

EN BANC

[G.R. No. 127570, February 25, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MELANIO BOLATETE @ MELON, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

On September 1, 1995, Reyah Lea Guivencan filed separate complaints accusing her stepfather Melanio Bolatete of three counts of statutory rape. She was assisted by Helen B. Ho, a municipal social welfare officer.

The amended complaints in Criminal Cases Nos'. 9459, 9460, 9461 respectively read as follows:

"AMENDED COMPLAINT

(Cc. No. 9459)

x x x

"That sometime in the second week of June 1993, in the municipality of Panglao, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to have sexual intercourse with the undersigned, a child under 12 years of age, did then and there willfully, unlawfully and feloniously force her to lie down, remove her panty and insert his penis to her vagina and have sexual intercourse with her against her will.

Cebu City (for Tagbilaran City), September 1, 1995.

(SGD) REYAH LEA GUIVENCAN
Offended Party

Assisted by:

(SGD) HELEN B. HO
MSWDO-Panglao, Bohol"

"AMENDED COMPLAINT
(Cc. No. 9460)

x x x

That on or about the 3rd day of August, 1994, in the municipality of Panglao, Province of Bohol, Philippines and within the jurisdiction of this

Honorable Court, the above-named accused with deliberate intent to have sexual intercourse with the undersigned, a child under 12 years of age, did then and there willfully, unlawfully and feloniously force her to lie down, remove her panty and insert his penis to her vagina and have sexual intercourse with her against her will.

Cebu City (for Tagbilaran City), September 1, 1995.

(SGD) REYAH LEA GUIVENCAN
Offended Party

Assisted by:

(SGD) HELEN B. HO
MSWDO-Panglao, Bohol"

"AMENDED COMPLAINT
(Cc. No. 9461)

x x x

That sometime in the 3rd week of March, 1995, in the municipality of Panglao, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to have sexual intercourse with the undersigned, a child under 12 years of age, did then and there willfully, unlawfully and feloniously force her to lie down, remove her panty and insert his penis to her vagina and have sexual intercourse with her against her will.

Cebu City (for Tagbilaran City), September 1, 1995.

(SGD) REYAH LEA GUIVENCAN
Offended Party

Assisted by:

(SGD) HELEN B. HO
MSWDO-Panglao, Bohol"

The 3rd assistant provincial prosecutor filed a Manifestation in court that he has reviewed the complaints and the supporting evidence of the prosecution as well as the preliminary investigation conducted by the Municipal Circuit Trial Court of Dauis, Panglao, Bohol.^[1]

The accused pleaded not guilty to each charge upon arraignment. Joint trial of the three cases ensued.

The prosecution presented the complainant and three other witnesses, namely: Dr. Maria Cyrilda Tallo, who examined complainant and found her to be a non-virgin;^[2] Jovencia Asilo, the Municipal Civil Registrar of Panglao, Bohol, who identified complainant's birth record showing she was an illegitimate child born in Panglao,

Bohol, on November 4, 1983;^[3] and Helen B. Ho, MSWD social worker of Panglao, Bohol, who assisted complainant in the preparation and filing of the complaints against the accused.

The testimony of Reyah is substantially as summarized by the appellee in its brief as follows:

"Complainant testified that appellant is her stepfather, married to her mother Pedrita; she was raped by appellant several times but could only remember three specific dates; the first date fell on the second week of June 1993; she could recall this date because it was enrollment period;; on that day, about 6 o'clock in the morning, she was awakened when appellant approached her at the upper floor of their house; at that time, her one-year old half-brother Rizal was also at the upper floor, while her mother was downstairs in the kitchen preparing breakfast; her other half-brother Rogelio was at the house of appellant's mother; appellant, who was only wearing brief, removed her short pants and her panties, after which he, too, removed his brief, then placed himself on top of her and made a push and pull movement with his buttocks; he was able to penetrate his penis into her vagina slightly; although she felt pain as appellant forced his penis into her vagina, she did not cry for help because she was afraid of appellant who threatened that he would bring her two brothers with him to Cotabato (TSN, January 17, 1996, pp. 2-8).

Another date complainant remembered was August 3, 1994. She particularly remembered this date because it was the day after her brother Rogelio's birthday. About 6 o'clock in the morning, at the upper floor of their house, appellant, who was only wearing brief, as was his wont asked her to come near him to scratch his back. At that time, her mother was in the comfort room a short distance away from their house, while her brothers Rogelio and Rizal were also at the upper floor. Rogelio, a retardate, who could neither talk nor walk, was sleeping on a hammock. Rogelio was then 4 years old while Rizal was 1 year old. When she was already near appellant, the latter removed her panties, made her lie down and placed himself on top of her. Appellant removed his brief and made a push and pull movement with his buttocks. This time, appellant was able to penetrate his penis deeper into her vagina. But like before, she did not cry for help as she was afraid of appellant who threatened that he would bring her two brothers with him to Cotabato (TSN, January 17, 1996, pp. 9-13).

The third date was sometime in the third week of March 1995. She recalled this date because it was the last time appellant raped her. On that day, her mother, who was leaving for Tagbilaran City, fetched her from the house of her neighbor, May Manliguez, and asked her to take care of her brothers in their house. Appellant was in Tagbilaran City where he worked as a carpenter. However, about noon, appellant arrived home drunk. He then undressed complainant, removed her panties and proceeded to rape her. This time, appellant penetrated his penis deep into her vagina. She was then 11 years old (TSN, January 17, 1996, pp. 1416).

