

## EN BANC

[ G.R. No. 132715, October 20, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DOMINADOR TABION, ACCUSED-APPELLANT.**

### D E C I S I O N

#### **PANGANIBAN, J.:**

The Information charging appellant with rape failed to allege the minority of his daughter-victim. As a result, he cannot be convicted of qualified rape and sentenced to death, consistent with the Court's ruling in *People v. Ramos*<sup>[1]</sup> that *both* the *age* of the victim and her *relationship* with the offender must be clearly alleged in the information. This doctrine is not a "mere technicality"; it rests on the constitutional principle that the accused are entitled "to be informed of the nature and cause" of the accusations against them, as stated in the information to which they are asked to plead prior to trial. In other words, the accused in the present case can be convicted only of the crime alleged in the Information and duly proven during the trial. In sum, he can be held guilty of simple rape only, which was the crime charged in the Information and proven during the trial.

#### The Case

Before us for automatic review is the Decision<sup>[2]</sup> of the Regional Trial Court, Branch 61 of Bogu, Cebu in Criminal Case No. B-00121, convicting Dominador Tabion of qualified rape and imposing upon him the supreme penalty of death. The case arose from the Information<sup>[3]</sup> dated October 30, 1996, filed by 3rd Assistant Provincial Prosecutor Eric F. Menchavez, charging appellant as follows:

"That on the 11th day of May, 1996 at 9:30 o'clock in the morning, more or less, in Sitio Bagong Lipunan, Barangay Kangka-ibe, Municipality of Bantayan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and with the use of a hunting knife and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge [of] his daughter REGIN<sup>[4]</sup> TABION, against her will and consent."

Appellant was arraigned on April 3, 1997. Duly assisted by his counsel de oficio, he entered a plea of not guilty.<sup>[5]</sup> Thereafter, trial ensued.

#### The Facts

##### *Version of the Prosecution*

The Office of the Solicitor General presents the facts, as viewed by the prosecution, in this wise:<sup>[6]</sup>

"On May 11, 1996 at about 9:30 in the morning, complainant Regin Tabion, a single girl barely sixteen (16) years old, was at their home in Sitio Bagong Lipunan, Barangay Kangka-Ibe, Municipality of Bantayan, Province of Cebu, weaving baskets when accused Dominador Tabion, who was her father and her only companion at the time, as her mother had gone to the town proper while her younger brothers were playing in the house of her aunt, called her to wash the plates. She complied.

"After washing the plates, she was ordered by the accused to get inside her parents' room. She obeyed.

"When she was already inside the room, the accused, who was at the time wearing a T-shirt and short pants and holding a ten (10) to twelve (12) inch long hunting knife in his right hand, ordered her to lie down on the bed and to remove her panty. At the time she was wearing a T-shirt and a skirt on top of her bra and white panty. The accused then told her: "do you see this knife, if you will resist, do you know what I will do, I will thrust this knife to your neck and you know me". Afraid of the accused, she reluctantly lay on the bed and removed her panty. Thereupon, the accused separated and spread out her legs, lay on top of her, pulled out his penis and thrust it into her vagina. She felt pain, a tearing pain inside her vagina. The accused then made a series of push and pull or pumping motions for about one (1) minute, all the while embracing her with his left hand and pointing the knife at her neck with his right hand. The accused's pumping motions and the intense pain she felt in her vagina made her to urinate but blood flowed out instead. She could not resist the accused because she was afraid of him and of his threat to kill her and her family.

"After consummating the sexual act, the accused went out, and she was left in the room crying. She did not tell her mother of what happened because her father warned her he would kill all of them should she tell her.

"Two days later, the accused again ordered her to get inside the room and forced her to have sexual intercourse with him. The accused had sexually assaulted her ten times up to July 10, 1996.

"After the tenth sexual assault against her she could no longer bear the pain of what her father had been doing to her, so she told her mother everything and complained to the authorities.

"On July 22, 1996, she underwent medical examination by Dra. Nayda P. Bautista, a resident physician, at the Bantayan District Hospital. Her findings, which were reduced in writing, were as follows:

PHY. EXAM. FINDINGS:

- A. Easily admits two (2) examining fingers.
- B. Vaginal OS with old healed lacerations at 5 x 7 o'clock positions.
- C. Cervical OS non-tender but erythematous.

"SEC. EXAM.

1. Cervic -- firm, non-tender
2. Adnaxae -- non-tender
3. Discharges -- whitish, non-foul smelling."

"Elaborating on her findings, Dra. Bautista declared that the patient was no longer a virgin; that there was evidence of penetration of male organ into the vagina of the patient; that in her opinion there were several insertions of the male organ into the vagina; and that the old healed lacerations at the lower part of the opening could be two (2) months old, more or less, which coincided with the patient's statement that she was raped by her on May 11, 1996." (Citations omitted)

#### *Version of the Defense*

On the other hand, appellant presented his version of the facts, as follows:<sup>[7]</sup>

