

## EN BANC

[ G.R. Nos. 132125-26, June 03, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SANTIAGO  
AGSAOAY,<sup>[1]</sup> JR. Y ALVENDIA, APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

For automatic review is the Decision<sup>[2]</sup> dated November 28, 1997 of the Regional Trial Court, Branch 46, Urdaneta, Pangasinan in Criminal Cases Nos. U-9332 and U-9333, convicting Santiago Agsaoay, Jr. y Alvendia, appellant, of two counts of rape (qualified by relationship and minority) and sentencing him to suffer the supreme penalty of death in each count. He was also ordered to pay the victim, his very own daughter Josephine Ferrer Agsaoay, P50,000.00 as moral damages and P20,000.00 as exemplary damages in each count.

The two Informations charging appellant with rape read:

#### **Criminal Case No. U-9333 –**

"That on or about July 15, 1997, at Barangay Malokiat, municipality of Pozorrubio, province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with JOSEPHINE FERRER AGSAOAY, a minor age 17 years old and accused's own daughter, against her will and without her consent, to the damage and prejudice of said JOSEPHINE FERRER AGSAOAY.

"Contrary to Art. 335, Revised Penal Code, as amended by R.A. 7659."<sup>[3]</sup>

#### **Criminal Case No. U-9332 –**

"That on or about July 17, 1997, at Barangay Malokiat, municipality of Pozorrubio, province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo with intent to have sexual intercourse with his own daughter, Josephine Ferrer Agsaoay, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with JOSEPHINE AGSAOAY, a 17 years old minor and accused's own daughter, against her will and without her consent, to the damage and prejudice of said Josephine F. Agsaoay.

"Contrary to Art. 335, Revised Penal Code, as amended by R.A. 7659."<sup>[4]</sup>

Upon arraignment, appellant, assisted by counsel, entered a plea of not guilty to the crimes charged. Thereafter, a joint trial on the merits followed.

The evidence for the prosecution shows that Josephine Ferrer Agsaoay<sup>[5]</sup> is the eldest child of appellant and Corazon Ferrer-Agsaoay. The couple are both farmers. Josephine was born on January 15, 1980 as shown by her Certificate of Live Birth.<sup>[6]</sup> She was 17 years old when the crimes were committed. The couple's five other children are Analyn (16), Winnie (14),<sup>[7]</sup> Gemma (11), Jiovani (6) and Jonalyn (2). They all reside at barangay Malokiat, Pozorrubio, Pangasinan.<sup>[8]</sup>

Very early in the morning of **July 15, 1997**, Corazon left their house and went to the field to uproot palay seedlings. Josephine and her sister Winnie were then sleeping on the second floor of their house,<sup>[9]</sup> while the other members of the family were at the ground floor. Around 3:30 o'clock that morning, Josephine was awakened when appellant suddenly kissed her lips.<sup>[10]</sup> Instinctively, she pushed him away but to no avail as she was too weak and sick.<sup>[11]</sup> He threatened to kill her and her entire family should she report the matter to her mother. She was so terrified and was not able to shout and resist him "because he might kill me as he killed my Uncle Jose" (her mother's brother).<sup>[12]</sup> While he continued kissing her, she tried to awaken Winnie, her younger sister, about 1½ meters away from her, but the latter was fast asleep.<sup>[13]</sup> Appellant then undressed her, spread her legs, held her hands, and inserted his penis into her vagina and made a push and pull movement. It was painful. Minutes later, a hot fluid came out from his penis. After his bestial act, he put on his brief and shorts and went downstairs. For her part, she cried until she fell asleep.<sup>[14]</sup> When she woke up the following morning, she saw blood on her underwear. Meanwhile, appellant went to the farm.

Josephine did not tell Corazon, her mother, about the incident because of her father's threat.<sup>[15]</sup> It was only the following day (July 16, 1997) that she finally mustered enough courage and revealed to her mother what happened. Corazon was shocked but could not report the matter immediately to the authorities. She was scared of him because on August 22, 1990, he killed her younger brother, but he was not imprisoned since "he settled the case."<sup>[16]</sup>

On **July 17, 1997**, appellant ravished Josephine for the second time. As usual, Corazon left the house early to work in the rice field. Josephine and Winnie were still sleeping. About 4:00 o'clock that same morning, Josephine was roused from her sleep when appellant forcibly undressed her. She begged him not to molest her again. Instead, he got a bolo, placed it beside her and said, "Do you want me to cut your neck?" Immediately, he removed his brief, inserted his penis into her vagina and made a push and pull movement. After satisfying his lust, he went downstairs. She could only cry.

When Corazon arrived home in the afternoon of that same day, she saw her daughter crying. Josephine told her mother that appellant sexually molested her again. Despite her plea, her mother refused to report the incidents to the police authorities for fear he might kill all of them.<sup>[17]</sup> Later, however, Corazon and her five children finally went to the Philippine National Police (PNP) station at Pozorrubio<sup>[18]</sup> where Josephine reported the harrowing experiences she suffered in the hands of

appellant.

