

EN BANC

[G.R. Nos. 134566-67, January 22, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GONYETO FRANCISCO Y CAPELLAN, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

For automatic review is the June 1, 1998 Decision^[1] of the Regional Trial Court of Cavite City, Branch 16, imposing the supreme penalty of death on accused-appellant Gonyeto Francisco y Capellan, in Criminal Case Nos. 248-96 and 249-96, for two counts of rape committed against his own daughter and stepdaughter, aged thirteen (13) and sixteen (16) years, respectively.

The informations indicting accused-appellant state:

In Criminal Case No. 248-96:

That on or about the 23rd day of July, 1996, at Barangay Wawa III, Municipality of Rosario, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, taking advantage of superior strength and moral ascendancy over her person being his own stepdaughter who is only 17 (sic) years of age, and by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with her (Wennie C. Merioles) against her will and consent.

CONTRARY TO LAW.^[2]

In Criminal Case No. 249-96:

That on or about the 19th day of July, 1996, at Barangay Wawa III, Municipality of Rosario, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, taking advantage of superior strength and moral ascendancy over her person being his own daughter who is only 13 years of age, and by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with her (Rachelle Francisco y Calitis) against her will and consent.

CONTRARY TO LAW.^[3]

Upon arraignment on September 11, 1996, with the assistance of counsel *de officio*, accused-appellant pleaded not guilty to both charges.^[4] Thereafter, the cases were consolidated and tried jointly, with the prosecution presenting Dra. Ida P. Daniel, Dr.

Ronaldo B. Mendez, and private complainants Winnie C. Merioles and Rachelle C. Francisco as witnesses.

On the other hand, accused-appellant and Julius Roquin, administrative assistant of Cities Construction, testified for the defense.

The prosecution's version of the facts are synthesized by the Solicitor General in the Appellee's Brief, thus -

Facts Common to Criminal Case Nos. 248-96 and 249-96

Private complainants Wennie Merioles (Criminal Case No. 248-96) and Rachelle Francisco (Criminal Case No. 249-96) are stepsisters. Their mother, Nicomedes Francisco, is married to appellant Gonyeto Francisco (p. 12, tsn, September 18, 1997) who is the father of Rachelle. They live in a two-storey house situated in Wawa II (sic), Little Baguio, Rosario, Cavite. Appellant was employed as driver with the Cities Corporation at the Export Processing Zone, Rosario, Cavite.

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On July 23, 1996, Wennie Merioles did not attend school because of flood (p. 16, tsn, October 20, 1996). Wennie was then 16 years old and in high school. Appellant, Wennie's stepfather, also stayed home because he was suffering from rheumatism (p.18, tsn, ibid.) Nicomedes Francisco, who alternatively worked as a laundry woman if not engaged in selling fish, had gone out of their house by 8:00 A.M. (pp. 13-14, tsn, ibid)

At around 9:00 A.M., appellant summoned Wennie to the room downstairs (pp. 17-20, tsn, ibid.). When she got there, appellant told her that he wanted to have sex with her (p. 22, tsn, ibid.) At first, Wennie refused but when appellant threatened to kill her and warned her, "sige, pag hindi ka pumayag, makakatikim ka sa akin," she acceded to his request. Appellant then proceeded to ravish her. (pp. 4-5, 27-28, tsn, ibid.)

What happened on July 23, 1996 was but the last of the countless sexual molestations endured by Wennie. The first occurred when she was only 11 years old. (p. 34., tsn, ibid.)

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On July 19, 1996, Rachelle Francisco, thirteen (13) years old, was instructed by her mother to stay home to attend to her younger brother and sister aged 3 1/2 and 5 years old (p.9, tsn, November 27, 1996). Sometime in the afternoon (p.11, tsn, ibid), when Rachelle's mother was no longer around, appellant told her younger brother and sister to get out of the house. Thereafter, he summoned Rachelle upstairs and ordered her to undress. When Rachelle refused, he told her, "maghuhubad ka o hindi." Still, Rachelle chose not to undress. Appellant

reacted by saying, "hanggang mamaya tatamaan ka sa akin". Rachelle succumbed to the intimidation and acceded by removing her clothes (upper). Thereafter, appellant started to kiss her and fondle her breast. Appellant caused her to lie down. Rachelle removed her skirt and panty. When she was naked, appellant undressed himself and inserted his penis into her vagina but only penetrated her a little as she told him, "nasasaktan ako." Rachelle bore the ordeal for five (5) minutes. (pp. 39-40, tsn, ibid.)

