

## EN BANC

[ 129298, April 14, 1999 ]

### **THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO CANTOS Y ASISTIO, SR., ACCUSED-APPELLANT.**

#### **D E C I S I O N**

##### **MENDOZA, J.:**

This case is here on appeal from the decision,<sup>[1]</sup> dated February 26, 1997, of the Regional Trial Court, Branch 1, Borongan, Eastern Samar, finding accused-appellant Rolando A. Cantos guilty of having raped his stepdaughter Remedios E. Cabiad and sentencing him to death in addition to ordering him to indemnify Remedios in the amount of P50,000.00 and to pay the costs.

Accused-appellant is the second husband of Loreta Esquerdo. Remedios, who was 15 years old at the time the offense was alleged to have been committed, is the eldest daughter of Loreta by her first husband Rafael Cabiad. The information filed against accused-appellant by the provincial prosecutor alleged

That on January 29, 1996, at about 9:00 o'clock in the morning at Barangay Libas, San Julian, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with a bolo and by means of force, violence and intimidation with lewd designs, did then and there wilfully, unlawfully and feloniously have carnal knowledge of REMEDIOS E. CABIAD, fifteen (15) years old, against her will and consent, to the damage and prejudice of the offended party.

<sup>[2]</sup>

The prosecution presented evidence showing that, on January 29, 1996, at nine in the morning, accused-appellant Cantos was alone with Remedios in their house in Libas, San Julian, Eastern Samar. His wife Loreta was in Borongan at the Eastern Samar Provincial Hospital looking after her youngest daughter Irene (she was confined there), while the two other children from the previous marriage were in school.<sup>[3]</sup>

On that day, accused-appellant Cantos was in the front yard sharpening a bolo while Remedios was making nipa shingles in the living room. After sharpening his bolo accused-appellant went inside the house and approached Remedios. Then he held her hands and threatened to kill her with the bolo if she shouted. He dragged her near the window, undressed her, and pushed her to the floor. He then took off his pants and underwear, went on top of Remedios, and inserted his penis into her vagina and began having sexual intercourse with her. Remedios resisted, but accused-appellant proved too strong for her. Accused-appellant succeeded in ravishing her.<sup>[4]</sup>

Afterwards, Remedios, distraught and not feeling well, went to the house of a cousin, where she stayed from ten in the morning to four in the afternoon. That evening, Remedios went to the house of her aunt, Esther Esquerdo, and related what had happened to her. Esther lost no time in taking Remedios to the police station at the Municipal Hall Building of San Julian where they reported the incident. The following day, January 30, 1996, she took Remedios to the Municipal Health Center of San Julian. However, Dr. Artemia Barlongay, the Municipal Health Officer, was unavailable. They returned the next day, January 31, 1996. The physical examination of Remedios was actually conducted by Dr. Barlongay at the Eastern Samar Provincial Hospital as the Municipal Health Center lacked the necessary facilities.<sup>[5]</sup> Dr. Barlongay issued a medical certificate, dated January 31, 1996, containing the following findings:

Findings:

Complete deep hymenal lacerations at 3:00 o'clock, 9:00 o'clock, and 11:00 o'clock.  
<sup>[6]</sup>

Accused-appellant testified on his behalf. He admitted having sexual intercourse with Remedios on the date in question but claimed that they had been engaging in consensual sexual intercourse since April 13, 1993.<sup>[7]</sup>

In its decision, dated February 26, 1997, the trial court held:

The question therefore that the court is called upon to resolve is whether or not the sexual intercourse of the accused with the complainant was against the latter's will.

On close and careful perusal, the testimony of Mr. Cantos that he had previous acts of sexual intercourse with Remedios Cabiad is incredible . . . . anent the testimony of Dra. Balongay that Remedios had no sexual experience prior to the incident as the victim's labia majora was still intact.

. . . .

The accused in his defense claimed that he and the victim are lovers and they have been such since April 13, 1993 and that what transpired between them on January 29, 1996 was voluntary and that complainant filed the rape charge because of insinuations coming from some barangay officials. However, it is the opinion of the court that the straight-forward and candid narration by the victim of how she was raped as borne out by the records and the transcript of stenographic notes bears the true earmarks of credibility. The contention of the defense that the accused and the complainant are sweethearts has not been proven by the accused. Rolando Cantos, Sr. has the burden of proving that he and Remedios Cabiad are sweethearts. No substantial evidence, such as lovenotes or pictures was presented to support his claim.

Also, while the medical report shows that complainant had no external signs or physical injuries, this does not negate the commission of the dastardly act against her.

. . . .