During the hearing and upon being asked by the trial judge, Josephine declared that she is well aware that if convicted of the charges, appellant would be sentenced to die by lethal injection.<sup>[19]</sup>

On August 1, 1997, Dr. Joseph S. Gomez, Medical Officer of the Pozorrubio Community Hospital, examined Josephine and issued a Medico-Legal Report.<sup>[20]</sup> On the witness stand, he confirmed his report that she has "healed hymenal lacerations at 3:00 and 8 o'clock positions;" that her "vaginal canal admits one finger with ease;"<sup>[21]</sup> and that the lacerations could have been caused by a hard and blunt instrument such as an erect penis which "could have occurred as early as the 15<sup>th</sup> of July, 1997, or even closer to the day of examination (August 1, 1997)."<sup>[22]</sup>

Appellant vehemently denied the charges. He testified that around 3:00 o'clock in the morning of July 15, 1997, he was sleeping at the ground floor of their house when he heard someone asking his wife to go to the field to uproot *palay* seedlings. Then his wife went upstairs. Later, his daughter Winnie accompanied him to the field to pasture their animals. When they returned home, he got his fish net and proceeded to the river to catch fish. He was home three hours after.<sup>[23]</sup>

On July 17, 1997, appellant was also at home. He woke up in the morning and saw his wife and two children still sleeping on the bamboo bed at the ground floor of their house. Afterwards, he went to the field to pasture animals.<sup>[24]</sup>

In the early afternoon of July 31, 1997, appellant arrived home from the farm and found their house in disarray. When his wife arrived, he got angry and told her to stop gambling. He then cooked their food and ate with his children. Then he returned to the farm. He arrived home about 6:00 o'clock in the evening and saw his daughter Josephine and a man on their bamboo bed holding hands. He slapped Josephine and the man left. Moments later, his nephew arrived and invited him to join him in his (nephew's house) because he slaughtered a pig. When appellant asked permission from his wife to join his nephew, she scolded him resulting in a heated argument. Josephine intervened, but he slapped her and his wife, prompting them to leave. He followed them but he could not find them. So he went home and sleep. About 12:00 o'clock midnight, he was awakened by policemen who invited him to their station at Pozorrubio. There he was detained after having been informed that Josephine filed complaints for rape against him.<sup>[25]</sup>

According to appellant, he "always inflicts physical violence on Josephine for going around with different men,"<sup>[26]</sup> the reason why she charged him with rape. There were times he saw her "with another man, so I punished her."<sup>[27]</sup> He also claimed that his wife was sore at him when he told her that he will separate from her as he could not stop her from gambling.<sup>[28]</sup>

Appellant's daughter Winnie also testified. Considering that she was only 1½ meters away from Josephine, appellant maintains that he could not have committed the crimes. Winnie declared that on July 15, 1997, around 3:15 o'clock in the morning, she and Josephine were sleeping at the second floor of their house. Their mother woke her up and asked her to accompany her to the rice field to uproot palay

seedlings. She refused because she had to study her lessons for her school examination that day. At 5:00 o'clock that morning, however, she accompanied her father to the field and helped him pasture their carabao and goats. An hour later, she went to school at Don Benito National High School.<sup>[29]</sup>

Winnie further testified that on July 17, 1997, she woke up at 5:30 in the morning to prepare breakfast. Josephine was still asleep. Her mother was sleeping downstairs, while her father was preparing the things to be brought to the farm. After breakfast, she went to school. She learned at the Pozorrubio Police Station that Josephine filed two complaints for rape against their father.<sup>[30]</sup>

On November 28, 1997, the court a quo rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, finding accused SANTIAGO AGSAOAY, JR., **guilty** beyond reasonable doubt of the crime of **rape aggravated by relationship and age**, the court sentences said Santiago Agsaoay, Jr., the following:

1. In CRIMINAL CASE No. U-9332, to suffer the penalty of **death**, to be implemented in the manner provided by law. Accused is likewise ordered to pay Josephine Agsaoay the amount of P50,000.00 as moral damages, and further sum of P20,000.00 as exemplary damages;
2. In CRIMINAL CASE No. U-9333, to suffer the penalty of **death**, to be implemented in the manner provided by law. Accused is likewise ordered to pay Josephine Agsaoay the amount of P50,000.00 as moral damages, and further sum of P20,000.00 as exemplary damages.

"SO ORDERED."

Appellant now seeks the reversal of the trial court's Decision on the following grounds:

"I

THE TRIAL COURT GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONY OF JOSEPHINE AGSAOAY.

"II

THE TRIAL COURT LIKEWISE ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF RAPE."<sup>[31]</sup>

For his part, the Solicitor General, in his Appellee's Brief, disputed appellant's claim and prayed that the assailed Decision be affirmed.

In his Reply Brief, appellant prayed that "should this Honorable Court find him guilty, he should only be convicted of SIMPLE RAPE and be given the penalty of reclusion

perpetua.”<sup>[32]</sup>

The two crimes of rape, as alleged in the Informations, were committed on July 15 and 17, 1997. Hence, the law applicable to the cases at bar is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,<sup>[33]</sup> which provides:

“Article 335. *When and how rape is committed.* – Rape 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.

The crime of rape shall be punished by **reclusion perpetua**.

x x x

The **death penalty** shall also be imposed if the crime of rape is committed with **any of the following attendant circumstances:**

1. When the **victim is under eighteen (18) years of age** and the **offender** is a **parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, **or the common-law spouse of the parent of the victim.**

x x x.” (Underscoring ours)

The above provisions of the amendatory law classify rape as either simple or qualified. It is qualified when any of the qualifying/aggravating circumstances which attended the commission of the crime – as when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree – is alleged in the Information and proven during trial.<sup>[34]</sup> A finding of qualified rape raises the penalty to death.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.<sup>[35]</sup> Consequently, for the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman and (2) he accomplished such act through force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented.<sup>[36]</sup>

The sole important issue in a rape case is the credibility of the victim’s testimony, in view of its nature in which only two persons are normally involved.<sup>[37]</sup> Hence, in adjudicating such issue, jurisprudence has established the following guidelines: (1) the victim’s testimony must be scrutinized with extreme caution since an accusation of rape can be made with facility, but difficult for the accused to disprove it; and (2) when her testimony meets the test of credibility, the accused may be convicted solely on the basis thereof.<sup>[38]</sup>