

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO PAJARILLO, ACCUSED-APPELLANT.***G.R. Nos. 143755-58. February 20, 2002*

Ponente: VITUG, J.

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To sixteen-year old Anne Rachel Pajarillo, who was abandoned by her natural parents when barely six months old, the spouses Eduardo Pajarillo and Resurreccion Pajarillo were her only real parents. The young girl was uncertain about the exact date of her birth. The couple themselves were unable to agree, Resurreccion recalling the year as early as 1979 when they took in Anne Rachel, while Eduardo would place it sometime in 1981. Eduardo and Resurreccion allowed Anne Rachel the use of the Pajarillo family name. Although Anne Rachel was not legally adopted, to all appearances, however, she was the daughter of the Pajarillos.

Eduardo and Resurreccion had nine sons, two of whom shared residence with them in the small two-storey house at Ponciano Street, Davao City. Eduardo Pajarillo, Jr., the older son, along with his family, occupied the first floor, while Ruel, the younger one, slept on the lone bedroom of the second-floor. A third child, Boy, sometimes would come and visit his parents but spent most of his time in Kidapawan where he was employed. Anne Rachel slept on the second floor of the house together with Resurreccion and the Pajarillo grandchildren, namely Junjun, Jin-jin, Eden, Yogi and Ryan.

The first indication that it was not all well in this seemingly tranquil picture of the family came on 27 November 1995 when the young girl left the house for school, never to return. That day, Anne Rachel tearfully narrated her ordeal to her teacher, Mrs. Rose Baja. In her account, Anne Rachel pointed to Eduardo Pajarillo as having raped her sometime in 1993, when she was yet in the third grade. Eduardo was drunk, started to force himself on her, removed her panty, held her two hands, spread her legs and touched her vagina with the tip of his penis. Despite the pitch-dark surroundings, she was still certain that it was Eduardo because she "could recognize his smell."

The sad experience would be repeated when Anne Rachel reached fourth grade and subsequently the fifth grade, with the more recent instances of sexual abuse occurring on the three separate dates of 5, 10 and 26 November 1995. According to Anne Rachel, she was at home on 05 November 1995, when Eduardo, who was so drunk as usual, vented his lustful advances on her. The outrage was again committed against her on 10 November 1995. She ran away from home and sought refuge in the house of a friend but Eduardo soon came to fetch her. The day of the last rape, the evening of 26 November 1995, she recalled, Eduardo was drinking "Tanduay" while watching basketball on television in the sala with his son Ruel and some friends. Resurreccion was not yet home but still elsewhere selling barbecue. While everyone else was thus engaged, Eduardo went to the bedroom. He undressed Anne Rachel and unceremoniously inserted his organ into her vagina. After the game had ended at about 9:30 p.m., the viewers dispersed and she transferred to the sala. Surprisingly, on re-direct examination, Anne Rachel stated that on that day, 26 November 1995, Eduardo did not rape her but merely mashed her breasts, embraced her and touched her vagina. The following morning, 27 November 2001, she woke up to find Eduardo already preparing breakfast. She gave every indication that it was like any typical morning although she did not partake of

breakfast with Eduardo and the children. Instead, she hurried to school where she unburdened her troubles to her classmates, who, in turn, advised her to report the incident to their English teacher, Mrs. Rose Baja. Anne Rachel never considered telling her mother about the molestations because, according to her, Resurreccion would just not listen.

Mrs. Rose Baja testified that, on 27 November 1995, she was surprised when Anne Rachel stayed after class. Hesitantly, the young girl soon told her that she had a problem and did not want to go home. When the teacher pressed her for details, Anne Rachel confided - "My stepfather, whom I call lolo, raped me." Baja agreed to accompany Anne Rachel to the "CYRS."

Dr. Danilo P. Ledesma, who conducted a medical investigation, found old and healed wounds on the hymen of Anne Rachel. Examining the vaginal orifice, the doctor concluded that penile penetration was merely superficial as the whole width of the wall of the hymen had not been lacerated. The laceration he found was incomplete and only had affected the superficial layer of the tissue.

On 03 August 1996, Anne Rachel filed four separate criminal complaints against Eduardo for the alleged sexual assaults against her in 1993, and on the 5th, 10th and 26th of November 1995 -

"The undersigned, ANNE RACHEL PAJARILLO, after having been duly shown to in accordance with law accuses EDUARDO PAJARILLO of RAPE, under Article 335, par. 1 of the Revised Penal Code, as amended by Republic Act No. 7659, committed as follows:

"That sometime in 1993, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned adopted daughter, who is then under 18 years of age, against her will.