The failure on the part of the complainant to shout for help at the earliest opportunity cannot be considered against her because at the time of the incident, accused was sticking a bolo near her and consequently, fear for her life was her paramount concern. If she did not cry out for help, evidently, it was in obedience to the accused's order and the apprehension that greater harm would befall her if she defied him.

That the victim did not tell anyone what was done to her by her step-father is understandable considering the fact that a death threat hangs over her head.

. . . .

It has also not been shown by the prosecution that any ill-motive can be ascribed to complainant other than her desire to seek justice for the terrible wrong inflicted upon her. . . . Moreover, as testified to by the accused, the victim even called him "Tatay" and it is for this reason that the act of sexual assault perpetrated by the accused on his young victim is all the more repulsive and perverse.

. . . .

WHEREFORE, in view of the foregoing facts and circumstances, accused ROLANDO CANTOS Y ASISTIO, SR., is hereby found guilty beyond reasonable doubt of the crime of RAPE defined and penalized by Article 335 of the Revised Penal Code, as amended, and further amended by Republic Act No. 7659, and he is hereby sentenced to suffer the maximum penalty of death. Further, accused is hereby ordered to pay the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) pursuant to the latest jurisprudence handed down by the Supreme Court. (People vs. Roger Laray, et. al, G.R. No. 101809, February 20, 1996) and to pay the costs of the proceedings.<sup>[8]</sup>

In his lone assignment of error, accused-appellant contends that --

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

Accused-appellant maintains that the sexual intercourse between him and Remedios was consensual. He contends that the evidence of the prosecution does not show the use of force or intimidation in committing the rape as it has not been shown that in fact she suffered injuries or that her clothes were torn as a result of the commission of the crime.<sup>[9]</sup>

Accused-appellant's allegations are without merit.

First, since the trial court had the opportunity of observing the demeanor of the witnesses while testifying, its findings should be upheld in the absence of evidence

to the contrary.<sup>[10]</sup> Indeed, the following testimony of Remedios leaves no room for doubt that she had been forced by accused-appellant to have sexual intercourse with him:

PROSECUTOR CATUDIO:

Q: At that time, 9:00 o'clock in the morning of January 29, 1996, while you and your stepfather were in your house at barangay Libas, San Julian, Eastern Samar, do you remember of anything unusual that happened?

A: Yes, sir.

Q: Please inform the court what was that unusual incident that happened?

A: The unusual incident that had happened on January 29, 1969, at 9:00 o'clock in the morning is, that my stepfather was sharpening a bolo near our door and I was making nipa shingles inside our house near the door and my back was facing the door then my stepfather went inside the house to change his clothes as he was going to the farm.

. . . .

Q: Now, before he actually change his clothes, what happened?

A: When he get inside our house he placed his bolo near me where I was making nipa singles and then he held my hand and brought me near the window and then he undressed me completely and laid me to the floor and then he also undressed himself completely.

Q: Now, after he undressed you and he followed also with undressing himself, what did he do then next?

A: He inserted his penis into my vagina.

Q: What was his relative position to you when he was on the act of inserting his penis to your vagina?

A: While my stepfather was on the act of inserting his penis into my vagina I was lying flat and he was on top of me then he inserted his penis:

Q: You said he tried to insert his penis into your vagina, did that penis in fact got inside your vagina?

A: Yes, sir.

Q: And, will you please inform the court how big was the penis which he tried to insert into your vagina?

A: Big. (the witness is demonstrating the circumference of the penis a little bigger than a flashlight battery)

Q: Did that penis easily got inside into that vagina of yours?

A: That was so hard.

Q: Can you estimate more or less how many seconds or minutes before he actually succeeded in inserting his penis into your

vagina?

A: I cannot estimate, sir.

Q: You said he succeeded in inserting that penis into your vagina, will you please inform the court how long was that penis been inside your vagina from the time it was placed inside your vagina?

A: It was quite long, I cannot estimate.

. . . .

Q: When the accused held your hand, did you not shout?

A: I did not.

Q: Why did you not shout?

ATTY. GO:

Already answered.

COURT:

Let the witness answer.

WITNESS:

A: Because I was afraid he threatened me that he will kill me.

PROS. CATUDIO:

Q: When was that threats made, before he held your hand or after he held your hand?

A: During the time he was already holding my hands.

Q: Now about when he undressed you, did you not attempt to free yourself or to shout?

A: I was unable to shout because the hand of my stepfather was placed on my mouth and he was threatening me that if I will shout he will kill me and I tried to free myself but I cannot because he was much stronger than me and I am still a child so he can defeat me.

Q: Now about while he was in the act of inserting his penis into your vagina, did you not shout or did you not try to free yourself from him?

A: I did not because I was afraid because that bolo was just near me and he was telling me that he will kill me.<sup>[11]</sup>

On further questioning by the trial court, Remedios answered:

COURT: