

EN BANC

[G. R. Nos. 142928-29, September 11, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RENATO TAMSI Y ACOSTA, ACCUSED-APPELLANT.**

D E C I S I O N**CARPIO, J.:**

In incestuous rape cases, the presence of the special qualifying circumstances of the complainant's minority and relationship with the accused warrants the imposition of the death penalty. However, the prosecution must prove the twin circumstances with the same certainty and clearness as the crime itself. Proof beyond reasonable doubt is the standard required in proving the complainant's minority and kinship with the accused. This is understandably so because the life of the accused is at stake. Anything short of proof beyond reasonable doubt will not justify the imposition of the extreme penalty of death. The proper penalty in such a case is *reclusion perpetua*.

The Case

This is an automatic review of the decision^[1] of the Regional Trial Court, Branch 4, Balanga, Bataan, finding appellant Renato Tamsi ("appellant" for brevity) guilty of two counts of rape. The trial court sentenced appellant to suffer the penalty of death for each count of rape and to pay the complainant Remily Tamsi ("Remily" for brevity) the amounts of P 75,000.00 as civil indemnity and P50,000.00 as moral damages in each of the two cases.

The Charge

The public prosecutor charged appellant of raping Remily, appellant's own daughter, on April 19, 1996 and July 16, 1996. Except for the dates of the commission of the rapes, the two Informations against appellant read alike, thus:

"That on or about [date]^[2] at Lupang Pangako, Brgy. Mt. View, Mariveles, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused thru force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed to have sexual intercourse with the offended party REMILY M. TAMSI, a 13 year-old minor girl, who is his daughter, against the will and consent of the latter, to her damage and prejudice."^[3]

Arraignment and Plea

On October 22, 1996, appellant, assisted by counsel, pleaded not guilty to the two Informations of rape.^[4] The Informations for the rape committed on April 19, 1996

and July 16, 1996 were docketed respectively as Criminal Case Nos. ML-1098 and ML-1097. The two cases were then consolidated and jointly tried.

The Trial

The prosecution submitted documentary evidence and presented four witnesses, namely: (1) Remily; (2) Emily Tamsi ("Emily" for brevity), the mother of Remily; (3) Dr. Josephine del Carmen ("Dr. del Carmen" for brevity), a resident physician of the Bataan Provincial Hospital; and (4) Loida S. Caubalejo, an employee of the Department of Social Work and Development. The defense presented the following witnesses: (1) appellant; (2) Benito Tamsi, Sr. ("Benito, Sr." for brevity), older brother of appellant; and (3) Benito Tamsi, Jr. ("Benito, Jr." for brevity), nephew of appellant. The defense did not adduce any documentary evidence.

The Version of the Prosecution

The Office of the Solicitor General summarizes the testimonies of the prosecution witnesses as follows:

"Remily Tamsi, the victim, testified that on two (2) occasions, April 19, 1996, her father's birthday and on July 16, 1996, while they were afflicted with chicken pox, she was raped by her father inside their house at Lupang Pangako, Mariveles, Bataan (p. 4, TSN, January 7, 1997).

On April 19, 1996, about 10:00 o'clock in the evening while the young Remily was resting, lying down, and was about to sleep, her father entered her room wearing white T-shirt and black shorts and then proceeded to her bed (p. 5, *ibid.*). She suddenly stood up but was pushed by her father back to her bed (*ibid.*). Then he held up her two (2) hands and removed her clothes (p. 6, *ibid.*). She was then wearing a t-shirt and pink pajamas (*ibid.*). Her father removed first her shirt, then her pajamas and panties (*ibid.*). While her father was removing her panties, he told her not to shout (*ibid.*). She remained silent afterwards as she was threatened by her father not to tell her mother otherwise, he would kill her (*ibid.*). After her clothes were removed, her father removed his clothes and raped her. She felt something come out from his organ (p. 7, *ibid.*). She tried to get away from him but was unsuccessful (*ibid.*).

After the rape, said minor victim felt severe pain all over her body, but remained silent and just cried as she was threatened not to tell her mother what happened on his threat that he would kill her (p. 10, *ibid.*). She was threatened by appellant while he was undressing her and after he raped her (p. 19, *ibid.*).

Remily's father also went to her on July 16, 1996 as she was sleeping inside her room (p. 12, *ibid.*). When she woke up, she saw him in front of her (p. 12, *ibid.*). He had entered her room and went inside her mosquito net (p. 13, *ibid.*). As she stood up, her father told her not to create noise or shout (p. 14, *ibid.*), and she felt afraid (p. 14, *ibid.*). Then, her father undressed her and he too undressed himself, and then he sexually violated her (*ibid.*). Afterwards, he dressed up and proceeded to his room (*ibid.*).

Emily Tamsi, mother of the minor victim, testified that she noticed on July 17, 1996 that her daughter was restless and acting not herself (p. 2, TSN, January 29, 1997). So Emily had a heart-to-heart talk with her young daughter and learned of the two rape incidents (*ibid.*). After her daughter was examined at the Bataan Provincial Hospital, they went to the Investigation Section of the Police Station at the Municipal Building of Mariveles, Bataan, to file the case against her husband (p. 8, *ibid.*).

