

EN BANC

[G.R. Nos. 127023-25, May 19, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO ACALA, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

These cases are here for automatic review of the decision^[1] of the Regional Trial Court, Branch 272, Marikina, Metro Manila, finding accused-appellant Reynaldo Acala guilty of three (3) counts of incestuous rape pursuant to Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, and sentencing him to death in each case in addition to ordering him to pay the victim, who is his daughter Fe Acala, the amount of P50,000.00 as moral damages, P25,000.00 as exemplary damages, and the costs of the suit.

In three (3) separate complaints^[2] it was alleged -

In Criminal Case No. 96-789-MK:

That on or about the 19th day of January 1996, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the legitimate father of undersigned complainant, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one FE ACALA, against her will and consent.

Contrary to law.

In Criminal Case No. 96-862-MK:

That on or about the 12th day of January, 1996 in the Municipality of Marikina, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the legitimate father of undersigned complainant, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Fe Acala, against her will and consent.

Contrary to law.

In Criminal Case No. 96-863-MK

That on or about the 26th day of December 1995, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the legitimate father

of undersigned complainant with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one FE ACALA, against her will and consent.

Contrary to law.

Accused-appellant pleaded "not guilty" to each charge. The three (3) cases were then jointly tried, during which the prosecution presented six (6) witnesses, including the complainant, while the defense presented four (4) witnesses, including accused-appellant. Their testimonies are summarized in the following portion of the decision of the trial court:^[3]

A close scrutiny of the aforestated narration of facts and the evidence presented in these cases readily show that the victim FE ACALA was first abused by her own father, REYNALDO ACALA, when she was yet six (6) years old and such incestuous lusts of her father on her continued until the same was discovered by her mother Perla Acala, on January 19, 1996, when the last rape has just been committed. Immediately on the next following day, January 20, 1996, Fe and her mother went to report the matter to the police headquarters where she executed a sworn statement charging her father for the crime of multiple rapes. Due to natural fickleness of memory as a result of her tender age, the private complainant was not able to vividly recall and specify the events and circumstances under which the incestuous rapes had been committed by her father against her, except those rapes committed on December 26, 1995 and on January 12, and January 19, 1996.

During the first rape on the evening of December 26, 1995, a day after Christmas, on that yuletide season, Reynaldo Acala sent his wife and his other daughter to the village gate to buy something for dinner leaving his daughter Fe Acala alone with him in their house. Considering that they have to ride a tricycle to reach the village gate, he set in motion his unchaste amorous intention against his daughter when he asked the latter to lie down, took off her shorts and underwear and likewise did the same and thereafter held her two arms, kissed her neck and then inserted his organ and pumped her. This was illustratively demonstrated by the private complainant while giving her testimony in court. That after she was raped, she went downstairs at about 8:00 o'clock in the evening. On the second rape committed in the early morning of January 12, 1996, the private complainant was awakened by the voice of her sister downstairs calling for her mother. On her way down, her father suddenly appeared besides her and told her to be quiet, which she obeyed because of his threat, then started undressing her. He succeeded in abusing her again until a white substance came out of his organ. These impure lusting advances were never made known by the victim to the mother because of the father's threat to maul and kill them until the former herself discovered the same immediately just after the rape on January 19, 1996, consequently, when confronted, her daughter confirmed the abovementioned incestuous rapes committed by her husband against their daughter.

As a result of the foregoing, three (3) separate crimes of rape were filed

in court and during the trial, the prosecution service presented the private complainant who testified to the effect that she was raped by her father on those particular aforesaid dates; the mother of the private complainant who assisted and corroborated the statement of the private complainant together with the family counselor and teacher of the private complainant; the police officer who conducted the investigation of the case; and the medico-legal officer who proved that the child was no longer in a virgin state.

On the part of the defense the accused blatantly denied the accusation of his daughter and wife. He alleged that he could not then be able to rape his daughter on those days mentioned by the latter as he played mahjong in the house of Nardo Mercado, also at NAWASA Compound in Provident Village from 12:00 o'clock at noontime up to 3:00 o'clock in the afternoon the following day; that on 5:00 o'clock in the morning of January 12, 1996, he was sleeping downstairs of their residence while his wife and two daughters slept upstairs and on January 19, 1996, at 10:30 in the morning, he was in a bus on the way to his sister Nelia del Rosario in Monumento. He left their residence at 9:00 o'clock and reached his sister's house at 11:00 o'clock. He pointed out that the cases filed against him was only fabricated because he is an irresponsible family man having hooked in gambling and for that reason, he mortgaged two rooms of their house to his sister-in-law Sally Ybanez without the knowledge of his wife. He further alleged that his daughter Fe may have lost her virginity as she frequently played soccer with her friends at Ateneo and she is also fond of riding bicycles. To vouch his testimonies, he presented his daughter Liezl Acala; his sister Nelia del Rosario; Perfecto Lovino, Jr., a taxi driver and also a resident of the same place; and his sister-in-law Exaltacion Ybanez.

