

## EN BANC

[ G.R. No. 140676, July 31, 2002 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JAIME GONZALES  
Y PALLER, APPELLANT.**

### DECISION

#### PANGANIBAN, J.:

When the age of the victim is not proven beyond reasonable doubt by the prosecution, the accused may be declared guilty only of simple, not qualified, rape; and penalized with reclusion perpetua, not death.

#### The Case

For automatic review before this Court is the August 12, 1997 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Las Piñas City (Branch 275) in Criminal Case No. 96-0101, finding Jaime Gonzales y Paller guilty beyond reasonable doubt of rape in its qualified form. The dispositive portion of the Decision reads as follows:

"WHEREFORE, judgment is rendered finding accused Jaime Gonzales y Paller GUILTY of Rape beyond reasonable doubt, which is punished under Article 335, as amended, with death. Accused Jaime Gonzales y Paller is hereby sentenced to die by the method provided for by law and to pay Maryann Gonzales y Aboga the sum of P100,000.00."<sup>[2]</sup>

The February 8, 1996 Information<sup>[3]</sup> against appellant was worded as follows:<sup>[4]</sup>

"That on or about the 29th day of January, 1996, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge [of] her daughter of tender age, Mary-ann Gonzales y Aboga who is eleven (11) years of age, against her will and consent."<sup>[5]</sup>

When arraigned on March 4, 1996, appellant, with the assistance of his counsel *de oficio*,<sup>[6]</sup> pleaded not guilty.<sup>[7]</sup> After pretrial and due trial, appellant was found guilty of qualified rape.

#### The Facts

##### Version of the Prosecution

In its Brief,<sup>[8]</sup> the Office of the Solicitor General (OSG) summarized the facts in the following manner:

"The victim Maryann Gonzales y Aboga is the daughter of appellant Jaime Gonzales. She was born on April 8, 1984. Sometime in December of the year 1995, her mother left for Kuwait to work. Maryann was left with her

father, herein appellant, and her five (5) younger brothers at their residence in Bernabe Compound, Las Piñas.

"On January 29, 1996, around 1:00 in the morning, appellant arrived home drunk. He roused Maryann from her sleep and ordered her to prepare milk for her baby brother who was then crying. As she rose from the bed from a 'nakatagilid' position, she noticed her skirt had been lifted up. However, she did what appellant told her to do and went down to prepare the milk for her baby brother.

"Thereafter, appellant ordered Maryann to put off the light as he removed his pants. He ordered her to undress to which she refused. But appellant pulled her and she became so afraid of him that she complied and removed her dress. He then placed himself on top of her and put a substance in her vagina after which he inserted his penis into her vagina. She felt pain. After he was finished, a substance came out from her vagina which she did not know what it was.

"After satisfying his lust, appellant told Maryann that he would kill her if she reported the incident to anyone. Maryann cried a lot. Later that morning when Maryann woke up, all the things on the beddings were already gone. When she urinated, she felt pain. She went to school but upon arriving thereat she felt as if she was 'out of her mind.' Her teacher called her attention and told her that her mind was blank. Notwithstanding appellant's threats, Maryann reported the sexual abuse to the aunt of her mother, Pacita Resco, and to a friend of her mother, Nenita Polintan.

"On February 5, 1996, Resco and Polintan accompanied the victim to the Las Piñas Police Station where the victim executed her sworn statement. That same day, she was brought to the National Bureau of Investigation (NBI) where she was medically examined by Dr. Louella I. Nario. Dr. Nario issued Living Case Report No. MG-96.184 which disclosed the following:

#### CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
2. Hymen intact and its orifice small (1.5 cms. In diameter) as to preclude complete penetration by an average sized, adult, Filipino male organ in full erection without producing any genital injury.

"Dr. Nario opined that even as the victim's hymen was not lacerated, it is still probable that she was raped because it has been said that mere contact of the male organ can already constitute a crime of rape.<sup>[9]</sup> (Citations omitted)

#### Version of the Defense

On the other hand, appellant's statement of facts is as follows:<sup>[10]</sup>

"Accused Jaime Gonzales testified that he was 35 year[s] old and married. On January 20, 1996 at about 2:00 or 2:30 a.m., he was in a

dancing session at the other barangay about a 100 meters from the house. The dancing ended at 4:30 a.m. Also living in the house are his 6 children. His daughter Mary-ann is 12 years old.

"When he arrived home, the door was open. He noticed that the mosquito net was untied from the posts. Mary-ann was not home when he arrived that morning. He lied down to take a rest.

"Regularly, his children go to Parañaque because they are selling fruits in the market.

"Nothing happened in the house that particular morning."<sup>[11]</sup> (Citations omitted)

#### Ruling of the Trial Court

The RTC held that because the testimony of complainant was clear and convincing, it could "not ignore [her] detailed declaration x x x on the rape committed against her by her own father."<sup>[12]</sup> It ruled that the contact of the penis with the labia of the vagina was sufficient to constitute carnal knowledge.<sup>[13]</sup> And since appellant was the father of complainant who, at the time of the rape, was only eleven (11) years and nine (9) months old,<sup>[14]</sup> the RTC sentenced him to death.

