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[G.R. No. 123543, August 23, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO GABIANA Y CARUBAS, ACCUSED-APPELLANT.

D E C I S I O N

PURISIMA, J.:

For automatic review is the Decision[1] of Branch 33, Regional Trial Court of Laguna, in Criminal Case No. S-1797, which imposed the supreme penalty of death on appellant Pedro Gabiana y Carubas for the crime of rape; disposing thus:

> "WHEREFORE, premises considered, judgment is hereby rendered, finding accused PEDRO GABIANA y CARUBAS Guilty beyond reasonable doubt of the crime of 'RAPE' as charged, and hereby sentences accused to suffer the extreme penalty of 'DEATH'. To pay the offended party the sum of P50,000.00 for moral damages, and to pay the cost.
>
> SO ORDERED."[2]

Filed on October 18, 1994 by Assistant Provincial Prosecutor Rodrigo B. Zayenis, the information indicting appellant, alleges:

> "That on or about 7:00 o'clock in the evening of September 12, 1994 at Sitio Quinale, Barangay Burgos, Municipality of Siniloan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Rosemarie C. Argosino a ten (10) year old girl, against her will and consent and to her damage and prejudice.
>
> CONTRARY TO LAW."[3]

With the appellant assisted by Atty. Benjamin G. Golla, pleading not guilty upon arraignment on November 28, 1994,[4] trial ensued with the prosecution presenting Dra. Eleanor V. Mane, Jocelyn R. Reformado, Isagani Argosina, Isabel Argosino and the private complainant herself, as witnesses.

Roy Gabiana, Edger Artula and the appellant testified for the defense.

Synthesized by the Solicitor General in the Appellee's Brief, the facts and circumstances complained of are as follows:

> "Appellant Pedro Gabiana and Rosalia dela Cruz are live-in partners. Rosemarie Argosino is the eldest of the three (3) children Rosalia dela Cruz has with her previous live-in partner, Isagani Argosino.
>
> *On September 12, 1994, about 7 o'clock in the evening, in Sitio Quinale, Barangay Burgos , Siniloan, Laguna, appellant carried Rosemarie, then*

10 years of age, up their 2-storey house and brought her to a corner. There, he undressed her, after which, he removed his pants. He then forced her to lie on the floor, placed himself on top of her and inserted his penis into her vagina. She felt pain in her vagina and wanted to cry for help but appellant covered her mouth with his hand (TSN , April 19, 1995, pp. 3-5; 9 and 13).

After about 3 to 5 minutes, appellant stood up and warned Rosemarie not to report the incident to her mother as he would kill her. He then left and went to sleep (TSN, April 19, 1995, p. 5).

Rosemarie who saw blood in her vagina went downstairs and washed herself, after which, she too went to sleep (TSN, April 15, 1995, p. 6).

The following day, September 13, 1994, Rosemarie went to school. However, after class, instead of going home, she and her younger sister, Isabel Argosino, then 9 years old, proceeded to their aunt Jocelyn Reformado at the latter's house in Barangay Taft, Pakil, Laguna. There, Isabel reported to their aunt Jocelyn Reformado what appellant did to Rosemarie (TSN, April 19, 1995, pp. 6-7).

> In the morning of September 14, 1994, Jocelyn Reformado brought Rosemarie to the General Cailles Memorial Hospital where Rosemarie was examined by Dra. Eleanor V. Mane who found a sort of a swelling in the labia minora and complete and incomplete laceration of the hymen (Exhibit 'A').[5]

In the afternoon of the same day, Jocelyn Reformado accompanied Rosemarie to the police station of Siniloan, Laguna and there reported the matter. The police took the respective sworn statements of Jocelyn Reformado and Rosemarie Agrosino (Exhibits 'B' and 'D'), after which, Rosemarie, assisted by Jocelyn Reformado, affixed her signature on the complaint for rape against appellant. The complaint was eventually filed in court on September 15, 1994 (TSN, December 19, 1994, pp. 23-28)." [6]

Appellant interposed the defense of denial and alibi. He theorized that at around 7:00 o'clock in the evening of September 12, 1994, his children, including the complainant, his cousin Roy Gabiana, and himself had supper. Thereafter, he and his cousin went outside the house and conversed with his (appellant's) neighbor, Edgar Artula, until 10:00 p.m. when he (appellant) and Roy went home to sleep.[7]

Appellant further asseverated that the charge hurled against him is nothing but a malicious fabrication of the complainant's aunt, Jocelyn R. Reformado, whose ulterior motive is to take custody of the complainant and the latter’s sister Isabel.[8]

On November 7, 1995, after finding the version of the prosecution credible, the trial court of origin handed down the judgment of conviction under review.

Appellant contends that:

I.

THE TRIAL COURT ERRED IN NOT CONSIDERING THE IRRECONCILABLE AND UNEXPLAINED CONTRADICTIONS BETWEEN THE PRIVATE COMPLAINANT'S STATEMENTS IN HER SWORN STATEMENT TO THE POLICE AND THOSE MADE SUBSEQUENTLY.

II.

THE TRIAL COURT FAILED TO CONSIDER THE IRRECONCILABLE AND UNEXPLAINED CONTRADICTIONS BETWEEN THE SWORN STATEMENT TO THE POLICE AND THE SUBSEQUENT TESTIMONY OF PRIVATE COMPLAINANT'S AUNT WHO CAUSED AND ASSISTED HER IN FILING THE COMPLAINT.

III.

THE LOWER COURT ERRED IN IGNORING THE MOTIVE OF PRIVATE COMPLAINANT'S AUNT IN CAUSING AND ASSISTING THE PRIVATE COMPLAINANT TO FILE THE RAPE CHARGE AGAINST ACCUSED-APPELLANT.

IV.

THE TRIAL COURT ERRED IN NOT IN GIVING CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF ALIBI.

V.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT AND FOR DISREGARDING SOME CRUCIAL DETAILS.

VI.

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY ON ACCUSED-APPELLANT AS A CONSEQUENCE OF THE ANTI-POOR, ANTI-UNINFLUENTIAL AND ANTI-SMALL FRY R.A. NO. 7659. THE PENALTY SHOULD BE SUSPENDED PENDING FURTHER EMPIRICAL STUDIES ON WHETHER ONLY THE WRETCHED AND THE POOR ARE SENT TO DEATH ROW IN AN IMPERMISSIBLE UNCONSTITUTIONAL MANNER.[9]

It has been held that:

"Countless of times, this Court has said that it will be guided in reviewing rape cases by the settled realities that an accusation for rape can be made with facility, and while the commission of the crime may not be easy to prove, it becomes even more difficult, however, for the person accused, although innocent, to disprove; that in view of the intrinsic nature of the crime of rape where only two persons normally are involved, the testimony of the complainant must always be scrutinized with great caution; and that the evidence for the prosecution must stand or fall on its own merits and should not be allowed to draw strength from the weakness of the evidence for the defense. In an appeal from a judgment of conviction in these rape cases, the issue boils down, almost invariably, to the credibility and story of the victim and just as often the Court is constrained to rely on the observations given by the trial court,