

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELANDRO NICOLAS Y FAVELLA, ACCUSED-APPELLANT.***G.R. Nos. 125125-27. February 04, 2000*

Ponente: BELLOSILLO, J.

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MELANDRO NICOLAS y FAVELLA was convicted by the court a quo of two (2) counts of statutory rape and one (1) simple rape committed against his own daughter, Shellome Nicolas y Dalisay. The statutory rapes were committed when Shellome was only eleven (11) years old while the simple rape was perpetrated when she was already twelve (12). Accordingly, he was sentenced to reclusion perpetua in each of the three (3) offenses and was ordered to indemnify his victim in the amounts of P150,000.00 as moral damages, P75,000.00 as exemplary damages, and to pay the costs.[1]

Shellome was born in 1980 to the accused Melandro Nicolas and his wife Marilyn Dalisay.[2] She was the second child in a brood of three (3). Since her mother left for Macao in 1986 to work as a domestic helper, Shellome and her siblings stayed with their father in Pandacan, Manila.

One evening in June 1991 Shellome, then eleven (11) years old, was roused from her sleep when she felt her father undressing her. She asked what he was doing but he did not answer. Melandro placed himself on top of her, mashed her breasts and kissed her all over her body. Thereafter, he inserted his penis into her vagina and had carnal knowledge of her. After satisfying his lust, he warned her not to report the incident to anyone as it would ruin the reputation of their family. Then he stood up and went to the comfort room.[3]

Shellome's experience with her father was not the last. On two (2) more occasions she again fell prey to her father's lechery. Two (2) months after she was initially raped, or in August 1991, her father ravished her again. According to her, as she was coming out of the bathroom after a bath, Melandro suddenly pulled her to the kitchen and pressed her against the staircase. He then forcibly removed the towel wrapped around her body. He spread her legs and gradually inserted his penis into her vagina. Rape was consummated. When he was through with her Melandro watched television in the sala as if nothing happened, while Shellome went back to the bathroom to wash herself.[4]

In the evening of 16 October 1992 she was again molested by her father. That was meant to be the last. As she was preparing to sleep on the floor with her younger sister, her father told her to transfer and sleep beside him. Like an obedient daughter she followed. But as soon as she lay beside him, her father immediately covered themselves with a blanket so they could have some privacy. He removed her pajamas thus exposing the lower portion of her body. Again, he mashed her breasts and kissed her body. He mounted her and had sexual intercourse with her. She tried to resist but her father persisted and prevailed. Thereafter he threatened to leave her mother if she would report the incident to anyone.[5]

Unable to contain herself any longer, Shellome confided her ordeal to a classmate, Erwina Batac, who, shocked with Shellome's revelation, told her parents about Shellome's problem. Erwina's parents immediately

accompanied Shellome to the police station to lodge a complaint against her father. Shellome, upon request of the police, submitted herself to medical examination by Dr. Manuel Lagonera, medico-legal officer, who reported a "6 o'clock healed laceration" on the victim's genitalia which tended to show that she was no longer a virgin.[6]

The accused professed innocence and claimed that he was greatly surprised his daughter completely misconstrued his show of affection and fondness for her. As a father, he said, it was very normal for him to cuddle his children by hugging, embracing and kissing them. He contends in this appeal that the trial court seriously erred in finding him guilty of two (2) counts of statutory rape and one (1) simple rape. He theorizes inter alia that assuming he really had carnal knowledge of his daughter it was consensual as she never offered any resistance nor did he employ force, threat or intimidation against her.

We strongly sustain his conviction. The rule is settled that this Court does not generally disturb the findings of fact of the trial court. Having observed the manner, conduct and demeanor of the witnesses while on the stand, the trial court is clearly in a better position to determine the weight to be given to their respective testimonies. Unless there is a clear showing that it overlooked certain facts and circumstances which might alter the result of the case, this Court accords respect, even finality, to these findings of fact made by the trial court.[7]

After a careful study of the records, we are convinced beyond any cavil of doubt, as was the court a quo, that accused-appellant Melandro Nicolas indeed sexually abused his daughter Shellome Nicolas in June and August 1991, and again in October 1992. Shellome's testimony was straightforward, unwavering and clear hence we see no reason to discredit her testimony.[8]

Strengthening the victim's allegation of sexual intrusion by her own father, her examining physician Dr. Lagonera categorically testified that she was no longer a virgin, which could have been caused by her having sex with a man.[9] This medical conclusion, coupled with the victim's testimony of rape, is more than sufficient to establish the essential requisite of carnal knowledge under the old provisions of Art. 335 of The Revised Penal Code, which is the law applicable in this case.[10]

Shellome was then barely in her teens, innocent and naive in the ways of the world. Thus it was very unlikely that she would fabricate a story of defloration against her father, and put to shame and public gossip not only herself but her whole family as well, unless it was the plain truth and her motive was purely to bring the perpetrator of her violation to justice. At the risk of being banal, "no complainant would admit that she has been raped, make public the offense, allow the examination of her private parts, undergo the troubles and humiliation of public trial and endure the ordeal of testifying to all its gory details if she had not in fact been raped."

