

## EN BANC

[ G.R. No. 140733, January 30, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARMANDO TAGUD, SR., ACCUSED-APPELLANT.**

### DECISION

**CARPIO, J.:**

An Information for a crime punishable with the supreme penalty of death must adhere to a higher standard in complying with the requirements of the law and the Rules of Court. The qualifying circumstance must be alleged with more particularity to alert the accused that his life hangs in the balance because of the special circumstance that raises the crime to a higher category. Thus, when the victim's minority qualifies the crime of rape, the exact age of the victim must be specifically alleged in the Information to warrant the imposition of the death penalty.

### THE CASE

Before this Court for automatic review is the Decision<sup>[1]</sup> dated September 22, 1999 of the Regional Trial Court of xxx, Branch 6, in Criminal Case No. 06-7190, finding Armando Tagud, Sr. guilty of the crime of qualified rape and sentencing him to suffer the death penalty.

### THE CHARGE

Appellant was charged with the crime of rape in an amended Information that reads:

"That on or about May 23, 1998, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of violence and/or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of his minor daughter AAA, against her will.

Contrary to and in violation of Art. 266-A, Chapter 3 of the Revised Penal Code, as amended by R.A. No. 8353."<sup>[2]</sup>

### ARRAIGNMENT AND PLEA

When arraigned on March 9, 1999, appellant, with the assistance of counsel, entered a plea of guilty with the proposal that the lesser penalty of *reclusion perpetua* be imposed upon him.<sup>[3]</sup> However, private complainant AAA ("AAA" for brevity) and her mother, BBB ("BBB" for brevity), disagreed insisting that appellant should be executed by lethal injection or in their words, "E-Echagaray".<sup>[4]</sup> The trial court advised appellant to enter a plea of not guilty since in any case the

prosecution is still required to present evidence. Accordingly, the appellant entered a plea of not guilty.

On May 11, 1999, the first hearing date, appellant through counsel, moved in open court for leave to withdraw his former plea of not guilty and to be re-arraigned for the purpose of entering a plea of guilty. The court granted the motion.

Appellant was re-arraigned on the amended Information in the Cebuano-Visayan dialect that he speaks and understands. The trial court asked appellant searching questions to determine the voluntariness and full comprehension of the consequences of his plea. Appellant informed the court that it was his own personal decision to withdraw his former plea of not guilty and enter a plea of guilty.<sup>[5]</sup> He likewise manifested in open court that he understood the consequences of his plea of guilt.<sup>[6]</sup> Thereafter, trial ensued to prove appellant's guilt and the precise degree of his culpability.

## **THE TRIAL**

### **Version of the Prosecution**

The prosecution presented four witnesses, namely: (1) the complainant, AAA; (2) the brother of AAA, CCC ("CCC" for brevity); (3) the common-law wife of appellant, Wenefreda; and (4) the Medico Legal Officer of the xxx Health Office, Dr. Leonardo Labanon.

In the People's Brief, the Solicitor General summarized the prosecution's version of the incident, as follows:

"Appellant is the common-law husband of BBB with whom he has two children, AAA and CCC. AAA was born on May 24, 1981 in Butuan City. At the time AAA testified, she was seventeen years of age. (pp. 3-4, TSN, May 20, 1999; p. 20 TSN, June 24, 1999; Exhibits "B" and "B-1").

On April 24, 1998, AAA was employed as a house helper by Mrs. Areola at xxx (p. 5, TSN, Ibid).

On May 23, 1998, at 7:00 p.m., more or less, AAA temporarily left her employer's abode and went to their house in xxx because the next day was her birthday. When she arrived home, she saw her father, the appellant and her brother, CCC (CCC) (pp. 6-7, TSN, Ibid).

Inside the house, appellant ordered AAA to lie on the floor face down. When AAA complied, appellant stepped on her back as she lay face down on their bamboo floor. Feeling intense pain, AAA pleaded with her father to stop. Appellant then forced AAA to lie on her back and ordered her to undress. AAA refused to remove her clothes. Appellant forcibly undressed AAA and stripped her of her dress, shorts and panty. Thereafter, appellant removed his shorts and brief. He then inserted his penis into AAA's sexual organ and made a pumping motion (pp. 10-11, TSN, Ibid). Petrified with pain, AAA told appellant "Stop it Pa", but appellant continued with his bestial act. AAA felt a stinging sensation (hapdos and sakit). AAA heard her brother CCC plead with appellant to

stop raping his sister. Appellant, however, ordered CCC to go downstairs and play. Fearful of the appellant, CCC obeyed (pp. 13-14, TSN, Ibid). When appellant stopped his push and pull motions, AAA noticed a white discharge coming from appellant's penis. Appellant then casually put on his clothes and left (pp. 12-13, TSN, Ibid).

When BBB, the mother of AAA, arrived at their house that night, AAA told her that she was raped by appellant. BBB was not able to do anything out of fear of her husband (p. 14, TSN, Ibid).

