

EN BANC

[G.R. No. 138838, December 11, 2001]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FRANCISCO BALAS
@ "FRANCING," APPELLANT.**

DECISION

PANGANIBAN, J.:

Where the father-daughter relationship between the offender and the offended party was not alleged in the information, an appellant cannot be convicted of rape in its qualified form and, hence, cannot be sentenced to death therefor. Accordingly, the Court affirms herein appellant's culpability for simple rape only and reduces the penalty to *reclusion perpetua*.

The Case

Before this Court on automatic review is the Decision^[1] of the Regional Trial Court (RTC) of Kalibo, Aklan (Branch 1) dated April 29, 1999, in Criminal Case No. 4391. The RTC found appellant guilty of rape beyond reasonable doubt and sentenced him to death.

The Complaint, dated January 12, 1995,^[2] charged appellant as follows:

"That on or about the 11th day of January, 1995, in the evening, in Poblacion, Municipality of Libacao, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, while armed with bolo and knife, with lewd design and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the complainant LUSMINDA C. BALAS, 13 years of age, against her will and without her consent thereby causing physical injuries upon the latter, to wit:

` FINDINGS:

VULVA----

-----Clean

VAGINA--

-----Redish Discoloration

sign of irritation

No laceration noted.

as per Medico-Legal Report on Physical Injuries issued by Dr. Chedy S. Bueno, M.D., Rural Health Physician, Rural Health Unit, Libacao, Aklan,

attached hereto as Annex `A' and forming part of this complaint."

Assisted by his counsel,^[3] appellant pleaded not guilty during his arraignment on February 6, 1995.^[4] After due trial, the court *a quo* rendered its Decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered finding accused Francisco alias `Francing' Balas guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 (Death Penalty Law), Section 11 thereof, the accused being the father of the victim as the attendant circumstance. He is sentenced to suffer the ultimate penalty of DEATH. He is also ordered to indemnify Lusminda Balas the amount of P75,000.00 pursuant to the ruling of the Court in People vs. Esteban Victor y Penis, G.R. No. 127903 promulgated on July 9, 1998."^[5]

The Facts

Version of the Prosecution

The Office of the Solicitor General presents the prosecution's version of the factual incidents in this manner:^[6]

"Appellant was a resident of Hilwan, Tapaz, Capiz where he stayed with his family. He maintained in his residence 2 wives, namely Jordeni Tamayo (also known as Nene or Melia) and Tita Culas. Appellant had 14 children, 8 from Jordeni Tamayo and 6 from Tita Culas. The victim, Lusminda Balas, was his second child by Tita Culas.

"Sometime in December 1994, Lusminda was brought by Jordeni Tamayo to Poblacion, Libacao, Aklan to work as a `school girl' in the house of Ruel and Helen Mia. As a `school girl', Lusminda would be working as a helper while Ruel and Helen Mia would be paying for her education. Lusminda would also be paid a salary of P250.00 a month.

"On January 11, 1995, appellant and Jordeni Tamayo went to Poblacion, Libacao, Aklan to visit Lusminda. Upon arriving at Poblacion, Libacao, Aklan in the afternoon, appellant told Jordeni Tamayo to proceed to the house of his brother in law while he would go to the house of Ruel and Helen Mia, the employers of Lusminda.

"Appellant arrived at the house of Ruel and Helen Mia at about 7:00 o'clock in the evening. He was invited by the Mias to sleep over. After eating his dinner, appellant went to sleep with Lusminda in her room which was located above the room of Ruel and Helen Mia.

"At about 11:45 that evening, Lusminda was awakened by appellant. Appellant told her to keep quiet, poked a knife at her neck and placed a bolo by her side. Appellant undressed her, went on top of her and inserted his penis inside her vagina. To prevent her from shouting, appellant covered her mouth with his hand. Appellant warned her that if she shouted, he would kill her.

"Feeling pain, Lusminda struggled and was able to kick some boxes kept inside the room which fell to the floor.

"Finished with his dastardly act, Lusminda asked appellant why he did this to her. Appellant answered that it was `alright that he will devirginize her.'

"Downstairs, in their room located below the room of Lusminda, Ruel and Helen heard a noise coming from the room of Lusminda. They went out of their room and Helen called for Lusminda to prepare milk for her. Lusminda came downstairs and told them about the rape.

"Ruel Mia immediately left their house and proceeded to the police station of Libacao, Aklan and asked for assistance. PO2 Mayulito Remedio and PO3 Elmer de Jose accompanied Ruel Mia back to their house.

"The 2 policemen saw Lusminda Balas crying. When asked why she was crying, Lusminda told them that she was raped by her father. The police called appellant to come down from the room. Appellant obliged and went with them peacefully to the police station. Ruel Mia went to the room of Lusminda and got the bolo of appellant and turned it over to the policemen. The knife, however, was nowhere to be found. He and Lusminda also went with the policeman and appellant to the police station. The case was, thereafter, turned over to the Women's desk at the Libacao Police Station.

"The following day, January 12, 1995, Lusminda was brought to the Libacao Health Unit, Libacao, Aklan for examination. As found by Dr.Chedy Bueno, `the vulva area is clean. That the vagina ha[d] a redish discoloration and sign of irritation.'"^[7] (Citations omitted)

Version of the Defense

On the other hand, appellant narrates his version of the facts as follows:^[8]

"Accused-appellant, on the other hand, vehemently denied the accusation. To bolster appellant's claim of innocence, he presented three (3) witnesses, namely: Joveny Balas, Jordeni Tamayo and accused-appellant himself.

