

EN BANC

[G.R. Nos. 134451-52, March 14, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO FRETA Y CUEVAS, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is a review by automatic appeal of the joint decision,^[1] rendered on July 7, 1998, of the Regional Trial Court, Branch 4, Batangas City, finding accused-appellant Reynaldo Freta y Cuevas guilty of two counts of qualified rape and sentencing him to two penalties of death and to pay complainant Jenny S. Freta P50,000.00 as moral and exemplary damages.

In Criminal Case No. 8721, the complaint alleged:

That on or about December 13, 1996, at around 9:00 o'clock in the evening of Brgy. Tinga Labac, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, violence, and intimidation, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of the undersigned complainant, a girl 16 years of age, against the latter's will and consent.

That the commission of the offense was attended by the aggravating circumstance of grave abuse of trust and confidence, the accused being the father of the undersigned offended party and residing with him.^[2]

In Criminal Case No. 8722, the complaint charged:

That on or about December 14, 1996, at around 8:30 o'clock in the evening at Brgy. Tinga Labac, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, violence, and intimidation, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of the undersigned complainant, a girl 16 years of age, against the latter's will and consent.

That the commission of the offense was attended by the aggravating circumstance of grave abuse of trust and confidence, the accused being the father of the undersigned offended party and residing with him.^[3]

Accused-appellant's arraignment took place on February 18, 1997. He pleaded not guilty, for which reason trial ensued.^[4]

The prosecution presented evidence showing the following:

Complainant Jenny S. Freta is the daughter of accused-appellant by his common-law wife Angelina Santos. Complainant testified that she was born on January 19, 1980. She grew up with her paternal grandmother, Marietta Cuevas Freta, in Centro 1, Manalig, Isabela.

In 1996, accused-appellant took Jenny with him to San Juan, Batangas so that she could take care of accused-appellant's baby by his wife, Fructosa Magadia Freta. Fructosa was teaching while accused-appellant was planning to return to Dubai to work overseas, and the couple needed someone to take care of their baby. However, Jenny could not get along with Fructosa, so accused-appellant took her on December 13, 1996 to Barangay Tinga Labac, Batangas City, where he also had a house.

After arriving from San Juan, on December 13, 1996, accused-appellant asked Jenny to prepare his lunch. But at around 11 o'clock in the morning, six friends of accused-appellant arrived, and they had a drinking session, which lasted until 9 o'clock in the evening. After his friends had left, accused-appellant told Jenny to lock the main door and close the windows. Accused-appellant told Jenny to sleep beside him, but Jenny refused and slept instead on a folding bed beside her father's bed. As Jenny was lying on her bed, accused-appellant came up to her and, pointing a knife at her, told her to undress. Afraid of displeasing her father, Jenny did as she was bidden. Accused-appellant told Jenny to transfer to his bed and then raped her.

The next morning, December 14, 1996, as she prepared breakfast for accused-appellant, Jenny thought of poisoning her father, but, according to her, she desisted upon seeing the image of the Virgin Mary. At around 8:30 that night, Jenny was again raped by her father. When Jenny afterwards went to the toilet to urinate, accused-appellant knocked on the door apparently to have sex with her again. Jenny told accused-appellant that it would be more comfortable to have sex in the bedroom, and so accused-appellant relented. As accused-appellant was urinating, Jenny fled to the house of her Ate Betty. Ronaldo Buquis, Betty's husband, and Marlyn Magadia took Jenny to the house of Barrio Councilman Arsenio Eje, who called the police. Accused-appellant was arrested in his house.^[5]

The following day, December 15, 1996, Jenny and Eje gave sworn statements (Exhs. B and D) to the Batangas City police. On the same day, Jenny was examined by Dr. Cynthia F. Beron of the Batangas Regional Hospital. Dr. Beron's findings (Exh. C) were:

Physical examination: No external signs of physical injury noted.

External genitalia: (+) evenly distributed pubic hair

(+) healed incomplete laceration at 4 o'clock and 8 o'clock position.

Internal examination: vagina admits 2 fingers with ease, cervix closed; uterus not enlarged; negative adnexa.

Sperm cell determination: No sperm cell seen.

Pregnancy test - negative.^[6]

Accused-appellant testified in his defense. He testified that Jenny and her sister Regina are his daughters by his common-law wife Angelina Santos. According to accused-appellant, Angelina left them when Jenny was six months old. Thereafter, he left Jenny and Regina to the care of his mother in Manalig, Isabela. Accused-appellant later married Fructosa Magadia, a teacher in San Juan, Batangas by whom he had a son, John Clemen.