On October 28, 1996, the trial court rendered judgment as follows:

WHEREFORE, foregoing premises considered, the court finds the accused REYNALDO ACALA guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659, for three (3) counts, as charged against him and is hereby sentenced to suffer in each of the case, the extreme penalty of DEATH.

The accused is further ordered to pay the private complainant Fe Acala the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages and the amount of TWENTY FIVE THOUSAND (P25,000.00) PESOS as exemplary damages and the cost of the suit.

SO ORDERED.

In view of the penalty imposed, the records were elevated to this Court for automatic review pursuant to Rule 122, §10 of the Rules on Criminal Procedure.

Accused-appellant seeks the reversal of his conviction on the following grounds:^[4]

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THREE (3) COUNTS OF RAPE.

II

THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY PRIVATE COMPLAINANT THE AMOUNT OF FIFTY THOUSAND PESOS (P50,000.00) AS MORAL DAMAGES AND THE AMOUNT OF TWENTY-FIVE THOUSAND PESOS (P25,000.00) AS EXEMPLARY DAMAGES AND THE COSTS OF THE SUIT.

In support of the assignment of errors, accused-appellant contends:

(1) The victim did not state in her first sworn statement, dated January 20, 1996, that aside from the rape committed on January 19, 1996, she was also raped by her father, herein accused-appellant, on December 26, 1995 and January 12, 1996, thereby placing in doubt her credibility.

(2) Dr. Jesusa Nieves Vergara's testimony that she found no fresh lacerations on the hymen and spermatozoa in the vagina of the victim negates the claim of the victim that she had been raped by accused-appellant on January 19, 1996.

(3) The victim harbored a grudge against accused-appellant for having beaten her mother and for being a gambler and an irresponsible father.

(4) There were no witnesses to the alleged rapes.

(5) The awards of P50,000.00 for moral damages and P25,000.00 for exemplary damages made in favor of the victim have no basis because his guilt has not been proven beyond reasonable doubt.

The Court has carefully reviewed the records of this case and has found no reason to reverse the trial court's findings, except to modify its decision as to the penalty and the award of damages.

I.

First. Concerning her failure to mention in her sworn statement, dated January 20, 1996, the two (2) other incidents of rape committed on December 26, 1995 and January 12, 1996, complainant said she was confused and had forgotten the specific dates of the other rapes and only remembered them when asked by the fiscal to try to recall all the incidents of rape to be included in the charge. Complainant testified:

[5]

PROSECUTOR:

Q When you gave your statement to the police on January 20, 1996, one day after the last rape on January 19, 1996, you did not specifically mention about the rapes committed . . . on December 26, 1995 and January 12, 1996, could you please tell us why?

ATTY. LARRACAS:

There was no mention of those dates.

COURT:

Witness may answer.

A Because at that time I forgot ma'am.

PROSECUTOR:

Q Did you mention to the police about the previous rapes?

A Yes, ma'am.

Q And your mother was present at that time?

A Yes, ma'am.

Q Now you subsequently executed a "Karagdagang Salaysay" or Supplemental Statement wherein you mentioned the rape on December 26, 1995 and January 12, 1996, Miss Witness, under what circumstances was this statement given?

A Because the first Fiscal told me to remember all the incidents of rape to be included in the case, ma'am.

. . . .

COURT:

Any re-cross?

ATTY. LARRACAS:

Yes, your Honor.

Q Miss Witness you remember very vividly the statement of your mind which you had on January 20, 1996 when you gave your sworn statement?

PROSECUTOR:

Not proper for recross Your Honor. It was not touched during the re-direct Your Honor. We just touched on the document.

COURT:

Witness may answer the question.

A Yes, ma'am.

ATTY. LARRACAS:

Q And you have the same condition or the same state of mind when you gave your statement on February 7, 1996?

A Yes, ma'am.