

[G.R No. 133859, August 24, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIZARDO GONZALES Y ALTARES, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

This case illustrates how parental neglect could sometimes lead children to tragic ends. The victim in this case, a 12-year old girl, was forced to live with her father's relatives when her parents succumbed to social pressure. Her father was in jail for peddling narcotics; her mother worked as a domestic helper in some foreign land. And in their absence, her very own uncle took advantage of her youth and naivete'. He is now on the verge of death, as society seeks to preserve itself from inner devastation.

On 3 March 1998, a decision^[1] was rendered in Criminal Case No. 97-18570 by the Regional Trial Court of Bacolod City, Branch 50, finding herein accused-appellant Felizardo Gonzales y Altares (hereafter FELIZARDO) guilty of the crime of rape and sentencing him to suffer the ultimate penalty of death.

The following facts, proved by the prosecution and culled from the records of the case, demonstrate how the case found its way to this Court for automatic review.

Katherine M. Gonzales (hereafter KATHERINE) was born on 10 October 1984 to the spouses Leopoldo Gonzales and Remedios Makilan.^[2] At the time of the first incident, she had just turned twelve (12) years old and was in the graduating elementary class of the Negros Occidental High School (NOHS) in Murcia, Negros Occidental. Two years prior to the incident, she and her five elder brothers began living with their paternal grandmother, Herminia Gonzales, at Alunan-Yulo Street, Bacolod City, because their father Leopoldo was serving a prison sentence at the National Penitentiary on a drug conviction, while their mother Remedios was in Qatar, working as a domestic helper. They shared the house with their uncle FELIZARDO, Leopoldo's younger brother, and cousin Joan, the illegitimate daughter of their Aunt Titing. They also shared one room at the ground floor of Herminia's house. KATHERINE, Joan, and their "Mama Minyang" occupied the biggest bed, a "matrimonial" bed with only a mat for a mattress. About one arm's length away, her brothers Renpol and Richard slept on a smaller bed with FELIZARDO. Her two other brothers, Ruel and Reggie, occupied the other bed, which is behind the cabinet ("aparador") serving as a divider.^[3]

The first incident occurred on 29 October 1996. Herminia woke up KATHERINE at around 4:00 a.m., as she usually did, so that the latter could close the door and turn off the lights when she left for the Libertad Market to shop for goods to be peddled. After complying with her grandmother's instructions, KATHERINE went back to their room. She was surprised to see her "Uncle Zardo," who was holding a flashlight in the dark room. Thereupon, FELIZARDO asked her if she really had a tattoo on her breast and pushed her to the bed where Joan was sleeping.

FELIZARDO moved Joan to the edge of the bed, then went on top of KATHERINE, holding her hands together. She struggled and tried to shout, but FELIZARDO covered and squeezed her mouth, at the same time threatening to kill her and her brothers. He took off her T-shirt (chemise), shorts, and panty. With KATHERINE naked, FELIZARDO spread her legs, focused the light on her vagina before licking it, and sucked her nipples. Moments later, FELIZARDO removed his shorts and briefs, again straddled KATHERINE, inserted his penis into her vagina, then performed the sexual act for about five minutes. She felt excruciating pain in her organ and begged him to stop; which he did, but only after he had ejaculated. KATHERINE felt something slippery run down her vagina. His nefarious deed accomplished, FELIZARDO stood up, trained the flashlight on KATHERINE's organ, then ordered her to wash.[4]

KATHERINE distinctly remembered her first ordeal not only because it happened two days after the birthday of her brother and cousin Joan, but because she experienced her first menstruation the day after, October 30th.[5]

Such violation was repeated on the 5th, 6th, and 9th of April 1997.[6] Likewise, KATHERINE clearly remembered these dates because she graduated from elementary on 3 April 1997. He employed the same *modus operandi* each time: when Patricia had left for the market and KATHERINE, had gone back to sleep after closing the door and turning off the light, FELIZARDO would crawl toward her. First, he would move Joan aside, then he would undress KATHERINE, suck her nipples, lick her vagina, and rape her. He never kissed her lips.[7] Her brothers never woke up whenever FELIZARDO performed his evil acts because they were "heavy sleepers." [8]

