

EN BANC

[G.R. No. 129299, November 15, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO OLING MADRAGA, ACCUSED-APPELLANT.**

D E C I S I O N

BUENA, J.:

Before the Court, for its automatic review, is the Decision^[1] of the Regional Trial Court of Isabela, Basilan, Branch 2, in Criminal Case No. 2511-599, which has found herein accused-appellant, Rodolfo Oling Madraga, guilty beyond reasonable doubt of the crime of rape committed against his 16-year old daughter. The death sentence having been decreed by the trial court, the records of the case have, accordingly, been elevated to this Court.

Rodolfo Oling Madraga was charged with two (2) counts of rape committed against his own 16-year old daughter, Fe C. Madraga. One was committed on May 19, 1995 (Crim. Case No. 2511-599), and the other one on August 24, 1996 (Crim. Case No. 2515-602).^[2]

At the arraignment on November 4, 1996, accused-appellant, with the assistance of Atty. Antonio D. Banico, entered separate pleas of not guilty for each case. Thereafter, the trial proper of the cases was set to November 18, 19, and 20, 1996.^[3]

On November 18, 1996, Atty. Banico, counsel for the accused, moved that they be given time up to December to talk with complainant's mother so that the accused will plead guilty to the first case, but will seek for the dismissal of the second case. The complainant's mother, who was in Court, manifested that she does not agree to the proposition. Trial of the cases was re-set to December 2, 3 & 4, 1996.^[4]

On December 2, 1996, counsel for the accused manifested that the accused was willing to enter a plea of guilty to the crime of rape, which was committed in the month of May, 1995, provided that the other case be tried on another date.

Thus, accused pleaded guilty in Criminal Case No. 2511-599 upon the following complaint:

"The undersigned complainant, a minor of sixteen (16) years of age, under oath, accuses her father, Rodolfo Oling Madraga, of the crime of Rape, committed as follows:

"That sometime in the month of May, 1995, and within the jurisdiction of this Honorable Court, viz., at Barrio Militar, Barangay Menzi, Municipality of Isabela, Province of Basilan, Philippines, the above-named accused

who was under the influence of liquor, entered the room of the undersigned complainant, who was then sleeping, and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously remove the short pant (sic) and panty of the undersigned complainant, lay on top of her and insert his penis inside her vagina, and succeeded in having carnal knowledge of the undersigned complainant, against her will.

"Contrary to law."^[5]

Thereafter, the prosecution presented its evidence which consisted of the private complainant's testimony and the medical certificate issued by Dr. Nilo Barandino.

Private complainant's testimony revealed that:

"Fe Madraga, 16 years old, is the daughter of Rodolfo Madraga, a tricycle driver (TSN, December 2, 1996, pp. 4-5). Her mother, Flordelina Madraga, was in Sabah, Malaysia, working as a domestic helper.

"When her mother left for Malaysia, Fe and her brothers and sisters stayed with their grandfather, Luis Cotamco Sr., at Calle Bisaya (Ibid., p. 5). On the other hand, Rodolfo Madraga remained at the family residence at Barrio Militar, Menzi, Isabela, Basilan Province (Ibid, p. 6).

"Sometime in January 1995, Rodolfo Madraga took his children from their grandfather and forced them to stay with him at the family residence (Ibid, pp. 6 & 7).

"Sometime in May 1995, at 12:00 midnight, Rodolfo Madraga sexually abused her (sic) 16-year old daughter, Fe Madraga, in one of the rooms of the family residence. (Ibid, pp. 7-8)

"On the third night after the rape, Rodolfo Madraga repeated his bestial act toward her (sic) own daughter and did it every night thereafter (Ibid, p. 9).

"On August 24, 1996, Flordelina Madraga arrived from Malaysia (Ibid, p. 10). The presence of her mother gave Fe Madraga enough courage to report to her the sexual abuses committed against her by her father (Ibid).

"Fe Madraga was brought to the doctor, and her medical examination confirmed that she was sexually molested (Ibid; Exhibits A, A-1, A-2 and B).

"Fe Madraga, reported the matter to the police authorities (Ibid, p. 13)."^[6]

On December 10, 1996, the trial court rendered its Decision,^[7] the dispositive

portion of which reads:

"WHEREFORE, premises considered, this Court finds the accused, RODOLFO OLING MADRAGA, GUILTY beyond reasonable doubt of committing the said crime of RAPE against his own daughter, who is only more than 16 years old at the time of the commission of the offense. And hereby sentences said accused to suffer the extreme penalty of DEATH.