"Accused-appellant Francisco Balas testified that he ha[d] been staying in Hilwan, Tapaz, Capiz with his family for 20 years; that sometime on January 11, 1995, he went to Libacao, Aklan with his first wife, Nene Tamayo, with whom he has eight (8) children, to visit his daughter Lusminda who was then working as babysitter in the house of Ruel Mia; that it was his wife Tita who told him to visit his daughter and to take her back as she was only receiving P250.00 a month; that when he and Nene Tamayo arrived in Labacao, they proceeded to the house of Alot Villore[n]te, who is Tita's first cousin where Lusminda later met him; x x x around 5:00 o'clock in the afternoon, Lusminda came to fetch him in order for the two of them to proceed to the house of her employers; that

when he told Ruel Mia that he wanted to take his daughter back the latter got angry; that he slept in the attic of the house of Ruel Mia while Lusminda slept downstairs with the children of Ruel Mia; that he was suddenly awakened when a policeman accosted him and took him to the police station where he was asked if he raped his daughter; that it was Ruel Mia who wanted [his] daughter to file this case against him.

"Joveny Balas, testified that the accused is her father while the victim is her younger sister; that on January 11, 1995 she was working as a housekeeper in the house of Sonny Turang in Poblacion, Libacao, Aklan; that on said date at around 6:00 o'clock in the afternoon, she met her father in the house Alot Villorente; and after sometime Lusminda arrived to fetch their father and brought him to the house of Ruel Mia; that at around 12:00 o'clock midnight she left the house of Ruel Mia. Her father was then already asleep at the attic of the Mias' while Lusminda was still washing the dishes; that when she, Lusminda and her father went to the house of Mia from the house of Alot Villorente she never saw her father carrying any bolo or knife; that she came to know that her sister was allegedly raped by her father when a certain Nene Tamayo came to the house of her employer; thereupon, she asked Lusminda if she was indeed molested by her father and the latter answered in the negative; she was further informed by Lusminda that the former [sic] was given P500.00 by the Mias in order to pin down their father.

"Jordeni Tamayo, testified that on the date of the alleged crime she and the accused went to Libacao to visit Lusminda who was then working as a domestic helper with the Mias; that she slept in the house of Sofronio Gabi, while the accused slept in the house of Ruel Mia; that on the following day, she went to Ruel Mia's house to fetch Lusminda and her spouse, but she was told by Ruel Mia's wife that her husband was already in jail because he raped Lusminda; that she asked Lusminda whether she was indeed raped by her father and Lusminda answered that it was not true." (Citations omitted)

The Trial Court's Ruling

The court *a quo* found appellant's denial of the charge to be "unsubstantiated by clear and convincing evidence." It brushed aside the claim of appellant that the rape charge was fabricated by the employer of his daughter to prevent him from taking her back. Such contention, the trial court said, is incredible for the following reasons: (1) the injury in Lusminda's genital organ refuted appellant's denial; (2) the significant inconsistencies in the testimonies of appellant and his other daughter, Joveny Balas, belie the latter's presence on the night the rape was allegedly committed; and (3) Lusminda denied that the reason she said she had been raped by her father was the P500 she supposedly received from Ruel Mia (her employer), as alleged by Jordeni Tamayo (one of appellant's "two wives"). On the victim's credibility, the trial court observed as follows:

"As heretofore noted, the behavior and appearance of the offended party revealed a person who [could] discern what is fundamentally wrong. She did not give the impression of someone who could easily be swayed by money so as to commit a grievous wrong of falsely charging her own

father of defiling her. Considering her age and rural background, she was no Judas [I]scariot who would sell her own father for less than 30 pieces of silver."^[9]

Convinced beyond reasonable doubt that appellant had committed the crime, the RTC sentenced him to death.

Hence, this automatic review before us.^[10]

The Issues

In his Brief, appellant raises the following alleged errors for our consideration:

"I

The court a quo gravely erred in finding that the guilt of herein accused-appellant has been proven beyond reasonable doubt.

"II

Assuming that the guilt of the accused-appellant has been proven beyond reasonable, the court a quo gravely erred in imposing the extreme penalty of death."^[11]

The Court's Ruling

The appeal is partly meritorious.

Main Issue

Sufficiency of Evidence

Appellant argues that the testimony of the victim does not meet the quantum of evidence required by law. According to him, the testimony was merely couched in general terms and lacking in critical details that would sufficiently describe the crime charged.

Appellant's argument is a desperate attempt to belittle the victim's otherwise clear, consistent and unwavering narration of the rape incident. A precise and picture-perfect recollection cannot be expected of a complaining witness, especially with respect to the lurid details of an experience so humiliating and so painful like rape. Indeed, a truthful and factual narration of the sexual assault is all that is required.

We believe that the victim's testimony more than adequately shows the dastardly act perpetrated by appellant on the offended party while they were sleeping in the upper room of the house of Ruel and Helen Mia. The victim related her painful ordeal on that fateful night as follows:

"Fiscal Ofialda:

Q: Miss witness, do you remember where were you on January 11, 1995 at about 11:45 in the evening?

A: At the house of Ruel Mia.