

## EN BANC

**[ G.R. No. 123599, December 13, 1999 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
AGAPITO FLORES Y VELISTA, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

Agapito V. Flores was charged with Rape in Criminal Case No. Q-94-99462 and was sentenced to suffer the supreme penalty of death by the Regional Trial Court, National Capital Region, Branch 216, Quezon City under the following information:

That on or about the 8th day of November, 1994, in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously at knife point undress the undersigned, a minor 13 years of age, and then and there placed himself on top her and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

Now on automatic review by this Court, Atty. Roberto Abad from the Law Firm, Abad & Associates entered his appearance in cooperation with the Free Legal Assistance Group (FLAG) to take up the cause of appellant.

From the testimony of the victim, the facts of the case as found by the trial court are as follows:

Ma. Cristina is the eldest among the four children of common-law spouses, Agapito Flores and Rosario Flores. They live in 168 Road 1, Bagong Pag-asa, Quezon City.<sup>[1]</sup>

In the evening of November 7, 1994, Rosario and Agapito had a quarrel. Rosario was beaten by the accused-appellant and so she left the house and stayed that night with a neighbor's house to escape his wrath.<sup>[2]</sup> The next morning, at about 10:00 o'clock, while Rosario was still away, the accused-appellant told the children to go out of the house, except Ma. Cristina.<sup>[3]</sup> He told Ma. Cristina to enter the bedroom as he was going to tell her something. Once inside, the accused-appellant pointed a knife at her neck and ordered her to take off her clothes.<sup>[4]</sup> She obeyed until she was completely naked. The accused-appellant undressed himself, kissed her, sucked her breast and inserted her penis inside her vagina. She was lying on the "papag" with the accused-appellant on top of her for about an hour.<sup>[5]</sup> She felt the private part of her father inside her organ and felt pain. All the time and while the accused-appellant was on top of her the knife was poked at her.<sup>[6]</sup>

When Rosario Flores returned home that same day, she learned about what happened to Ma. Cristina.<sup>[7]</sup> She went immediately to the police authorities to

report the incident and Ma. Cristina was brought to a physician.<sup>[8]</sup> She was examined by Dr. Rosaline Casidone, Sr. Inspector, Medico-Legal Officer of the PNP who found her hymen to have healed lacerations at 3:00, 7:00, and 9:00 positions.<sup>[9]</sup>

Ma. Cristina also testified in open court that this was not the first time that such an incident happened. She stated that her father raped her for four (4) times when she was in Grade IV.<sup>[10]</sup>

The accused-appellant, on the other hand, put up the following version:

He and his common-law wife, Rosario had a quarrel in the evening of November 7, 1994 regarding the non-payment of rentals by a relative of Rosario.<sup>[11]</sup> The accused-appellant also threatened her that she would be replaced by his other woman, Tess Gaviola, who would take charge of collecting the rental payments.<sup>[12]</sup> Everytime they had a fight, Rosario would always leave the house tagging along the children.<sup>[13]</sup> But this time, Ma. Cristina did not follow her mother. She stayed behind to talk to her father. On November 8, 1996 at 10:00 A.M., Ma. Cristina left the house to look for her mother and did not return that day or the next.<sup>[14]</sup> On November 10, 1994 Rosario returned home without saying anything. After awhile, the *barangay tanod* came to their house and apprehended the accused-appellant. He was brought to the barangay hall and there he saw Ma. Cristina.<sup>[15]</sup> He subsequently learned the reason for his arrest and denied the charges hurled at him.<sup>[16]</sup> Upon presentation of the knife which he allegedly used in poking Ma. Cristina's neck, he explained that this was already in the possession of the Criminal Investigation Division (CID) of the Philippine National Police (PNP) since this was earlier surrendered on October 2, 1994 after he and Rosario had quarreled many times before.<sup>[17]</sup> The charge of rape was merely fabricated because Rosario was very mad at him and was certainly trying to get back at him.<sup>[18]</sup>

In this appeal, appellant makes the following assignment of errors:

1. *Whether or not the rule of sufficiency of evidence in rape cases applied by the trial court amounts to a denial of the presumption of innocence accorded by the Constitution to the accused;*
2. *Whether or not, given the serious inconsistencies in Ma. Cristina's testimony, the evidence is sufficient to establish the guilt of the accused beyond reasonable doubt;*
3. *Whether or not the testimonies of the other witnesses in the case buttress the testimony of Ma. Cristina; and*
4. *Assuming the evidence of guilt is sufficient, whether or not the Court may recommend executive clemency considering that a strict enforcement of the provisions of Republic Act 7659 would result in the imposition of a clearly excessive penalty of death on the accused.*<sup>[19]</sup>

Appellants faults the trial court for making a sweeping statement that "Filipino women will not testify to being raped unless it was the case" pursuant to the ruling in *People v. Caballes*.<sup>[20]</sup> According to appellant, "if women can now muster the courage to complain of rape when it happens, it should stand to reason that, when driven by sufficient motivation, some women can also feign charges or rape."<sup>[21]</sup> In this case, the cry for rape was motivated by the blind jealousy of Ma. Cristina's mother.

