

EN BANC

[G.R. Nos. 132379-82, June 29, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENIDO ALCARTADO AND RODOLFO ALCARTADO, ACCUSED-
APPELLANTS.**

DECISION

DE LEON, JR., J.:

Before us on automatic review is the Decision^[1] of the Regional Trial Court of Bangued, Abra, Branch 2, convicting herein appellant Benido Alcartado in Criminal Cases Nos. 97-005 to 06 and appellant Rodolfo Alcartado in Criminal Cases Nos. 97-007 to 08 of the crime of rape and sentencing them to suffer the supreme penalty of death.

The appellants, Benido Alcartado and Rodolfo Alcartado, father and son respectively, stand charged with the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended, in four separate Informations, which read:

Criminal Case No. 97-005:

That on or about September 21, 1996, at around 10:00 o'clock in the morning, at Sitio Dumeguiay, Barangay Caupasan, Municipality of Danglas, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation with threats to kill, with criminal and carnal knowledge and with lewd design, did then and there, wilfully, unlawfully and feloniously lie and succeed in having carnal knowledge of the offended party Marites Bandeyrel Perez, a.k.a. Cristina Bandeyrel Perez, an 11-year old girl, hence below 12 years old, to the damage and prejudice of the offended party.

CONTRARY TO LAW.

Criminal Case No. 97-006:

That on or about December 10, 1996, at around 11:00 o'clock in the morning, at Sitio Dumeguiay, Barangay Caupasan, Municipality of Danglas, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation with threats to kill, with criminal and carnal knowledge and with lewd design, did then and there, wilfully, unlawfully and feloniously lie and succeed in having carnal knowledge of the offended party Marites Bandeyrel Perez, a.k.a. Cristina Bandeyrel Perez, an 11-year old girl, hence below 12 years of age, to the damage and prejudice of the offended party.

CONTRARY TO LAW.

Criminal Case No. 97-007:

That on or about August 23, 1996, at around 11:00 o'clock in the morning, at Sitio Dumeguiay, Barangay Caupasan, Municipality of Danglas, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with threats to kill, with criminal and carnal knowledge and with lewd design, did then and there, wilfully, unlawfully and feloniously lie and succeed in having carnal knowledge of the offended party Marites Bandeyrel Perez, a.k.a. Cristina Bandeyrel Perez, an 11-year old girl, hence below 12 years of age, and to the damage and prejudice of the offended party.

CONTRARY TO LAW.

Criminal Case No. 97-008:

That on or about October 19, 1996, at Sitio Dumeguiay, Barangay Caupasan, Municipality of Danglas, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation with threats to kill, with criminal and carnal knowledge and with lewd design, did then and there, wilfully, unlawfully and feloniously lie and succeed in having carnal knowledge of the offended party Marites Bandeyrel Perez, a.k.a. Cristina Bandeyrel Perez, an 11 year old girl, hence below twelve years of age, to the damage and prejudice of the offended party.

CONTRARY TO LAW.

Upon being arraigned, both appellants, assisted by counsel, separately entered the plea of "Not guilty" to each of the Informations filed against them. Thereafter, joint trial on the merits ensued.

The evidence of the prosecution shows that on January 13, 1997, Marites B. Perez, a.k.a. Cristina B. Perez, was accompanied by her mother, Patricia P. Alcartado, to the Department of Social Welfare and Development (DSWD) office in Bangued, Abra to seek assistance for the reason that Marites was allegedly raped by her stepfather, Rodolfo Alcartado, and her stepgrandfather, Benido Alcartado.^[2] It was learned that Marites is second to the eldest of the three (3) children of Patricia Alcartado and born out of wedlock. The two (2) other children are Bogard Perez and Bernard Perez. Patricia has since been married to herein appellant Rodolfo Alcartado with whom she has one (1) child named Estrella Alcartado.^[3]

Marites Perez was referred by the DSWD to SPO1 Florderico Javier in Camp Juan Villamor, Bangued, Abra for proper investigation. On January 13, 1997 SPO1 Javier took the sworn statement^[4] of Marites Perez and the same became the basis for the subsequent filing in court of four (4) informations for the crime of rape against herein appellants Benido Alcartado and Rodolfo Alcartado.

