

EN BANC

[G.R. Nos. 131818-19, February 03, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNABE SANCHA, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

Automatic review of the decision^[1] of the Regional Trial Court, Branch 38, Daet, Camarines Norte, finding accused-appellant Bernabe Sancha guilty beyond reasonable doubt of two counts of rape of his daughter, aged 15, and sentencing him, in both cases, to suffer the penalty of death and to indemnify the victim in the amount of ₱100,000.00.

Two informations for rape were filed against accused-appellant.

In Criminal Case No. 8888, the information^[2] against accused-appellant alleged -

"That on or about the 20th day of June 1996 at around 7:00 o'clock in the evening at Sitio Biray, Barangay Banocboc, Municipality of Vinzons, Province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by bestial lust and taking advantage of his over-bearing power over his own daughter, Bermalyne Aban Sancha, who was living under his parental care, unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with said Bermalyne Aban Sancha, a girl of 15 years of age against the latter's will to her damage and prejudice.

"CONTRARY TO LAW."

In Criminal Case No. 8889, it was alleged -

"That on or about the 21st day of June 1996 at around 9:00 o'clock in the morning at Sitio Biray, Barangay Banocboc, Municipality of Vinzons, Province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by bestial lust and taking advantage of his over-bearing power over his own daughter, Bermalyne Aban Sancha, who was living under his parental care, unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with said Bermalyne Aban Sancha, a girl of 15 years of age against the latter's will to her damage and prejudice.

"CONTRARY TO LAW."

The cases were then consolidated. When arraigned, accused-appellant pleaded not guilty to the charges, whereupon, joint trial commenced.

The prosecution evidence shows the following: Complainant Bermalyne Aban Sancha is accused-appellant's daughter by his wife Arsenia Aban Sancha. She is the second child of the couple. At the time she testified in court on February 26, 1997, Bermalyne was 16 years old. Upon the death of their mother on June 17, 1995, Bermalyne and her siblings, Emma, 19, Augusto, 12, Maritess, 10, and Rosalie, 8, had been left in the care of accused-appellant in their house in Sitio Biray, Barangay Banokbok, Vinzons, Camarines Norte. Soon after, however, Emma, the eldest, went to Manila.

In the evening of June 20, 1996, accused-appellant and his children, Bermalyne, Augusto, Maritess and Rosalie were at home about to go to sleep. Their house was small (about one-fourth [$\frac{1}{4}$] of the courtroom) with no partition inside. The family slept side by side on the floor. Accused-appellant slept between Augusto and Maritess. To the right of Augusto were Rosalie and Bermalyne. At about 7:00 p.m., after the children had fallen asleep, accused-appellant went near Bermalyne and then started to remove her t-shirt, short pants and underwear. Bermalyne was awakened, and she started to cry. Accused-appellant removed his short pants and underwear quickly, went on top of Bermalyne and then inserted his penis into her vagina. Bermalyne felt pain in her private parts as accused-appellant forced himself upon her. When accused-appellant removed himself from her, Bermalyne noticed her vagina bleeding. Accused-appellant raped her two more times that night, at about 10:00 p.m. and 12:00 midnight. Throughout the rape, Bermalyne was crying but accused-appellant threatened to kill her if she resisted or woke up her siblings.^[3]

The following day, June 21, 1996, at about 8:00 a.m., accused-appellant again sexually assaulted his daughter. At about 11:00 a.m. of that day, while the other children were out, playing in the house of Arsenio Aban, Bermalyne's maternal uncle, accused-appellant again raped Bermalyne inside their house. Bermalyne tried to shout but accused-appellant covered her mouth with his hand. When Bermalyne's siblings returned home at about 3:00 p.m. of that same day, she did not tell them what had happened to her as she was afraid of accused-appellant and ashamed of her disgrace.^[4] In fact, she did not even say anything of her ordeal to her uncles Artemio, Alejandro and Arsenio Aban, brothers of her late mother Arsenia, who were also residents of Sitio Biray. Later, Bermalyne and her siblings were brought by accused-appellant to their paternal grandfather's house in Mangcawayan, Vinzons, Camarines Norte.

Somehow, however, Artemio Aban learned from Flory Vasquez and one Julieta that Bermalyne had been raped by accused-appellant. When confronted, Bermalyne broke down and admitted to her uncle that she had been molested by her own father. So, on September 24, 1996, while accused-appellant was out fishing (naglaot), Artemio took Bermalyne to Sitio Biray where Bermalyne confided the matter to her aunt Flocerfida Aban, Artemio's wife. Artemio and Flocerfida did not bring Bermalyne back to Mangcawayan and instead took custody of her.^[5]

The following day, September 25, 1996, at about 6:00 p.m., Bermalyne, together with spouses Artemio and Flocerfida, and Flory Vasquez, went to radio station Bombo Radyo (DZVX) in Daet.^[6] They sought the help of station manager Rhonnel R. Peñaflor who accompanied them to the 501st Criminal Investigation Group (CIG) Office in Daet, Camarines Norte where the officer-in-charge, SPO2 Clemente

Gonzales, conducted an investigation and placed Bermalyne's statements in writing (Exh. C).^[7]

On September 26, 1996, Bermalyne filed a criminal complaint (Exh. B) for two counts of rape against accused-appellant before the Municipal Trial Court, Vinzons, Camarines Norte.

