

EN BANC

[G.R. Nos. 133343-44, March 02, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ILDEFONSO BAYONA Y CALOSO, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On automatic review is the decision of the Regional Trial Court of Tagaytay City, Branch 18, in Criminal Case Nos. TG-2436-95 and TG-2437-95, finding appellant guilty of two (2) counts of rape, sentencing him to death, and ordering him to pay the victim the amount of P50,000.00 as indemnity for each count of rape.

The facts of the case are as follows:

On October 31, 1994, at around 3:00 A.M., in Barangay Tibig, Silang, Cavite, appellant entered the room where his daughter, Marilou, and his three (3) sons, Michael, Melvin, and Marlon, were sleeping. Appellant, who was wearing only his briefs, woke up his daughter, pulled her feet and dragged her towards him. Appellant started touching his daughter in her private parts. When Marilou struggled ("*nagwawala*"), appellant boxed her in the abdomen until she lost consciousness. When Marilou regained consciousness, she noticed that she was no longer wearing her shorts, only her t-shirt. She also found blood on her private parts.^[1]

On November 2, 1994, at around 10 o'clock in the evening, appellant again entered the room where his daughter was sleeping. He told her that he would give her everything if she would accede to his sexual desire ("*Ibibigay niya ang lahat, pumayag lang ako.*") When Marilou refused, he boxed her. Then she lost consciousness. When she woke up, she found herself naked. She could barely stand up because of the pain in her private parts.^[2]

After the rapes, Marilou stopped going to school. She told her paternal grandmother about the rapes but the latter merely advised her to just ignore it. She also told her paternal uncles about it. On November 11, 1994, two of her uncles, German and Lando Bayona, accompanied by the barangay captain, finally brought her to the Municipal Health Center for examination.^[3] While Marilou was being examined, her maternal aunt, Teresita D. Agaen, who was a Barangay Health Worker, saw the uncles. She asked Lando what they were doing there. He replied that they were having Marilou treated because she was always dizzy. When Marilou came out of the examination room, she saw her aunt and embraced her. She told her aunt that her father raped her.^[4]

On November 11, 1994, Marilou, assisted by her aunt Teresita, filed a Complaint^[5] against her father, alleging that she was raped on three occasions - October 31,

1994, November 2, 1994, and November 8, 1994. During preliminary investigation, appellant could not be located at his address. On January 6, 1995, the investigating judge rendered a Resolution^[6] finding probable cause that appellant raped his daughter on two occasions. For some reason, the aforesaid Resolution failed to include the rape committed on November 8, 1994.

On April 18, 1995, appellant was charged with two counts of rape under the following Informations:^[7]

CRIMINAL CASE NO. TG-2436-95

"I N F O R M A T I O N

The undersigned Assistant Provincial Prosecutor, based on a verified complaint filed by one Marilou Bayona, hereby accuses ILDEFONSO BAYONA of the crime of RAPE, committed as follows:

That on or about the 31st day of October, 1994, in the Municipality of Silang, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Marilou Bayona, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.

Imus, Cavite, February 13, 1995.

(SGD.) OSCAR R. JARLOS

Asst. Provincial Prosecutor"

CRIMINAL CASE NO. TG-2437-95

"I N F O R M A T I O N

The undersigned Assistant Provincial Prosecutor, based on a verified complaint filed by one Marilou Bayona, hereby accuses ILDEFONSO BAYONA of the crime of RAPE, committed as follows:

That on or about the 2nd day of November, 1994, in the Municipality of Silang, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Marilou Bayona, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.

Imus, Cavite, Febraury 13, 1995.

