

## EN BANC

[ G.R. No. 137401-03, February 06, 2002 ]

### PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS MARCELLANA, ACCUSED-APPELLANT.

#### DECISION

##### PER CURIAM:

This is an automatic review of the decision dated January 21, 1999 of the Regional Trial Court, Fifth Judicial Region, Branch 7, Legazpi City in Criminal Cases Nos. 7584, 7585 and 7586 for three (3) counts of Rape, the dispositive portion of which reads:

"PREMISES CONSIDERED, the Court finds the accused TOMAS MARCELLANA, as having committed beyond reasonable doubt the crime of RAPE against her (sic) daughter FRANZIA MARCELLANA, who was sixteen (16) years old at the time of the incidents complained of. He is therefore declared GUILTY of the crime as charged on three (3) counts.

"Pursuant to the provisions of Article 335 of the Revised Penal Code, as amended, Under Criminal Case No. 7584, the accused is hereby sentenced to suffer the penalty of DEATH. He is likewise ordered to pay the victim the amounts of Php50,000.00, as damages for the offense of rape, Php30,000.00 as moral damages, and Php20,000.00 as exemplary damages.

"Under Criminal Case No. 7585, accused is likewise hereby sentenced to suffer the penalty of DEATH and ordered to pay the victim the amounts of Php50,000.00 as damages for the offense of rape, Php30,000.00 as moral damages, and Php20,000.00 as exemplary damages.

"Under Criminal Case No. 7586, accused is also hereby sentenced to suffer the penalty of DEATH and ordered to pay the amounts of Php50,000.00 as damages for the offense of rape, Php30,000.00 as moral damages, and Php20,000.00 as exemplary damages.

"SO ORDERED."<sup>[1]</sup>

The antecedents of the case are as follows:

Private complainant Francia Marcellana testified that her father, accused-appellant Tomas Marcellana, had been raping the former since 1992, the last of which happened on November 10 and 12, and December 5, 1996. The incidents usually happen at about 7 o'clock in the morning when Francia is left alone in their house, as her classes start at 11:00 a.m. At this time, her brothers and sisters are already in school while her mother is in the farm. Accused-appellant also goes to the farm early but returns before 7:00 a.m., at which time Francia's ordeal at the hands of

her father begin. He would drag Francia inside the bedroom, undress her, lay her down on the bed and tie her hands and feet to the farm posts of the bed. Accused-appellant would then take off his shorts and brief, lay on top of Francia and make a *push and pull* movement for about three minutes. Thereafter, accused-appellant would put on his brief and shorts, untie one of the hands of Francia and leave her. The latter would then untie her other hand and feet.<sup>[2]</sup> She could not tell her mother as well as her siblings about the incidents because she was always threatened by accused-appellant. It was only in December of 1996 when Francia, suspecting that she might be pregnant, gathered enough courage to reveal her ordeal to her mother.<sup>[3]</sup> Since her mother did not initially believe her, Francia went to her high school teacher<sup>[4]</sup> who helped her secure assistance from the Department of Social Welfare and Development.<sup>[5]</sup>

Dr. Jose Cope, the Municipal Health Officer of Daraga, Albay, conducted a medical examination on Francia and found one deep old hymenal laceration at 1:00 o'clock and multiple superficial lacerations at 3:00, 5:00, 9:00, 11:00 and 12:00 o'clock positions.<sup>[6]</sup>

On January 15, 1997, a criminal complaint was filed against accused-appellant Tomas Marcellana on the basis of which accused-appellant was charged in three separate informations for Rape, thus:

"CRIMINAL CASE NO. 7584

"The undersigned PROSECUTOR II, upon sworn written complaint of private complainant FRANCIA MARCELLANA, hereby accuses TOMAS MARCELLANA, of the crime of RAPE, committed as follows:

"That on November 10, 1996 at 7:00 o'clock in the morning, more or less, at Barangay Kilicao, Municipality of Daraga, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own 16 years old daughter, FRANCIA MARCELLANA, against her will and consent, to her damage and prejudice.

