

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANIEL C. NAVARRO, ACCUSED-APPELLANT.***G.R. No. 96251. May 11, 1993*

Ponente: NOCON, J.

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A picture speaks a thousand words, it has been said. The prosecution presented a Polaroid picture of accused-appellant Daniel C. Navarro with his sexual organ halfway inside his daughter's private part. His daughter, then eleven years old, testified that it was painful when her father inserted his organ inside her private part. His wife, who took the picture with a Polaroid camera given by one Robert Tanner,[1] testified that she took the picture when her husband's sexual organ had already penetrated her daughter's private part and was on the verge of completely being inserted, as this was the instruction of said Robert Tanner. Accused-appellant waived his right to present evidence on his behalf even if his Demurrer to Evidence would be denied. He now appeals his conviction for rape.

Accused-appellant Daniel C. Navarro was charged with the crime of rape alleged to have been committed as follows:

"That in or about September 1989, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously, have carnal knowledge of x x x ANGELITA NAVARRO y CRUZ, his daughter, a girl 11 years of age." [2]

As found by the trial court, the antecedents of this case are, as follows:

"Angelita Navarro is a pretty Grade IV pupil at Immaculate Concepcion Elementary School at Tetuan, Zamboanga City. She is called An-An by her parents and by the kids in their neighborhood. She testified that she is eleven years old. She was born on April 28, 1978. This fact was indubitably established by her Certificate of Birth marked as Exhibit "F". She resided with her parents, Daniel and Elizabeth Navarro, and her brothers Dennis, 17 yrs. old, and Robert, 4 years old, at their house at Gov. Alvarez St., Camino Nuevo, Zamboanga City.

"When she was five (5) years old, her father, accused Daniel Navarro, took her to Lantaka Hotel where he was then working as waiter and introduced her to an American named Robert Tanner who used to come to Zamboanga City every year. When she was eight (8) years old, her father again took her to Tanner's room at Lantaka Hotel. Her father had conversation with Tanner and then left her inside Tanner's room. When she was alone with Tanner in the room, the latter took her pictures while she was naked. Then Tanner asked her to pose with her legs apart and took her pictures while she was in that position. x x x.

"Angelita calls Tanner 'Papa Bob'. Tanner calls her 'Bobbi'. Tanner calls Daniel Navarro 'Boone', 'Osi-san', 'old Dan', and Elizabeth Navarro 'Beth', and 'Beautiful Girl' (tsn, p. 34, id). Tanner gave Angelita a wrist watch, magazines and toys. He gave to her father two Polaroid cameras which she identified in court (Exh. 'I'; 'J'). A picture taken with a Polaroid camera develops in itself in a few seconds (tsn, pp. 60-61, id). With a Polaroid camera, 'pictures are taken, developed and printed in less than a minute' (Merit

Students Encyclopedia, Vol. 4, p. 69). Angelita's father and mother used the Polaroid cameras to take her nude pictures which were sent to Tanner in the United States. In return, Tanner sent dollars to her father. Tanner was the one paying for the tuition fees of Angelita and for her school uniforms and other needs since 1985. Angelita said: 'It is just like paying me because he used to have pictures coming from me' (tsn, p. 67, id).

"From 1985 to 1988, many pictures were sent by her parents to Tanner. In all the pictures, she was naked. Tanner does not like pictures with her clothes on. In some pictures, she was lying down with her legs spread apart and her vagina exposed. On one occasion twenty (20) pictures were taken. Sixteen (16) were sent to Tanner and the four were left behind. The pictures were taken by her father or by her mother on orders of her father (tsn, pp. 55-57, 76, 81, id). When Tanner's money arrive, her parents play mah-jong. Angelita joins her mother in playing mahjong using Tanner's money (tsn, p. 79, id).

x x x x x x x x

"Sometime in the month of September or October, 1989, while Angelita was inside a room in their house at Governor Alvarez, her father asked her to undress in the presence of her mother who was also in the room. It was about 4:30 in the afternoon. Angelita just came from school. When she was already naked, her father ordered her mother to take several pictures with the use of a Polaroid camera. One picture shows Angelita standing, completely naked, wearing a hat, with her private parts exposed (Exh. 'A'). Another picture shows Angelita with her open mouth and tongue a few centimeters below her father's bared penis (Exh. 'C'). A picture was taken while she was actually sucking inside her mouth her father's penis; another with her legs spread apart. On this occasion, her father inserted his penis inside her vagina while her mother took pictures of the sexual connection (Exh. 'B'). All the pictures, including one with her father's penis lodged inside her vagina, except the three (3) pictures marked as Exhibits 'A', 'B' and 'C', were sent to Robert Tanner in the United States (tsn, pp. 10-11, 15-20, 23, 76-77, April 16, 1990). Angelita testified that it was painful when her father pushed his erected penis into her sexual organ because his penis was able to penetrate inside her vagina. She said: 'x x x My father just inserted his penis. When I felt the pain, I told my father that it is painful. According to my father, never mind' (tsn, p. 76, id). x x x

x x x x x x x x

"Elizabeth Cruz Navarro, 38 years old, is the wife of accused Daniel Navarro and mother of Angelita Navarro. She testified that one afternoon in the month of October, 1989, she was commanded by her husband to take pictures with the use of a Polaroid camera while he was having sexual intercourse with their daughter, Angelita, then eleven (11) years old, inside a room in their house located at Governor Alvarez, Camino Nuevo, Zamboanga City. One of the pictures taken by her of the sexual act which is marked as Exhibit 'B' shows a man's penis inserted in the vagina of a woman. x x x.

