

EN BANC

[G.R. No. 135049, May 28, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARTURO OCOMEN Y ABRASALDO, ACCUSED-APPELLANT.**

DECISION

KAPUNAN, J.:

Before this Court for automatic review is the Decision^[1] of the Regional Trial Court of Urdaneta, Pangasinan, Branch 46, in Criminal Case No. U-9581, which found accused-appellant Arturo Ocomen y Abrasaldo guilty beyond reasonable doubt of the rape of his fifteen-year-old daughter, Kristine Ocomen,^[2] and imposed upon him the death penalty.

Accusing her father of having raped her sometime in February 1998, Kristine executed an affidavit on March 3, 1998,^[3] stating therein among others:

04. Q Why are you filing a complaint against your father?

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A He sexually abused me once & attempted to sexually abuse me once also, against my consent, sir.

05. Q When & where did these happen?

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A Sometime in February 1998, last month, at about 11 o'clock in the evening, at Brgy. Cabacaraan, San Miguel, Pangasinan, and on or about 8:00 o'clock in the morning of March 3, 1998.

06. Q Please state briefly on how did these happen?

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A Sometime in February 1998, last month, at about 11:00 o'clock in the evening, while I & my two younger brother, Arvin & Rodolfo Ocomen, were sleeping inside our room, my father woke me up & told me to go with him downstairs[s]. I queried him why and answered me (sic) to go with him downstair[s] & at the same time pulled my hand to follow him. Upon reaching downstair[s], he told me to have sex with him which I refused prompting him to slap my face & head repeatedly. After he stopped slapping me, I went back to the upper floor to sleep again. About 5 minutes after, he came back to me & told me again to have sex with him. When I refused again, he tried to persuade/insist to have sex with him & I continued refusing him. Then he went downstair[s] to get

a chord (sic) & when he came back he tied my both hands behind my back. He then ripped off my t-shirt & bra & pulled my short pants & panty down to my legs. Then I started to cry & pleaded to him not to continue his sexual desire but refused to heed my plea. Then, he laid on top of me & inserted his penis inside my vagina. After satisfying himself, he went downstairs.

07. Q Were your two brothers awakened when you were crying while being sexually abused by your father?

A Only my brother, Arvin Ocomen was awakened but he was scolded by our father when he was asking to (sic) our father why I was crying, sir.

08. Q Was the incident repeated?

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A No more, 'sir. But he again attempted to sexually abused (sic) me against my consent, sir.

09. Q When & where did this happen?

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A While I was lying inside our room at the upper floor (same place), he came up & ordered me to undress but when I refused, he ripped off my t-shirt & thereafter, he took off my bra. He then tied my both hands behind my back. Because I was crying my aunt, Moderna Tolete, heard me & went upstairs & upon seeing me, he asked my father '*Apay nga ikaskastam ta anak mo*' and answered her '*Awan ti pakibiabiangam.*' After that, they exchanged heated words & moments later, my aunt, Moderna, went downstairs & then my father followed, sir.

Accordingly, the following information was filed by the Provincial Prosecutor on April 3, 1998:

That sometime in February 1998, in the evening at Barangay Cabacaraan, San Manuel, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, violence and intimidation, did, then and there wilfully, unlawfully and feloniously (sic) tie the hands of Kristine Ocomen y Tolete, a minor, 15 years of age and accused's own legitimate daughter and thereafter have sexual intercourse with her without the latter's consent and against her will, to her damage and prejudice.

CONTRARY to Art. 335, Revised Penal Code, as amended by R.A. 7059 (sic) and R.A. 8353.^[4]

The case was docketed as Criminal Case No. U-9581.

On May 5, 1998, Kristine executed an affidavit of desistance before Provincial Prosecutor Restituto Dumlao, Jr., alleging that she had long forgiven the accused and, hence, she was no longer interested in his prosecution. She also manifested

her desire for the dismissal of the case she filed against her father.^[5] Nevertheless, on May 26, 1998, Arturo Ocomen was arraigned and pleaded not guilty to the accusation. Trial on the merits ensued.

The prosecution presented Dr. Noel Obedoza of the Don Amadeo J. Perez, Sr. Memorial General Hospital in Urdaneta, Pangasinan. He testified that on March 3, 1998, he conducted a medical and physical examination on a rape victim, identified as Kristine Ocomen.^[6] His examination showed that Kristine's hymen was ruptured at 2, 6, 9 and 12 o'clock positions.^[7] The lacerations were already healed and could be about two (2) weeks old at the time of the examination.^[8] The lacerations were caused by a hard foreign object, which could be an erect male organ.^[9] However, he found no laceration or injuries on the upper part of the victim's body. ^[10]

The prosecution likewise presented SPO3 Avelino Sandi, Jr. of the Philippine National Police (PNP) San Miguel, Pangasinan, who testified that on March 3, 1998, he received a complaint from Panchito Salioa, *Barangay Kagawad of Barangay Cabacaraan* that Kristine Ocomen was raped by her father Arturo Ocomen.^[11] He went to Cabacaraan, together with SPO3 Gregorio Antonio and Eduardo Banggi to investigate and arrest the accused. Arturo initially refused to go with the policemen but later on, he was prevailed upon to accompany them to the police station.^[12] At the police station, he took the statements of Kristine as well as of Salioa and Moderna Tolete.^[13]

