

EN BANC

[G.R. No. 130407, December 15, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RENATO RAMON, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

For review is another of hundreds of cases which continue to reach this Court because of the imposition by the trial court of the death penalty.

In this instance, accused-appellant Renato Ramon was charged with the crime of rape allegedly committed against his stepdaughter Analyn Manio y Fajilago. When arraigned on 05 March 1996, the accused entered a plea of "not guilty."

The Office of the Solicitor General, in its brief for the People, gives a resume' of the evidence submitted by the prosecution.

"Victim Analyn Manio y Fajilago is one of three children of Josephine Fajilago from her marriage to her first husband, Roberto Manio. After Roberto's death, Josephine married appellant Renato Ramon. The couple begot three children of their own. Josephine's children from her previous marriage namely, Joe, Geraldine and Analyn lived with her and appellant.

"The first rape was committed by appellant in 1990 when Analyn was about five years old and attending day care schooling. Analyn was alone at her grandmother's house when she was fetched by appellant purportedly to assist him in collecting dried palay. It was about 4:00 P.M. when appellant brought Analyn to an area near the side of the house of her aunt, Jocelyn Fajilago, where the palay had been spread out on a mat and left to dry in the sun. After Analyn fixed the mat, appellant suddenly pushed the unwary child to the mat and took off her panty. He proceeded to unbutton his pants and took out his penis. Appellant positioned himself on top of Analyn and, while continuously kissing the child, forcibly inserted his penis into her vagina. Analyn felt considerable pain and blood oozed out of her vagina. Analyn felt a sticky and hot substance emitted from appellant's sex organ. Appellant, armed with a `balisong', threatened Analyn not to report the incident. After the rape, appellant casually walked towards the direction of the river while Analyn proceeded home. In view of Analyn's tender age, the rape resulted in the dislocation of her legs and pelvic bones which caused her to become temporarily lame. That same night, Analyn reported the incident to her mother in the presence of appellant. Analyn's mother refused to believe her. Neither was she brought to the hospital for treatment.

"The second rape was committed in 1993 when the victim was about

eight years old and in Grade II. Analyn and her sister, Geraldine, were already asleep when appellant came home drunk. Analyn woke up in time to see appellant on top of ten-year old Geraldine who was crying. Analyn saw appellant's penis inserted into her sister's sex organ before the former disengaged from Geraldine and turned his attention to her. In the meantime, appellant instructed Geraldine to dress up. Armed with a 'balisong', appellant removed Analyn's panty and while holding her shoulder, inserted his penis into her vagina. A crying Geraldine pleaded with appellant to spare her sister and to rape her instead. Unmoved by Geraldine's pleas, appellant continued his assault on Analyn even while the latter begged for mercy ('Maawa na po kayo sa akin'.) Appellant warned Analyn not to be noisy. This time, appellant did not ejaculate. Because her mother refused to believe the first rape, Analyn did not report the second rape.

"The third rape happened in 1995 when Analyn was nine years old. The victim was selling cigarettes during the 'Flores de Mayo' held at Aagsalin when her half-sister took ill. The sick child was brought by appellant and Jocelyn to the Medicare Center at Gloria, Oriental Mindoro. Appellant later returned alone to fetch Analyn. He told Analyn to proceed home. Analyn pleaded to be allowed to sleep at her grandmother's house. Appellant refused and instead took her home. There, appellant pushed her on a mat and succeeded in sexually abusing her again. Appellant threatened to kill the child if she told anyone about the rape.

"It was only when appellant tried to rape her again that Analyn finally worked up enough courage to report the sexual abuse to her maternal grandmother, Diosa Fajilago.

"On January 19, 1996, Diosa Fajilago was washing clothes near a river when she was approached by Analyn who narrated to her all that transpired between her and appellant. Diosa asked Analyn why the latter did not report the sexual abuse to her mother. Analyn told her that she did but that Jocelyn refused to believe her. Diosa Fajilago confronted Jocelyn. A belligerent Jocelyn told her mother that it was up to her ('Bahala na kayo') to act on the matter. Diosa Fajilago forthwith filed a complaint with the police authorities in the area. Jocelyn later pleaded to Diosa not to pursue the case. She in fact went to the trial prosecutor's residence in an attempt to have the latter agree to the reduction of the penalty to be imposed in exchange for appellant's entering a plea of guilty to the charge.

"Analyn was brought by Erling, the wife of the Barangay Captain of Banus, and Mira, an employee of the DSWD, to a hospital for medical examination. Analyn who was by then eleven years old, was examined by Dra. Editha Dumlao, Municipal Health Officer of Gloria, Oriental Mindoro."^[1]

The findings of *Dra. Dumlao*, who had conducted the medical examination, were contained in a medical certificate issued by her. Her certification was to the following effect:

"PHYSICAL EXAMINATION:

"Breast: Soft fairly developed, nipples are light pinkish to pale brown surrounded by areola.

"Labia Majora and Minora are normal with one another covering completely the opening of the external opening with occasional thin black pubic hair at Mon's Pubis.

"INJURIES FOUND:

Healed laceration with sharp borders and slightly retracted edge was noted at 3rd, 5th and 9th position about 0.1 cm. each on the face of a watch.

"INTERNAL EXAMINATION:

Admit one middle finger with very slight degree of resistance.