Marites related on the witness stand how she was raped by her stepfather, Rodolfo

Alcartado, on August 23, 1996 at about 11:00 o'clock in the morning. It was Friday and Marites did not go to class, due to headache, in Caupasan Elementary School, Bangued, Abra where she was a grade four elementary pupil. Her mother at that time was out in the river washing some clothes while her stepfather Rodolfo remained in the house together with her two other younger siblings, Bernard and Estrella. Their eldest brother, Bogard, was not at home as he was a stay-in worker at the Lucky's Restaurant.

Rodolfo sent Bernard and Estrella to the store of a certain Lola Caring to buy something. After the two children had left, Rodolfo called for Marites who was sitting at the doorway to come inside the house. Subsequently, Rodolfo suddenly pulled her by the hand and kissed her. Rodolfo removed the clothes of Marites before he took off his own clothes. Once they were both naked, Rodolfo laid Marites on the floor before he went on top of her and inserted his penis into her vagina. Marites felt pain in her private part and noticed afterward that it was bleeding.^[5]

Her next ordeal came on September 21, 1996, a Saturday, this time from the hands of her step-grandfather, herein appellant Benido Alcartado. At around 11:00 o'clock in the morning, while both parents of Marites were out and the two children, Bernard and Estrella, were playing outside the house, Benido approached and handed her a note which, as far as she can recall, states in Ilocano "I love you. Don't call me lolo anymore." Benido left after he handed the note to Marites only to come back later. He told Marites to ignore the note as it did not mean anything. Thereafter, he pulled Marites toward the kitchen where he undressed himself. After undressing Marites, Benido made her lie down and raped her by inserting his penis into her vagina. Like in the first instance, Marites felt pain and her private part bled.^[6]

Came another Saturday, October 19, 1996, at around 10:00 o'clock in the morning. The two younger children, Bernard and Estrella, were busy playing at the back of the house fifty (50) meters away, and Marites was left alone inside the house. Rodolfo entered the house and suddenly held the hands of Marites. He kissed her on the cheeks and removed his clothes before undressing her. Subsequently, Rodolfo laid down Marites on the floor and again raped her by inserting his penis into her vagina. Marites again felt pain in her private part.^[7]

The last incident of rape occurred on a Tuesday, December 10, 1996. Both parents of Marites were away and her two younger siblings were, as usual, playing outside the house. Marites was lying inside the house when her stepgrandfather came in. Benido held the hands of Marites and kissed her. He undressed himself before taking off her dress. Benido consummated the act by getting on top of Marites and inserted his penis into her vagina, causing the latter great pain.^[8]

In each instance or occasion of rape aforesated, Marites was overcome by fear for the reason that her attackers might harm or even kill her. She disclosed that there was a bolo nearby.^[9]

Unable to bear her agony much longer, Marites confided her ordeal to her uncle, Sonny Venus, on January 12, 1997. She admitted having initially kept the matter secret from her mother for fear that the situation would only become worse. However, upon being informed that her daughter had been raped, Patricia, together

with Sonny Venus, accompanied Marites to the DSWD in Bangued, Abra which gave them assistance through Josephine Dumlao, Social Welfare Officer III, in filing complaint with the police.^[10]

After the investigation, Marites underwent physical examination in Camp Bado, Dangwa, La Trinidad, Benguet which was conducted by medico-legal officer Dr. Vladimir V. Villasenor, M.D. Per Medico-Legal Report No. M-029-97^[11] dated January 30, 1997 and signed by Dr. Vladimir Villasenor, the following findings appear, to wit:

General and Extragenital:

Fairly nourished, fairly developed, coherent female child. Breasts are conical, with light brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and tight.

Genital:

There is lanugo-type growth of pubic hair. Labia majora are full convex, coaptated with the light brown labia minora, presenting in between. On separating the same is disclosed an elastic hymen with shallow healed lacerations at 3, 8 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-size vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

Conclusion:

Subject is in Non-Virgin State Physically.

There are no external sign of recent application of physical violence.