On the same day, September 26, 1996, Artemio and Flocerfida accompanied Bermalyne to the Camarines Norte Provincial Hospital in Daet, Camarines Norte for her medical examination. Dr. Marcelito B. Abas, medico-legal officer of Regional Health Office No. 5, examined Bermalyne and his report (Exh. A)^[8] yielded the following results:

"GENITAL EXAM:

- = Healed hymenal laceration at 2, 8, 9 o'clock;
- = Vagina admits one finger easily but two fingers with slight difficulty."

The findings showed that the hymenal lacerations of Bermalyne could have been caused by the penetration of a turgid penis during sexual intercourse. There is no finding of other physical injuries inflicted upon Bermalyne.^[9]

The defense then presented its evidence. Accused-appellant Bernabe Sancha interposed denials. According to him, at about 6:00 p.m. of June 20, 1996, Arturo and Edmundo Flavia went to his house and they drank two bottles of gin. As they got tired and became tipsy, the two left. At about 7:00 p.m., he was already asleep in his house in Sitio Biray, Barangay Banokbok, Vinzons, Camarines Norte together with his children, Bermalyne, Augusto, Maritess and Rosalie. He slept soundly and woke up at 7:00 a.m. of the following day, June 21, 1996. By 7:30 a.m., he left and did some usual farm work (*kaingin*) for more than two hours. At about 10:00 a.m., he went back to his house and slept again. He woke up at 3:00 p.m. He claimed that the charge of double rape was merely a scheme (*pakana*) of his brothers-in-law, Alejandro and Artemio, to get back at him for Arsenia's death. He alleged that they harbored ill-feelings against him for being negligent in attending to Arsenia while she was giving birth to her youngest child which resulted in her untimely demise. After Arsenia's death, Bermalyne would visit the house of her maternal uncles once in a while. He averred that the reason he transferred his family to Mangcawayan was that he wanted to take care of his father (Bermalyne's paternal grandfather) who was already very old. He said that when the case was filed, he did not ask Bermalyne why his brothers-in-law prevented him from seeing her. Nor did he bring up the matter to any member of his own family nor to any of his immediate relatives.^[10]

On August 21, 1997, the trial court rendered a decision finding accused-appellant guilty of two counts of rape. The dispositive portion of its decision reads:^[11]

"WHEREFORE, finding the accused Bernabe Sancha guilty beyond reasonable doubt of the two (2) counts of rape as charged under Art. 335 Revised Penal Code as amended by R.A. 7659, he is hereby sentenced to suffer the extreme penalty of DEA TH in both cases and to pay the offended party the amount of ₱100,000.00, as damages.

"SO ORDERED."

Accused-appellant seeks reversal of his conviction alleging errors in the trial court's decision.

First. Accused-appellant points out inconsistencies in Bermalyne's statements as to the number of times he allegedly raped her. He says that at one time, she said she was abused three times, while at another time she said four times. On the other hand, a witness for the prosecution, Flocerfida Aban, testified that Bermalyne related to her that she had been raped by accused-appellant twice. Accused-appellant contends that because of these discrepancies, Bermalyne was lying.

This contention is without merit. The perceived discrepancies in the testimony of Bermalyne as to the number of times she was raped are inconsequential. Inconsistencies of this nature can be expected of a young girl whose harrowing experience she is called upon to recall.^[12] They tend to buttress, rather than weaken, her credibility, since they indicate that her testimony was not contrived.^[13] Indeed, victims of rape hardly retain in their memories the dates, number of times and manner they were violated. For this reason, it has been held that the exact date of the commission of the rape is not an essential element of the crime.^[14] What is material is that the commission of the rape by accused-appellant against complainant is sufficiently proven. Discrepancies should refer to significant facts which are crucial to the guilt or innocence of an accused. Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime, such as the exact time of the commission of the crime, are not grounds for acquittal.^[15]

On the other hand, that Bermalyne was telling the truth is evident from a reading of her testimony as she recounted, with tears welling in her eyes, how she was molested by her father three times on the night of June 20, 1996 and twice in the morning of June 21, 1996:

"Q You said awhile ago that you were about to sleep on that evening of June 20, 1996 , at around 7:00 o'clock , is it not?

A Yes, sir.

Q Were you able to sleep that night?

A No, sir.

Q Why were you not able to sleep that night on June 20, 1996 , at around 7:00 o'clock in the evening?

FISCAL FERRER

Witness is crying, Your Honor. I would like to place on record that witness is shedding tears.

ATTY. BARANDON

I would like to put on record that the alleged victim cannot answer simple question, Your Honor.

COURT

The witness is crying that's the reason why she could not answer. And the court is waiting for that answer.

FISCAL FERRER

Q Who were the persons inside your house?

A Augusto, Maritess, Rosalie and my father, sir.

Q Where is your [father] at that time?

A He was in the sala, sir.

Q How about you?

A I was also in the sala, sir.

FISCAL FERRER

Q What was your distance?

A A bit far, sir.

Q What happened?

A My father went near me, sir.

Q What did he do?

A He undressed me, sir.

ATTY. BARANDON

We believe the answer should be louder.

(WITNESS)

A He undressed me, sir.

Q You said that your father removed your dress, what else did he do?

A My pant[y], sir.

Q What [were] you wearing that night?

A T-shirt, sir.

Q That was also removed by your father?

A Yes, sir.

Q Were you wearing short pants?

A Yes, sir, I was wearing.

xxx xxx xxx

FISCAL FERRER

Q When your father was removing your T-shirt, and short pants, what did you do, if any?

A I was crying, sir.