

EN BANC

[G.R. No. 127652, December 05, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR
M. DANTE, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Before us on automatic review is the Decision^[1] dated November 27, 1996 of the Regional Trial Court of Quezon City, Branch 76, in Criminal Case No. 96-65488, finding accused-appellant Oscar M. Dante guilty of rape and imposing on him the death penalty.

In a criminal complaint filed on March 29, 1996, accused-appellant was charged with the crime of rape, committed as follows -

That on or about the 25th day of March, 1996, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously removed (sic) her clothes and underwear and went on top of her with lewd design and thereafter have carnal knowledge with (sic) the undersigned complainant against her will and without her consent.^[2]

At his arraignment, accused-appellant entered a plea of "not guilty."

The victim, Aurora Cañizares, is the daughter of Antonio Cañizares and Sonia Mayote. After her parents separated, she lived with her mother and her live-in partner, accused-appellant herein, in their house in Nawasa Road, Barangay Holy Spirit, Quezon City. The two have been cohabiting since Aurora was eight (8) years old. Aurora, thus, regarded accused-appellant, who is her mother's first cousin, as her stepfather.

Aurora testified that she was first raped by accused-appellant in 1992 when she was only ten (10) years old. Accused-appellant raped her everyday after her mother went to work and she was left alone in the house with her younger sister.

The last time accused-appellant raped Aurora was on March 25, 1996, when she was fourteen (14) years old. Accused-appellant ordered Aurora's younger sister to go to the store to buy ice cream. With her younger sister gone, accused-appellant pulled Aurora inside the bedroom and ordered her to remove all of her clothes. She refused at first, but accused-appellant got mad and threatened her that he would tell her mother of their previous sexual encounters. This was sure to make her mother crazy, and Aurora would be blamed. Because of this threat, Aurora removed her clothes. Accused-appellant also took off his shorts and briefs, then he lay on top of Aurora and inserted his penis inside her vagina. After satisfying his lust, accused-

appellant dressed up and ordered Aurora to put on her clothes. Before leaving the room, he warned her not to tell anyone about what happened.

On March 26, 1996, Aurora did not go home after school. Instead, she went to the house of her classmate, Ma. Victoria de Monteverde, in Barangay Piñahan, Quezon City. Ma. Victoria told her father, Mohammed, that Aurora was sexually abused by her stepfather. Being a member of the press, Mohammed brought Aurora to his press colleagues, to whom she relayed her story. The next morning, accompanied by Mohammed and other members of the press, Aurora went to the Police Headquarters in Kamuning, Quezon City, where she gave her statement and underwent medical examination.

Aurora's natural father, Antonio Cañizares, testified that he found out about the rape of his daughter through his niece, Maritess, who read about it in the tabloid, *Abante*. He took custody of Aurora after learning that she was under the care of the Monteverdes.

Dr. Ma. Cristina Freyra, the medico-legal officer who conducted the medical examination on Aurora, testified that she found her to be in a non-virgin state, physically; and that she had shallow healed lacerations on her vagina.

Accused-appellant denied the charges against him. He averred that if Aurora was indeed raped from 1992 up to 1996, she could have complained to her uncle, who was residing in the same house. He claims that in the afternoon of March 25, 1996, Aurora came home from school and asked for money to buy softdrinks but he refused as he had no money at that time. He denied Aurora's claim that he ordered Antonette to buy ice cream outside. He stated that he beat up Aurora when he learned from a neighbor that she was going out with some male suitors.

After trial, the lower court rendered judgment as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape described and penalized under Article 335 of the Revised Penal Code as amended by Republic Act 7659, the court hereby imposes the death penalty on the accused Oscar Dante. He is also ordered to indemnify the offended party in the amount of P50,000.00 as moral damages and to pay the costs.

SO ORDERED.^[3]

On August 28, 1997, a Motion for New Trial was filed by accused-appellant, based on an affidavit executed by the victim, Aurora Cañizares, wherein she declared as follows--

x x x

x x x

x x x

That in the interest of justice and fairness to the accused, I hereby declare under oath the more accurate version of the case;

That since the separation of my biological father Antonio Cañizares and my mother Sonia Mayote, I have the deep longing that one day my legitimate parents would reconcile and live together under one roof as

one happy family;

That failing that wish I have always looked upon my stepfather as the stumbling block to the reconciliation of my father and my mother;

That because of my antipathy with my stepfather, I have always looked upon his manner of discipline as an act of cruelty and his warmness to me as an indication of prurient desires;

That on January 1, 1996, acting on the report of my stepfather's kumpadre that I was dating with my boyfriend, I was beaten up by my stepfather which damaged my nosebridge and bruised my body;

That after that incident, I all the more developed the feeling that my stepfather has a sexual interest in me and that living with him in one house is more of a problem than a convenience for me;

That on March 25, 1996, I mustered enough courage to report to my friends my predicaments with my stepfather and that on March 27, 1996, I together with the father of my friend, went to the Police Station 10 at Kamuning, Quezon City to file a charge of rape against my stepfather;

That during the trial, I did not have the chance to have a talk with my mother and my stepfather and so I did not have the opportunity to discuss with them my grievance with my stepfather;

That I am executing this affidavit for the purpose of informing the Supreme Court that a re-trial or new trial of the case could bear out the more accurate incidents of the case.^[4]

By way of defense, accused-appellant contends that although the prosecution attempted to prove that Aurora was repeatedly raped by accused-appellant from 1992-1996, the Criminal Complaint against him alleged only one incident of rape, which was committed on March 25, 1996 when Aurora was already fourteen (14) years old. Thus, if at all committed, it did not constitute statutory rape. Accused-appellant further argued that the alleged threats on Aurora were mere warnings and that, in the absence of force or intimidation, accused-appellant can not be convicted of rape.

Accused-appellant also points out that the healed lacerations found on Aurora's hymen were inconsistent with the theory that she was raped only two (2) days earlier.

Finally, accused-appellant alleges that Aurora had a "penchant to associate herself with group of youngsters who are engaged in sexual experiments." He also claims that she had a fondness for amorous relationships, and that she had several boyfriends at the early age of fourteen.

The Office of the Solicitor General filed its Comment on the Motion for New Trial, arguing that the holding of a new trial merely on the basis of an affidavit of desistance is generally frowned upon.