"x x x x x x x x

"That on or about November 5, 1995, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned adopted daughter, who is then under 18 years of age, against her will.

"x x x x x x x x

"That on or about November 10, 1995, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned adopted daughter, who is then under 18 years of age, against her will.

"x x x x x x x x

"That on or about November 26, 1995, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned adopted daughter, who is then under 18 years of age, against her will."[1]

The accused, raising the defense of denial and alibi, introduced to the stand a parade of witnesses, namely, William Abuda, Archel Aniega, Junnebelyn Pajarillo, and his wife Resurreccion Pajarillo. The testimony they gave was almost invariably the same - that on the dates and hours when the sexual assaults against complainant allegedly took place, the Pajarillo residence was full of people, including neighbors, who were all watching basketball on television and that Anne Rachel was a "naughty" girl.

According to William Abuda and Archel Aniega, both neighbors and friends of Eduardo Pajarillo, they would stay in the house of the accused and his family almost everyday to watch television, it being the basketball season. On the day of the second alleged rape, William Abuda left the Pajarillo residence at about 10:00 to 10:30 that evening, while Archel Aniega decided to remain to watch the showing of a boxing match. When Aniega left, Junnebelyn, a granddaughter of the accused, was still watching television while Resurreccion, still awake, continued fixing things around the house. Again, on 10 November 1995, both Abuda and Aniega testified to being in the Pajarillo residence by 5:30 in the afternoon, again for the basketball telecast. Viewing the games with them were Abraham, Aniega's younger brother, the accused, his wife, their son Ruel and the grandchildren. When Abuda and Aniega left at 10:00 that evening, the accused was already asleep with his grandchildren. On the date of the supposed last rape, 26 November 1995, a Sunday, both men were again at the Pajarillo residence watching television with the accused, his wife and their grandchildren. Abuda left at 10:00 in the evening while Aniega stayed behind. Aniega testified that when he left, the accused and his wife were already asleep. He did not notice Anne Rachel that night although he testified to seeing her earlier at 3:00 in the afternoon, his house being just along the road.

Junnebelyn Pajarillo, a granddaughter of the accused, corroborated the accounts of Aniega and Abuda. Junnebelyn said that she slept in the same room with Anne Rachel, the accused, the latter's wife, her two small male cousins, and one younger sister. All six of them slept side by side, with Junnebelyn and Anne Rachel next to each other. Junnebelyn corroborated the statements of witnesses Abuda and Aniega to the effect that during the evenings of 5, 10 and 26 November 1995, she was watching basketball on television with her father, her two neighbors and her grandparents. She said that Anne Rachel was almost always not home and she would usually leave the house at 7:00 in the evening. She would at times be asked by Anne Rachel to deliver love letters to her boyfriend. Once, when she went to the comfort room, Junnebelyn caught the young lovers holding hands and embracing each other. When Junnebelyn reported the incident to her grandparents, Anne Rachel resented it and left the house. Later, however, Junnebelyn, her younger sister and their grandfather, fetched Anne Rachel.

According to Resurreccion Pajarillo, wife of the accused, Anne Rachel was the daughter of one Nestor Libre. Libre, who was separated from the child's mother, had decided to leave Anne Rachel, then a nine-month old baby, to the Pajarillos. While the girl was growing up, Resurreccion observed Anne Rachel to be slow in comprehension, and she then had to transfer the young girl from Kapitan Tomas Elementary school, where she was enrolled in the first grade, to Padena Gil upon the recommendation of a teacher who assessed the young girl to be "simple-minded." Later, the teachers in Padena Gil told her about the strange behavior of Anne Rachel. Resurreccion branded the charges of Anne Rachel against the accused to be unfounded, adding that Eduardo had always been a good husband. Resurreccion testified that she did not notice anything out of the ordinary on the dates of and following the alleged rape incidents. She said that Anne Rachel would go out of the house at night, and she would still be away by the time the family retired to bed. She narrated how she would keep the door of the room unbolted for Anne Rachel. Anne Rachel was too hard-headed to listen to any admonition against her nocturnal outings that left Resurreccion with no choice but to finally tolerate the truancy.