x x x x x x x x"[3]

After trial, the lower court found accused-appellant guilty as charged, and sentenced him to suffer the penalty of reclusion perpetua, to pay Angelita Navarro the sum of P30,000.00 as indemnity and P30,000.00 moral damages, P20,000.00 as exemplary damages and the costs.[4]

Hence, this appeal.

The Court clarifies for the record that G.R. Nos. 96250-51 correspond to Criminal Case No. 9779, entitled "People vs. Navarro and Tanner," for Corruption of Minor, and Criminal Case No. 9781, entitled "People vs. Navarro," for Rape, which cases were jointly decided by the trial court. After the decision of conviction, the trial court directed accused-appellants Navarro and Tanner to file a separate Notice of Appeal with the Court of Appeals for Criminal Case No. 9779.[5] This decision reviews only the appeal of accused-appellant Daniel Navarro with respect to Criminal Case No. 9781 for Rape.

Accused-appellant claims error on the part of the lower court in convicting him of the crime of rape as his penis was not erect during the supposed intercourse, thereby negating any assertion by the prosecution that his penis had been inserted inside his daughter's vagina. He claims that it is impossible to insert and lodge a soft, flaccid and limp penis between the lips of his daughter's private part; as his penis was just "attached" to the labia.[6]

Accused-appellant's arguments are fallacious in the face of the damaging evidence of the Prosecution showing how he raped his daughter, to wit: the testimonies of both the victim and accused-appellant's wife narrating how the accused-appellant had sexual intercourse with Angelita, the medical report on the condition of the victim's private part after the rape showing lacerations on the victim's hymen and the actual picture of the rape.[7] At any rate, there is consummated rape where the penis of the accused touched the middle part of the vagina, having penetrated the labia of the pudendum; full penetration or rupture of the hymen is not essential.[8]

The accused-appellant's pretension of innocence is utterly devoid of merit.

To understand, why such a heinous and shocking incident could have happened, this Court quotes, with approval, the following finding of fact by the trial court, as follows:

"The uncontradicted evidence of the prosecution established that accused Daniel Navarro facilitated or promoted the corruption of his eleven-year old daughter by leaving her to sleep alone in the hotel room of Robert Tanner; allowing her to go with Tanner to Manila where she slept in the same bed in a hotel with Tanner; taking nude pictures of his daughter in different obscene poses and forcing his wife to do so; inserting his penis inside his daughter's vagina and asking his wife to take pictures of the sexual act; sending the obscene pictures of his minor daughter to Tanner in the United States to satisfy the lust of Tanner, all because of the dollars he received and expected to receive every month from Tanner as requital of his daughter's loss of innocence.

"Moreover, there is proof that Tanner received the salacious, naked pictures of Angelita sent to him by Daniel Navarro. Thus, in a letter postmarked in San Francisco, California on October 6, 1988, addressed to the "NAVARROS", Tanner said:

'Folks: Thank you MUCHO for the picture of My Daughter's beautiful Cunt. She is a big girl . . .

X X X X X X X X

I hope your Polaroid film has not increased like mine has, those pics I just sent you come to P27.85 per picture. I expect 20 pictures of only sex, no other nonsense . . . When I say sex, I mean with the "LOVE JUICES" flowing . . FROM SNAKE AND BOBBI'S CUNT' . . . I have enough pictures of the others.

Beth, find some of Bobbi's friends for pictures, because as I said, they are the same as Bobbi, only no one gives them the opportunity to show it and admit it . . . Bobbi is not different . . .

X X X X X X X X

ALL OF YOU, My Daughter included, DON'T send me 'HOWDY' letters, send interesting letters and INTERESTING pictures -or-NOTHING!

X X X X X X X X

. . . I like sex, albeit, fucking, sucking, etc. but you have been very minimal in your response . . . ' (Exh. 'T'; 'T-1', 'T-2', 'T3'). "[9]

Accused-appellant's daughter, Angelita, positively declared that she was the girl in the picture and her father as the man in the picture who inserted his erect penis inside her private part causing her to cry in pain. Her testimony

is as follows:

“FISCAL NUVAL:

“Q What relation has this picture with the picture you said that was taken when your father was having sexual intercourse with you?

“A This is the one already.

“Q Who is this man with his exposed penis which is inserted in the vagina of a woman?

“A That is my father.

“Q Who is this woman with whom he is having sexual intercourse?

“A Its me.

“Q Who took this picture?

