

## EN BANC

[ G.R. Nos. 139698-726, February 20, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WILFREDO D. MATUGAS, ACCUSED-APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

This is an automatic review of the decision<sup>[1]</sup> of the Regional Trial Court, Branch XXVIII, Mandaue City, finding accused-appellant Wilfredo Matugas guilty beyond reasonable doubt of twenty-nine (29) counts of rape, and sentencing him, in each case, to suffer the penalty of death, to indemnify the victim in the amount of P75,000.00, and to pay the costs.

Except as to the date of the commission of the rape and the age of the complainant on the several dates indicated, the 29 amended complaints,<sup>[2]</sup> which formed the basis of the 29 informations against accused-appellant, uniformly alleged as follows:

“The undersigned complainant, assisted by the undersigned prosecutor, accuses WILFREDO D. MATUGAS of RAPE, committed as follows:

That on or about the [date<sup>[3]</sup>], in Mandaue City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of complainant AIMEE G. MATUGAS, who is 13-year-old girl,<sup>[4]</sup> with deliberate intent, did then and there willfully, unlawfully and feloniously have sexual intercourse with the said offended party against the latter’s will.

CONTRARY TO LAW.”

When arraigned, accused-appellant pleaded not guilty, whereupon the cases were jointly tried.

The prosecution presented complainant Aime who testified as follows:

Aime was the eldest of three children of the spouses Librada Matugas and accused-appellant Wilfredo Matugas.<sup>[5]</sup> At the time she testified, she was 16 years old, having been born on November 1, 1981, and a fourth year high School student at the Consolacion National High School in Mandaue City. She lived in Canduman, Mandaue City with her father, mother, and sister, while her brother lived with their grandmother in Danao.

In the evening of September 6, 1995, Aime was alone in their house with her father and her one-year-old sister Cindy Mae. Her mother had not come home from work. While she and her father were watching television upstairs, the latter got up and,

after closing the windows and the door, removed her short pants and forced her to have sexual intercourse with him. Complainant said she resisted and shouted for help as she felt so much pain in her private parts, but her father covered her mouth. After he was through, accused-appellant warned her not to tell anybody about the incident or he would kill all the members of their family.<sup>[6]</sup>

Again, in the evening of November 29, 1995, while complainant was watching television upstairs with her father, the latter switched off the television and the light. He made her lie down, took off her pants and panties, and forcibly inserted his penis into her vagina. After ravishing her, he threatened to kill her and the rest of their family if complainant told anyone about what had happened. So complainant simply suffered in silence, afraid that her father would carry out his threat.<sup>[7]</sup>

After that, as if by habit, accused-appellant abused his daughter 27 times more, on December 9, 1995, February 18, 1996, February 26, 1996, March 6, 1996, April 10, 1996, May 3, 1996, June 6, 1996, July 1, 1996, August 26, 1996, September 8, 1996, September 16, 1996, October 6, 1996, November 7, 1996, January 7, 1997, January 18, 1997, February 2, 1997, March 24, 1997, April 6, 1997, May 17, 1997, May 27, 1997, June 5, 1997, July 2, 1997, July 10, 1997, August 21, 1997, September 8, 1997, September 16, 1997, and October 6, 1997.<sup>[8]</sup> Except for the first and the last dates, the others were her mere estimates of the dates she was raped by her father. She wrote these dates (Exh. "JJ") by referring to the calendar in relation to the time her mother was allegedly away for work.<sup>[9]</sup> She said there could be more than 29 instances when her father raped her.<sup>[10]</sup> On each occasion, complainant said, her father beat her up whenever she refused to accede to his demands.<sup>[11]</sup> The incidents happened either at about 9 o'clock in the morning or at about 9 o'clock in the evening, when her mother was away working.<sup>[12]</sup>