The last incident, which is the subject of this case, occurred on 15 August 1997. On this, KATHERINE made the following narration:

Q. After April 9, was there any other incidents?

A. Yes, sir.

Q. When was that?

A. On August 15, 1997, the last incident.

Q. Will you please tell this Honorable Court why were you able to know this date, August 15, 1997?

A. Because that was a Friday and the following Monday, that was the time when I complained to somebody.

Q. On August 15, 1997, what time did the accused rape you?

A. Same time, 4:00 a.m.

Q. Do you want to convey to this Honorable Court that the accused used to rape you at 4:00 a.m.?

A. Yes, sir.

Q. Also on October 29, 1996, April 5, 6, 9 and August 15, 1997?

A. Yes, sir.

Q. This incident happened while your grandmother Herminia was out because she was going to the market?

A. Yes, sir.

Q. And your Lola Menyang used to wake you up whenever she goes to the market?

A. Yes, sir.

Q. Were you always the one who was tasked to close the door whenever she left the house?

A. Yes, sir

COURT:

Q. So, what happened on August 15, 1997, would you narrate?

A. The same.

FISCAL ESQUILLA:

Q. What happened, when you said the same thing happened?

A. The same, he would crawl towards me and raped (sic) me.

COURT:

Q. The August 15 incident is the subject matter of this case. You tell us everything that happened. Do not touch on any other dates.

A. On August 15, I was sleeping then when I noticed that somebody was putting aside Joan but I did not mind because I fall (sic) asleep again. Before I knew it, I was surprised when he was already at my feet.

FISCAL ESQUILLA:

Q. Whom are you referring to that he was at your feet?

A. Felizardo Gonzales.

COURT:

Q. How do you call him?

A. Tito Zardo.

FISCAL ESQUILLA:

Q. So, please narrate to this Court after that when the accused was at your feet?

A. Before he would do anything, he would tell me not to shout or make any noise because he will kill my brothers. So, the same thing, what he had done to me previously, he did it again on that day.

Q. After the accused told you not to shout for if you shout he will kill your brothers, what did the accused do after that?

A. He undressed me again, he pulled off my short pants and panty and spread my legs.

Q. After that, what happened next?

A. He licked my vagina.

Q. How about your breast?

A. He sucked my breast.

COURT:

Q. He did this [sic] to you one at a time, alternately or what?

A. First, he licked my vagina, and mashed my breast.

Q. And after that on that particular morning, on August 15, 1997, after the accused mashed your breast, licked your vagina, what did the accused further do to you?

A. He was on top of me and made a motion of push and pull and forced his penis to insert in my vagina.

Q. Did you feel that penis of the accused penetrated [sic] your vagina?

A. Yes, sir.

Q. If you know, and what you feel, the entire penis was inside your vagina?

A. Yes, the entire length of his penis.

Q. What did you do?

A. I was struggling.

Q. How long did he stay on top of you while moving this push and pull?

A. Not less than five (5) minutes.

Q. So, you said that after he completely have [sic] a sexual intercourse with you, what happened next?

A. No more.

Q. What did he tell you, if any?

A. After that, he instructed me to dress up? [sic]^[9]

On 18 August 1997, KATHERINE finally found the will and courage to relate to somebody what FELIZARDO had done to her. She narrated her harrowing experience to her classmates, Claire Vingco and Rosemary Quiatchon. In turn, Rosemarie relayed the information to her mother Gilda, who happened to be a teacher and, in fact, was KATHERINE's adviser at the NOHS. Gilda brought KATHERINE to the GABRIELLA^[10] Center. Gilda and a certain Yolly Macaya of GABRIELLA accompanied KATHERINE to the house of her maternal grandmother, Patricia Makilan, located at Barangay Minoyan, Murcia, Negros Occidental. They informed her that KATHERINE had been raped by her uncle FELIZARDO. KATHERINE's case was then referred to the Women's and Children's Desk of the Bacolod City Police Office (BCPO).^[11]