The accused, the last to take the witness stand, corroborated much of what had been said by the defense witnesses. He claimed that he would occasionally doze off while watching television and sleep on a mat spread on the floor while the rest of the household and the neighbors would continue watching television. Often, Anne Rachel was a no-show during the evenings while he was still awake. Indeed, he said, Anne Rachel was a stubborn and hard-headed young girl who had no compunction at being with her boyfriend in the secluded areas of the Pajarillo residence.

Unmoved by the version of the defense, the Regional Trial Court, Branch 15, of Davao City, found accused

Eduardo Pajarillo guilty of the offenses charged. In its decision of 27 January 2000, the trial court held:

"WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, EDUARDO PAJARILLO is hereby sentenced as follows:

- Criminal Case No. 37-590 – Reclusion perpetua and to indemnify Rachel Pajarillo Forty thousand (Ph40,000.00) Pesos.
- Criminal Case No. 37-591 – Death and to indemnify Rachel Pajarillo Forty thousand (Ph40,000.00) Pesos.
- Criminal Case No. 37-592 – Death and to indemnify Rachel Pajarillo Forty thousand (Ph40,000.00) Pesos.
- Criminal Case No. 37-593 – Death and to indemnify Rachel Pajarillo Forty thousand (Ph40,000.00) Pesos."[2]

Hence, this automatic review of the judgment of the trial court.

The usual secrecy that envelops an act of rape, where only the malefactor and the victim are present, places the Court in a delicate task of sifting for truth from the statements and accounts of witnesses proffered by the prosecution and the defense. The Court has rightly been guided by three principles in going through the mass of the evidence, i.e., (1) that an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, although innocent, to disprove; (2) that, by the intrinsic nature of the crime where two persons, the complainant and the accused, are usually the ones involved, the testimony of the complainant is scrutinized with extreme caution; and (3) that the case for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[3]

Using these yardsticks, the Court has examined the testimony of Anne Rachel Pajarillo. She has charged appellant with raping her on four separate occasions - the first time in 1993 and subsequently on the 5[th], 10[th] and 26[th] of November 1995.

Testifying on the alleged initial rape committed against her, the complainant narrated that one evening when she was still in the third grade, the date and exact time of which she could not remember, appellant removed her panty, held her two hands, spread her two legs and inserted the tip of his penis inside her vagina. She wanted to shout but she did not because of fear.

"Q.

Could you describe how your father raped you when you were in grade three?

"A.

He held my hands.

"Q.

And then what did you do?

"A.

He removed my panty.

"Q.

What were you doing, did you not resist?

"A.

I wanted to shout but I was afraid.

"Q.

Then after he had undressed you, what did he do next?

"A.

He inserted his penis inside my vagina.

"Q.

What did you feel?

"A.

I felt pain.

"Q.

Was that the last time your father raped you?

"A.

No, sir.

"Q.

When was the next time?

"A.

When I was in Grade 4 and Grade 5.

"Q.

You were also raped?

"A.

Yes, sir."[4]

On cross-examination, however, Anne Rachel admitted that, in view of darkness, she was not able to clearly see her rapist and she could only be certain that it was Eduardo Pajarillo, Sr., because she "could recognize his smell."

"COURT:

Somebody stood up and went near her and touched her.

"ATTY. ALONZO:

"Q.

You just pinpointed your father because at that time you don't know who that person was because it was dark?

"A.

I am sure it was my father.

"A.

I am sure it was my father.

"COURT:

"Q.

Why did you say that it was your father who touched you?

"A.

Because I could recognize his smell."[5]

The use of the sense of smell, given other circumstances, might be a reliable mode of identification but it could also prove to be tenuous if it were to serve as the sole basis for identification in a criminal case where there is much room for other probabilities to contend with. The Pajarillo residence was home to the grown-up sons of

appellant, and it was a favorite hangout for male neighbors, who had easy ingress and egress to the house, anyone of whom could have committed the dastardly act. Anne Rachel, as early as the preliminary investigation, had more than once confused not only the identity of her rapists but likewise what exactly had transpired.

Anne Rachel Pajarillo, on 11 December 1995, had initially accused not only Eduardo, Sr., but also Rolito Pajarillo and Randy Pajarillo, two of the sons of appellant as well, of having all raped her. The complaint was dismissed by Prosecutor Al Calica on 04 March 1996.[6] Prosecutor Al P. Calica, in his resolution, observed -

"ON THE MATTER OF MULTIPLE RAPE

"According to the complainant, it was actually respondent Rolito Pajarillo, not Eduardo Pajarillo, who first had sexual intercourse with her sometime in 1993, when she was in grade III. But when pressed for details, complainant testified that respondent did not have sexual intercourse with her but merely invited her to have one. On the first rape allegedly committed by respondent Eduardo Pajarillo, the latter was only calling her to a room in the house, which she refused and she went out of the house. She then proceeded to her friend's house where she was fetched by her adopting mother. She further contended that she was also raped four (4) times. Again pressed for details she said that while asleep, respondent touched her body and when she woke up, she went down from the house. Respondent Randy Pajarillo also raped her sometime on November 1995, she averred. When asked to narrate the incident, she answered Randy Pajarillo merely touched her breasts.

"ON THE MATTER OF MULTIPLE ACTS OF
LASCIVIOUSNESS

"When she was in grade I and II, respondents touched her dressed body many times.

"During the hearing, undersigned investigator was able to observe the demeanor of the complainant and he was patient in waiting for her answers regarding the details of the incidents. And coupled with the evidence adduced therein, undersigned finds complainant's evidence leaves too much to be desired in order to establish probable cause of the crimes charged. Complainant's accusations contained in her affidavit appear unsubstantiated. Between her affidavit-complaint and the evidence adduced during the clarificatory hearing, undersigned gives more weight to the latter as he was able to observe and note first hand the testimony personally and orally given by the complainant.

"WHEREFORE, premises considered, for lack of probable cause, the above-entitled case against respondents is hereby dismissed."[7]

While the case was subsequently reconsidered, and only insofar as appellant was concerned, in a resolution, dated 23 August 1996, the prosecutor, nonetheless, expressed grave reservations on the complainant's too sketchy narration of the incidents -

"x x x. Complainant's allegations of rape, which are however too generalized, need to be particularized in the interest of due process so as the respondents can properly respond to the same. These commissions need further investigation."[8]

Anne Rachel averred having been likewise molested on the 5[th], 10[th] and 26[th] of November 1995. Testifying on the 5[th] and 10[th] of November 1995 incidents, she recalled that appellant "raped" her but she failed to give any further account on how the incidents happened. She simply declared -

"Q.

On 05 November 1995, where were you at night?

"A.

In the house.

"Q.

Tell us what happened?

"A.

He raped me.

"Q.

On November 10, 1995, what happened?

"A.

The same, he raped me."[9]

It may be true that when a woman cries "rape!" she says, in effect, all that may be necessary to prove the charge, but there is also an equally compelling dictum, i.e., that a conviction for rape, resting solely on the testimony of the complainant, should be subjected to great scrutiny, which can only mean that she should be able to at least give a fairly good account of how it has transpired if only to demonstrate that she knows what rape means or what it entails.

Recounting the last incident on 26 November 1995, Anne Rachel testified that appellant again sexually molested her.

"Q.

When was the last time your father raped you?

"A.

November 26.

"Q.

Where were you when you were raped by your father on November 26?

"A.

In the room.

"Q.

Tell the court how it happened.

"A.

On November 26 he also raped me.

"Q.

Please describe what happened, how it happened?

"A.

He undressed me.

"Q.

After that what else did he do?

"A.

He inserted his penis inside my vagina.

"Q.

After November 26 what happened?

"A.

That was it.

"Q.

What did you do after November 26?

"A.

I slept in the sala."[10]

But seriously tainting the veracity of the narrative was when she, on re-direct, said that appellant merely mashed her breasts, embraced her and touched her genitalia.

"PROSECUTOR VILLAFUERTE:

"Q.

What happened on November 26, 1995?

"COURT:

"Q.

Did something happen to you on November 26, 1995?

"A.

Yes, sir.

"Q.

What?

"A.

My father mashed my breast.

"Q.

What else did he do if any aside from mashing your breast?

"A.

He embraced me and touched my vagina.

"Q.

What else happened?

"A.

That happened, sir."[11]

Owing to the character of the crime of rape, the testimony of the victim is the focal area around which the

outcome of the charges naturally revolves. Her consistency on material points, or lack of it, that can sustain or negate conviction,[12] becomes the single most important matter in inquiry.[13] The rigidity with which the account of the victim undergoes examination becomes even much more pronounced where a conviction can mean the possible imposition of death, a penalty the court a quo has, in fact, adjudged in this case. It is not to say, however, that Anne Rachel has not been a victim of rape as the result of the medical examination might in a way so suggest, or that the defense of alibi or denial of appellant can be given full faith and credence; it only means that the testimony of Anne Rachel Pajarillo has been unable to meet the exacting test of moral certainty that the law demands and the rules require in order to satisfy the burden of the prosecution in overcoming the presumption of innocence.