“A My mother.

“Q What kind of camera was used in taking this picture?

“A Polaroid.

“Q When for the first time did you see this picture?

“A The time he took the picture.

x x x x x x x x

“COURT:

“Q You said that when he inserted his penis, you complained to your father that it was painful?

“A Yes your Honor.

“Q Why was it painful?

“A Because your Honor, his penis was being inserted inside.

“Q You mean his penis was hard and erected?

“A Yes your Honor.

“Q And it entered your vagina?

“A Yes your Honor.

“Q That is why you felt pain?

“A Yes your Honor.

“Q So this post was just to take the picture as declared by your father?

“A Yes.”[10]

Accused-appellant’s wife testified that she took the picture while her husband was having sexual intercourse with Angelita, as follows:

“Q I show you another picture which was previously marked as Exh. “B”, what relation is this to that picture

you said that you took?

“A This is the picture.

“Q Where did you take this picture?

“A In the house.

“Q What part of the house?

“A In the room.

“Q Who took this picture?

“A I was the one who took this picture.

“Q Who is this man having sexual intercourse with the woman?

“A It was Daniel Navarro.

“Q Who was this woman?

“A Angelita my daughter.

“Q When for the first time you saw this picture?

“A Yes. I saw this.

“A When?

“A The time when I took the picture.

“A What kind of camera did you use?

“A Polaroid.

“Q At the back of this picture is a signature above the date 2/9/89, whose signature is this?

“A My signature.”[11]

Dr. Ma. Socorro R. Galvez, who physically examined Angelita, corroborated the fact of rape with her testimony that Angelita’s hymen had a healed incomplete laceration at 3 o’clock and healed complete lacerations at 6 o’clock and 8 o’clock, and that the lacerations could have been caused by the penetration of a male organ.[12]

A close examination of the picture presented by the prosecution[13] indeed shows the actual sexual intercourse between accused-appellant and his daughter, Angelita, with the former’s penis almost completely inserted in Angelita’s vagina.

Against these four (4) pieces of evidence for the People, accused-appellant’s assertion of the impossibility of rape being committed as his penis was just “attached” to his daughter’s labia is plain nonsense. His daughter would NOT have cried out in pain IF it were otherwise. Denial is the weakest defense and will not prosper against a positive testimony identifying accused-appellant as the person who had sexual intercourse with the victim.[14]

Article 335 of the Revised Penal Code states that the crime of “Rape” is committed by having carnal knowledge of a woman under any of the following circumstance:

x x x

“3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the

two next preceding paragraphs shall be present.”

It appearing from the evidence on record that accused-appellant had sexual intercourse with his daughter, Angelita, who was then 11 years old on 4 September 1989 when the alleged offense was committed, having been born on April 28, 1978 as shown by her birth certificate, Exhibit “F”, there is no question of accused-appellant’s guilt beyond reasonable doubt.

In line with current policy for the indemnity^[15] imposed on rape cases, the same is increased to P50,000.00.^[16]

WHEREFORE, the appeal is hereby DISMISSED for lack of merit. With the modification that the indemnity is increased to P50,000.00, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Robert Tanner was accused-appellant’s co-accused in G.R. No. 96250 and was the accused-appellant in G.R. No. 101554 for the rape of Angelita Navarro. He died on October 19, 1992 at the Veterans Memorial Medical Center. A certified photocopy of his fact of death was received by the Court on December 21, 1992. In view of which, the Court dismissed G.R. Nos. 96250-51 as far as Tanner was concerned and G.R. No. 101554 (Resolution, G.R. Nos. 96250-51 and 101554, February 1, 1992).

[2] Decision, pp. 2-3; Original Records, pp. 51-52.

[3] Decision, pp. 6-11; Original Record, pp. 55-60.

[4] Decision, *People v. Navarro*, Criminal Cases Nos. 9779 & 9781, Zamboanga City RTC, Branch 16, penned August 23, 1990 by Hon. Jesus C. Carbon, Jr.; Original Record, pp. 50-84.

[5] Original Record, p. 88.

[6] Appellant’s Brief, p. 8; Rollo, p. 67.

[7] Appellee’s Brief, p. 14; *Ibid.*, p. 130.

[8] *People v. Aragona*, 138 SCRA 569.

[9] Decision, pp. 19-20; Original Record, pp. 68-69. Emphasis supplied.

[10] TSN, April 16, 1990, pp. 16; 77-78.

[11] *Ibid.*, April 16, 1990, pp. 97-98.

[12] *Ibid.*, April 17, 1990, pp. 6-13.

[13] People’s Exhibit “B”, Folder of Exhibits.

[14] *People v. Malonzo*, G.R. No. 91695, August 4, 1992.

[15] Art. 345, Revised Penal Code. Civil liability of persons guilty of crimes against chastity. - Persons guilty of rape, x x x shall also be sentenced:

‘1. To indemnify the offended woman.

x x x x x x x x.’

[16] People v. Magallanes, G.R. No. 89036, January 29, 1993.

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