"Evidence for the defense shows that on May 11, 1996 at about 8:00 o'clock in the morning, herein accused-appellant went to his place at work at Bagong Lipunan, Bantayan, where he is a self-employed man doing some handicrafts. From their residence to his working place, it would take him fifty (50) minutes to negotiate such distance which is about one (1) kilometer. Once he left the house in the morning, he usually returns in the evening. At the time said incident allegedly happened, he testified that some of his children were in their house while the others were in Iloilo. He denied having raped her daughter and that the allegations made by the complainant were all fabricated as the latter and her mother had a grudge against the accused-appellant. He told his daughter and his wife to stop their vice of drinking with their male friends. However, instead of following his advice, they got angry with him. As a result, the couple kept on quarreling and never had a good relationship since then. When he was already in jail, he wrote his wife and asked why she charged him of rape, however, his letter remained unanswered as she refused to talk to him. (TSN, October 21, 1997, pp. 2-7; TSN, October 30, 1997, pp. 1-6; TSN November 11, 1997, pp. 1-7)"

#### *Ruling of the Trial Court*

Assessing the complaining witness and her testimony, the trial judge wrote:<sup>[8]</sup>

"[During] the entire testimony of the complainant, the Court x x x observed her demeanor and behavior in the narration of [the] facts of the incident. The Court observed her sincerity in testifying against her own father. She show[ed] sign of coolness, calmness and her answer flow[ed] naturally, as if the incident was still fresh in her memory. She appear[ed] forlorn, desolate, lonely but courageous enough to narrate how her father rape[d] her on May 11, 1996 and repeated it two (2) days thereafter.

"There was no motive for her to testif[y] falsely against her father or to falsely fabricate in so serious and heinous a crime if it is not true that she was rape[d].

"The statement of the victim that she was rape[d] by her father was corroborated by Dra. Nayda Bautista when she testified that the old healed lacerations present at the time of the examination coincide[d] [with] the patient[']s statements that she was allegedly rape[d] on May 11, 1996 or it may be two (2) months old, more or less (Tsn, Dra. Bautista, July 22, 1997, p. 9).

x x x

x x x

x x x

"The testimony of complainant is replete with details of the incident, unshaken and unwavering even on cross-examination and that it is hard to fabricate and [manufacture] the sequence of event[s] which would seriously cast dishonor on her maidenhood.

"The complainant is young, she is only 16 years old and it would be unnatural to expose herself to social humiliation, go to the doctor for examination and expose her parts and undergo the agony of a public trial, if such is not the truth."

Describing the appellant's defenses of denial and alibi as "inherently weak," the trial judge cited extant jurisprudence: "For alibi to be given weight and credit, it must be established that it would be physically impossible for him to be present at the scene of the incident or crime"; and denial "cannot prevail over the positive and unshaken testimony of the x x x the complainant." The trial court further held that "[t]he motive proffered by the accused is not so strong enough to overthrow the positive and affirmative declaration of the complainant."

Additionally, the court *a quo* noted that "not even [appellant's] wife ever visited him in jail. Not one of his children, 11 children, ever visited him. It only shows that his wife and children condemned the accused [for] what he had done to [his] daughter. He was then left alone. He is being ostracized by his own family. They cannot forgive the bestial act of their father."

Concluding, the trial court said that it "gives more weight and credit to the testimony of the complainant x x x that she was indeed rape[d] and the rapist was her father and that she was sixteen (16) years old at the time she was sexually abused." It thus disposed as follows:

"WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code in relation to Rep. Act No. 7659, Sec. 11 as amended and hereby imposes upon the accused, Dominador Tabion, the penalty of death."

In view of the penalty imposed, this case was elevated direct to this Court for automatic review.<sup>[9]</sup>

Issue

In his Brief,<sup>[10]</sup> appellant makes this lone assignment of error:<sup>[11]</sup>

"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."

## This Court's Ruling

The appellant may be convicted only of simple, not qualified, rape. Hence, his penalty should be reduced to *reclusion perpetua*.

### Main Issue:

#### *Sufficiency of Prosecution Evidence*

In his Brief, appellant pleads for acquittal, on the anemic argument that the private complainant instituted the criminal charge, merely because she hated him so much for his having been a member of the NPA (New People's Army). Without much ado, he submits that the evidence of the prosecution was not enough to overcome the constitutional presumption of his innocence.<sup>[12]</sup>

The settled guiding principles in reviewing rape cases are: (1) to accuse a man of rape is easy, but it is difficult for the accused to disprove, though he may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.<sup>[13]</sup> Corollary to these is the principle that when a victim of rape says that she was defiled, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.<sup>[14]</sup> The application of this doctrine becomes even more compelling when the culprit is a close relative of the victim.<sup>[15]</sup>

After meticulously perusing the records and evaluating the evidence, the Court is convinced beyond doubt of the credibility and the sufficiency of the prosecution evidence establishing that appellant raped his own daughter Regin. As the solicitor general observed, the testimony of the victim is replete with details; she was categorical, straightforward, unshaken and unwavering even during the grueling cross-examination. She candidly related her sordid tale thus:<sup>[16]</sup>

"Q. Miss Regine Tabion, please tell this Court, where you were on 11th day of May, 1996 at about 9:30 o'clock in the morning?

A. I was at home.

Q. And your house is located in Bagong Lipunan, Bantayan, Cebu?

A. Yes.

Q. While you were in your house, what were you doing at that time?

A. I was weaving baskets.

xxx

xxx

xxx

FISCAL MAÑALAC:

Q. While you were weaving a basket, did your father [call] you?

A. Yes, he called me to wash the plates.