Dr. Joy Ann Jocson, medico-legal officer at the Bacolod City Health Office, conducted a physical examination on KATHERINE. Her findings, contained in her medical report dated 18 August 1997, revealed that KATHERINE had incomplete lacerations at the 7 and 9 o'clock positions.^[12] Her cervix admitted two (2) fingers and her hymen was partially lacerated, suggesting prior sexual intercourse. Dr. Jocson also said that during the examination, KATHERINE divulged that she had been raped "many times" between 29 October 1996 and 15 August 1997.^[13]

SPO2 Evelyn M. Mabayag, who was assigned at the Women's Desk of the BCPO, confirmed the testimony of KATHERINE on the circumstances surrounding the rape charge.^[14] After taking the statements of KATHERINE and Patricia, she was convinced that the crime charged was indeed committed. SPO2 Mabayag then prepared the complaint,^[15] which was signed by KATHERINE and Patricia. On the

strength of said complaint, FELIZARDO was apprehended on the same date at their house by a team composed of SPO2 Mabayag, SPO4 Carmencita Saliba, two investigators and a mobile group.^[16] On 22 August 1997, SPO2 Mabayag conducted an ocular inspection of the place of the incident and found the arrangement of the beds at the ground floor of Patricia Makilan's house to be consistent with KATHERINE'S description.^[17]

After due proceedings, a complaint^[18] was filed with the Regional Trial Court of Bacolod City on 22 August 1997, charging FELIZARDO with rape allegedly committed as follows:

That on or about the 15th day of August, 1997, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have incestuous carnal knowledge of his niece, the herein complainant, KATHERINE Gonzales y Makilan, 12 years of age, against the latter's will.

ACTS CONTRARY TO LAW.

The case, docketed as Criminal Case No. 97-18570, was raffled off to Branch 50 of the Regional Trial Court of Negros Occidental, Bacolod City.

During arraignment, FELIZARDO entered a plea of not guilty.

FELIZARDO denied the accusation against him and declared that he could not have raped or molested KATHERINE at 4:00 in the morning of 15 August 1997 because he was sleeping at the time. His mother Herminia usually woke him up after 5:00 a.m. KATHERINE's claim that he raped her at 4:00 a.m. was, therefore, false and incredible. He was not even aware of any reason why KATHERINE' would point to him as the culprit when, in fact, he had never touched her.^[19]

Herminia Gonzales believed in her son's innocence and said FELIZARDO could never have committed such a thing. During the time the rape was allegedly committed, she was still in the house preparing their breakfast, leaving only at around 5:30 to 6:00 each morning to do her marketing. She recalled, however, that one early morning, she and Richard saw KATHERINE in the company of a man in his early twenties. When KATHERINE did not return from her early morning jog, they even had to look for her.^[20]

Further bolstering FELIZARDO's defense as well as Herminia's testimony, Richard Jude Gonzales, KATHERINE's brother, testified that he did not notice anything unusual in their house on 15 August 1997. After this case was filed, KATHERINE apparently revealed to him that she was actually raped by a certain Eric and not by their uncle FELIZARDO.^[21]

Finally, the defense called on KATHERINE as a recanting witness. She declared that she had not been raped by her uncle FELIZARDO but by a certain Eric, a transient in their place. Sometime in the early morning of June or July, 1995, Eric befriended her while she was jogging. A week later, Eric raped her, first at the fishpond across the river of Magsungay, and again, after a week, at a *camote* plantation.^[22] She did not report the incident for fear that she might be harmed by her relatives. To ensure her physical well-being, she decided to put the blame on her uncle FELIZARDO.^[23]