

**[ G. R. No. 135330, August 31, 2000 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CAMILO VILLANUEVA, ACCUSED-APPELLANT.**

**D E C I S I O N**

**DAVIDE JR., C.J.:**

For automatic review<sup>[1]</sup> by this Court is the judgment<sup>[2]</sup> of 12 May 1998, of the Regional Trial Court, Branch 15, Cebu City, in Criminal Case No. CBU-46026-A, finding accused-appellant Camilo Villanueva (hereafter CAMILO) guilty of the crime of rape committed on the victim, Nia Gabuya (hereafter NIA), and sentencing him to suffer the extreme penalty of death and to pay NIA moral damages in the amount of P50,000.

In an amended Information<sup>[3]</sup> dated 16 January 1998, CAMILO was charged with rape as defined and penalized in R.A. No. 8353.<sup>[4]</sup> The accusatory portion of the indictment states:

That at midnight of December 4, 1997, in Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the accused, with deliberate intent, with force and intimidation upon person, did then and there willfully, feloniously and unlawfully have carnal knowledge with Nia Gabuya, a minor of only 11 years of age and step-daughter of the said accused, against the latter's will. CONTRARY TO LAW.

Upon arraignment on 25 February 1998, with the assistance of counsel, CAMILO entered a plea of not guilty.<sup>[5]</sup> Trial on the merits followed.

The prosecution's version of the incident as summarized by the Solicitor General in the Appellee's Brief<sup>[6]</sup> is as follows:

On December 5, 1997, Reynaldo Gabuya received word that a kissmark was on the neck of his younger sister, 11 year old Nia Gabuya. He confronted and asked her who planted said kissmark. He was told that it was their stepfather. He immediately brought his sister to the Pardo Police Station and had the incident blottedtered. Upon the advice of the police officer, Nia was brought to the hospital. He further testified that Nia told her that she was allegedly raped for the first time by Camilo Villanueva in May 1997 and the last time was on December 4, 1997 at around 12:00 midnight. From May 1997 up to December 4, 1997 she has been sexually abused by the appellant for seven times already (TSN dated January 29, 1998, pp.4-6).

Private complainant Nia Gabuya was born on February 15, 1986 as evidenced by her Birth Certificate. She was in her fourth grade. She only knew her father by name for she had been living with her mother and her stepfather, herein appellant, since she came to the age of reason. She

claimed that on the night of December 4, 1997 at 12:00 midnight, her stepfather, Camilo Villanueva pointed a knife at the right portion of her neck and warned her not to tell anybody or else he would kill her. The appellant took off her short pants and her panty, then he also took off his short pants. Appellant who still had his T-shirt on but was naked from his waist down, placed himself on top of her and made a push and pull movement, but his organ did not penetrate her because it was big. He spat on her vagina and licked it, then he made a push and pull movement again. While this was happening, she was crying because of pain. After the act, the appellant went to sleep soundly while she kept crying. She did not awaken her brother, Roque who was sleeping beside her, because she was afraid of appellant. Her brother Roque did not notice that she was raped by appellant. When she woke up the following day, her mother was still not home because she was at Norma's Mahjong Place the whole night until the following morning (TSN dated February 25, 1998, pp.5,7-8).

On cross-examination, she mentioned that one Candido Cellan, a neighbor, also raped her (TSN dated March 18, 1998, pp.5). On re-direct, she clarified that she did not initially implicate Candido Cellan upon the request of his daughter who said that her father was already sickly. Nonetheless, on the witness stand, the victim testified that before she was raped by appellant at midnight of December 4, 1997, she was also fingered by Candido Cellan at about 7:00 P.M. of the same night. She did not tell appellant what Candido did to her because she was afraid that appellant would also rape her which he actually did (TSN dated April 1, 1998, pp.2-5). On this score, the trial court, in the subject decision recommended that an indictment for rape be likewise filed against Candido Cellan (Decision dated May 12, 1998, p.14).

Dr. Jovy Alvarado, a doctor connected with the O.B. Department of Cebu City Medical Center, testified that sometime on December 5, 1997, she conducted an examination on the victim and made the following findings:

Introitus -intact hymen, no erythema, no bleeding; was able to insert cotton-tipped applicator through the hymenal orifice with slight difficulty.

Gram staining on vaginal smear

1. Gram negative coco bacilli-plenty
2. Puss cells-few (T-3) etc.
3. Epithelial cells-moderate

Smear for spermatozoa- positive (0-2 hpf).