"CONCLUSION:

The above described injuries was noted in the person of Analyn Manio."^[2]

Dra. Dumlao, in her testimony, stated that the hymenal lacerations found on Analyn could be attributed to the penetration of a male sex organ.

The defense presented Josephine Ramon, mother of Analyn, who said that her daughter Analyn was never heard to fret about any sexual transgression, let alone one perpetrated by accused-appellant. What Analyn only complained of, Josephine testified, was the swelling of Analyn's legs. At one time, she brought Analyn to a "*manghihilot*" due to an injury on her left foot which Analyn had sustained when she fell from a mango tree.

Renato Ramon, on his part, denied all the charges against him. He stated that Analyn was only about two years old when he and Josephine got married, and the family lived all together in one house.^[3] He was there to witness his stepdaughters, Analyn and Geraldine, grow up from childhood to puberty. He denied the insinuation that the untimely death of Geraldine could have been due to an infection in her sex organ caused by him.

The trial judge,^[4] in his decision of 10 April 1997, found Renato Ramon guilty of the charge; he concluded:

"WHEREFORE, in view of the foregoing, this court finds the accused RENATO RAMON guilty beyond reasonable doubt of three counts of rape defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act 7659 which took effect only on January 1, 1994, and in the absence of any mitigating circumstance, Renato Ramon is hereby sentenced as follows:

1. RECLUSION PERPETUA for the first rape he committed in 1990 when Analyn Manio was five (5) years old;
2. RECLUSION PERPETUA for the second rape committed in 1993 when Analyn was in Grade II or when she was Eight (8) years old; and
3. DEATH for the rape committed on May, 1995 (Sec. 11, RA, 7659).

"To pay the offended party the sum of FIFTY THOUSAND PESOS for each and every rape committed by way of moral damages (People vs. Ibay, 233 SCRA 15; People vs. Espinosa, 247 SCRA 66; People vs. Sabellina, 238 SCRA 492). Further, accused is hereby ordered to pay the offended party the amount of FIFTY THOUSAND PESOS by way of exemplary damages (People vs. Lao, 249 SCRA 137) and to pay the costs.

"SO ORDERED."^[5]

The death penalty having been imposed on accused-appellant, the records of the case were elevated to this Court for its automatic review.

Accused-appellant, through counsel in this appellate proceedings, bewails his conviction on all three counts of rape; alternatively, he urges, the penalties imposed on him should be lowered. The Office of the Solicitor General takes exception and contends that the decision of the trial court should be affirmed with only the `modification that the civil indemnity to the victim be amended such as would make accused-appellant liable for the amount of P50,000.00 for each of the first two acts of rape and P75,000.00 for the third offense of rape.

The complaint is indeed flawed; it reads:

"CRIMINAL COMPLAINT

"The undersigned, grandmother of the offended party accuses RENATO RAMON of the crime of RAPE, committed as follows, to wit:

"That on or about the month of May, 1995, **and prior thereto**, in barangay Banus, municipality of Gloria, province of Oriental Mindoro, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, RENATO RAMON, by means of force and intimidation, with lewd and unchaste design, did, then and there wilfully, unlawfully and feloniously lay with and have carnal knowledge with the granddaughter of the undersigned, against her (ANALYN MANIO y Fajilago) will and without her consent.

"CONTRARY TO ART. 335 OF THE RPC IN RELATION TO R.A. 7659

Pinamalayan, Oriental Mindoro

January 26, 1996

(Sgd.)
DIOSA FAJILAGO y de
Guzman
(Grandmother of
Offended Party)

"ASSISTED
BY:

(Sgd.)
CESAR A.
ENRIQUEZ
1st Assistant
Provincial
Prosecutor"^[6]

The complaint charges accused-appellant with more than one count of rape by the bare added phrase, "**and prior thereto.**" An indictment for multiple offenses in a single complaint or information transgresses Section 13, Rule 110, of the 1985 Rules on Criminal Procedure which states that a "complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses." Regrettably for accused-appellant, however, he has failed to timely question the above defect, and he may thus be deemed to have waived his objection to the multiplicity of charges. In *People vs. Conte*,^[7] this Court has ruled:

"But was the trial court correct in convicting the appellant of eleven counts of rape?

"Notably, the single complaint filed by Gloria Crisostomo charges the appellant with several crimes of rape, (It states in part `that the said accused . . . did then and there wilfully, unlawfully and feloniously have carnal knowledge *for several times* with . . .' [emphasis supplied].) in violation of Section 13, Rule 110 of the Rules of Court, which provides that a complaint or information must charge but one offense. Under Sections 1 and 3(e) of Rule 117, the appellant, before entering his plea, should have moved to quash the complaint for being duplicitous. For his failure to do so, he is deemed to have waived the defect. (Section 8, Rule 117, Rules of Court; *People vs. Dulay*, 217 SCRA 132 ^[1993]; *People vs. Basay*, 219 SCRA 404 ^[1993]; *People vs. Ducay*, 225 SCRA 1 ^[1993].) Hence, pursuant to Section 3 of Rule 120, the court could convict him of as many offenses as are charged and proved, and impose on him the penalty for each and every one of them."^[8]

It would appear from the records of the case that the defense of accused-appellant consisted basically of a mere denial of the charges. He insisted that he "did nothing," wrong and claimed, "*wala akong kasalanan sa ibinibintang sa akin.*"^[9] In our jurisprudence, a simple denial, unless substantiated by clear and convincing