"ACTS CONTRARY TO LAW."<sup>[7]</sup>

"CRIMINAL CASE NO. 7585

"The undersigned PROSECUTOR II, upon sworn written complaint of private complainant FRANCIA MARCELLANA, hereby accuses TOMAS MARCELLANA, of the crime of RAPE, committed as follows:

"That on November 12, 1996 at 7:00 o'clock in the morning, more or less, at Barangay Kilicao, Municipality of Daraga, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own 16 years old daughter,

FRANCIA MARCELLANA, against her will and consent, to her damage and prejudice.

"ACTS CONTRARY TO LAW."<sup>[8]</sup>

"CRIMINAL CASE NO. 7586

"The undersigned PROSECUTOR II, upon sworn written complaint of private complainant FRANCIA MARCELLANA, hereby accuses TOMAS MARCELLANA, of the crime of RAPE, committed as follows:

"That on December 5, 1996 at 7:00 o'clock in the morning, more or less, at Barangay Kilicao, Municipality of Daraga, province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own 16 years old daughter, FRANCIA MARCELLANA, against her will and consent, to her damage and prejudice.

"ACTS CONTRARY TO LAW."<sup>[9]</sup>

Upon arraignment on August 28, 1997, accused-appellant pleaded *not guilty* to each of the offenses charged.<sup>[10]</sup>

In disowning liability, accused-appellant simply denied the same and argued that the charges were mere fabrications as a consequence of an isolated incident wherein he reprimanded her daughter, herein complainant, for going home late.<sup>[11]</sup>

After trial on the merits, accused-appellant was found guilty beyond reasonable doubt of the crimes charged and was sentenced accordingly. Hence, this case before us for review.

In his brief, accused-appellant raised the following errors:

"ASSIGNMENT OF ERRORS

"I.

"THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

"II.

"THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT IN EACH OF THE THREE (3) RAPE CHARGES.

"III.

"ASSUMING ARGUENDO THAT ACCUSED-APPELLANT INDEED HAD SEXUAL INTERCOURSE WITH PRIVATE COMPLAINANT, NONETHELESS, THE COURT ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH, CONSIDERING THAT THE ESTABLISHED FACTS SHOW THAT, IF

EVER A CRIME IS COMMITTED, THE SAME IS ONLY QUALIFIED SEDUCTION.”<sup>[12]</sup>

The first and the second assigned errors were explained simultaneously in appellant’s brief. Consequently, We will examine and discuss them jointly.

Three indications, allegedly upholding accused-appellants innocence, were laid down. First, accused-appellant points to the delay in reporting the incidents complained of.

We are not persuaded. The delay and initial reluctance of a rape victim to make public the assault on her virtue is neither unknown or uncommon.<sup>[13]</sup> Particularly in incestuous rape, this Court has consistently held that delay in reporting the offense is not indicative of a fabricated charge.<sup>[14]</sup>

“Delay in reporting a rape incident neither diminishes complainant’s credibility nor undermines the charges of rape where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, **specially by one who exercised moral ascendancy over the victims.** (underscoring supplied)”<sup>[15]</sup>

Moreover, the young victim might just opt to bear the ignominy and pain in private rather than reveal her shame to the whole world.<sup>[16]</sup> She may also be too overwhelmed with fear and confusion as to why her very own father would commit such a nefarious act.<sup>[17]</sup>

In the case before us, Francia’s ordeal in the hands of her father began in 1992.<sup>[18]</sup> Based on her Certificate of Live Birth,<sup>[19]</sup> Francia was then only twelve years old. At that young age and with the naivete and innocence that comes with provincial upbringing, the callow Francia was undoubtedly under her father’s moral authority and influence. This ascendancy over her together with the constant threats from her father, Francia could not possibly be expected to come out in the open. It took her four more years of prolonged abuse as well as the threat of a more humiliating circumstance – that of being pregnant – to gather enough courage in finally revealing her ordeal.<sup>[20]</sup> Withal, we do not consider the delay to be fatal.

With regard to the second indication, accused-appellant lays too much emphasis on the accuracy of the frequency offered by Francia regarding the number of times she was raped.

In **People vs. Alicante**,<sup>[21]</sup> this Court aptly said,

“The other inconsistencies refer to minor details such as how many times she was raped during a certain month. These do not create a reasonable doubt as to whether or not accused-appellant raped his daughter. It must be remembered that the victim is a girl of tender age who was sexually attacked by her father several times during a period of less than a year.

“It is not expected that Richelle would remember every single detail of every single rape. It is understandable, even anticipated, that there