Four complaints for rape committed on different occasions were leveled against appellant --- Criminal Case No. 37,590 for the alleged molestation sometime in 1993, Criminal Case No. 37,591 for the 5[th] November 1995 incident, Criminal Case No. 37,592 for the 10[th] November 1995 accusation, and Criminal Case No. 37,593 for the 26[th] November 1995 charge. The evidence adduced in the 1993 incident failed to sufficiently establish the identity of the perpetrator. The alleged sexual assaults perpetrated on 5 and 10 November 1995 were inadequately proved. The 26[th] November 1995 incident would only sufficiently demonstrate that appellant mashed the victim's breasts, embraced her, and touched her vagina albeit enough, in this particular instance, to hold appellant guilty of the crime of acts of lasciviousness.[14]

Where there is a variance between the offense charged in the complaint or information and that proved and the offense charged necessarily includes the lesser offense established in evidence, the accused can be convicted of the offense proved.[15] Acts of lasciviousness is punishable by reclusion correccional. The alternative circumstance of relationship between the parties cannot be considered aggravating as the accusatory information has not aptly alleged the true nature of the kinship between appellant and the offended party. Accordingly, the penalty that can be imposed upon appellant is prision correccional or from six (6) months and one (1) day to six (6) years and, absent either an aggravating or mitigating circumstance, should be imposed in its medium term. Applying the Indeterminate Sentence Law the minimum that can be imposed is anywhere from one (1) month and one (1) day to six (6) months of arresto mayor, as minimum, and from two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of prision correccional, as maximum.

WHEREFORE, the Decision of the Regional Trial Court, Branch 15, of Davao City in Criminal Cases No. 37-590, No. 37-591, No. 37-592 and No. 37-593 is SET ASIDE. Accused-appellant Eduardo Pajarillo, Sr., is acquitted of the crime of rape in all the four charges against him; in Criminal Case No. 37-593, however, said accused-appellant is found guilty beyond reasonable doubt, on one count, of the crime of acts of lasciviousness, defined and penalized under Article 336 of the Revised Penal Code, and sentenced to suffer the indeterminate penalty of from six (6) months of arresto mayor, as minimum, to three (3) years and six (6) months of prision correccional medium, as maximum. Accused-appellant is likewise ordered to pay the victim the sum of P30,000.00 by way of moral damages. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Rollo, pp. 13-16.

[2] Rollo, p. 39.

[3] *People vs. Florendo*, 230 SCRA 599.

[4] TSN, Anne Rachel Pajarillo, 19 January 1998, pp. 4-5.

[5] Cross-examination, Anne Rachel Pajarillo, 16 February 1998, p 26.

[6] Exhibits I-A, I-B and I-C for the Prosecution, Resolution of Prosecutor Al Calica, Anne Rachel Pajarillo vs. Eduardo Pajarillo y Ara, Boy Pajarillo, Randy Pajarillo, Respondents, I.S. No. 96-15741, 04 March 1996.

[7] Records, pp. 66-67.

[8] Resolution of Prosecutor Al Calica, Anne Rachel Pajarillo versus Eduardo Pajarillo y Ara, Boy Pajarillo, Randy Pajarillo, I.S. No. 96-15741, 23 August 1996 (Records, pp. 69-70).

[9] Direct examination, Anne Rachel Pajarillo, 19 January 1998, pp. 5-6.

[10] *Ibid.*, p.6.

[11] Re-direct examination, Anne Rachel Pajarillo, 16 February 1998, p. 32.

[12] *People vs. Quitariano*, 266 SCRA 373; *People vs. Edualino*, 271 SCRA 189.

[13] *People vs. Malabago*, 271 SCRA 464.

[14] Revised Penal Code, Article 336. Acts of Lasciviousness. – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the next preceding article, shall be punished by prision correccional.

The "next preceding paragraph" referred to in the foregoing pertain to the crime of Rape, which, as defined by Article 335 of the Revised Penal Code is committed by having carnal knowledge of a woman under any of the following circumstances –

- 1) by using force or intimidation;
- 2) when the woman is deprived of reason or otherwise unconscious; and
- 3) when the woman is under twelve years of age or is demented.

[15] Section 4, Rule 120, Rules of Court –

Judgment in case of variance between allegation and proof. When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.

Section 5, Rule 120 of the Rules of Court provides –

When an offense includes or is included in another. An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

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