"The plea of guilty of the accused being offset by his being drunk during the commission of the crime, which according to the complainant, her father is not a habitual drinker, cannot be taken into consideration in his favor.

"The penalty imposable for the crime of Rape especially if it is committed by the accused against his children is really harsh. In fact this Presiding Judge was a little bit reluctant to impose that extreme penalty of death upon the accused, but since it is the mandate of the law, then the Court when the evidence warrant must have to obey its command. And besides, the Court cannot cleanse its conscience if the perpetrator of the crime of rape committed against his own blood would be able to escape the punitive sanction of the law.

"And as this Court had repeatedly pronounced over and over again, under no circumstance, shall a father use his own daughter as a vehicle to satisfy his bestial instinct for it is his moral and legal responsibility to take care, to nourish, and to educate his children to become useful citizens of this country. But since the accused herein had chosen to place the honor and the dignity of her (sic) daughter into shame, into disgrace, and into ill-repute, then the heavy burden of the law that catches upon him cannot show him any mercy.

"With respect to Criminal Case No. 2515-602, for the same offense of Rape committed by the same accused, against the same complainant, the hearing thereof is hereby set to the January calendar of this Court.

"SO ORDERED."

Two Appellant's Brief were filed with this Court -- one filed by the Free Legal Assistance Group (FLAG) Anti Death Penalty Task Force, and another one filed by Public Attorney Antonio D. Banico, appellant's counsel, before the court *a quo*.

The Appellant's Brief filed by the Free Legal Assistance Group (FLAG), submits the following assignment of errors:

I

Accused-appellant was denied due process.

II

The plea of guilt of accused-appellant is null and void as the trial court violated Section 3, Rule 116 of the 1985 Rules on Criminal Procedure.

On the first assigned error, appellant contends that he was illegally arrested, because there was no warrant of arrest issued for his arrest. Worse, appellant avers, his right to preliminary investigation was not observed, although there is no showing that he waived his right thereto. Appellant further alleges that there was irregularity in the filing of the information in that a criminal complaint was filed on September 10, 1996. However, in the Order of the Court dated October 7, 1996, it mentioned an information not attached to the records of the case. The trial court directed the prosecution to submit the resolution which became the basis for the filing of the alleged information. A resolution dated October 8, 1996 was submitted by the prosecution on October 17, 1996 in compliance with the Order dated October 7, 1996. The resolution was issued only on October 8, 1996, hence, appellant concludes that the same could not have been the basis for the alleged information (assuming such information exists) which was obviously filed earlier.^[8]

The contentions have no merit.

In the recent case of ***People vs. Galleno***,^[9] this Court held that an accused, as in this case, is estopped from questioning any defect in the manner of his arrest if he fails to move for the quashing of the information before the trial court, or if he voluntarily submits himself to the jurisdiction of the court by entering a plea, and by participating in the trial.

With regards to the absence of preliminary investigation, this Court ruled in ***Sanciangco, Jr. vs. People***^[10] and cited in *Larranaga vs. Court of Appeals*,^[11] that "the absence of preliminary investigation does not affect the court's jurisdiction over the case. Nor does it impair the validity of the (complaint) or, otherwise, render it defective."

On the second issue, appellant, through the FLAG, argues that the trial judge failed to conduct a searching inquiry into the voluntariness and full comprehension of the accused's plea of guilty to the capital offense, as mandated in Sec. 3, Rule 116^[12] of the New Rules on Criminal Procedure. Thus, this case should be remanded to the court of origin for further and appropriate proceedings, citing ***People vs. Estomaca***.^[13]

This contention^[14] of the FLAG would have been correct were it not for the circumstance that accused-appellant did not, in fact, plead guilty to a capital offense in the first place. On this matter, Atty. Banico correctly pointed out that only the first paragraph of the complaint mentions the age of the private complainant and the relationship of the accused to the private complainant, *i.e.*, that the accused is the father of the private complainant. Atty. Banico is correct in arguing that the first paragraph of the complaint is not part of the allegation of the charge for rape to which appellant pleaded guilty. Therefore, said complaint charges only simple rape under Art. 335, for which the penalty is only reclusion perpetua, and not for rape under R.A. 7659, qualified by the circumstance that the offender is the father of the victim who is a minor, for which the penalty is death.^[15]