Just like her stepsister Wennie, Rachelle was regularly abused sexually by appellant. She could not remember the first time appellant molested her. (p.37, tsn, ibid.).^[5]

On July 29, 1996, private complainants mustered enough courage to reveal their traumatic experience to their mother^[6] who lost no time in accompanying them to the National Bureau of Investigation for medical examination. The medico-legal findings of Dr. Rolando B. Mendez on private complainant Wennie C. Merioles yielded the following results:

GENITAL EXAMINATION:

Pubic hair, fully grown moderate. Labia majora and Labia minora, gaping. Fourchette, lax. Vestibule pinkish, smooth. Hymen original annular, moderately tall, moderately thick, with old healed, superficial lacerations at 7 and 8 o'clock positions corresponding to the face of a watch, edges of which are rounded and non coaptable. Hymenal orifice, admits a tube 2.5 cm in diameter. Vaginal walls, light, Rugosities (sic), prominent.

CONCLUSIONS:

- 1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.*
- 2. Old healed superficial hymenal lacerations, present.*^[7]

As to private complainant Rachelle C. Francisco, the result of the examination by Dra. Ida P. Daniel indicates that:

GENITAL EXAMINATION:

Pubic hair, fine, short, scanty. Labia majora, coaptated. Labia minora, gaping. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, admits a tube 2.5 cms., in diameter with moderate resistance. Vaginal walls, lax. Rugosities, shallow.

CONCLUSIONS:

1. *No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.*

2. *Hymen, intact, distensible and its orifice wide (2.5 cms in diameter) to allow complete penetration by an average sized adult Filipino male organ in full erection without producing genital injury.*^[8]

Accused-appellant on the other hand, testified that he is married to Nicomedes C. Francisco, mother of private complainants. Asked if he contracted any other marriage prior to that with Nicomedes, he said that he had a "first wife" by the name of Pacita, who is now living in the province.^[9]

Insisting on his innocence, accused-appellant interposed the defense of denial and alibi. He posited that on July 19 and 23, 1996, when the rape complained of were allegedly committed, he was at work. He testified that as a driver of Construction Cities, he worked continuously from 7:30 a.m. to 5:30 p.m., and then from 5:30 p.m. to 8:00 p.m., while waiting for the evening shift.^[10] To bolster his claim, accused-appellant presented Julius Roquin, administrative assistant of Cities Construction who declared that per the daily time record, accused-appellant worked in the company from July 12 to July 29, 1996; and that on July 23, 1996, he reported for work from 7:00 am to 5:00 p.m.^[11]

On June 1, 1998, after finding the version of the prosecution credible, the trial court rendered the judgment of conviction under review. The dispositive portion thereof reads:

WHEREFORE, finding the accused Gonyeto Francisco y Capellan GUILTY beyond reasonable doubt as principal, the Court hereby imposes upon him:

1. *For the crime of rape, in Criminal Case No. 248-96, committed by him against his stepdaughter Wennie Merioles, which relationship he never disclaimed, the absolute penalty of DEATH by lethal injection, and to indemnify her the sums of P50,000.00 and P20,000.00, as moral and exemplary damages;*
2. *For the crime of rape, in Criminal Case No. 249-96, committed by him against his daughter, Rachelle Francisco, the absolute penalty of DEATH by lethal injection, and to indemnify her the sums of P50,000.00 and P20,000.00, as moral and exemplary damages.*

Costs against the accused.

SO ORDERED.^[12]

In his Brief, accused-appellant, through the Public Attorney's Office, contends that:

THEREOF.

II

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE COURT A QUO ERRED IN METING OUT THE DEATH PENALTY NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO ESTABLISH THE RELATIONSHIP BETWEEN THE PRIVATE COMPLAINANT AND THE ACCUSED.^[13]

In an appeal from a judgment of conviction in rape cases, the issue boils down, almost invariably, to the credibility of the victim and, just as often, the Court is constrained to rely on the observations given by the trial court, with its vantage, not equally enjoyed by the appellate court, during the reception of testimony. It has thus since become doctrinal that the evaluation of testimonial evidence by the trial court is accorded great respect precisely for its chance to observe first hand the demeanor on the stand of the witness, a matter which is important in determining whether what has been said should be taken to be the truth or falsehood^[14]

In the case at bar, the trial court gave full faith and credit to the testimony of private complainants, thus -

x x x During their respective testimonies both of them were terse and direct in the answers, even on cross-examination and clarificatory questioning, which would not be the case if their testimonies were conjured or rehearsed, for then such would be adorned by flowery details. The Court takes the conciseness of their answer and the straightforward manner in which they were given as mirrors of the gruesome experience they have suffered in the hands of accused, the memories of which, provoked by direct and often provocative questioning, they excised to brevity in an attempt to obscure it from their young minds. Their narrations of their respective harrowing experience were too rich and vivid in details, that they could not be easily set aside and branded as mere fabrications.

It has not also escaped the Court's attention that when both complainants were asked to identify the person of the accused, both boldly confronted the accused and pointed to him as their defiler. In the case of Wennie, she looked directly at accused, pointed to him and resonantly said, "siya ho", as if daring him to deny her claim as he bowed his head in silence. While Rachelle may not have been as emphatic, she was equally firm and forthright in identifying him.

The manner by which Wennie and Rachelle have given evidence against the accused has left the Court with no reason to doubt the truth and candor of their testimonies.^[15]