

EN BANC

[G.R. Nos. 131858-59, April 14, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO ALBA, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

For review is the decision,^[1] dated November 7, 1997, of the Regional Trial Court, Branch 23 of Naga City, in two consolidated cases, finding accused-appellant Alfredo Alba guilty beyond reasonable doubt of two (2) counts of rape under Article 355 of the Revised Penal Code, and sentencing him, in Criminal Case No. 94-5517, to suffer the penalty of death, and in Criminal Case No. 94-5516, the penalty of *reclusion perpetua*. In addition, the trial court ordered accused-appellant to pay in each case, the offended party the amount of P50,000.00, as civil indemnity, P30,000.00 as moral damages, and P30,000.00, as exemplary damages, and the costs of the suit.

The information's against accused-appellant alleged ³/₄

In Criminal Case No. 94-5516:

"That sometime on the month of May, 1993 at Barangay Tamban, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie and succeed in having sexual intercourse with his daughter JANETTE ALBA, 9 years old then, against the latter's will to her damage and prejudice.

"ACTS CONTRARY TO LAW."

In Criminal Case No. 94-5517:

"That sometime on the 7th day of February, 1994 Barangay Tamban, Tinambac, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie and succeed in having sexual intercourse with his daughter JANETTE ALBA, 10 years old against the latter's will to her damage and prejudice.

"ACTS CONTRARY TO LAW."

The cases were tried jointly. The evidence of the parties is fairly summarized in the decision of the trial court, thus:^[2]

"The cool and clear mountain creek seemed inviting to nine year old Janette Alba, that early morning of May 1993. She yielded to the tempting waters and leisurely dipped her young body. Then, her widowed father, Alfredo Alba came, disturbed her communion with nature and abruptly ended her sweet innocence.

"The first sexual desecration was not to be the last. The abuse was repeated and the last time happened in the afternoon of February 7, 1994, at their very own dwelling. While her "Mama" Maria, her father's second wife, was not at home, Janette Alba, again, was sexually molested by her own father. As in the first instance, Alfredo went on top of Janette, and had carnal congress with his daughter. Janel felt pain as before. She wept. The experience was too painful to bear for the ten year old, who had no one to turn to. Her mother was already dead and her only brother whom she hadn't seen was allegedly in Candelaria, Quezon. Janette wished her father dead.

"Janette Alba reported the incident to a fat man whose name she does not know, who took pity on her and bought her a dress. The fat man brought her to the police authorities. Later, she was brought to a doctor, who examined her. The medical certificate of Dr. Marita B. Reyes, (Exhibit "A", p. 5, Record) indicated:

"x x x

"This is to certify that JANETTE ALBA Y SALDAÑA, 10 years old, child, residing at Tamban, Tinambac, Camarines Sur, has been examined in this hospital on February 13, 1994.

"Janette Alba y Saldaña, 10 years old, Tamban, Tinambac, Camarines Sur.

DOI:

POI: Tamban, Tinambac, Camarines Sur

TOI: From May 1993 to February 1994

DOE: February 13, 1994

POE: Tinambac District Hospital, Tinambac, Camarines Sur

TOE: 10:30 AM

Findings:

NOE: Allegedly rape (Statutory Rape)

TOE/DOE: (since 7 yrs. old)

I.E.: Hymenal laceration healed at 1:00 o'clock and 3:00 `clock position

x x x

"The police authorities investigated Janette Alba, and a complaint was filed before the MTC of Tinambac, Camarines Sur (p. 4, Record). Accused was arrested on February 14, 1994, while the victim was turned over to the Social Worker through the Municipal Mayor of Tinambac, Camarines Sur. The lower Court found the existence of a prima facie case for Rape and recommended the filing of the appropriate information. Prosecution Attorney Richard T. Cu affirmed the findings of the investigating Judge and two (2) informations for rape were filed with the Regional Trial Court.

"x x x x x x x x

"Dr. Marita Reyes, the Resident Physician of the Tinambac Medicare Hospital, examined the offended party, by placing her in a lithotomy position (lying flat on her back and placing her on a stirrup). She was able to determine that the vaginal orifice had a ten-centavo opening already, the hymen was lacerated, with a healed wound at 1:00 and 3:00 o'clock. The edges of the laceration are no longer sharp, there were no more signs of inflammation.

"Janette Alba is now in the protective custody of the Department of Social Welfare and Development, at the Center for Girls in Pampang, Sorsogon, Sorsogon, according to Paciencia Relayo, a social worker who also testified for the prosecution. The child was referred to the DSWD and was fetched at Tinambac, Camarines Sur in February 1994. Ms. Relayo secured the birth certificate and baptismal certificate of Janette. It is shown that Janette was born on January 7, 1984, at Tamban, Tinambac, Camarines Sur, to spouses Alfredo Mariano Alba and Cristina Saldaña (Exhibit C, p. 64, Record). She was baptized on April 15, 1984 (Exhibit B, p. 65, Record).

"For the defense, only Alfredo Alba testified, although his counsel manifested that he will present three witnesses. The presentation of defense evidence was reset several times, but accused's common law wife, Maria Bolo, despite subpoena issued, failed to appear. The court noted that during several hearings of the case, said Maria Bolo was present (p. 17, TSN dated May 15, 1997 and p. 17, March 20, 1997), yet on the date she was supposed to testify she failed to come. She was subpoenaed several times, but she never came back to Court. Even accused's other witness was no longer presented. According to accused, his wife has not visited him for the last two months. (p. 108, Record).

