

EN BANC

[G.R. No. 132673-75, October 17, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINADOR GOMEZ Y CANAMO, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

Before the Court for automatic review, conformably with Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659,^[1] is the joint decision dated January 26, 1998 of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, in Criminal Cases Nos. 8396-97, 8397-97, and 8398-97, finding accused-appellant Dominador Gomez y Canamo guilty of three (3) counts of rape and sentencing him to three (3) death penalties.^[2]

In three separate informations, accused-appellant Dominador Gomez y Canamo was charged with three (3) counts of rape allegedly committed sometime in July 1996, on August 5, 1996, and on August 15, 1996, against his sixteen-year old daughter Myrna Gomez (hereinafter referred to as Myrna), which were docketed as Criminal Cases Nos. 8396-97, 8397-97, and 8398-97, respectively.

The informations were similarly worded, except as to the dates of the commission of the crime, as follows:

"That sometime (on or about), in the evening, at Sitio Mahayag, Barangay Husayan, Municipality of Kadingilan, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused prompted with lewd design, with the use of force and intimidation upon his daughter Myrna Gomez, a 16-year old girl, did then and there wilfully, unlawfully and criminally lie beside Myrna Gomez and then removed her panty, placed himself on top of her and had sexual intercourse with Myrna Gomez against her will, to the damage and prejudice of Myrna Gomez in such amount as may be allowed by law.

"Contrary to, and in violation of, Republic Act 7659.

"Malaybalay, Bukidnon, March 25, 1997."^[3]

On September 18, 1997, duly assisted by counsel, appellant Dominador Gomez entered a plea of not guilty in each of the three cases. Thereafter joint trial of the cases proceeded.

The trial court's summary of the evidence for the prosecution, is as follows:

"Myrna Gomez was hardly 15 years old when she was allegedly raped by her father the first time in July, 1996. Her Certificate of Birth, marked Exhibit `C,' states she was born on December 20, 1980.

"Myrna testified that at about midnight, sometime in the month of July 1996, while she was sleeping inside her room, she was awakened when she felt that somebody was lying by her side and taking off her panty. Myrna immediately recognized the person to be her own father by his smell and his voice. Besides, the room was not completely dark because of the light from the moon passing through the house walling that (sic) made of sliced bamboo. Wriggling and kicking as her father mounted her, Myrna pleaded, *'Don't do it, pa.'* Her resistance and her plea was (sic) useless. Her father successfully consummated his bestial sexual assault upon her. Myrna could only cry after his father left the room, going back to his sleeping area at the sala of the house.

"At that time Myrna's mother was not home. She has been harvesting corn at barangay Mahayag and at a place called UST (for *'Unahan sa Tulay,'* literally, *'Farther away from the bridge'*). Myrna's room companion was her younger sister, but the latter did not notice the incident.

"Myrna further testified that she was raped the second time by her father on August 5, 1996, at about 10:00 o'clock in the evening, in the same room at their parents' house. The accused was even bolder this time because Myrna's mother was at home, sleeping at the sala with her husband, the accused. Before mounting Myrna, accused warned her not to resist or she will be mauled. And after consummating his carnal lust, he giggled and went out.

"Continuing her testimony, Myrna told the court that her father raped her again on August 15, 1996, at about 11:00 o'clock in the evening, in the same room. Despite her usual protest, accused had no compunction in inserting his penis into her vagina.

"Myrna did not have the courage to tell her mother about the horrible things her father did to her. The accused had warned her not to reveal anything or she will be mauled.

"But apparently, Myrna had confided her distress and anguish to her close friends.

"Thus, Myrna's aunt, Amalia M. Tania, testified that on January 29, 1997, while she was on her way to the market of Kadingilan, she happened to overhear a certain Michelle Legaspi talking to one Eugene Lapuz concerning Myrna. Michelle was quoting what Myrna said to her: *'It's good you are not being molested by your father. As for me, my father has been molesting me. I am now pregnant.'* Michelle is about the same age as Myrna and her neighbors. Tania was shocked but pretended not

to have heard the conversation. When she returned home after her marketing, Tania reported what she had heard to her mother. She requested her to see Myrna's parents and verify if what she heard was true. Meanwhile, Tania: went back to the market looking for Eugene Lapuz. Finding Lapuz, Tania questioned her if what she heard was indeed correct. Lapuz confirmed the information she got from Michelle.

"Upon the return of Tania's mother from her visit to the parents of Myrna, she reported that the accused denied having raped his daughter. And even Myrna herself said she was not molested.

"Still convinced that Myrna was indeed impregnated by her own father, Tania, with her father and mother, went to the Barangay Captain for assistance on the following day. The Barangay Captain later reported back that his own inquiries came out negative. He was not able to get any information as to the person who may be responsible for Myrna's pregnancy. Tania was not to be pacified. Determined to go deeper into the matter, she and her parents sought the help of the police authorities. The following day February 1, the police picked up accused Dominador Gomez.

"At the police station, Myrna finally poured out all the sexual violations her father did to her.

"On April 2, 1997, Myrna Gomez gave birth to a child named Dave Gomez. The child birth (sic) was registered with the local Civil Registrar of Kadingilan as shown in Exhibit `A,' a Certificate of Live Birth. The poor child, however, died on May 6, 1997, as evidenced by a Certificate of Death, marked Exhibit `B'."^[4]

Dominador Gomez, in his defense, denied all the accusations. His daughter Myrna was lying in court, he claimed. He suspected his brother-in-law to be interested in the prosecution because the latter did not agree to have the charges withdrawn. *"I swear to God I did not do it,"* he told the court. He also told the court that possibly, the reason why his daughter filed these three counts of rape against him was that they were having a hard time in identifying the person responsible for her pregnancy.^[5]

On January 26, 1998, the trial court found Dominador Gomez guilty of the crime of rape in each of the three cases and sentenced him as follows:

"WHEREFORE, this court finds accused Dominador Gomez y Canamo GUILTY beyond reasonable doubt of three (3) crimes of rape as charged. Pursuant to the provisions of Section 11 of Republic Act No. 7659, amending Article 335 of the Revised Penal Code, considering the victim is his own daughter below 18 years old at the time the offenses were committed, he is hereby sentenced to three (3) DEATH penalties. He is also ordered to indemnify his victim Myrna Gomez the sum of P50,000.00 for each of the offense, or a total of P150,000.00, and to pay the cost.