

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL DUSOHAN Y BORJA, ACCUSED-APPELLANT.

G.R. No. 97307. October 05, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 156, Pasig, Metro Manila in Criminal Case No. 83994, finding "the accused Manuel Dusoman y Borja guilty beyond reasonable doubt of the crime of Rape by force and intimidation with the aggravating circumstance of relationship under Article 15 of the Revised Penal Code" and sentencing him "to suffer the penalty of reclusion perpetua, to indemnify the victim Mariel Dusohan Gresola, in the amount of thirty thousand pesos (P30,000.00) in compliance with the mandate in Articles 100, 104 (3), 107 and 345 of the Revised Penal Code and to pay the costs" (Decision, p. 8; Rollo, pp. 17-18).

In the criminal complaint filed with the trial court, appellant was charged with rape committed as follows:

"That in or about the month of July, 1990 up to August 8, 1990, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy over the undersigned complainant Mariel Dusohan y Gresola, his own daughter, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge over (sic) Mariel Dusohan y Gresola against the latter's will" (Rollo, p. 4).

In the title of the complaint prepared by the Office of the Public Prosecutor of Rizal, the name of the accused was erroneously spelled as "Dusoman." The error was repeated by the trial court in its decision.

Appellant, when arraigned, pleaded "not guilty."

The trial court found that sometime in October 1989, appellant, after quarreling with his wife, left the conjugal house at Barangay Parang, Marikina, Metro Manila, to live in Barangay Concepcion of the same town. His daughter, Mariel, followed and lived with him.

Sometime between October 23 and 30, 1989, at about 9:00 P.M., appellant entered the room of Mariel. He started to undress her and kiss the exposed part of her body. He ordered her to lie down. Once Mariel was prostrate, he tightly embraced her and pinned her with his body. She pleaded in vain with appellant to desist from his lewd designs.

Realizing that any resistance on her part was inutile, all that Mariel could do was cry. Against the protestations of his daughter, he proceeded to satisfy his bestiality. Thereafter and before going to sleep, he threatened to kill her if she disclosed the incident to anyone.

Appellant repeated the sexual aggressions on his daughter every week thereafter until January 1990, when Mariel went to her mother to complain that her father was treating her like a house maid. She did not mention the sexual abuses out of fear of her father. Her mother enrolled her at the Sienna College Convent in Taytay, Rizal.

Sometime in July 1990 Mariel saw appellant at the poblacion. Appellant pleaded with her to return home, and promised that he would not abuse her again. With this in mind, Mariel returned to appellant's house. However, appellant broke his promise and resumed the sexual assaults on Mariel about 20 times within that month.

On August 8, 1990, Mariel fell ill. At about 2 P.M. of that day, appellant entered her room. He asked her to undress and proceeded to touch her private parts. She tried to resist and told her father "Papa, why are you doing this to me. You could do this with other woman (sic) I am your daughter." Despite her pleas, appellant again succeeded in satisfying his lust.

When she could no longer bear his abuses, Mariel reported her father to her mother. As Mariel could not count on her mother to initiate an action against her father, she went to the police station to complain against appellant.

In this appeal, appellant assigns the following errors which he claims to have been committed by the trial court in convicting him of the offense charged:

1. He was convicted despite the lack of resistance on the part of the complainant;
2. To commit the crime of rape under paragraph 1 of the Revised Penal Code, the carnal knowledge of the woman must have been consummated with the use of force or intimidation upon the victim;
3. The complainant consented in having sexual intercourse with him;
4. Complainant was coerced by her mother in filing the rape case in order to effect a separation between them.

Appellant's contentions deserve scant consideration.

As to the first and second assigned errors, the law does not impose on the rape victim the burden of proving resistance. What needs only to be proven by the prosecution is that the will of the victim to resist the sexual aggression has been overpowered by the accused (*People vs. Dinola*, 183 SCRA 493 [1990]). It is not necessary that actual force and intimidation be employed. It is sufficient that the accused exercised a pervasive influence and control over the victim (*People vs. Robles*, 170 SCRA 557 [1989]). Appellant exercised such a strong moral ascendancy and parental control over his daughter (*People v. Lucas*, 181 SCRA 319 [1990]). The force and violence, threat or intimidation upon her need not be of such nature and degree as would be required in rape cases committed by the accused having no filial relations with the victim (*People vs. Caballes*, 199 SCRA 152 [1991]).