(SGD.) OSCAR R. JARLOS

Upon arraignment on June 24, 1996, appellant, duly assisted by counsel *de officio* Atty. Crisostomo Dario, Jr., entered a plea of not guilty to both charges.^[8] The two cases were jointly tried.^[9]

During trial, the prosecution presented the following witnesses: (1) Dra. Engracia A. dela Cruz, Municipal Health Officer of Silang Cavite; (2) Private complainant Marilou Derla Bayona, and (3) her aunt, Teresita Derla Agaen. Dra. Cruz testified that she examined the victim on November 11, 1994. She found that the hymen was not intact, the vagina had lacerations at 7 o'clock, which refers to the lower left portion of the vagina, and that the vagina easily admitted two fingers. She concluded that it was possible that the victim had sexual intercourse within the past three (3) days.^[10]

After the prosecution rested, the defense requested for numerous postponements in order to secure the presence of appellant's sons as witnesses. Having failed to do so, appellant was finally presented as sole witness for the defense.^[11]

Appellant categorically denied the rape charges. He claimed at the time of the alleged rapes, he was then working in Gitasin, Sitio Kaong, Silang, Cavite, which is more or less seven (7) kilometers from their residence where the rapes took place. Because of the distance, he explained he went home only during weekends. He further testified that he was separated from his wife because she eloped with another man, and that she egged their daughter to file the rape charges so that he will be imprisoned and could no longer file adultery charges against her. He also testified that his daughter filed the rape charges because he spanked her for having an affair with the son of the brother of his wife's paramour.^[12]

On April 8, 1998, the trial court rendered a decision^[13] finding appellant guilty as charged. The dispositive portion of the decision states:

"WHEREFORE, the Court hereby finds the accused ILDEFONSO BAYONA GUILTY beyond reasonable doubt in both criminal cases and sentences him to

In Criminal Case No. TG-2436-95, to suffer the extreme penalty of DEATH and to indemnify the victim Marilou Bayona the sum of P50,000.00 as damages;

In Criminal Case No. TG-2437-95, to suffer the extreme penalty of DEATH and to indemnify the victim Marilou Bayona the sum of P50,000.00 as damages.

Costs against the accused.

SO ORDERED."

Hence, the present automatic review. Appellant now raises the following issues:^[14]

"I. THE COURT ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE EXTREME PENALTY OF DEATH.

II. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE INCONCLUSIVE AND WEAK EVIDENCE OF THE PROSECUTION."

Appellant contends, and the Office of the Solicitor General concurs, that the trial court erred in imposing the death sentence since the two (2) Informations failed to allege the special qualifying circumstance of relationship between appellant and his daughter. Hence, appellant could only be convicted of the crime of simple rape, and not qualified rape.^[15]

Appellant, however, assails also the credibility of the victim by pointing out this inconsistency in her testimony - that the victim could not have felt the pain in her private parts during the rape since she testified that she was unconscious at that time. Appellant assails as baseless the conclusions made by examining physician since (1) there was no evidence of external aggression on the victim's body, and (2) there was only one vaginal laceration while the victim claimed she was raped three times. The medical certificate, appellant argues, is merely proof of loss of virginity and not of rape.

The Office of the Solicitor General, on the other hand, contends that appellant's guilt was proven beyond reasonable doubt by the victim's categorical testimony, which never wavered even under rigorous cross-examination. A daughter would not accuse her own father of such a heinous crime unless it were true. Further, the medical certificate corroborates her testimony that she was indeed raped. In view of the failure to allege the special qualifying circumstance of relationship, the OSG recommends, however, the modification of the penalty and civil indemnity awarded to the victim.

The pertinent issues here pertain *first*, to the credibility of witnesses; second, the sufficiency of the evidence against appellant; and *lastly*, the correctness of the penalty imposed upon him.

Anent the first issue, the well-entrenched rule is that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination.^[16] Appellate courts are bound by the findings of the trial court in this respect, unless it is shown that the trial court has overlooked, misunderstood, or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case.^[17] Our own review of the victim's testimony confirms the conclusion of the trial court that "her testimony deserves full faith and credence."^[18] The alleged inconsistency in her testimony pertaining to the pain she felt during the rape is only a minor detail and should detract from the weight and credibility of her testimony.^[19] Errorless recollection of a harrowing incident cannot be expected of a witness especially when she is recounting details of an experience so humiliating and so painful as rape.^[20]

The conduct of the victim immediately following the alleged assault is likewise of utmost importance so as to establish the truth or falsity of the charge of rape.^[21] In