

## EN BANC

[ G.R. No. 137963, February 06, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROGELIO CAIÑGAT, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

This is an automatic review of the Decision of the Regional Trial Court of Capas, Tarlac, Branch 66, in Criminal Case No. 1139 finding accused-appellant Rogelio Caiñgat guilty beyond reasonable doubt of raping his daughter, Rowena Caiñgat, a minor, and imposing upon him the supreme penalty of death. The trial court further ordered accused-appellant to pay the victim the amount of fifty thousand pesos (P50,000.00) "by way of indemnification for moral damages."

In the criminal complaint, dated October 28, 1996, Rowena charges her father, accused-appellant, as follows:

The undersigned private complainant Rowena Payumo Caiñgat, 14 years, assisted by her guardian-aunt, Dometila Nolasco, after the necessary preliminary investigation conducted by Assistant Provincial Prosecutor Aladin C. Bermudez, Jr., accuses her father, Rogelio Caiñgat of Cub-Cub, Capas, Tarlac, of the crime of Rape, committed as follows:

That on or about the 28<sup>th</sup> day of July, 1996, in the Municipality of Capas, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously with lewd design, have sexual intercourse with her undersigned daughter, Rowena Payumo Caiñgat against the latter's will and with the said accused taking advantage of his moral ascendancy equivalent to force and intimidation.

Contrary to law.<sup>[1]</sup>

At his arraignment on April 21, 1997, accused-appellant, who was assisted by counsel *de oficio*, pleaded not guilty to the crime charged.<sup>[2]</sup> The prosecution then presented two witnesses: Rowena and Dr. Glothelda Rivera. They testified to the following:

Fifteen-year-old Rowena was six years old when her mother, Lucila Payumo, died. Her father, accused-appellant, did not re-marry. Since then, the two of them lived together in a house in Cub-Cub, Capas, Tarlac.<sup>[3]</sup>

Late in the evening of July 28, 1996, while Rowena was sleeping in their house, accused-appellant arrived. He was intoxicated and immediately came near

Rowena, who was then only half-asleep. He was wearing only his briefs. He awakened Rowena and began to undress her. He told her he was going to kill her. As accused-appellant "grabbed" her, Rowena was forced to lie down (*napahiga ako*). He kissed her, removed his briefs, and, according to her, he "raped" her. After the incident, Rowena left their house and told her aunt, Dometila Nolasco, accused-appellant's sister, what happened. Dometila brought Rowena to the chapel and forthwith reported the incident to the police.<sup>[4]</sup>

In her sworn statement given to the police, Rowena stated that she was filing a complaint against her father as he had been raping her since she was eight years old until she was fourteen (*panggagahasa sa akin mula noong ako ay walong taong gulang pa lamang hanggang ngayong labing-apat na taon na po ako*).<sup>[5]</sup> Rowena confirmed this statement on the witness stand when she testified that accused-appellant had raped her two (2) times prior to July 28, 1996.<sup>[6]</sup>

On cross-examination, Rowena testified that only she and her father slept in their one-room house that had no divider. She did not shout when her father raped her because she was afraid.<sup>[7]</sup>

Carlos Caiñgat, accused-appellant's first cousin, accompanied Rowena<sup>[8]</sup> to Dr. Glothelda Rivera who, after examining her, issued a medical certificate, the pertinent portion of which states:

GENITALIA:

- = slightly prominent mons pubis with scanty, black, curly pubic hairs
- = hymen; (+) healed laceration, complete at 3 o'clock
- = labia minora noted to be gaping
- = 'U' shaped fourchet
- = admits 2 fingers snugly at introitus.<sup>[9]</sup>

According to Dr. Rivera, who claimed that a psychiatrist referred Rowena to her on September 4, 1996 "because of the possibility of incest," the 3 o'clock "complete laceration" in her hymen was possibly caused by "sexual abuse." However, she could not say whether a penis or any other hard object, including a finger, caused the laceration. She opined that the laceration might have been inflicted "more than a week" before the examination or possibly on July 28, 1996 because of its rounded edges and scars.<sup>[10]</sup>

Dr. Rivera added that Rowena, who was then under treatment for psychosis, was "not very cooperative." When Dr. Rivera verified from Rowena if she was indeed abused by her father, she replied that her father "was trying to molest her." However, Dr. Rivera did not find Rowena to be psychotic as she answered her questions "intelligently," although according to Dr. Rivera, she had to repeat the questions several times before Rowena could give her answers. Rowena appeared then to be "very afraid."<sup>[11]</sup>

Only accused-appellant testified in his own defense. A laborer, shoemaker and widower, accused-appellant admitted that Rowena is his only child with his deceased common-law wife although he had children with another woman.<sup>[12]</sup> On July 28,

1996, Rowena was staying with his sister, Dometila Nolasco. Dometila's house was beside his own. On the evening of that date, he fetched his sister who was selling *balut* at the market. It was 1:00 a.m. when they returned home. Rowena was in his house, sleeping on her bed. He told her to eat the *balut* given by her aunt, as she had been awakened by the noise of his cart. His sister had transferred Rowena to his house at 1:30 a.m. and she slept on the folding bed three (3) paces away from his own folding bed. Rowena was eating *balut* when he slept. He woke up at 7:00 the next morning while Rowena slept until 10:00 a.m.<sup>[13]</sup>