In June 1998, AAA was able to muster enough courage and told her employer, Mrs. Areola, that she was raped by her own father. Mrs. Areola accompanied AAA to the Department of Social Welfare and Development (DSWD), Saray Branch to report the rape (pp. 25-26, TSN, Ibid). AAA also reported the incident to the National Bureau of Investigation (NBI) and submitted herself to medical examination (pp. 17-19, TSN, Ibid).

On July 9, 1998, Dr. Leonardo Labanon, Medico Legal Officer of the City Health Office, xxx conducted the medical examination. A medical certificate (Exhibit "A") was issued with the following results:

- (1) hymenal laceration, old, 3 and 9 o'clock position
- (2) Intruitus admits 2 fingers w/ less resistance
- (3) Slightly catatonic, depressed mood (referred to Dr. Sagge for psychiatric evaluation.)

During the trial, AAA told the court that she was first raped by appellant when she was eight years old. The sexual abuse was repeated several times. AAA testified how appellant threatened to kill her if she told anyone that she was raped by appellant. AAA told the trial court that she informed her mother about what appellant did to her. BBB, however, could not do anything since appellant would physically abuse BBB whenever she tried to stop appellant from raping her daughter (pp. 14-17, TSN, Ibid).

### **Version of the Defense**

After the prosecution rested its case, appellant, through counsel, manifested in open court that he was waiving his right to present evidence. The trial court then considered the case submitted for decision.<sup>[7]</sup>

### **THE TRIAL COURT'S RULING**

The trial court accorded full faith and credence to the evidence of the prosecution. The trial court believed that the evidence for the prosecution disclosed a horror story of moral depravity and sadism.<sup>[8]</sup> Appellant started sexually abusing his daughter AAA when she was only eight years old. Appellant also physically maltreated AAA's mother, BBB, whenever she attempted to prevent him from perpetrating a vile and wicked act upon AAA. Cowed into submission, BBB failed to stop her husband's beastly acts. It was only on May 23, 1998, the last sexual

assault, that AAA broke free from this sexual bondage when she narrated her ordeal to her employer, Mrs. Areola. This led to the filing of the criminal case against appellant. In view of the undisputed evidence of the prosecution and appellant's plea of guilt, the trial court rendered a judgment of conviction on September 22, 1999. The dispositive portion of the decision reads:

"WHEREFORE, the court finds the accused Armando Tagud, Sr. GUILTY beyond reasonable doubt as principal of the crime of qualified rape defined and penalized in Article 266-A in relation to Art. 266-B of the Revised Penal Code as amended by R.A. 8353 and hereby imposes upon him the single and indivisible penalty of death by lethal injection and to indemnify the victim, AAA the sum of P50,000.00 as moral damages and P50,000.00 as exemplary damages."<sup>[9]</sup>

Hence, the automatic review of this case before us.

### **THE ISSUES**

Appellant seeks the reversal of his conviction by contending that -

#### I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

#### II

ASSUMING THAT THE ACCUSED IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE ACTUAL AGE OF THE VICTIM.

### **THE COURT'S RULING**

The Court sustains the conviction of appellant, but the penalty imposed by the trial court should be reduced to *reclusion perpetua*.

Appellant contends that he entered a plea of guilty believing that the trial court would appreciate in his favor his admission. Had he known that the penalty would still be death, he would have opted to plead not guilty and would have adduced evidence in his defense.

Appellant's argument fails to persuade us. The record reveals that appellant was duly informed of the consequences of his plea of guilt. We quote:

"Atty. Susan Escalona:

Your Honor, the accused intends to withdraw his former plea of not guilty and we will re-enter a plea of guilty of the crime charged.

COURT:

Alright, the motion to withdraw the former plea of not guilty entered by the accused on March 9, 1999 is granted.

Re-arraign the accused. (The Information was read to accused Armando Tagud)

Now, Armando Tagud, the Information was read to you in the Cebuano-Visayan dialect. Did you understand the Information?

A: Yes, sir.

Q: Do you speak and understand the Cebuano-Visayan dialect?

A: Yes, sir.

Q: So, what is your plea?

A: I am guilty, sir.

Q: Now, on March 9, 1999 the Information was read to you in the Cebuano-Visayan dialect and you entered a plea of not guilty. Your counsel submitted a motion that you are withdrawing your former plea of not guilty and that you intend to re-enter a plea of guilty to the crime charged. Do you understand that?

A: Yes, sir, I understand.

Q: And so, you are now entering a plea of guilty to the offense charged?

A: Yes, sir.

Q: Do you know that the victim in this case is your own daughter named Arlene (AAA) Tagud is below 18 years old?

A: Yes, sir.

Q: So, when you entered a plea of guilty to the crime of rape committed by you against your own daughter, have you not been forced, threatened or coerced into entering a plea of guilty?

A: This is my own will, sir.

Q: **Do you know that by entering a plea of guilty for having raped your own daughter who is a minor, the law specifically imposes upon the judge the obligation to impose the penalty of death and no other sentence can be given to you?**

A: **Yes, sir.**

Q: And despite this information that you might be sentenced to a penalty of death, you will still continue your plea of