Appellant, in a bid for exculpation, also cites inconsistencies in the testimony of Cristina.

1. ) Ma. Cristina testified that she readily obeyed the accused when he asked her to enter the room because he had something to tell her but in her sworn statement, she stated that after her father sent the other children out of the house, he pulled her towards the bedroom, implying the use of force.
2. ) In her testimony in court, Ma. Cristina said that the accused forced her to undress and she did so. But, in her sworn statement, she said that the accused undressed her himself.
3. ) She testified in court that the accused sucked her breast and then entered her. In her sworn statement, however, she stated that he touched her breast with his hand, then her genitalia before entering her.
4. ) She testified that after the accused raped her, she told her brothers Jesus and Lito about it and they in turn went to inform their mother. On the other hand, she said in her sworn statement, that she herself informed her mother of the rape when she came back at about noon.
5. ) Ma. Cristina testified that the accused remained on top of her for one hour. This, of course, is contrary to common experience as to the time it takes to consummate sexual acts. Ma. Cristina makes no claim that the accused repeatedly ravished her right that time.

<sup>[22]</sup>

Appellant further contends that the medical findings reveal that the healed lacerations in the victim's hymen were already existing prior to the alleged date of rape, in which case, there is really no evidence to prove that appellant raped Ma. Cristina on November 8, 1994.

Nonetheless, as if anticipating a conviction for his client, counsel for appellant would plead for mitigation or clemency. He brings to the attention of the Court that cases of rape are generally domestic; between members of the household and belonging mostly from the lower classes where their surroundings and living conditions are dismal - no partitions in the house, boys and girls sleeping together, no covered bathrooms, etc. Counsel further states:

The number of men waiting to be put to death at the National Bilibid Prisons for rape is a growing number, outpacing the growth of murder

said the study. As of December 1995, 53% of the inmates at the death row were convicted for rape and rape-related crimes, while only 35% were convicted for murder and murder-related crimes. The rest are for kidnappings and drugs smuggling at 6% each. A further research should reveal that many of those held at the death row for rape charges are for incestuous rapes. Surely, where the penalty of death is specially excessive, the Court can recommend executive clemency for the commutation of such penalty.<sup>[23]</sup>

In the main, appellant questions the credibility of the witnesses: the victim herself and her mother who allegedly have an ill-motive to take revenge against him for all the maltreatment he has caused Rosario and the family. But when it comes to the issue of credibility the time honored rule is that appellate courts will generally not disturb the findings of the trial court unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.<sup>[24]</sup> The trial court indeed enjoy this badge of respect since they have the advantage of observing the demeanor of witnesses as they testify in court and are able to detect whether they are telling the truth or not.<sup>[25]</sup>

It is the finding of the trial court in the instant case that the narration made by Ma. Cristina of how she was raped on November 8, 1994 appears to be credible and worthy of belief. She testified in a clear and straightforward manner. The sincerity, bitterness and disdain of what she experienced was manifested by the tears on her eyes while she was testifying in court.<sup>[26]</sup> She testified, to wit:

FISCAL TOBIA- Miss Witness, how are you related to the accused Agapito Flores?

A- My father, sir.

Q- Now, at about 10:00 o'clock in the morning of November 8, 1994, where were you?

A- We were at home, sir.

Q- And this is at 168 Road I, Barangay Bagong Pag-asa, Quezon City?

A- Yes, sir.

Q- Now, was your mother with you at that time?

A- No, sir.

Q- Who was then with you at your residence?

A- My siblings and my father, sir.

Q- Now do you remember of anything unusual that happened at that time?

A- There was, sir.

Q- Can you tell the Honorable Court what is this unusual

incident all about?

A- Yes, sir. He asked me to enter the room as he was going to tell me something.

Q- And, who asked you to enter the room?

A- My father, sir.

Q- Did you go inside the room as asked by your father?

A- Yes, sir.

Q- Before we proceed, Miss Witness, can you point out to your father, the accused Agapito Flores?

RECORD

Witness pointing to a male person wearing an orange T-shirt who identified himself as Agapito Flores.

FISCAL TOBIA - Now, what happened when you went inside the room as asked by your father?

A- He pointed a knife at me, sir.

Q- At what particular part of your body did your father point the knife?

A- At my neck, sir.

Q- Will you describe the knife used by your father?

A- A kitchen knife, sir.

Q- Can you demonstrate to the Honorable Court how long that knife was, including the handle?

RECORD- Witness describing the knife as 10 inches including the handle.

ATTY. TABANG- Admitted, Your Honor.

FISCAL TOBIA- Now, why did your father point a knife at you, Miss Witness?

A- He was forcing me to undress, sir.

Q- Did you undress as forced by your father?

A- Yes, sir.