

EN BANC

[G.R. No. 137048, May 24, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CASTRO GERABAN, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

For automatic review pursuant to Article 47 of the Revised Penal Code as amended by section 22 of R.A. No. 7659, is the decision^[1] of 17 November 1998 of the Regional Trial Court of the Fifth Judicial Region, Branch 65, Bulan, Sorsogon, in Criminal Case No. 90, finding accused-appellant Castro Geraban (hereafter CASTRO) guilty of the crime of rape committed against his own daughter, Venus Geraban (hereafter VENUS), and sentencing him to suffer the extreme penalty of death and to indemnify VENUS the amount of P50,000 as moral and exemplary damages.

This case was commenced with the filing on 21 February 1996 of a complaint for rape^[2] by VENUS' mother Dolores Geraban before the Municipal Trial Court of Bulan, Sorsogon. The complaint was supported by the sworn statements of Dolores Geraban,^[3] VENUS^[4] and Rosita Gutlay.^[5] CASTRO did not file his counter-affidavit as required by the court. Finding sufficient probable cause against him, the court forwarded the record of the case to the Office of the Provincial Prosecutor of Sorsogon for appropriate proceedings.^[6]

On 21 March 1996 the Office of the Provincial Prosecutor of Sorsogon filed an information^[7] charging CASTRO with rape as defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A.7659. The accusatory portion of the information states:

That on or about the 20th day of February 1996, at about 4:00 o'clock in the morning, at Barangay Managa-naga, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with a bolo, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Venus Geraban a fifteen-year old girl, his own daughter, against her will and without her consent, to her damage and prejudice.

Attended by aggravating circumstance of relationship and moral ascendancy considering that the victim is the daughter of the accused.

Contrary to law.

Upon arraignment^[8] on 10 June 1996, with the assistance of counsel, CASTRO entered a plea of not guilty. Trial on the merits followed.

The prosecution presented as witnesses Dr. Estrella Payoyo, Rosita Gutlay, Dolores Gutlay Geraban, SPO2 Eulogio P. Santos and VENUS. Their combined testimonies establish the following material operative facts:

VENUS, who claimed to be fifteen years old at the time of the incident, is the eldest among the four children of CASTRO with his wife Dolores Gutlay Geraban. After a serious quarrel with Dolores over a piece of land last 15 February 1996, CASTRO and Dolores separated for the seventh time. Dolores was then renting with their four children -- VENUS, Richard, Melvin and Christian -- a small house at Brgy. Managana, Bulan, Sorsogon. In the late evening of 19 February 1996, CASTRO made a surprise visit to his family to persuade Dolores and the children to return to their residence at Brgy. San Vicente, Bulan, Sorsogon. His plea was ignored, and since it was already late, Dolores agreed to the request of CASTRO to sleep at the rented house.^[9] CASTRO then slept beside Dolores along with Richard, Melvin and Christian in the sleeping area, which was four (4) meters long and two and a half (2 1/2) meters wide. VENUS however slept separately from her parents and siblings.^[10]

At about 4:00 in the early morning of 20 February 1996, VENUS was awakened by CASTRO who asked her to transfer to the spot vacated by Dolores who had left early, as was her usual routine to deliver some bread. VENUS obeyed. She then lay in between her two sleeping younger brothers, Richard and Melvin. CASTRO however objected and insisted that VENUS should sleep beside him. VENUS hesitantly obeyed. While VENUS was lying on her side with her back turned against him, CASTRO suddenly placed his leg on top of VENUS. Vexed by his move, VENUS brushed aside his leg; but instantaneously, CASTRO pulled her by the shoulder and turned her face up. Then he placed himself on top of her and started to choke her. VENUS tried to struggle but he threatened to kill her and her siblings with the "bolo" he was holding. Thereafter, CASTRO released his "bolo" and with the use of his left hand pulled down VENUS' shorts and panty. At this point, VENUS tried to reach CASTRO's face to scratch him but as she was effectively pinned by CASTRO's lower body, all she could reach was CASTRO's back. With VENUS already naked from her waist down, CASTRO started to remove his briefs, but since VENUS continued to resist him, he slid his briefs sideways and put out his penis which he then successfully inserted into the vagina of the struggling VENUS. VENUS felt pain; During the struggle, VENUS hit one of the three cans located just below her feet which caused it to fall on the floor. The brothers of VENUS woke up and started to cry. CASTRO got distracted and because of this, VENUS was able to push him away from her. VENUS returned to her sleeping area and cried. With dawn breaking, VENUS surreptitiously went out of their house and proceeded to the house of her grandmother, Rosita Outlay, located a few houses away. VENUS forthwith told Rosita of CASTRO's dastardly act. VENUS and Rosita then reported the matter to the police authorities of Bulan.^[11]