Fearing harm to her and her family, complainant said she kept the incidents to herself and did not tell anyone about them. On October 10, 1997, four days after the last incident, however, she finally broke her silence as she could no longer bear the abuses of her father. She confided to her maternal aunt, Elisa Gerundio, who lived about 30 meters from their house, about what accused-appellant had done to her. She was then taken to the barangay captain, who later accompanied her to the police station in Basak, Mandaue City.<sup>[13]</sup>

From the police precinct, her mother Librada Matugas and her aunt Elisa Gerundio took complainant to the Vicente Sotto Memorial Medical Center, where she was examined by Dr. Besie Acebes on October 11, 1997.<sup>[14]</sup> Dr. Acebes' medical report (Exh. "GG") reads in pertinent parts:

"Ext. gen. phys. injuries present: Extremity 1 (+) Contusion Hematoma 2x3, posterior aspect of the right forearm, 2x2 cm contusion hematoma, dorsum of the left hand, 2x2 cm hematoma, posterior the neck R, (+) eyethema dorsal aspect of the R area

Hymen: + old healed laceration with 2, 4, 6 & 9 o'clock position

Orifice: Admits 2 finger with ease

Conclusions: Spermatozoa Identification (-)  
Gram staining of the vaginal discharge"

On October 13, 1997, SPO3 Alejandro Vidal, Jr. of the Mandaue City Police conducted an investigation, taking the sworn statement of complainant as well as the supplemental affidavit on October 23, 1997. In his testimony, SPO3 Vidal explained that only one specific date of rape (October 6, 1997) was mentioned in the first sworn statement dated October 13, 1997 because complainant was unable to recall all the dates on which she was raped by her father. Upon his advice, complainant prepared a list of the dates on which she was raped. The list (Exh. "JJ") was presented to him on October 23, 1997. On the same date, the supplemental affidavit was prepared. Vidal said that during his interview of complainant, the latter spoke in a low voice which indicated that she was ashamed of what had happened to her.<sup>[15]</sup>

The defense presented six witnesses: the accused-appellant Wilfredo D. Matugas, his wife Librada Matugas, Crescencia Matugas, Evelyn Matugas-Avila, Dr. Besie Acebes, and Senen Batoon, Sr.

Accused-appellant's defense was alibi. According to him, he usually left their house at 5 o'clock in the morning to go to Danao, which was about a 40-minute ride from Mandaue City, in order to tend to his cow. He had just returned home in the evening of October 10, 1997 when several policemen arrived, with their guns drawn, and took him in handcuffs to the police precinct. His arrest was made without a warrant.<sup>[16]</sup>

He denied ever watching television alone with his daughter Aime.<sup>[17]</sup> He claimed the charges were fabricated by his daughter and by his sister-in-law, Elisa Gerundio. According to him, complainant concocted the story because he had laid hands on her on October 9, 1997 when he discovered that she was having a tryst with her boyfriend at about 11 o'clock in the evening at the Consolacion National High School. On the other hand, he claimed Elisa Gerundio had harbored a grudge against him even before he and his wife Librada, who was Elisa's sister, were married.<sup>[18]</sup>

Accused-appellant's testimony was corroborated by his wife Librada Matugas<sup>[19]</sup> and his sister Evelyn Matugas-Avila.<sup>[20]</sup> On the other hand, accused-appellant's cousin, Crescencia Matugas, testified that she lived in the house of accused-appellant from September 1996 to September 1997, sharing a room on the second floor with complainant. She denied ever seeing complainant being raped by her father.<sup>[21]</sup>

Dr. Besie Acebes, the medical officer who examined complainant and prepared the medical report, testified that while the old healed lacerations in the hymen of the complainant could have been caused by masturbation, it was also possible that it was caused by the insertion of the male organ.<sup>[22]</sup>

Lastly, Senen Batoon, Sr., a kagawad in Dunggoan, Danao City, whose wife was accused-appellant's niece, testified that he had secured certifications attesting to the good moral character of accused-appellant Wilfredo Matugas from the barangay captain of Guinsay, Danao City, Chief of Police of Guinsay, and MTCC of Danao City. However, he admitted that he was not able to secure a similar certification from the

barangay captain of Canduman, Mandaue City, of which accused-appellant was a resident.<sup>[23]</sup>