(Exhibit "A").

For its part, the defense presented the accused CAMILO and Dr. Joseph Tumala. The trial court summarized their testimonies as follows:

For the defense, accused Camilo Villanueva denied having raped his step-daughter, Nia Gabuya. He claimed that at about 7:00 P.M. of December 4, 1997, he went to the mahjong place in order to sell the eggs which he

cooked earlier in the afternoon. At 10:00 in the evening, he and Felipa Gabuya, his live-in partner and mother of the victim went home and they arrived in the house in ten minutes. He and Felipa had been living together as husband and wife since 1991 and they have no issue because he had a vasectomy operation in 1976. When they arrived home, he then spread a mat on the floor and while he was spreading the mat, Felipa asked permission from him to fetch her children, Nia and Roque who watched Betamax. When Felipa and her children arrived, he was still inside the house listening to the radio. Felipa then asked Nia to buy kerosene. After buying kerosene, Nia who was still on the road did not bother to get inside the house and gave the kerosene to his brother Roque, who was also on the road. Roque brought the kerosene inside the house and Nia went out again to watch Betamax. While Felipa defecated, Nia was still outside the house. After she defecated, Felipa told Nia to go to sleep. Felipa instructed Nia to sleep by the door followed by Roque, Felipa and then himself. That was the usual arrangement every time they slept. He fell asleep and woke up the next morning.

Camilo insisted that he did not rape Nia and claimed that the spermatozoa found in the victim's organ was not his since he could not produce any after he underwent vasectomy in 1976. However, he could not present any record of his vasectomy operation because the records of the Sacred Heart Hospital were discarded five years after the records were entered. He further claimed that he came to know of the charge on December 5, 1997 at 3:30 P.M. He was recently examined by a doctor who made him ejaculate in the comfort room to determine if he could still produce spermatozoa. The Medical Examination Report was marked as Exhibit "3".

On cross-examination, he claimed that he was examined by the doctor at the Cebu City Medical Center on April 2, 1998. He was made to ejaculate inside the comfort room all by himself. He placed the semen in the bottle that was provided to him and no other person had seen him place his fluid in the bottle.

He claimed that Felipa Gabuya worked as a tong collector at the mahjong place. He admitted that there were times that mahjong sessions would last up to dawn and there were also times that Felipa would go home at dawn because of the tong that she had to collect at the mahjong place. He also admitted that most of the times, Felipa would go home early in the morning but he claimed that he and Felipa always go home together.

He further claimed that on the night of December 4, 1997, he slept at 11:00 P.M. because they were at the mahjong place. Nia and his younger brother Roque went to sleep together with them at the same time. Although Nia and Roque did not go to the mahjong place with him and Felipa, they also slept late because they watched betamax. When they slept, Nia was about 2 to 3 meters away from him. From 11:00 o'clock in the evening until the morning of the following day, he could not recall anymore what happened during this period of time because he slept. When he woke up at 6:00 A.M., Nia, Roque and Felipa were no longer at his side. They were already outside since he was the last to rise because he had no work.

He further claimed that he came to know of this charge for the first time on December 5, 1997 at about 3:00 P.M through Reynaldo Gabuya, the elder brother of the victim. Rey informed him that he would be included in the charge of raping Nia because he was allegedly the one who caused the kiss mark on the neck of Nia. He declared that Reynaldo Gabuya, the brother of the victim had a grudge against him because he always caught Rey sniffing marijuana and whenever he admonished him he got mad. He had known the victim Nia Gabuya since she was one year old and Nia does not have a personal grudge against him. The only possible reason why Nia had the courage to include him in the charge is because of her brother, Reynaldo Gabuya.

Dr. Joseph Marlon Tumala , 30 years old, medical Officer III and a Senior Resident Physician and presently connected with the Cebu City Medical Center testified that he examined Camilo Villanueva on April 2, 1998 and he issued a Medical Report, Exhibit "3". He found the seminal fluid of Camilo Villanueva to be negative for the presence of spermatozoa, Exhibit "3-B". He explained that the vasectomy is a male sterilization procedure wherein the vas deferens of the male person is cut off. The life span of a sperm is from 42 to 72 hours.<sup>[7]</sup>

The trial court, in its judgment<sup>[8]</sup> of 12 May 1998, found CAMILO guilty beyond reasonable doubt of the crime of rape and decreed as follows:

WHEREFORE, premises all considered, the court finds accused Camilo Villanueva GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized by Article 266-A of the Revised Penal Code in relation to R.A. 7610 and R.A. 8353 and he is hereby sentenced to suffer the extreme and maximum penalty of DEATH. The accused is further ordered to pay the victim Nia Gabuya the sum of P50,000.00 as moral damages and to pay the costs of this suit.