For a while, trial of the case could not be conducted because Kristine, who was summoned to testify, could not be located. On June 1, 1998, the trial court issued an order for her arrest for her failure to attend the hearing.^[14] However, SPO1 Rodolfo Abat Estacio reported that Kristine could not be located.^[15] The trial court ordered Police Senior Inspector Rodolfo Ramos Tadeo to explain why both Kristine and Panchito Salioa could not be located. In the same order, a representative of the local Department of Social Welfare and Development (DSWD) of San Miguel, Pangasinan was directed to appear before the court.^[16] On even date, another order was issued directing the Head of the CIG/PNP Urdaneta Detachment to locate Kristine and to bring her to the DSWD, Lingayen, Pangasinan.^[17]

It would appear that on March 5, 1998, Salioa and Carlos M. Tolete, Sr., uncle of Kristine, entered into an agreement with the Municipal Social Welfare and Development Officer of San Manuel where they manifested their willingness to take custody of Kristine. They also held themselves responsible for the safety and protection of Kristine, as well as her appearance during court hearings.^[18] Still, the police could not locate Kristine and during the hearing on June 15, 1998, the trial court gave the police and the DSWD three (3) days within which to produce Kristine.
^[19]

Finally, on June 22, 1998, Kristine Ocomen gave her testimony before the trial court. She recounted that sometime in February 1998, at around 11 o'clock in the evening, she was sleeping beside her 12-year old brother in their house when her father, Arturo Ocomen removed her t-shirt and shorts and "raped" her.^[20] She likewise testified that before the act of rape, her father slapped her on the head several times because she refused to have sex with him. ^[21] However, while Kristine

testified that she voluntarily reported the incident to the police and that she executed a sworn statement, she refused to affirm her answer to question no. 6 [22] of the sworn statement on the particulars of the act of rape. [23]

During the hearing on June 23, 1998 and after the prosecution rested its case, the defense manifested his intention to file a demurrer to evidence for "insufficiency of evidence," but the court intimated that it would not grant any motion and ordered the defense to present evidence. [24]

Only Arturo Ocomen testified for the defense. He admitted that Kristine is his daughter and that she was born in December 1982. [25] He likewise admitted that sometime in February 1998, at around 11 o'clock in the evening, he woke up Kristine [26] but denied that he slapped her and forced her to have sex with him. [27] He recalled that he only wanted her to boil some water for his coffee because he just came from the ricefield. After waking her up, he went downstairs to their kitchen and waited for Kristine to follow him but she did not heed his order [28] so he just went to sleep. [29] He surmised that Kristine filed a case against him because he scolded her. [30]

After trial, judgment was rendered against the accused, as follows:

WHEREFORE, JUDGMENT is hereby rendered CONVICTING the accused beyond reasonable doubt of the crime of RAPE aggravated by relationship (between father and daughter below 18 years old) and the Court sentences ARTURO OCOMEN to suffer the penalty of DEATH to be implemented in the manner as provided for by law. The accused is hereby ordered to pay Kristine Ocomen the sum of P50,000.00 as moral damages and P20,000.00 as exemplary damages.

The Clerk of Court is hereby ordered to prepare the Mittimus and to transmit the complete records of this case to the Honorable Supreme Court.

The Warden, Bureau of Jail Management and Penology is hereby ordered to immediately deliver the person of Arturo Ocomen to the National Bilibid Prisons, Muntinlupa City, with proper escort and security.

SO ORDERED. [31]

Accused-appellant now avers that:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED DESPITE THE DISCREPANCIES AND INCONSISTENCIES BETWEEN THE TESTIMONY OF PRIVATE COMPLAINANT AND HER SWORN STATEMENT.

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY

DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE MINORITY OF THE ALLEGED RAPE VICTIM AND HER FILIATION WITH THE ACCUSED. [32]

Ordinarily, the conclusions of the trial courts command great weight and respect [33] unless the trial judge overlooked certain facts of substance and value which, if considered, might affect the result of the case, [34] in which case this Court is compelled to reassess the findings reached by the trial judge. After a careful evaluation of the records of this case, the Court finds that the acquittal of accused-appellant is in order.

It is well-settled that while an absolute guarantee of guilt is not demanded by law to convict a person of a crime, there must at least be moral certainty that each element essential to constitute the offense and the identity of the person who committed the same are established by the prosecution. [35] To sustain a conviction for the crime of rape as charged, it is necessary for the prosecution to allege and prove the following basic elements: (1) sexual congress; (2) with a woman; (3) by force and without consent, and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen [18] years of age at the time of the rape; and (5) the offender is a parent [whether legitimate, illegitimate or adopted] of the victim. [36]

In the case before us, the fact of rape was not sufficiently proved by the prosecution. On direct examination, Kristine testified as follows:

PROS. MENESES:

I just withdraw that:

Q Did you experience an unusual event on February, 1998 at around 11:00 o'clock in the evening?

WITNESS:

A Yes, sir, there is.

Q What incident was that?

A ***My father raped me sir.***

Q Where were you at that time when you said that your father raped you?

A At home sir.

Q Where in particular at your home?

A Upstairs sir.

Q And what are you doing at that time?

A I was sleeping sir.

Q And how did your father rape you, can you please