The defense is merely a bare denial by accused-appellant, which is weak and will certainly fail when placed astride the complainant's positive assertions. Being evidence that is negative and self-serving in nature, it cannot secure more worthiness than that placed upon the testimonies of prosecution witnesses who testify on clear and positive evidence.

Interestingly, accused-appellant would want to impress upon this Court that what he did to his daughter was only a manifestation of his "fondness" and "affection" as a father. But, it taxes credulity that his "fondness" and "affection" for her went far beyond mere hugging, kissing and embracing to include mashing of her breasts and penile penetration of her genitalia.

More incredible is his insistence that the sexual congresses between him and his daughter were consensual. It is utterly unbelievable that a young girl of eleven (11) like Shellome who at that time was still in her elementary grades and possessed of the traditional and proverbial modesty of a Filipina would voluntarily consent to mate with her own father. The facts plainly reveal that Shellome tried to resist her father's sexual advances but

eventually succumbed to his lust out of fear.

Moreover, accused-appellant's threats and warnings - that she should not tell anybody about what he did to her as it would cast dishonor to the family, and that he would leave her mother - were all etched in her gullible mind and sufficient to intimidate her into submission. Besides, accused-appellant was her own father who had overpowering moral ascendancy over her. She was living with him and dependent on him during the entire period of her tribulation. With her mother abroad working for a living, one can clearly visualize her helplessness. To us, she is but a terrified young child who was completely at the mercy of her shameless father.

The pattern of instilling fear, utilized by the perpetrator in incestuous rape to intimidate his victim into submission, is evident in virtually all cases that have reached this Court. It is through this fear that the perpetrator hopes to create a climate of extreme psychological terror which would, he hopes, numb his victim into silence and force her to submit to repeated acts of rape over a period of time. The relationship of the victim to the perpetrator magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim.[11]

We are aghast that accused-appellant's demonic lust destroyed the purity of his own daughter and exposed her to a lifetime of disgrace. But what makes his crime even more outrageous is his total lack of remorse or penitential gesture for what he did. Now, he has the temerity to describe his daughter as a knowing and willing participant in an incestuous liaison. It is like rubbing salt to a bleeding wound. Such claim indeed only heightens his despicable moral depravity thus making him deserve a shot from the lethal syringe but for the proscription of death under the 1987 Constitution when the rapes were committed.

Incestuous rape of a daughter by a father has heretofore been bitterly and vehemently denounced by this Court as more than just a shameful and shameless crime. Rape in itself is a nauseating crime that deserves the condemnation of all decent persons who recognize that a woman's cherished chastity is hers alone to surrender at her own free will, and whoever violates this norm descends to the level of the odious beast. But the act becomes doubly repulsive where the outrage is perpetrated on one's own flesh and blood for the culprit is further reduced to a level lower than the lowly animal and forfeits all respect otherwise due him as a human being.

WHEREFORE, the Decision of the trial court finding accused-appellant MELANDRO NICOLAS y FAVELLA guilty of two (2) counts of statutory rape and of simple rape, and sentencing him to suffer the penalty of reclusion perpetua in each of the three (3) crimes is **AFFIRMED**. He is further ordered to pay his victim Shellome Nicolas y Dalisay P50,000.00 or a total of P150,000.00 as civil indemnity in addition to the P150,000.00 for moral damages and P75,000.00 for exemplary damages in the three (3) cases, and the costs as earlier decreed by the trial court.

### **SO ORDERED.**

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Decision penned by Judge Guillermo L. Loja, Sr., RTC-Br. 26, Manila.[2] TSN, 19 July 1994, p. 4; Exhs. "E" and "E-1." [3] Rollo, p. 77; TSN, 30 August 1994, pp. 4-6.[4] Id., 30 August 1994, pp. 7-8.[5] Id., 19 July 1994, pp. 3-9.[6] See Exh. "J;" TSN, 2 May 1994, p. 3.[7] *People v. San Juan*, G.R. No. 105556, 4 April 1997, 270 SCRA 693.[8] See TSN, 19 July 1994, pp. 2-16; TSN, 30 August 1994, pp. 4-8.[9] Id., 2 May 1994, pp. 3-7.[10] Art. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

- By using force and intimidation;

- When the woman is deprived of reason or otherwise unconscious; and
- 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.

The crime of rape shall be punished by reclusion perpetua. Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death. When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death. When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.[11] *People v. Melivo*, G.R. No. 113029, 8 February 1996, 253 SCRA 347.

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