

EN BANC

[G.R. Nos. 123138-39, November 08, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HONESTO LLANDELAR Y MAGANTI^[1], ACCUSED-APPELLANT.**

DECISION

QUISUMBING, J.:

For automatic review is the consolidated decision promulgated on December 8, 1995, by the Regional Trial Court of Libmanan, Camarines Sur, Branch 56, in Criminal Cases Nos. L-1728 and L-1729, finding appellant Honesto Llandelar guilty of two counts of rape and imposing on him in each count the penalty of death.

The informations against him, both dated March 9, 1995, read as follows:

L-1728

The undersigned 4th Assistant Provincial Prosecutor of Camarines Sur upon sworn complaint originally filed by the offended party, Marjorie M. Llandelar, accuses HONESTO LLANDELAR y DOE^[2] of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, committed as follows:

That on or about the 14th day of January, 1995 at around 12:00 o'clock midnight at Sitio Pag-Ultan, Barangay Salvacion, Municipality of Ragay, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation did then and there wilfully, unlawfully and feloniously did lie and have carnal knowledge of his own daughter, Marjorie Llandelar, 16 years of age, single, against her will and without her consent.

ACTS CONTRARY TO LAW.^[3]

L-1729

The undersigned 4th Assistant Provincial Prosecutor of Camarines Sur upon sworn complaint originally filed by the offended party, Marjorie M. Llandelar, accuses HONESTO LLANDELAR y DOE of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, committed as follows:

That on or sometime between the month of April, 1994 and January, 1995 at Sitio Pag-Ultan, Barangay Salvacion, Municipality of Ragay, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of violence, force,

threat and intimidation did then and there wilfully, unlawfully and feloniously did lie and have carnal knowledge of his own daughter, Marjorie Llandelar, 16 years of age, single, against her will and without her consent.

ACTS CONTRARY TO LAW.^[4]

It appears that the spouses Honesto and Rosalina Llandelar resided in the far-flung sitio of Pag-ultan, barangay Salvacion, in the railroad town of Ragay, Camarines Sur. They occupied a small house, nestled on a hill, surrounded by cogon grass and dotted by shrubs and trees. Their nearest neighbor lived far out of sight. Their house had a living room and an elevated portion called "*bintaas*" (attic) with sawali walls, measuring 4 x 4½ meters. This was where the family members slept. The couple had eight children, namely: Marjorie, Allan, Gilberto, Ruel, Lorena, Myra, Menchie and Jomar. At 16 years old, Marjorie was the eldest. Soft spoken, pensive, dark eyed and pretty, she was the spitting image of her father.

Alleging that her father, appellant Honesto Llandelar had sexually abused her, Marjorie filed rape charges against him. After conducting preliminary investigation and finding probable cause, MCTC Judge Benjamin Ramos of Ragay ordered the arrest of appellant. No bail was recommended considering the gravity of the charges.^[5]

Appellant pleaded not guilty on arraignment. The cases were set for joint trial in the sala of RTC Judge Lore Valencia Bagalacsa in Libmanan. While the trial was in progress, appellant informed the trial court that he was willing to plead guilty to one offense on condition that the other be withdrawn. Judge Bagalacsa advised him to think about it as the imposable penalty is death, and that even if he pleaded guilty, the prosecution would still be directed to present evidence. Later, appellant told his counsel that he was willing to plead guilty to the lesser offense of qualified seduction. When informed of this matter, complainant vehemently refused to agree with the proposed plea of appellant.^[6]

At the trial, MARJORIE LLANDELAR testified that she was born on July 29, 1978. She used to work as housemaid in Cavite. On February 14, 1994, her father brought her to Ibaan, Batangas, where she was employed as a housemaid by a certain Amor Esperina. In April, 1994, appellant fetched her from her employer's house and brought her to the residence of his uncle, Federico Llandelar in Ragay. It was there where appellant first vent his bestial lust on her. Despite the sexual abuse, Marjorie said she went home with him. She could not refuse to go because he was hurting her. In their home in Pag-ultan, he sexually abused her again while her mother was not around. Armed with a *balisong*, he held her by the shoulders, swung her to and fro, then dragged her to the sala. He forced her to lie down, then he removed her shorts and panty. He then inserted his penis in her vagina which took a little while. She said she tried to resist and fight him but she did not succeed. No screams escaped her lips. Even if she did scream, nobody would come to her rescue. They lived far from their neighbors. Her mother was not around. Her siblings could not help her either even if they were awake, for they were too young and small to defend her. After satisfying his lust, his father warned her not to tell anybody or else he would kill her, her mother and her siblings. In May, 1994, he again violated her. Again she said that she was too afraid to resist. She succumbed to his sexual

advances because whenever she refused to 'sleep' with him, he always hurt her.