The prosecution is hereby prodded to institute the filing of a separate case against Candido Cellan who may be found guilty of the crime of rape as revealed in the mounting evidence against him.

The death penalty having been imposed on CAMILO, the records of the case were elevated to this Court for automatic review. In his Appellant's Brief, CAMILO raised the following issues for resolution:

1. WHETHER THE PRIVATE COMPLAINANT NIA GABUYA WAS REALLY RAPED BY THE ACCUSED CAMILO VILLANUEVA ON THE FATEFUL NIGHT OF DECEMBER 4, 1997 AT AROUND MIDNIGHT.
2. WHETHER THE TESTIMONY OF THE PRIVATE COMPLAINANT NIA GABUYA IS NOT TAINTED WITH MATERIAL INCONSISTENCIES AND GRIEVOUS FALSITY.
3. WHETHER THE TESTIMONY OF THE PRIVATE COMPLAINANT NIA GABUYA IS ENOUGH BASES TO CONVICT THE ACCUSED CAMILO VILLANUEVA OF A CRIME PUNISHABLE BY DEATH.
4. WHETHER THE TRIAL COURT WAS CORRECT IN DENYING THE ACCUSED MOTION FOR NEW TRIAL, WHICH WAS INTENDED TO RECEIVE

THE TESTIMONY OF THE THIRD WITNESS OF THE ACCUSED IN THE PERSON OF THE MOTHER OF THE PRIVATE COMPLAINANT FELIPA GABUYA.

5. WHETHER THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONSIDERING THE FACT OF COMMON LAW RELATIONSHIP BETWEEN THE ACCUSED AND THE MOTHER OF THE PRIVATE COMPLAINANT WHEN THE INFORMATION THAT WAS READ TO THE ACCUSED ONLY ACCUSES THE ACCUSED CAMILO VILLANUEVA OF RAPE OF ONE NIA GABUYA WHO WAS THE STEP DAUGHTER OF THE ACCUSED.<sup>[9]</sup>

At the core of the first three assigned errors is the issue of credibility of NIA.

We shall first address the issue on the denial of the motion for new trial. That motion was solely for the purpose of allowing the defense to present as its third witness the mother of NIA, Felipa Gabuya. We rule that the trial court did not err in denying the motion for new trial. As aptly stated by the trial court, the testimony of the witness sought to be presented serves only as impeaching and corroborative evidence.<sup>[10]</sup> It has been ruled that a new trial is justifiably denied where only impeaching evidence is sought to be introduced as the court had already passed upon the issue of credibility at the trial,<sup>[11]</sup> and where only corroborative evidence is to be offered, as it would not change the result of the case.<sup>[12]</sup> Moreover, the failure of the defense to present NIA's mother by reason of the alleged inexperience of his lawyer is not a sufficient ground for a new trial. The error of the defense counsel in the conduct of the trial is neither an error of law nor an irregularity upon which a motion for new trial may be presented. Generally, the client is bound by the action of his counsel in the conduct of his case and cannot be heard to complain that the result of the litigation might have been different had his counsel proceeded differently. In criminal cases, as well as in civil cases, it has frequently been held that the fact that blunders and mistakes may have been made in the conduct of the proceedings in the trial court, as a result of the ignorance, inexperience or incompetence of counsel, do not furnish a ground for new trial, for if such grounds were to be admitted as reasons for re-opening cases, there would never be an end to suits so long as new counsel could be employed who could allege and show that the prior counsel had not been sufficiently diligent, or experienced, or learned. To do so would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing new trials in the event of conviction.<sup>[13]</sup>

The issue of credibility raised in the first three assigned errors should also be resolved against CAMILO.

Long settled is the rule that the assessment of the credibility of the complainant in a rape case falls primarily within the province of the trial judge. He is in a better position to determine if the complainant is telling the truth or merely narrating a concocted tale, and to weigh conflicting testimonies because he heard the witnesses themselves, observed their deportment and manner of testifying, and had full access to vital aids: e.g., the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sight, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. Therefore, unless therefore the trial judge plainly