"Alfredo Alba denied the charges against him. He asserted (sic) declared that Janet Alba is one of his children with the deceased Cristina Saldana. A son, Ramil was adopted and is in Candelaria while another one is already dead. He has a wife now, but just like his first wife, he is not legally married to Maria Bolo. He and Maria started living together in 1990 and Janette stayed with them. Alba stated that his wife worked as a laundry woman and Janette helped her. He claimed that Janette did not recognize Maria Bolo as a second mother and in 1994, the two had a disagreement, the fact of which Alba does not know because he was ill

that time. He inquired from his wife what the disagreement was about, and the next thing he knew, he hit his wife because of his ill temper. (p. 7, TSN, May 5, 1997) Maria Bolo left Alba and went to a Kagawad where she aired her grievances. Later, accused was picked up from his residence by the barangay tanod and the policemen. Allegedly, he was arrested on the complaint of his wife. The authorities told him to just air his queries to the Station Commander, which he did. There he was informed that he was detained because he raped his daughter.

"At the time he was picked up from his house, Janette was not at home, because she asked permission to go to church. At 9:00 o'clock, she did not go home yet, and he came to know later, that Janette was taken by the barangay tanod.

"Accused denied the charge against him saying that he did not do that to his daughter (p. 9, TSN, May 15, 1997). Alba said that he never raped his daughter on these two occasions mentioned in the complaint, in May 1993 and on February 7, 1994. He claimed that he does not know the reason why his daughter complained against him, what he knows is that she just went to church. He remembers having inflicted corporal punishment on his daughter when he was informed that their neighbor lost something after Janette entered their store. Allegedly, his daughter got money from the drawer. And that was the time that Janette left their house (p. 15, TSN, dated May 15, 1997).

"Alba admitted on cross that from the time his wife died in childbirth in 1988, Janette was left in his custody. When Maria Bolo came into his life in 1990, the three of them lived together in one house. He worked to sustain his family. Maria also worked as a laundrywoman, especially when he got sick, and Janette helped her, despite their disagreements. Janette went to school too, but she wanted to take a vacation in Candelaria, where her brother was. He told her however, that they can go there only if he is able to find some money for the fare. Accused claimed that the two, Maria and Janette, got on well except when Janette became hardheaded and Maria would punish her. (p. 15, TSN, supra).

"Maria Bolo left him on February 10, 1994. He tried to get her back, telling the Barangay Kagawad where she worked that she was family (sic) and was entrusted by her parents to him, but the Kagawad told him that he should not intervene as she was working with them. She did not return to him anymore, but she is the same Maria Bolo, accused admitted, with whom he was talking with before he was placed on the witness stand. (p. 17, TSN, supra).

x x x x x x x x

"Janette Alba, was already a thirteen year old girl, when she testified in Court about her father's sexual abuses. Actually, her father had carnal congress with her thrice, but she could no longer recall the facts of the second sexual imposition. The offended party, who was too small and short for her age, narrated in Court, that the first sexual abuse happened while she was bathing in the creek in Tamban, Tinambac, near their

house and she was just a mere nine year old motherless child. The last molestation happened in their house, while her stepmother was not around. This was the time that she aired her complaint and a fat man helped her."

On November 7, 1997, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, this Court finds the accused ALFREDO ALBA y MALANO GUILTY beyond reasonable doubt of the crime of Rape under Article 335 of the Revised Penal Code, as amended by Section 11, of R.A. No. 7659, in both criminal cases. Accused is hereby sentenced to RECLUSION PERPETUA in Criminal Case No. 94-5516, and the maximum penalty of DEATH in Criminal Case No. 94-5517. He is likewise directed to indemnify the offended party, the amount of Fifty Thousand Pesos (P50,000.00), for desecrating her sweet innocence, moral damages of Thirty Thousand Pesos (P30,000.00) and Exemplary Damages of Thirty Thousand Pesos (P30,000.00) in both cases and to pay the costs of this suit.

"SO ORDERED."

Accused-appellant seeks the reversal of his conviction on the following grounds:

"I. THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

"II. THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT ON THE BASIS OF A FATALLY DEFECTIVE INFORMATION WHICH VIOLATES ACCUSED-APPELLANT'S RIGHT TO DUE PROCESS AND TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM."

The Court has carefully reviewed the records of this case and has found accused-appellant's contentions to be without merit.

FIRST. Accused-appellant points to the alleged failure of the offended party, Janette Alba, to give the exact date she was raped by accused-appellant for the second time and the date when she was turned over to the custody of the DSWD as indicating that she was prevaricating.

With respect to the date of the rape, she said it was in February of 1994. She was not asked when exactly it was committed. If the defense wanted to test her credibility, it should have pointedly asked her for the exact date. It is noteworthy that the information in Criminal Case No. 94-5517 alleged that the second time Janette was raped by her father was on February 7, 1994. At any rate, proof of the exact date the rape was committed is not required so much so that the offended party's failure to recall the exact date is fatal. As this Court has held in several cases,^[3] the exact date of commission of rape is not an element of the crime.

As for the date the victim was entrusted to the custody of the DSWD, it has not been shown in what way the victim's failure to recall it can affect her credibility. The fact is that for lack of anyone to take custody of her, considering her tender age, she