

## EN BANC

**[ G.R. No. 130653 & G.R. No. 139384, December 11, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FRANCISCO BANIQUED, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

Francisco Baniqued was charged with the crime of rape, on two counts, before the Regional Trial Court, Branch 65, of Tarlac, Tarlac, in separate criminal complaints, both dated 11 November 1996, which read:

In Criminal Case No. 9400 -

"The undersigned Arlene Baniqued, 15 years old, represented at this instance by the DSWD, after the necessary preliminary investigation conducted by Assistant Provincial Prosecutor Aladin C. Bermudez, Jr. in accordance with the Rules on Criminal Procedure, accuses her own father, Francisco Baniqued, a resident of Abagon, Gerona, Tarlac, with a crime of Rape, committed as follows:

"That on or about the month of June, 1996, at Brgy. Abagon, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously, with lustful design and grave abuse of moral ascendancy and by force and intimidation, have sexual intercourse with his own daughter, Arlene Baniqued, the undersigned herein, against her will."<sup>[1]</sup>

In Criminal Case No. 9401 -

"That on or about the 4th day of September, 1996 at Brgy. Abagon, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously, with lustful design and grave abuse of moral ascendancy and by force and intimidation, have sexual intercourse with his own daughter, Arlene Baniqued, the undersigned herein, against her will."<sup>[2]</sup>

Upon his arraignment, the accused, duly represented by counsel, pled "not guilty" to the offenses charged; forthwith, trial ensued on the two cases.

The evidence for the prosecution was summarized by the Solicitor General in the Appellee's Brief submitted to the Court.

"Sometime in June 1996 at early dawn, private complainant Arlene Baniqued who at the time was fifteen (15) years old, was sleeping in the sala of her house while her brothers slept with her parents in the only bedroom of the house. She was awakened to find her father, appellant Francisco Baniqued, already undressed and on top of her (pp. 6-8, TSN, January 22, 1997).

"Appellant told her 'Do not make any noise we will just play' (p. 9, *ibid.*) and proceeded to take off Arlene's short pants and panties. Arlene cried 'Papa do not do it,' but appellant pointed a knife ('lanseta') at her and threatened to kill her (p. 10, *ibid.*) Appellant then proceeded to kiss Arlene's neck and successfully had sexual intercourse with her for thirty (30) minutes, caressing her breasts and laughing (p. 13-14, *ibid.*). Arlene could only cry feeling pain at the penetration (pp. 13-14, *ibid.*) and could not resist her father because she was crushed by his weight. When she struggled with her legs, appellant put down his knife and struck her thighs, then held both Arlene's hands with his left hand and held the knife with his right (pp. 6-7, 10, TSN, February 4, 1997).

"After appellant was finished, he merely got up and dressed, then asked Arlene 'Anak, masarap ba?' Arlene did not say anything. When her father left her, she cried (pp. 14-15, TSN, January 22, 1997).

"The following morning, Arlene was feverish, but did not tell anyone in her family of the incident (*Ibid.*).

"In the evening of September 3, 1996, Arlene noticed that appellant was unusually affectionate towards her ('inaamo') (p. 7, TSN, January 28, 1997) and gave her money. Appellant even displayed his genitalia for Arlene to see while the latter was washing the dishes (*Ibid.*).

"Later at one o'clock in the morning of September 4, 1996 when the whole Baniqued family were sleeping in the bedroom, except for Arlene who was sleeping in the sala, she again woke up to find her father undressed and on top of her. She was already rid of her own shorts and panties (p. 17, TSN, January 22, 1997). Arlene pleaded with appellant by saying 'Papa, do not do it' and pushed him away, but appellant was successful in having intercourse with her while pointing a knife at her chest. Arlene's ordeal lasted for fifteen (15) minutes. She again felt pain at the penetration and cried (pp. 17-19, 27-30, *ibid.*). After the intercourse, appellant just left Arlene (p. 20, *ibid.*).

"The following day, Arlene confided to her classmates what her father did to her and was advised to get out of their house immediately (*Ibid.*) Arlene likewise told her Aunt Dory and Uncle Mario of her ordeal. Her Aunt Dory then proceeded to bring Arlene to Guimba, Nueva Ecija to stay momentarily with a friend of the former (pp. 20-21, *ibid.*).

"Appellant was arrested on September 22, 1996 (p. 10, TSN, April 8, 1997) and the criminal investigation proceeded.