At around midnight of January 14, 1995, her father again raped her. As in previous occasions, Marjorie said her father hurt her before sexually abusing her. He forced her to remove her shorts and panty, after which he also removed his short pants. Then, he let his penis out of his brief and inserted it in her vagina. Her mother was not at home as she was confined at the Ragay District Hospital. Her younger siblings were already asleep at that time. She kept the abuse to herself. She was so afraid of him and she had likewise no opportunity to leave their house.^[7]

Marjorie said she tried to keep her father's abuses a secret, as did the other members of the family, except that she became pregnant. On January 20, 1995, she told her grandmother, Erlinda Mantis-Almojela, of her father's lechery. On January 28, 1995, they reported the matter to the officials of Barangay Salvacion, Ragay, Camarines Sur. On January 30, 1995, police officer Merly Silva requested the Chief of the Ragay District Hospital to conduct a medical examination on Marjorie.^[8]

On February 1, 1995, DR. MARILYN CERILO-FOLLOSO, Municipal Health Officer, Ragay, Camarines Sur, examined complainant. She later testified that complainant has a healed hymenal laceration at 6:00 o'clock position. The cervix was closed and the uterus was enlarged indicating pregnancy, at about two to three months at the time of examination. There was slight bleeding due to a threatened abortion.^[9]

In their testimonies, ROSALINA LLANDELAR and her son GILBERTO related separately that they saw appellant hurting Marjorie whenever she would resist or refuse to lie down with him. Both confirmed that they saw father and daughter sleeping together ("*nag-durog*"), covered with a blanket, in the '*bintaas*'. In local parlance, *nag-durog* means lying with or having sexual relations.

Rosalina further testified that she and appellant married on May 3, 1978. She recalled that after appellant arrived with complainant from Batangas in April, 1994, she noticed that the two always slept together in the *bintaas*. She was also hurt by appellant and she also witnessed how Marjorie was hit by appellant in the arm and at the back. Rosalina said she was confined in the hospital starting December, 1994, because of tuberculosis.^[10]

Gilberto stated on the witness stand that he sensed something wrong about his father and sister because the two were always sleeping together in the *bintaas*. He said that complainant was beaten by their father whenever she refused to sleep with appellant. He added that he and his mother could not do anything to help his sister because they were also physically abused by appellant.^[11]

Appellant HONESTO LLANDELAR took the witness stand to defend himself. He said he learned that he was being charged with the rape of his daughter when he was already in the municipal jail. He admitted that complainant is his daughter by his wife, Rosalina. However, he denied sexually abusing his daughter because he loved his family and he would not do such a dastardly act. He claimed that he was in Batangas from April, 1994, to December 8, 1994, working in a poultry farm. In December, 1994, he learned that his wife was ill. On December 9, 1994, he went home to Ragay with Marjorie and Allan who also worked in Batangas. He brought his wife to the hospital and he took care of her. Sometimes, he stayed with his wife's

mother in the hospital. In January, 1995, he brought his wife to the hospital every Monday. They would stay in the house of his uncle, Federico Llandelar, in Ragay because Rosalina could not bear the trip home to Pag-ultan. He said that Marjorie had a boyfriend; she was once abducted by the members of the New People's Army.
[12]

FEDERICO LLANDELAR, appellant's uncle, also testified for the defense. He stated that appellant and Rosalina slept at his house for twenty days when the latter was brought to the hospital for medical check up. The couple went to his house on December 20, 1994. They stayed there until January 5, 1995, as Rosalina was undergoing medication. On January 28, appellant arrived at his house to raise money. It was only on January 29, that he learned about the rape charges and appellant's arrest.
[13]

The trial court found the testimonies of witnesses for the prosecution credible. In contrast, it found appellant's alibi and denial unworthy of belief. Accordingly, the court found appellant guilty as charged. In its decision, the trial court decreed:

WHEREFORE, in view of the foregoing, this Court finds the accused, HONESTO LLANDELAR Y MAGANTI, GUILTY beyond reasonable doubt, of the crime of Rape, under Article 335, as amended by Sec. 11 of RA 7659, in Crim. Case Nos. 1728 and 1729, and hereby sentences him to suffer the maximum penalty of DEATH in both cases. He is likewise directed to pay the sum of Fifty Thousand Pesos (P50,000.00) in each case, as moral damages, and Fifty Thousand Pesos (P50,000.00) in both cases, as exemplary damages, and to pay the costs of this suit.

x x x

SO ORDERED.
[14]

Hence, this appeal. In his brief, appellant alleges that:

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT WHEN THE EVIDENCE ADDUCED BY THE PROSECUTION FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN HIS FAVOR BY CLEAR AND CONVINCING EVIDENCE OF GUILT BEYOND REASONABLE DOUBT.

[15]

The issues for resolution are: (1) Is there sufficient evidence to support the finding of guilt beyond reasonable doubt for the two counts of qualified rape? (2) Is the sentence of death in each count properly imposed?

Appellant assails the trial court for giving full credence to the testimony of prosecution witnesses and totally disregarding the evidence for the defense. He contends that the delay in reporting the sexual abuses to her grandmother and the authorities makes private complainant's story doubtful. He points out that for ten months complainant allegedly had sexual intercourse with him yet she reported them only when she was already pregnant. He also asserts that complainant consented to the sexual advances because they always slept together covered by a blanket.
[16]