After this last rape incident, complainant finally sought help from Zenaida Milay who brought the matter to the attention of Helen B. Ho, a DSWD social worker. Helen B. Ho interviewed and accompanied complainant to the Celestino Gallares Memorial Hospital where she was examined by Dr. Maria Cyrilda Tallo. Complainant was found to be a non-virgin. With the assistance of Helen B. Ho, complaints for rape against appellant were filed by herein complainant (TSN, January 30, 1996, pp. 2-5)." (pp. 4-7, Appellee's Brief, pp. 76-79, *Rollo*).

Witness Helen Ballecer Ho testified that Reyah Lea Guivencan, accompanied by one Zenaida Milay, sought her help to file rape charges against the accused; she interviewed Reyah who informed her that she was sexually abused by the accused. Helen brought Reyah to the police station of Panglao, where Reyah's affidavit was taken and took her to the Celestino Gallares Memorial Hospital where she was examined by Dra. Tallo, who issued a medico-legal certificate.^[4] Helen turned over Reyah to their child specialist in Tagbilaran City and was placed in the custody of the Regional Social Welfare Office in Cebu City.^[5]

Jovencia Asilo, Municipal Civil Registrar identified Reyah's record of birth; she was the one who signed Reyah's birth certificate^[6] showing that Reyah's date of birth is November 4, 1983.^[7]

Dr. Ma. Cyrilda Tallo identified the medico-legal certificate^[8] which she issued and testified that when she examined Reyah on May 25, 1995, she noted that there was no bleeding or laceration on her genitalia nor bruises in the surrounding area; internal examination showed that her hymen was no longer intact as she was able to insert 1-2 fingers.^[9]

The accused denied all the charges against him. He stated that Reyah had been living with Anastacia Manliguis, the aunt of his wife, since the first week of January, 1995 until the last week of April, when she was asked by her mother to stay in the house as she, together with the accused, was going to Cebu. He admitted that Reyah was living in their house in August 1994 and in June 1993. The accused claimed that he was accused by Reyah of three counts of rape because Reyah is a carefree child ("lakwacha"), used to climb trees, and was always reprimanded for her wrong-doing.^[10] On cross-examination, the accused testified that Reyah resented his scolding, and that her neighbor Zenaida Milay, a neighbor with whom she had a prior disagreement, and Carmencita Arcay, the grandmother of Reyah, were the persons who urged Reyah to file charges against him.^[11]

The defense presented Pedrita Bolatete, the mother of the victim, who corroborated Melanio's testimony that Reyah "always commit wrong and Melanio would punish her physically."^[12] However, she testified that Reyah was living in the family house on August 3, 1994 and in the second week of June, 1993; but was living with her aunt from January, 1995 up to the third week of March 1995.^[13]

The court *a quo* found the accused guilty of three counts of rape:

"IN VIEW OF ALL THE FOREGOING, the Court finds the accused GUILTY beyond reasonable doubt of all the crimes of statutory rapes committed

against the complaining witness on the 2nd week of June, 1993, on the 3rd of August, 1994 and on the 3rd week of March, 1995 punishable under Article 335, par. 3 of the Revised Penal Code in relation to Sec. 11 of R.A. No. 7659 and for which crimes the Court hereby sentences the accused Melanio Bolatete to DEATH for Crim. Case No. 9459; to DEATH likewise for Crim. Case No. 9460 and finally also to DEATH for Crim. - Case No. 9461 and moral damages in the amount of P50,000.00 for each crime or a sum total of P150,000.00.

SO ORDERED."

Hence, this automatic review.

The appellant submits the following assigned errors in his brief:

1. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED AND PENALIZING HIM TO THE EXTENT OF DEATH WITHOUT APPARENTLY GIVING CREDIT TO HIS EVIDENCES;
2. THE TRIAL COURT ERRED IN NOT TAKING INTO ACCOUNT THE INCONSISTENCIES OF THE PROSECUTION'S WITNESSES WHICH IF GIVEN WEIGHT COULD HAVE EITHER EXONERATE(D) THE ACCUSED OR MITIGATE(D) THE PENALTY."

and discussed the same simultaneously.

In essence, accused-appellant claims that complainant led a carefree and happy-go lucky life and resented the "hard discipline" imposed by her stepfather; she concocted the accusations out of hatred. It is unbelievable that the accused succeeded in ravishing her despite the absence of serious threats or intimidation, and that the accused submitted to her step-father's wishes because she was afraid he would carry out his threat to take away her brothers.

The appeal has no merit.

Melanie was born on November 4, 1983^[14]. She was accordingly nine (9) years and seven (7) months old at the time of the first rape incident on June 1993, ten (10) years and eight (8) months old at the time of the second rape incident on August 3, 1994, and eleven (11) years and four (4) months old at the time of the third rape incident in March, 1995. She was clearly less than twelve years old at the time of the three rape incidents subject of her complaints.

Rape is defined and penalized under Article 335 of the Revised Penal Code as amended by Section 11, R.A. 7659,^[15] which provides:

"ART. 335. *When and how rape is committed.* Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation.
2. When the woman is deprived of reason or otherwise unconscious;
and