According to accused-appellant, sometime in December 1996, he received a letter from his daughter Regina asking him to go to Isabela. He later learned that his daughters often quarreled, and his mother could not handle Jenny, who was headstrong. Jenny agreed to go with her father and take care of the latter's child. Jenny was thus taken to San Juan, Batangas. But Jenny stayed with accused-appellant and his family only until December 13, 1996 as accused-appellant was informed that Jenny was using drugs, specifically one commonly termed as "shabu," and neglecting her baby brother. Accused-appellant, therefore, decided to take Jenny to his house in Barangay Tinga Labac, Batangas City. They left San Juan at 9 o'clock in the morning of December 13, 1996 and arrived in Barangay Tinga Labac on the same day at 10:30. Shortly thereafter, two of his friends arrived, and they had a drinking session until 9 o'clock in the evening. According to accused-appellant, he was so drunk that he passed out. He woke up only the next day, after which he and his friends once more had a drinking session. Again, accused-appellant passed out. When he regained consciousness in the evening, he found that Jenny had left. He looked for her in Balagtas, where he knew "shabu" was being sold, but did not find Jenny. When he arrived home that night, he found policemen waiting for him. They took him to the police station where he learned that Jenny had charged him with raping her.

Accused-appellant claimed that on December 22, 1996, Jenny visited him in his cell at the Batangas City Jail and asked for forgiveness for having falsely accused him. Asked why Betty and Arsenio Eje helped Jenny file charges against him, accused-appellant said it was because Betty suspected that his (accused-appellant's) wife had caused the ejectment of Betty's husband from the land he was tilling.^[7]

The second witness for the defense was Michael Mindanao, a guard at the Batangas City Jail, who testified that on December 22, 1996, accused-appellant's two daughters visited him. He said the older one talked to accused-appellant, but that he did not understand what they talked about as they were speaking in Ilocano.^[8]

On July 7, 1998, the trial court rendered its decision, the dispositive portion of which reads:

Wherefore, accused Reynaldo Freta y Cuevas is found Guilty beyond reasonable doubt of the crime of rape in both of these cases as charged in the two criminal complaints and is thus sentenced in each of these cases to suffer the supreme penalty of Death. He is further directed to indemnify complainant, Jenny S. Freta, the sum of Fifty Thousand Pesos (P50,000.00) in each case as moral and exemplary damages and to pay the costs.^[9]

Hence this appeal wherein accused-appellant makes the following assignment of errors:

I

THE COURT OF ORIGIN COMMITTED GRAVE ERROR WHEN IT FAILED TO CONSIDER THE TESTIMONY OF THE DOCTOR WHO EXAMINED THE VICTIM.

II

THE LOWER COURT FINALLY ERRED IN FAILING TO TAKE INTO ACCOUNT THE TESTIMONY OF THE ACCUSED-APPELLANT THAT HE WAS DR[U]NK AND KNOCKED OUT AT THE TIME THE ALLEGED RAPE[S] W[ERE] COMMITTED.^[10]

These contentions are without merit.

First. Accused-appellant claims that the trial court overlooked the findings of Dr. Cynthia F. Beron, who examined Jenny, which he claims are exculpatory:

(1) There was no spermatozoa found in Jenny's vagina when Dr. Beron examined the latter on December 15, 1996. Citing Dr. Beron's testimony that the sperm cell has a lifespan of 48 to 72 hours,^[11] accused-appellant claims that the absence of spermatozoa belied Jenny's claim that she was raped on December 13 and 14, 1996.

The contention has no merit. The absence of spermatozoa is not a negation of rape. The presence or absence of spermatozoa is immaterial since it is penetration, not ejaculation, which constitutes the crime of rape.^[12] Besides, the absence of spermatozoa in the vagina could be due to a number of factors, such as the vertical drainage of the semen from the vagina, the acidity of the vagina, or the washing of the vagina immediately after sexual intercourse.^[13]

(2) Dr. Beron also found healed lacerations in Jenny's hymen. According to Dr. Beron, the lacerations were more than a month old at the time she examined Jenny on December 15, 1996 and could be attributed to sexual intercourse which Jenny admitted she had had with her boyfriend in Isabela.^[14]

The fact that the lacerations in the hymen of the victim were at least a month old only shows that Jenny was no longer a virgin, but not that she had not been raped on December 13 and 14, 1996. In any case, virginity is not an essential element of rape.^[15]

(3) Dr. Beron also did not find any physical injury sustained by Jenny which accused-appellant points out contradicts Jenny's claim that she struggled with accused-appellant.^[16]

What Jenny probably meant was that she tried to resist accused-appellant. Indeed, the lack of marks of violence on Jenny does not mean lack of resistance on her part. Proof of external injuries inflicted on the complainant is not indispensable in a prosecution for rape committed with force or violence.^[17] As Jenny testified, accused-appellant was able to rape her by threatening her with a knife. This constitutes the force or intimidation which would make the act of sexual intercourse