Anent the third assigned error, appellant in his desperate attempt to rid himself of the consequences of his act, alleges that his own daughter consented to his lechery. In the appellant's brief, he contends that his daughter "surrendered to the call of the flesh and could not resist the temptation of the highest form of physical pleasure" (*Rollo*, p. 35).

This is the first case wherein the defendant, accused of incestuous rape, has claimed that his daughter willingly surrendered her body to satisfy her own lust. In all the cases involving incestuous rape decided by this Court, invariably the appellants denied the accusations (*People v. Clarin*, 108 SCRA 680 [1981]; *People v. Alvis, Jr.*, 117 SCRA 362 [1982]; *People v. Domen*, 120 SCRA 486 [1983]; *People v. Egot*, 129 SCRA 96 [1984]; *People v. Erardo*, 127 SCRA 250 [1984]; *People v. Quintal*, 125 SCRA 734 [1983]; *People v. Ramos*, 165 SCRA 400 [1988]; *People v. Corina*, 167 SCRA 285 [1988]; *People v. Lucas*, 181 SCRA 316 [1990]; *People v. Rosell*, 181 SCRA 679 [1990]; and *People v. Telio*, 210 SCRA 169 [1991]). We grope for words to describe our disgust with this claim of appellant; so we have to borrow the words "Sick, sick, sick" used in *People v. Domen*, 120 SCRA 487 (1983).

The surrender to superior force is not the same as giving consent to the violation of the victim's virtue. Mariel did not consent to the lascivious acts of appellant. She even begged her father to desist from his bestial designs. In her

young mind, she could not understand why her own father was having sexual intercourse with her.

As to the fourth assigned error, appellant claims that he caught his wife and his store helper, named Alvin, in bed on August 5, 1990. Not wanting any trouble he just requested his wife to ask her paramour to leave. This allegedly angered his wife and so she coerced Mariel to file this case in order to effect a separation between them.

As correctly held by the trial court:

"It is hard to believe that a mother would sacrifice her own daughter to tell a story of defloration, allow the examination of her private parts, and thereafter present her to be the subject of a public trial, if they (mother and daughter) were not motivated by an honest desire to have the culprit who is Mariel's own father, punished (People vs. Erardo, 127 SCRA 250 [1984])" (Decision, p. 8; Rollo p. 17).

A daughter, especially one of tender age, would not accuse her own father of this heinous crime had she really not have been aggrieved. On the other hand, a mother would not sacrifice her daughter's virtue in order to punish her husband, especially when, as claimed by appellant, she was the one at fault.

In a last ditch effort to elude the clutches of law, appellant interposes the defense of alibi. He contends that he was not in Marikina, Metro Manila but in Cebu City when the criminal acts were committed.

After admitting that he had carnal knowledge with his own daughter, appellant could no longer claim that he was elsewhere during the times he was said to have committed the offense. Furthermore, appellant asked for Mariel's forgiveness after his arrest.

Relationship, in this case, as correctly held by the trial court, is aggravating (People vs. Lucas, 181 SCRA 316 [1990]).

A violation of a woman's chastity becomes doubly repulsive where the outrage is perpetrated on one's own flesh and blood, for the culprit is reduced to a level lower than a beast. "The latter yields only to biological impulses and is unfettered by social inhibitions when it mates with its own kin, but a man who rapes his own daughter violates not only her purity and her trust but also the mores of his society which he has scornfully defied. By inflicting his animal lust on her, he forfeits all respect as a human being and is justly spurned by all, not least of all by the fruit of his own loins whose progeny he has forever stained with his shameful and shameless lechery" (People vs. Ramos, 165 SCRA 400 [1988]).

The circumstances that are present in this particular case render the offense charged and proven heinous and highly offensive to the moral sense of the community (People vs. Aquino, Resolution dated July 24, 1991). The indemnity should therefore be increased to P50,000.00 (People v. Magaluna, 205 SCRA 266 [1992]).

WHEREFORE, the decision of the trial court is AFFIRMED, with the MODIFICATION that the indemnity is increased to P50,000.00.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.
Griño-Aquino, J., on leave.

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