Based on the evidence presented by both parties, the trial court rendered a decision on May 10, 1999 finding accused-appellant guilty of 29 counts of rape. It found complainant's testimony credible, taking note of the fact that she was 14 years old when she was first raped. It likewise gave weight to the medical certificate (Exhibit "GG-2") of Dr. Acebes. Accordingly, it sentenced accused-appellant in each of the 29 cases to death and ordered him to indemnify his daughter Aime Matugas in the amount of P75,000.00 and to pay the costs.

Accused-appellant assails the judgment of conviction. He contends that-

"I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE A CLEAR SHOWING THAT THE POLICE AND THE PROSECUTION HAD COMMITTED MANY IRREGULAR ACTS AND PROCEDURAL LAPSES, WHICH TAMPERED WITH THE EVIDENCE AND VIOLATED CERTAIN CONSTITUTIONAL AND STATUTORY RIGHTS OF THE ACCUSED.

II. THE TRIAL COURT DISREGARDED THE LAW AND THE EVIDENCE IN CONVICTING THE ACCUSED-APPELLANT, FOR IT IS VERY PATENT THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT, OR OTHERWISE OVERTURN THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

III. THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND UNTRUSTWORTHY TESTIMONY OF THE COMPLAINING WOMAN, IN THIS CASE, WHO WAS OBVIOUSLY INCONSISTENT ON VERY MATERIAL POINTS."

Accused-appellant's contentions will be discussed seriatim.

**First.** Accused-appellant claims that his arrest by the police officers on October 10, 1997 was illegal because it was made without a warrant.

We agree with the accused-appellant's contention, considering that the arrest was not one of the instances enumerated in Rule 113, §5 of the Rules of Criminal Procedure when an arrest without a warrant may be made not only by a police officer but even by a citizen. However, for this objection to prosper, accused-appellant should have interposed it before entering his plea.<sup>[24]</sup> As he did not do so, he is now estopped from questioning any defect in the manner his arrest was effected as in fact he not only pleaded to the charge but also participated in the trial.<sup>[25]</sup> The fact that his arrest was illegal does not render the subsequent proceeding void and deprive the State of its right to convict him when all the facts point to his culpability.<sup>[26]</sup> His contention that he was arbitrarily detained for four days must fail. This contention stems from the fact that he was arrested without warrant.

**Second.** Accused-appellant makes much of the fact that the charges were filed in installments. This was because of the failure of complainant to mention in her first sworn statement the 28 other incidents of rape. Except for the dates of the first and last incidents of rape, complainant was unable to supply the dates and number of times she was raped by her father. In fact, she said she could actually have been raped more than 29 times by her father.<sup>[27]</sup> The dates which she wrote down at the instance of the police were mere approximations based on reference to the calendar. Consequently, for lack of certitude as to the number of times complainant was raped between the first, which happened on September 6, 1995, and the last time, which took place on October 6, 1997, the conviction of accused-appellant for 27 other rapes cannot be sustained. While the exact dates of the commission of the rape may be stated at or near the time it actually happened, the number of times the complainant was actually raped is important because each act of sexual intercourse constitutes one offense.

In her direct examination, complainant testified:

Q- There were several dates that according to you, the crimes of rape were committed on you. Tell this Court how were you able to keep track of these specific dates?

.(There was no answer from the witness.)

How come that according to you, your father committed rape on you on those specific dates and not on other dates?

.(Still no answer.)

How did you know that the crime of rape was committed on you on September 6, 1995, November 29, 1995, December 9, 1995, and so on, and not on any other dates?

.(Still no answer.)

Did you understand my question?

A- Yes.

Q- Answer it?

.(No answer from the witness.)

Who supplied those dates of the commission of rape on you?

A- Only myself.