Hence, this automatic review before us.<sup>[15]</sup>

#### Issues

In his Brief, appellant assigns this lone error:

"The trial court erred in finding the accused guilty of the crime of qualified rape instead of attempted rape only."<sup>[16]</sup>

#### The Court's Ruling

The appeal is partly meritorious. Appellant is guilty of simple, not qualified, rape; hence, the penalty should be reduced to *reclusion perpetua*.

#### First Issue:

##### Stage of the Rape Committed

In the main, appellant does not deny having sexually molested his daughter. After poring over the evidence adduced in the court below, we do not doubt the fact. The RTC assessed the testimony of the victim as positive, clear, convincing and sufficient to sustain a conviction for rape. Indeed, the narration could have been made only by someone subjected to a sexual assault. As we have ruled on many occasions, the testimonies of child-victims of rape are to be given full weight and credence.<sup>[17]</sup>

The victim in the present case was even more credible, because she vividly recalled details that a child could not have possibly concocted. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape, if what she claims is not true.<sup>[18]</sup>

Courts usually give greater weight to the testimony of the victim of a sexual assault, especially a minor.<sup>[19]</sup> No woman, especially one so young, would concoct a tale of

defloration; allow the examination of her private parts; and undergo the expense, the trouble and the inconvenience -- not to mention the trauma of a public trial -- if she is not motivated solely by the desire to have the culprit apprehended and punished.<sup>[20]</sup> The embarrassment or stigma she suffers in allowing an examination of her private parts and in testifying in open court on the painfully intimate details of her ravishment effectively rules out the possibility of a false accusation of rape.<sup>[21]</sup> For this reason, the Court has consistently applied the well-settled rule that when a woman -- more so if she is a minor -- says she has been raped, she says in effect all that is necessary to prove that rape was committed.<sup>[22]</sup>

Equally telling is the fact that appellant opted to rely on bare and unsubstantiated denials. In his testimony he simply averred that nothing happened in their house on that particular morning<sup>[23]</sup> and expected the court to believe his bare and self-serving statement.

It is well-settled in our jurisdiction that plain denial and alibi in a criminal trial cannot take precedence over the positive testimony of the offended party.<sup>[24]</sup> Prevailing over these lines of defense are categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter. Unless substantiated by clear and convincing proof, these defenses are deemed to be negative, self-serving and undeserving of any weight in law.<sup>[25]</sup>

Since, on the part of the victim, there was no showing of any improper motive to testify falsely against the accused or to implicate him falsely in the commission of the crime, the logical conclusion is that no such improper motive existed, and that the testimony is worthy of full faith and credence.<sup>[26]</sup> As this Court has reiterated time and time again, it is most unlikely for a young girl like complainant, to impute the crime of rape to no less than a close relative and to face social humiliation therefor, if not to vindicate her honor.<sup>[27]</sup>

This truism becomes even more pronounced in this case, in which a child is accusing her very own father of acts of bestiality. It would take the most senseless kind of depravity for a young daughter to fabricate a story that would send her father to death, only because he had scolded her or because they did not see eye to eye.<sup>[28]</sup> A child, innocent and naive to the ways of the world, is not likely to accuse her own father of so serious a crime as incestuous rape if it was not the plain truth, or if her motive was not purely to bring the offender to justice.<sup>[29]</sup>

Appellant insists that there was no consummated rape. If at all, the crime committed was only attempted rape, there being allegedly no proof of penetration.

We disagree. The testimony of complainant is very clear. That there had been penetration she undoubtedly proved in this wise:

"Q What happened after your father arrived?

A He was so drunk. When he entered the house, I was not aware of that. He told me to wake up because my baby brother was then crying and asked me to prepare milk for my brother.

Q What did you do after your father woke up and asked you to prepare milk for your younger brother?

A I went down and I prepared the milk for my brother.

Q After you prepared milk for your younger brother, do you remember what happened next, if any?

A At first, he asked me to put off the light, and then, he removed his pants.

Q After your father put off the lights and removed his pants, do you remember what happened next, if any?

A He asked me to undress, but I refused, so, he pulled me.

Q What did you do when your father pulled you?

A I undressed myself because I was afraid of him.

Q Why are [you] afraid of him?

A Since I was very young, I have been so afraid of him. (Witness started to cry).

Q After he asked you to undress yourself, what did he do next, if any?

A He touched me.

Q What do you mean when you say ginalaw ako'?

A He put himself on top of me.

Q After your father put himself on top of your body, what did he do next, if any?

A He put something, a white substance which I do not know what.

Q Where did your father place this white substance? What part of your body?

A At my vagina.

Q After your father placed this white substance at your vagina, do you remember what happened next, if any?

A He inserted his penis, and thereafter, there was a substance that came out from my organ which I do not know.

Q How did you feel when he inserted his penis to your vagina?

A I felt pain.

Q After your father inserted his penis to your vagina, do you remember what happened next, if any?

A 'Matapos niya akong ginalaw, tapos, may lumabas sa akin.' And then, when I woke up, all the things on the beddings were gone already.