Accused-appellant vehemently denied that he raped Rowena. According to accused-appellant, Rowena filed the rape case against him because she "was not in her right mind." She would laugh and be in a state of shock (*tulala*) sometimes. One morning, Rowena told him, "*Tata, o, bili tanas. He-he-he,*" which meant that she wanted him to buy her an apple. That evening of July 28, 1996, when he gave her *balut*, Rowena said, "*He!*"<sup>[14]</sup>

He discovered that Rowena was mentally disturbed on June 24, 1996 when his sister brought her to his house. He was mad at his sister. Rowena was going to school and he would give her allowance. One time, he asked her why she became mentally disturbed. Rowena told him: "*Tata, pinainom po ako ng Pepsi Cola sa tapat po ng eskuwela namin*" (Father, somebody asked me to drink Pepsi Cola in front of our school). He asked her to identify the person who gave her the drink but she could not tell him who that person was. Rowena also told him that there was an old man on board a car but when he asked her about the plate number of the car, Rowena answered: "I don't remember. *He-he-he.*" After that, accused-appellant could no longer talk to Rowena.<sup>[15]</sup>

Accused-appellant made inquiries in Rowena's school about the person who gave her a drink but nobody knew that person. After June 28, 1996, he "took full responsibility" of his daughter. He was mad at "them" (his sister) because when his sister took his daughter, Rowena was still in her right mind; when her sister returned Rowena to him, she was already "suffering from mental disorder." Hence, on July 15, 1996, before taking Rowena to the hospital, accused-appellant asked "them" if they maltreated his daughter while she was in "their" custody. His sister got angry. However, at that time, Rowena was in his sister's house because he had asked her to look after Rowena.<sup>[16]</sup>

Accused-appellant was detained on September 17, 1996 but he did not know the reason for his detention. Neither did he know why Dometila and his daughter would file the rape case against him. Feeling embarrassed by the accusation against him, accused-appellant went to the office of the barangay captain for advice. The barangay captain told him to go to the police station. He did as told but he could not confront Rowena because Dometila had hidden her from him since the first Saturday of September 1996.<sup>[17]</sup>

He was at the police station at 2:00 p.m. on September 17, 1996, when a person angrily told him to affix his signature on an affidavit. When shown the counter-affidavit, dated October 7, 1996, that bore his signature, accused-appellant initially denied that it was his. Later, he claimed that he was forced to sign the document.

<sup>[18]</sup>

On cross-examination, accused-appellant again admitted that Rowena is his daughter, that she was already sixteen (16) years of age at that time, and that on July 28, 1996, she was only fourteen (14) years old. His first wife was Josefina Castro but she was not Rowena's mother. He and Rowena's mother, Lucila, did not get married. Rowena was born on the eighth year that they (accused-appellant and Lucila) were living together. In 1988, Lucila died; Rowena was then six years old. He and Lucila's mother, Fidela Tiamzon Canono, took care of Rowena. They stayed with his sister. Later, accused-appellant built a small hut near Dometila's house but Rowena did not stay with him yet. She would just pass by his hut to ask if he had eaten. On June 24, 1996, after five years that Dometila had been taking care of Rowena, she brought Rowena to accused-appellant. She said, "Rolly, Rowena, your daughter will stay with you because right now she is not in her right mind. My daughter-in-law was afraid of her, she might kill her two kids."<sup>[19]</sup>

In the evening of June 28, 1996, he was waiting for his sister because she would pay him P10.00 every time he delivered *balut*. Rowena was at home then because he took care of him whenever he was home. They slept in their respective folding beds.<sup>[20]</sup>

After the prosecution and the defense presented their respective evidence, the trial court rendered judgment convicting accused-appellant for the crime of rape and sentencing him to death. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused, ROGELIO CAIÑGAT, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code as amended.

Accordingly, by virtue of the amendment therefor under Republic Act No. 7659 and as further amended in Republic Act No. 8353, said accused is hereby sentenced to suffer the penalty of DEATH.

Likewise, the accused is hereby ordered to pay the victim, Rowena Caiñgat, the amount of P50,000.00 by way of indemnification for moral damages.

SO ORDERED.<sup>[21]</sup>

In this automatic appeal, accused-appellant raises the following assignment of errors:

## I

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT ROGELIO CAIÑGAT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DEFINED AND PENALIZED UNDER ARTICLE 335 OF THE REVISED PENAL CODE, AS AMENDED, IN RELATION TO REPUBLIC ACT NOS. 7659 AND 8353.

## II

THE COURT A QUO ERRED IN IMPOSING THE CAPITAL PUNISHMENT OF

## DEATH.<sup>[22]</sup>

In determining the guilt of the accused in rape cases, the Court is guided by the following considerations: (a) that an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense.<sup>[23]</sup> In all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish his guilt beyond reasonable doubt.<sup>[24]</sup>

Further, it is the prosecution's duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.<sup>[25]</sup>

As defined by Article 335 of the Revised Penal Code, as amended, the law then in effect at the time of the commission of the crime, rape is committed as follows:

Art. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation.
2. When the woman is deprived of reason or otherwise unconscious;  
and
3. When the woman is under twelve years of age or demented.

The crime of rape shall be punished by *reclusion perpetua*.

x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x

To sustain a conviction under the above provision of law, the prosecution must allege and prove the basic elements of: 1) sexual congress; 2) with a woman; 3) by force and without consent, and in order to warrant the imposition of the death penalty, the additional elements that 4) the victim is under eighteen (18) years of age at the time of the rape; and 5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.<sup>[26]</sup>

The Court is mindful of the general rule that factual findings by the trial court deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or