Dr. Josephine T. del Carmen, who was then a resident physician of the Bataan Provincial Hospital under the OB-Gyne Section since February 1996, gave her testimony: that upon medical examination, she found the victim with no hematoma, no abrasion, but with scabs and scars which, according to her, were due to chicken pox, axilla with few axillary hair; that her breast was globular with light brown areola and inverted nipple; that the most important state is the genitalia, with few pubic hair; the labia mejora and labia minora were closely opposed; the hymenal ring had deep healed laceration at 3, 9 o'clock positions with superficial healed laceration at 11 and 1 o'clock positions, post fourchette U shape, which examination was marked as Exhibit "C". She examined the victim and found old lacerations (pp. 3-7, TSN, January 22, 1997)."[5]

The Version of the Defense

Appellant denies raping Remily, his daughter. In this appeal, appellant recounts the testimonies of the defense witnesses, to wit:

"The defense presented Renato Tamsi, the accused himself. When his counsel propounded questions to him, he kept on responding that he could not remember anymore. His counsel made a manifestation and asked for a motion for mental examination. (TSN, March 25, 1997, pp. 2-6) On the next hearing, the counsel moved for the withdrawal of his representation because the accused was uncooperative (TSN, April 8, 1997) which the lower court, however, denied.

The defense presented Benito Tamsi, Jr. He testified that on April 19, 1996 while cleaning their vehicle, he borrowed a screwdriver from Renato Tamsi upon the instruction of his father. That Renato asked him to sleep in Renato's house because they were sick. That he and his mother slept at the house of Renato. (TSN, April 22, 1998, pp. 6-10).

The next witness for the defense was Benito Tamsi, Jr.. He testified that on April 19, 1996, Renato Tamsi arrived and because it was the latter's birthday they had a drinking spree from 4:00 o'clock in the afternoon to 7:00 o'clock in the evening. Then, he proceeded to his in-law's house to fetch his wife at 7:05 o'clock, and while at that place, the accused Renato and Benito Tamsi, Jr. arrived and that he did not allow the accused to leave that place for the latter was a little bit tipsy. The accused slept in that place. He further testified that on July 16, 1996, while in his house, his son arrived and told him if it was possible for him to sleep at the accused's house because the latter's family was sick. His wife acceded and after taking their dinner, his son and wife went to the house of the accused.

That the testimony of Remily Tamsi (the victim) was not true because he was with the accused during the alleged date (April 19, 1996) and also it was not true that the victim was raped on July 16, 1996 because his wife was there at the house of the accused. (TSN's July 1997, pp. 4-11; August 26, 1997, pp. 7-12)."[6]

The Trial Court's Ruling

After trial, the court rendered its judgment dated June 6, 2000 convicting appellant of two counts of rape and imposing on him the penalty of death for each count, thus:

"WHEREFORE, premises considered, the court finds the accused Renato Tamsi GUILTY beyond reasonable doubt of the crime of rape (2 counts) penalized under Art. 335[7] of the Revised Penal Code as amended by R.A. 7659, Sec. 11 and hereby sentences him to death and to indemnify Remily Tamsi in the amount of P75,000.00 and P50,000.00 moral damages in each of the two (2) cases.

SO ORDERED."[8]

Issues

Appellant argues for his acquittal, raising these issues as grounds for the reversal of the judgment of conviction:

"I

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN CONVICTING ACCUSED-APPELLANT ON THE BASIS OF THE INCREDIBLE AND INCONSISTENT STATEMENTS OF THE PROSECUTION WITNESSES.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE HAS BEEN PROVEN BEYOND REASONABLE DOUBT."[9]

The Court's Ruling

We agree with the trial court that appellant's guilt for the two charges of rape has been proven beyond reasonable doubt. However, we cannot sanction the imposition of the death penalty for each count of rape in view of the prosecution's failure to prove with certainty Remily's minority. The proper penalty therefore is *reclusion perpetua* for each count of rape, not death.

Appellant concedes that when the issue is a matter of credibility, the trial court judge is in a better position to pass judgment on the credibility of witnesses, having had the opportunity to personally hear them, observe their deportment and manner of testifying.[10] However, appellant points out that the testimonies of the prosecution witnesses, particularly of the complainant, are so incredible and inconsistent in a number of material aspects such that these inconsistencies should have raised doubt in his favor. To prove his point, appellant cites the following portions of Remily's testimony:

"ATTY. DOMINGO to complainant Remily Tamsi on cross-examination:

Q: So, let us clarify this matter, when I asked you if on the night of April 19, 1996 that was the first time that your brother slept in the *sala*, you stated in the affirmative, do you remember having made that statement?

A: Yes, sir.

Q: I followed up that question and you answered that even before April 19, 1996 your brother slept in the *sala*, do you remember having stated that?

A: Yes, sir.

Q: Do you know that these statements of yours are grammatically opposed to each other. My question is this two (2) conflicting statements of yours is correct?

A: He was previously sleeping in the said *sala*, sir.

Q: You answered to my question earlier that April 19, 1996 was the first time that your brother slept in the *sala*, is not correct?

A: Yes, sir.

Q: If that is not correct then why did you say that?

A: I did not think about it, sir.

Q: Madam witness, you will admit that when you claimed that April 19, 1996 was the first time that your brother slept in the *sala* you admit that you were lying, is that correct? You told a lie because your statement is not correct?

A: I cannot understand, sir.

Q: You cannot understand or you ready to answer the question?

A: I do not understand, sir.

ATTY. DOMINGO:

Let us go back there for you to understand it. My question to you is, you made two (2) opposing claims madam witness, you stated that the night of April 19, 1996 was the first time that your brother slept at the *sala* and then you made another statement saying that even before the night of April 19, 1996 your brother slept at the *sala*. When I asked you which of these two (2) statements of yours is correct you stated that your statement, even before April 19, 1996 your brother was already sleeping in the *sala* is correct and so, your statement that April 19, 1996 was the first time that your brother slept in the *sala* is not correct? Do you understand that? And then you later made a statement; at the second statement that your brother slept in the *sala* on April 19, 1996 is not correct?

A: Now, I understand, sir.