"Arlene presented herself for medical examination. The results thereof

were submitted by the Medico-Legal Officer, Dr. Alicia E. Castro, in the Medico-Legal Certificate dated October 25, 1996, to wit:

"GENITALIA: mons pubis with black hair sparsely distributed, labia majora partially hiding the minora, fourchette U-shaped with minimal whitish mucoid discharge, hymen with old healed superficial lacerations at 3:00 o'clock, 5:00 o'clock, 6:00 o'clock positions."<sup>[3]</sup>

The accused, denying the accusations, claimed that he was not at home when the rape incidents allegedly occurred. He asserted that from June 1 to June 30, 1996, he was in San Carlos, Pangasinan, with his second wife, Virginia Taduran, while his children, including Arlene, were staying in their house in Brgy. Abagon, Gerona, Tarlac. The accused would only send money to his children, through Virginia, who would go home in Brgy. Abagon, Gerona, Tarlac, once a week in the month of June 1996. In August, 1996, the accused went home in Gerona only to discover that Arlene had by then left their house. The accused had previously threatened to stop supporting her in school due to her laziness and for being hardheaded. The accused went back to Pangasinan on 04 September 1996 and only returned to Brgy. Abagon on 15 September 1996. He was later informed by his sister-in-law Dory that she brought Arlene to Guimba, Nueva Ecija. On 23 September 1996, he was arrested by the police on the basis of the complaints for rape filed by his daughter.

On 07 July 1997, the trial court rendered its decision; it found the accused guilty, on two counts, of the crime of rape; it held:

"WHEREFORE, this Court finds accused Francisco Baniqued GUILTY beyond reasonable doubt of the crime of rape as defined and penalized in Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, in Criminal Case No. 9400 and in Criminal Case No. 9401 and hereby sentences him in EACH CASE to suffer the penalty of DEATH by lethal injection; he is further ordered to pay complainant P50,000.00 for each case as moral damages, to pay complainant the amount of P50,000.00 as exemplary damages and to pay the costs."<sup>[4]</sup>

The death penalty having been imposed, the records of the case were elevated to this Court for automatic review.

In his appeal brief, Francisco Baniqued contends that the trial court has gravely erred in convicting him and in sentencing him to suffer the extreme penalty.

In rape cases, the credibility of the victim is normally determinative of its outcome, her sole testimony, if credible, being quite often sufficient to declare a conviction.<sup>[5]</sup> It becomes most important, therefore, to examine closely her testimony and how it is given before the trial court. The Court here reproduces, at length, her narration at the witness stand.

"FISCAL CAPULONG:

"Q Arlene, will you inform the Honorable Court if you still recall the **day** in the month of June 1996 when according to you, your father went on top of you?

"A No sir.

"Q What about the **time** when according to you in the month of June 1996 when your [father] went on top of you?

"A In the early morning or early dawn, sir.

"Q Incidentally Arlene, in what particular place in your residence [were] you sleeping?

"A In our sala sir.

"Q At the sala where you were sleeping then, were there other persons sleeping at that time?

"A I [was] the only one sir.

"Q What about the other persons or members of your family where [were] they sleeping?

"A Upstairs sir.

"Q Could you describe your residence, is it made of what or is it two storey?

"A It is made of two storey.

"Q Will you describe your house?

"A Inside the house on the left side is the bed of my father and mother, sir.

"Q This bed of your father and mother, is it on the ground floor or on the upper part of your house?

"A Upper part of our house, sir.

"Q What about your brothers where [were] they sleeping?

"A They [were] with them sir.

"Q Incidentally in June 1996 how old were you then?

"A Fifteen (15) years old sir.

"Q Could you tell us if you still recall what you were then wearing on that night your father went on top of you on June 1996?

"A Yes sir.

"Q What were you then wearing?

"A T-shirt and short pants, sir.

"Q According to you, your father on the night of June 1996 went

on top of you, could you further explain how he went on top of you?

"A He was undressed when I noticed him on top of me, and he was removing my dress, sir.

"Q I supposed, you [were] sleeping when your father went beside you?

"A Yes sir.

"Q Now according to you, your father removed your dress, when he removed your dress. . .

"COURT

What was first removed. . .

"FISCAL CAPULONG

"Q Which dress was first removed by your father?

"A My short [pants] and panty, sir.

"Q After your father removed your short [pants] and panty, what did he do if any?

"COURT

Were you awaken[ed] when your short [pants] and panty were removed?

"WITNESS

"A I was awaken[ed] when he was doing the sexual act to me, sir.

"FISCAL CAPULONG

"Q What about your T-shirt?

"A He did not remove it, sir.

"Q Now when you were awaken[ed] what did your father tell you?

"A He said, `Don't make any noise we will just play.

"Q After telling you that what was your reaction, or did you tell anything to your father?

"A I said, `Papa do not do it.'

"Q After telling him that, what did your father do if he did anything?

"A He told me he is going to kill me because he was holding a