VENUS also declared that she had been similarly abused by CASTRO sometime in July 1994 somewhere in Las Piñas.^[12] He invited her to see a movie. But, instead of bringing her to a movie house, he brought her to the barracks of the construction

site where he was working and ravished her there.

Dra. Estrella Payoyo testified that she conducted a physical and genital examination on VENUS. She noted the presence of old healed lacerations at 3:00 and 9:00 o'clock positions in the hymen of VENUS and marked redness on the lower part of her *labia minora*.^[13] Dr. Payoyo opined that the redness could be the result of scratching or by sexual contact;^[14] and that the old healed laceration in the hymen could have been caused by sexual intercourse or by a foreign body inserted into VENUS' private parts possibly a year before the date of the examination.^[15]

CASTRO invoked denial and alibi for his defense. He claimed that on 2 February 1996, he and his wife Dolores had a quarrel over a small lot which he bought for P350.00. Because of this incident, his wife together with all their four children moved to his parents-in-law's place at Brgy. Managa-naga, leaving him alone at their house in Brgy. San Vicente.^[16]

CASTRO recalled that on 16 February 1996 he slapped VENUS at the house in Brgy. Managa-naga after the latter told him that he gave priority to his drinking than to the welfare of his family. The incident happened after he declined the request of Dolores for him to sleep at his parents-in-law's house.^[17]

As for the date in question, CASTRO declared that when he returned to the house in Brgy. Managa-naga at 4:30 o'clock in the early morning of 20 February 1996, VENUS was not around. She was at the Summit Bakery, tending the store, and only Richard and Melvin were in the house.

In its decision of 17 November 1998,^[18] the trial court found CASTRO guilty beyond reasonable doubt of the crime of rape. It gave credence to the positive, unequivocal and unswerving testimony of VENUS that she was sexually abused by CASTRO in the early morning of 20 February 1996. The trial court further held that against the damning positive evidence of the prosecution, CASTRO's self-serving negative evidence cannot stand. Moreover, no ulterior motive was sufficiently established against the witnesses for the prosecution.

The trial court also found as inconsequential the lapses in the testimony of VENUS considering her tender age and lack of exposure to court proceedings. It held as immaterial her confusion as to the date when the alleged first rape was committed as it was merely intended to establish propensity on the part of CASTRO to commit the crime of rape.

In imposing the death penalty, the trial court appreciated the presence of the special circumstance of relationship and minority provided for in Article 335 of the Revised Penal Code, as amended by Sec.11 of R.A. 7659. It found undisputed these facts: (1) VENUS was about 15 years old at the time of commission of the crime, as testified to by VENUS and without objection from the defense; and (2) CASTRO is VENUS' legitimate father.

It then decreed:

WHEREFORE, in view of the foregoing, accused CASTRO GERABAN is found guilty by proof beyond reasonable doubt of the crime of RAPE penalized in accordance with Sec. 11 of R.A. 7659 (Death Penalty Law) classifying this offense as one of the heinous crimes and hereby sentences him to suffer the penalty of DEATH; to indemnify the victim VENUS GERABAN the amount of P50,000.00 by way of moral and exemplary damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

As earlier stated, the case is now before us on automatic review.

