

EN BANC

[G.R. Nos. 146352-56, September 10, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENIGNO ELONA Y BAUTISTA, ACCUSED-APPELLANT.**

DECISION

PUNO, J.:

Not only did the accused rape his daughter-in-law, Rhodora, five times in her home where she welcomed him to stay. He did the dastardly acts before the eyes of Rhodora's two-year old daughter who could not fully comprehend the suffering of her mother. In one instance, the accused even put the crying toddler on his back to play horse while he straddled and ravaged her mother. The moral depravity is unspeakable and the law will be applied in all its severity upon the accused.

On April 30, 1999, the accused Elona was charged with five counts of rape in five separate informations, which were similarly worded except for the dates of commission of the crime, viz:

"At the instance of the private complainant RHODORA ELONA y CAPUNO, in a sworn complaint filed with the Municipal Trial Court of Pila, Laguna, the undersigned Assistant Provincial Prosecutor of Laguna, hereby accuses BENIGNO ELONA y BAUTISTA, of the crime of "RAPE," committed as follows:

That on or about February 15, 1999, in the Municipality of Pila, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one RHODORA ELONA y CAPUNO, his daughter-in-law, against her will and consent."

CONTRARY TO LAW."^[1]

The accused pleaded not guilty to all five charges. Trial ensued.

The records show that the victim, Rhodora Elona, is married to Luisito Elona. She lives in Barangay Bulilan Norte, Pila, Laguna, with Luisito and their two and a half year old child, Charamay. In January 1999, Luisito's father, the accused Benigno, started living with Rhodora's family. Benigno is a widower. He had just been released on January 6, 1999 from imprisonment for homicide.

On February 15, 1999, Rhodora was home with Charamay and the accused. Luisito was at work, pushing cart on the railway. At about 8:00 a.m., while Rhodora was in their kitchen, the accused poked a knife at her neck. He threatened to kill her if she did not give in to his carnal desire. In the words of Rhodora, "Gustong matikman niya (the accused) ang katawan ko at gusto niyang maranasan ang gumamit sa

akin." He tore off her blouse and forced her to go to the sleeping area. She was afraid that the accused might kill her as he had previously confided to her that he used to kill. She went to the sleeping area where Charamay sat. She was made to sit on the floor. He forced her to remove her short pants, but she refused. Thus, he pulled it down himself and took off her panty. The accused knelt in front of her, spread a blanket on the floor and compelled her to lie down. She did as told. He stood up, removed his short pants and brief, spread Rhodora's legs and removed her bra. All the while, he was holding the knife in his left hand. He then did a pumping movement and inserted his penis into Rhodora's private part. She felt pain, cried and tried to free herself, but to no avail. He also mashed, sucked, and kissed both her breasts. He then removed himself on top of her and licked her vagina. Afterwards, he went on top of her again and consummated another coitus. All this time, Charamay sat beside Rhodora and cried. When the accused noticed Charamay crying, he put her on his back and told her to play "kabayu-kabayuhan" while the accused still lay on top of Rhodora. Charamay asked Rhodora, "Nanay Doray, anong gagawa Lolo Bining?", but she could not answer her as she was too young to understand. Afterwards, he placed Charamay beside Rhodora. He then got up and told her he was done. Rhodora changed her clothes when the accused stepped out of the house. That night, when Luisito came home, Rhodora did not tell him the tragedy that befell her during the day for fear that the accused would kill her and Charamay. Whenever she and Luisito talked, the accused would gesture like he was strangling and boxing Charamay, and would even poke a knife at Charamay's neck.

On February 20, 1999, the accused repeated the sexual assault on Rhodora. It was about 10:00 in the morning. Again, her husband was not home as he was out working. On February 27, at about 12:00 noon, he penetrated her for the third time. He again unleashed his bestiality on her on March 5, 1999 at 7:00 a.m. Finally, on March 17, 1999, at about 10:00 a.m., he again satisfied his lust on her. All these rape incidents happened in her own abode. Each time, Rhodora begged the accused not to violate her, but he nevertheless ravaged her. She cried every time she was sexually violated as she was afraid of the accused who poked a knife at her each time. Charamay witnessed all these abuses her mother suffered in the hands of the accused.

The March 17 attack was the last straw. At dawn the next day, Rhodora revealed to her husband all the sexual violations of the accused as she could no longer take them. The accused was not home at that time and was visiting his relatives. Rhodora's husband raged and hit their wall twice.

The couple, along with Charamay, proceeded to the police station. Rhodora narrated the sexual attacks committed by the accused upon her and executed a sworn statement regarding these. The police then arrested the accused.^[2]

Delfin Obiniana, Jr., one of the police officers who arrested the accused, declared that at about 10:00 a.m. on March 18, 1999, Rhodora Elona went to the Pila police station with her husband and child. She reported that the accused raped her several times. She also stated that the accused threatened her with a pointed weapon each time she was abused. Obiniana and another police officer went to Rhodora's residence and invited the accused to the municipal building for investigation. He also searched the house and found a sickle-type knife in it. He took the knife with him and showed it to Rhodora. The latter confirmed that it was the knife the accused used to threaten her. Obiniana endorsed it to the investigator of Rhodora's complaint, PO3 Josue Ladiana.

The testimony of Obiniana was corroborated by PO3 Josue Ladiana and SPO2 Rufino Anterola.^[3]

Dr. Joan Tobias, a physician at the OB Gynecology Department of the Laguna Provincial Hospital, examined Rhodora on March 18, 1999. Her findings showed that the victim's hymen had old healed hymenal lacerations at 3, 6, 8 and 12 o'clock positions and the vagina admits two fingers with ease. According to her, her findings were normal for a married woman like Rhodora.^[4]

The accused was the lone witness for the defense. He is the father-in-law of Rhodora, the wife of his son, Luisito. He is a widower, his wife having died about fifteen years ago. He has not had any sexual relations since his wife died. He spent between five to ten years in jail for killing a man whom he saw molesting his three-year old daughter. When he was released, he stayed with his niece. Then, he moved to Luisito's abode in January 1999.

The accused denied Rhodora's accusation that he threatened and raped her on February 15, 1999. On that day, he said he was at home in Bulilan Norte, Pila, Laguna. Luisito left the house at about 6:30 a.m. to look for a job, while Elona washed clothes from 7:30 a.m. to 10:00 a.m. near the river, an arm's length away from the house. He cut the grass and took care of the two-year old daughter of Rhodora and Luisito. The nearest neighbors were about 60 to 70 meters away from Rhodora's house. After Rhodora washed clothes, she approached the accused and informed him that they did not have viand for lunch. He gave her P50.00 and instructed her to go to the poblacion to buy viand. She came back after about an hour. Late that afternoon, Luisito came home.

The following day, the accused discussed with Luisito about his (Luisito's) arguments with his wife. It seems that Luisito's wife did not want to have sexual intercourse with him. For some reason, Luisito got jealous of the accused, thus he told Luisito that he would just leave his dwelling. The accused tried to leave on March 17, 1999 but Rhodora pleaded with him to stay and not to mind Luisito's jealousy. Luisito also asked him to stay.

On the day the second alleged rape took place on February 20, 1999, Luisito again left in the morning to look for a job. Only Rhodora, her child, and the accused were home. The accused was cutting *katuray* to be used as a fence. The place was very near their house and Rhodora even helped him with his work. Luisito returned in the afternoon.

On February 27, 1999, Luisito, Rhodora, and the accused were home. After taking a cup of coffee, the accused washed his glass and accidentally hit their rice container. He found out it was empty so he told Rhodora that he would buy rice. He left at about 6:30 a.m. to look for money and buy rice. Luisito, Rhodora, and their daughter were left in the house the whole day. The accused returned home at about 12:00 noon.

On March 5, 1999, the accused was home. Rhodora and her daughter went to church at Sta. Cruz, Laguna at about 7:00 a.m. They came back at 10:30 a.m. Luisito and the accused did not leave the house that day.

In the morning of March 17, 1999, Luisito left for Sta. Cruz to look for a job. Rhodora and the accused were left home. Luisito returned late in the afternoon. The following day, Rhodora, her child, and the accused were home while Luisito was out,