I was afraid, Your Honor.

Q. It was only on July 7, 1988 when you complained of your being sexually abused because you realized that your honor was destroyed?

A. Even before but I was afraid, Your Honor.

Q. Actually on July 7, 1988 you did not have in mind that your honor was destroyed that was why you gave up yourself to your father's lust?

A. I was forced because if I objected he will kill me, Your Honor.

Q. Do you mean to say that every time your father sexually abuse you was he always holding a bolo threatening you if you will not give up yourself to him?

A. Yes, Your Honor.

COURT:

Q. You mean to say that every time or every three (3) times a week that he abused you previous to July 7, 1988 he was holding a bolo and threatening you?

A. Yes, Your Honor.

(t.s.n., id., pp. 37-39)

(pp. 17-19, Brief for the Plaintiff-Appellee; p. 40, Rollo)

Towards what conclusion does the foregoing narration point? The premises laid in a straight--forward fashion by Marita herself gain strength to buttress the charge of rape on July 7, 1988 especially so in the light of accused-appellant's obviously concocted version that he was seduced by his own young daughter. No evidence was adduced to portray Marita as a barrio temptress and accused-appellant's insinuation that his daughter virtually enjoyed something taboo to the point that she had become the active subject on July 7, 1988 defies the known and proverbial modesty of Filipino girls. Of utmost significance, too, is the absence of proof of Marita's ill-motive to prevaricate nay, concoct a shocking tale of what she underwent in the hands of her father. Her testimony, pregnant with sordid details of the sexual abuse, can not thus be far from the truth.

Accused-appellant lays too much emphasis on the delay of Marita to protest the wrong done to her ever since she

was thirteen years old. But this hiatus is to be expected from a child who has yet to pass through the puberty stage apart from the fact that she was constantly terrified by the ominous character and presence of her father. We are not talking here about the silence of a mature woman who would ordinarily have the means and self-reliance to seek vindication if not retribution. But even then, when Marita finally came to her senses, when she was no longer able to suffer further indignities, she immediately reported the matter to her aunt on July 18, 1988 (TSN, July 14, 1989, p. 25; p. 20, Brief for the Plaintiff-Appellee) which led to accused-appellant's indictment a few months thereafter. No adverse inference can thus be drawn from Marita's failure to immediately expose the bestial indulgences of her own father.

One final point. The series of letters written by accused-appellant asking for forgiveness could hardly have been motivated by a sincere desire to atone for his lechery, concerned as he is with simply escaping mosquito bites and the hardship and coldness of the cement floor on which he had to sleep in jail. He is worse than a wild beast in the jungle and must be made to atone for his bestial misdeeds and serve the sentence imposed upon him. The judge below was, therefore, correct in imposing upon accused-appellant the penalty of reclusion perpetua and in ordering the payment of indemnity to private complainant in the amount of P30,000.00.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** in toto.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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