In his Appellant's Brief, CASTRO imputes upon the trial court the commission of the following errors:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONY OF THE PRIVATE COMPLAINANT WAS PUNCTURED WITH MATERIAL IMPROBABILITIES AND UNIMAGINABLE SITUATION THEREBY CASTING GRAVE DOUBT ON THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED BY RELYING ON THE WEAKNESS OF THE DEFENSE EVIDENCE RATHER THAN ON THE STRENGTH OF THE EVIDENCE OF THE PROSECUTION.

In support thereof, CASTRO contends that the testimony of VENUS is simply incredible, full of improbabilities and inconsistent with human experience. More specifically, he cites: (1) the impossibility of committing the alleged sexual assault in the presence of VENUS' two younger brothers who, although asleep, were just 1 1/2 arms length away from VENUS and CASTRO; (2) the absurdity of consummating penile penetration when VENUS' body and CASTRO's body were one and a half feet away from each other; (3) VENUS' incredulous claims regarding the details of the alleged violation of her honor; and (4) the absence of fresh lacerations and spermatozoa in her organ during examination. CASTRO adds that while admittedly the evidence for the defense is weak, yet weaker still is the evidence for the prosecution in light of the material improbabilities in its evidence. Accordingly, he should be acquitted, as the prosecution failed to establish with moral certainty his culpability.

In the Appellee's Brief, the Office of the Solicitor General supports the trial court's finding and conclusion that CASTRO is guilty beyond reasonable doubt of raping VENUS, his own daughter. His bare denials and alibi cannot overcome the

categorical testimony of VENUS that he violated her. Moreover, there was no evidence of ulterior motive on the part of VENUS to implicate him in the commission of the crime. However, the Office of the Solicitor General recommends that an additional amount of P75,000 as civil indemnity be awarded to VENUS.

It is doctrinally settled that in rape cases the lone testimony of the rape victim, if credible, is sufficient to convict.^[19] Indeed, from the nature of the crime the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony.^[20] No woman would openly admit that she was raped and consequently subject herself to an examination of her private parts, undergo the trauma and humiliation of a public trial and embarrass herself with the need to narrate in detail how she was raped unless she was in fact raped.^[21] This is especially true when the accusing words are directed against a close relative, especially the father, as in this case.^[22] A young unmarried lass does not ordinarily file a rape complaint against anybody, much less her own father, if it is not true.^[23]

In the case at bar, no iota of evidence was shown that VENUS' account of her defilement was a result of falsehood. CASTRO's insinuation of ill-motive on the part of VENUS in the filing of the rape charge against him is too lame and flimsy. Parental punishment is not a good reason for a daughter to falsely accuse her father of rape.^[24] Filipino children's reverence and respect for elders is too deeply ingrained in Filipino children and families.^[25] Thus, it would take depravity for a young daughter to concoct such a story of defloration against her own father unless she had really been aggrieved.

Similarly, the imputation by CASTRO of ill-motive on the part of his wife and mother-in-law does not persuade us. It is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to the humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement.^[26] Other than his self-serving testimony, CASTRO failed to substantiate his claims that his fight with Dolores over a parcel of land could have caused the filing of the case against him. In the same vein, no grandmother would expose her granddaughter of innocent age to the ignominy and ordeal of a public trial of rape unless the charge is true.^[27] Furthermore, the record reveals that Rosita Gutlay lost no time in reporting the bestial act of CASTRO to the police authorities of Bulan immediately after VENUS told her about the dastardly act.

We also cannot sustain the argument of CASTRO that rape was impossible to commit in the presence of VENUS' two younger brothers. Firstly, per testimony of VENUS, her two younger brothers were in deep slumber when CASTRO molested her. Secondly, rapists are not deterred from committing their odious act by the presence of people nearby. Rape is not impossible even if committed in the same room where the rapist's spouse was sleeping or in a small room where other household members also slept.^[28] Hence, it was neither impossible nor incredible for CASTRO to have raped VENUS even in the presence of her two younger brothers. There is no rule that a woman can only be raped in seclusion.^[29]

CASTRO' s claim that there could have no penile penetration since his and VENUS' body were one and a half feet away is without merit. A meticulous dissection of