

EN BANC

[G.R. No. 143030, March 12, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO PORTUGAL Y GALLARDO, ACCUSED-APPELLANT.**

DECISION

MELO, J.:

Before us on automatic review is the decision dated January 18, 2001 of Branch 40 of the Regional Trial Court of the Fourth Judicial Region stationed in Oriental Mindoro, in its Criminal Case No. C-4739, finding appellant Reynaldo Portugal guilty of rape and sentencing him to suffer the supreme penalty of death.

Appellant's conviction for said crime arose from an Information reading as follows:

That on or about the 4th day of March, 1995, at around 7:00 o'clock in the evening, at Barangay Canubing I, Municipality of Calapan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the step-father of the offended party Maricel Abela y Apelado, motivated by diabolical desire and by means of force and intimidation wilfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge of said MARICEL ABELA against her will and consent.

Contrary to Law.

(p. 3, Rollo.)

Appellant pleaded not guilty to the charge and stood trial, resulting in a judgment of conviction, disposing:

ACCORDINGLY, finding herein accused Reynaldo Portugal y Gallardo guilty beyond reasonable doubt as principal of the crime of Rape with the qualifying circumstance that the victim was under 18 years of age at the time of the commission of the offense and that the offender is the step-parent of the victim, the Court hereby sentences said accused Reynaldo Portugal y Gallardo to suffer the maximum penalty of death, with all the accessory penalties imposed by law, and to indemnify the victim Maricel Abela y Apelado, the amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages and P50,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

(p. 16, Rollo.)

The prosecution's version of the events is based principally on the testimony of the victim, Maricel Abela; Dr. Cresencia Gutierrez, the examining resident physician of the Oriental Mindoro Provincial Hospital; Angeles Marasigan, barangay captain of Canubing I, Calapan City; and Nelly F. Asturias, Local Civil Registrar of Calapan City.

Maricel testified that on March 4, 1995 at around 7 o'clock in the evening, she was home taking care of her baby brother. Suddenly, appellant Reynaldo approached her and started to undress her. Maricel resisted and earnestly begged appellant to stop, pleading "*huwag po*", several times. Appellant paid no heed to Maricel's pleas and instead told her not to cry, otherwise, she will be killed.

Maricel could not do anything anymore, and so appellant was able to carry out his vicious plan. Naked as he was, appellant laid himself on top of Maricel and inserted his penis into her vagina. Maricel no longer fought back as she was continuously threatened by him. Thereafter, appellant, with a standing order that she must not report the matter to anyone, left. Maricel, on the other hand, proceeded to her grandmother's house which is just 5 meters away from theirs and spent the night over. It was her intention to divulge to her uncle, who at that time was in her grandmother's house, the ordeal she just went through. But she held back as she was haunted by appellant's fulminations.

The next day, Maricel intimated to her mother her tribulation. However, she was instead accused by her mother of being a liar. This urged her to look for her Uncle Obet, her mother's brother, to report the incident. Unable to do so, Maricel sought refuge in the solicitude of their barangay captain, Angeles Marasigan. Consequently, Maricel's mother was summoned by said barangay captain to inform her of Maricel's condition. Later, Maricel was brought to the hospital for examination.

Prosecution witness Dr. Cresencia Gutierrez, resident physician of the Oriental Mindoro Provincial Hospital where Maricel was brought, testified that she conducted a physical examination of Maricel. She revealed that Maricel's vagina admits the small finger with ease, with an area of erythema around the hymen; and the cervix is closed with multiple old hymenal lacerations at 3, 5, 6, 8, and 9 o'clock positions which could have been sustained through sexual intercourse (pp. 11-13, tsn, May 9, 1996).

Nelly F. Asturias, the local Civil Registrar of Calapan City, presented the birth certificate of the victim showing that she was born on May 1, 1982.

Appellant denied the charges leveled against him and claimed that at around 7 o'clock on the evening of March 4, 1995, he was having a drinking spree with his four other companions which lasted until 11 o'clock that same night. He recalled that a week prior to the alleged rape incident, he scolded Maricel for having disobeyed her mother. But instead of showing remorse Maricel displayed animosity and disrespect towards him, for which behavior he slapped her.

Appellant also mentioned an earlier cuffing incident. Allegedly, when he confronted Maricel about her baby brother whom she was supposed to take care of but fell from the crib and sustained an injury, Maricel answered back, "Why don't you look for someone to take care of the child?"

The trial court did not accord credence to the testimony of appellant, pointing out

that denial and alibi are purely self-serving and deserve scant consideration. Further, appellant failed to present any witness to corroborate his alibi. The trial court found the victim's testimony unbridled and unadulterated. It characterized Maricel's testimony as categorical, straightforward, spontaneous, and frank.

Aggrieved, appellant is now before us insisting on his innocence, anchoring his plea for reversal upon the following assigned errors:

I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT ANENT THE INCIDENT IN QUESTION.

II

THE TRIAL COURT ERRED IN NOT GIVING EVIDENTIARY WEIGHT TO THE EVIDENCE ADDUCED BY THE DEFENSE AND IN NOT DISREGARDING THE TESTIMONY OF THE PRIVATE COMPLAINANT CONSIDERING THAT SHE WAS MOTIVATED BY ILL-WILL.

III

THE TRIAL COURT ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

IV

GRANTING FOR THE SAKE OF ARGUMENT THAT THE ACCUSED-APPELLANT IS GUILTY OF RAPE, NONETHELESS, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE DEATH PENALTY NOTWITHSTANDING THE FACT THAT THE QUALIFYING CIRCUMSTANCE OF MINORITY WAS NOT ALLEGED IN THE INFORMATION, HENCE, THE APPROPRIATE PENALTY SHOULD ONLY BE RECLUSION PERPETUA.

(pp. 29-30, Rollo.)

In a prosecution for rape, the complainant's credibility becomes the single most important issue. 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 the evidence for the prosecution must stand or fall on its own merits and should not be allowed to gain validity from the lack of evidence for the defense.

In the instant case, after a meticulous examination of the evidentiary record, we find it difficult to conceive that Maricel would reveal and admit the sexual abuse she suffered if it were not true. It would be highly improbable for Maricel, against whom no proof of sexual perversity or loose morality has been shown, to fabricate charges.

The Court usually accords confidence and weight to the testimony of a child who is a victim of sexual assault because ordinarily, no person would be willing to undergo