The appellants denied liability for the charges of rape filed against them in the instant criminal cases. Appellant Benido Alcartado testified that he did not go to the house of the complainant during the occasions when he allegedly raped her on September 21, 1996 and on December 10, 1996. He denied having handed to the complainant a love note on September 21, 1996 for the reason that he allegedly did not know how to read nor write. Benido also testified that he has a weak constitution owing to pulmonary tuberculosis and bronchial asthma^[12] from which he has been suffering for almost 25 years now.

The testimony of Benido Alcartado was corroborated by his daughter, Mary Alcartado, who testified that she lives in the house of her father Benido; that she did not leave their house in order to look after her father who has been suffering from pulmonary tuberculosis and bronchial asthma; that her father did not go to the house of the complainant on September 21, 1996 and December 10, 1996; that her father is an illiterate; that the complainant used to watch bold films together with other men in the house of a certain Encarnacion Velasco; that the complainant talks back to her mother whenever she was scolded by the latter; and that she (complainant) was caught stealing rice from their house in order to sell the same to the store.^[13]

For his defense, appellant Rodolfo Alcartado testified that he was planting rice in the

field of Felix Valera during the day from August 20, 1996 to August 28, 1996. On the other hand, from October 15, 1996 to October 30, 1996, he continuously worked in the field owned by Valera harvesting rice. Hence, he could not have been in his house on the two occasions when he allegedly raped his stepdaughter, Marites.^[14]

Felix Valera corroborated Rodolfo's testimony on material points. Valera testified that Rodolfo and five other laborers planted rice in his field from August 20 to 28, 1996 during the day for which he paid them either P50.00 or 1 ½ gantas of rice daily at their option. From October 15 to 30, 1996, Rodolfo worked alone in his field digging holes for banana seedlings and harvesting rice during the day for which Rodolfo had a share of 30 sacks of palay at the termination of his work. Valera stated that Rodolfo did not go back to his house during the day for the entire period that he (Rodolfo) worked in his field. Rodolfo ate his meals in his house and regularly goes home in the evening at 7:30 o'clock after watching T.V. Patrol on the television.^[15]

Patricia Alcartado, mother of the complainant, Marites Perez, denied that she accompanied her daughter to the DSWD and to the police to file complaints for rape against her husband and father-in-law. On the contrary, she was fetched from the house and was made to sign the sworn statement of her daughter and the four (4) complaints for rape which were prepared by the police of Bangued, Abra without understanding their contents. She also denied the truth of her daughter's claim that she (Marites) was raped by the appellants. She revealed that Marites is a rebellious daughter who had many boyfriends. Marites would talk back whenever she scolded her for being frequently late in coming home from school.

Patricia further testified that Marites even attempted to stab her with a knife after she whipped her for being in the company of men. Marites was even allegedly caught by her brother in the act of pulling down her pants while kissing with a man. She would also steal two (2) to three (3) gantas of rice from their house and sell the same so she could buy her boyfriends soft drinks and biscuits. When confronted by her mother, Marites allegedly denied stealing anything and even retorted "Oki ni inam" (Vagina of your mother).^[16]

Marieta Oca, who is a neighbor of the Alcartados, described the house of her neighbor which is made of materials from cogon grass and boho as small, old, and dilapidated. The kitchen which is separate from the house has no walls and likewise dilapidated. Marieta stated in general that she did not witness any instance of rape in the house as well as in the kitchen of the Alcartado's during the occasions when the same were allegedly committed.^[17]

After analyzing the evidence, the trial court concluded that:

There is no doubt at all in the mind of the court that accused Rodolfo Alcartado raped the complainant Marites Bandeyrel Perez, his step-father (sic) on August 23, 1996, when the latter was only 11 years, 9 months and 17 days, and on October 19, 1996 when she was 11 years and 11 months and 13 days. Likewise, accused Benido Alcartado raped the complainant Marites Bandeyrel Perez, his step-granddaughter on September 21, 1996, when the latter was 11 years, 10 months and 15 days, and on December 10, 1996, when she was 12 years, 1 month and 4 days old. Although the complainant was already 1 month and 4 days