

## EN BANC

[ G.R. No. 141123, July 23, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NICOMEDES CANON, ACCUSED-APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

Before the Court on automatic review is the Decision dated October 22, 1999 of the Regional Trial Court of Palawan, Branch 52, in Criminal Case No. 12929 finding accused-appellant Nicomedes Canon guilty of qualified rape.

On March 19, 1996, an information charging accused-appellant of rape was filed by Prosecutor Cesar Estolano upon a sworn complaint filed by private complainant Genelyn Barnuevo Canon. The information alleged-

That on or about the 22nd day of January, 1996, more or less 4:00 o'clock in the afternoon of Sitio Salvador, Barangay Dumarao, Municipality of Roxas, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court the said accused with force, threat and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, a girl of nine (9) years of age, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.<sup>[1]</sup>

Upon arraignment, accused-appellant pleaded not guilty to the charge. Thereafter, trial ensued.

The prosecution presented as its witnesses accused-appellant's wife, Asuncion Canon; complainant Genelyn Barnuevo Canon, and Dr. Leo Salvino, the examining physician.

Asuncion Canon ("Mrs. Canon") testified that at about 4:00 p.m. on January 22, 1996, she went out of the house where she, accused-appellant and their children, including complainant Genelyn Barnuevo Canon ("Genelyn"), stayed because she heard a loud voice from outside, particularly from the area beside their cornfield. She realized that the voice belonged to her husband, the accused-appellant. Mrs. Canon began to walk towards the area where she heard accused-appellant's voice. When she was about 50 meters away from their house, she saw the accused-appellant lying on top of their daughter Genelyn and making some pumping motions while in that position. Mrs. Canon said that she was about 20 meters away from where accused-appellant and Genelyn lay.

Mrs. Canon exclaimed "*Por Dios, Por Santo, bakit mo yan nagawa sa anak natin.*" (My God, why did you do that to our daughter?) Thereafter, accused-appellant stood

up, put his brief and pants on and chased her with a bolo in his hand. Mrs. Canon ran toward their house and shouted for help so that their son Wilson, who was also at home then, could hear her and protect her from her husband.<sup>[2]</sup>

Mrs. Canon stated that Genelyn, who was born on July 25, 1988, was only nine years old when she was raped by accused-appellant on January 22, 1996.<sup>[3]</sup>

Genelyn testified that she was walking home from school in the afternoon of January 22, 1996 when she met the accused-appellant along the way. Accused-appellant gave her some money so that she could buy bread. Thereafter, he removed her underwear and removed his pants and brief. He then knelt in front of Genelyn and asked her to lie down on the ground. Afterwards, accused-appellant went on top of her and made pumping motions. Accused-appellant then inserted his penis into the vagina of complainant. Genelyn said that she felt pain in her vagina. At that point, she saw her mother standing at some distance away from where she and accused-appellant lay.<sup>[4]</sup>

Genelyn narrated that accused-appellant stood up and ran after Genelyn's mother with a bolo in his right hand.<sup>[5]</sup>

Dr. Leo Salvino, Medical Officer III of Roxas, Palawan, the physician who conducted an examination of Genelyn on January 24, 1996, found erythematous irritations on the labia majora of Genelyn. He opined that said irritations could have been caused by some rubbing of the labia majora. He further stated that said irritations could have been caused by an erect adult male penis placed on top of the labia majora.<sup>[6]</sup> The physician also said that he did not find any lacerations on Genelyn's hymen.<sup>[7]</sup>

Accused-appellant, the lone witness for the defense, testified that from 7:00 a.m. up to 3:30 p.m. of January 22, 1996, he engaged in a drinking spree with three companions in his home. They were able to consume 23 bottles of gin. He said that he was no longer aware of what transpired that afternoon since he was already dead drunk. When asked if he raped his daughter Genelyn that afternoon, accused-appellant replied, "*Aminado ako kung ginawa ko.*" (I admit if I did it.)<sup>[8]</sup>

Accused-appellant admitted that at the time of the alleged rape, his daughter Genelyn was only nine years of age.<sup>[9]</sup>

On October 22, 1999, the trial court promulgated its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused, Nicomedes Canon, guilty beyond reasonable doubt as principal of the crime of rape as charged in Criminal Case No. 12929, and as the commission of the offense had been attended by the qualifying circumstance that, the offense charge was committed against a victim below eighteen (18) years of age and by an offender who is a parent of the offended party, the accused is hereby sentenced to suffer the penalty of DEATH in a manner prescribed by law; to pay the offended party, Genelyn Canon, the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity.

IT IS SO ORDERED.<sup>[10]</sup>

In his Appeal Brief, accused-appellant contends that the trial court erred in holding that his guilt was established beyond reasonable doubt, and in imposing upon him the death penalty.<sup>[11]</sup>

Accused-appellant denies having raped his daughter Genelyn and points out that Dr. Leo Salvino, the physician who examined complainant, found the latter's hymen to be intact and without lacerations.<sup>[12]</sup> He states that "it is very unlikely for [him] to commit such a heinous crime because he and his wife have at least nine (9) children to attend to and take care of."<sup>[13]</sup>

It is likewise alleged by accused-appellant that Genelyn filed charges against him upon her mother's prodding, because the latter has an ill motive against accused-appellant.<sup>[14]</sup>

Accused-appellant argues further that the prosecution was not able to establish with certainty the age of Genelyn at the time he allegedly raped her, and that Genelyn herself was not sure of her age at the time of the incident.<sup>[15]</sup>

Lastly, accused-appellant contends that the information filed against him is defective in form and in substance, since said document allegedly failed to state the name of the victim.<sup>[16]</sup>

After a careful scrutiny of the records, the Court finds that the trial court did not err in holding accused-appellant guilty beyond reasonable doubt of raping his daughter Genelyn on January 22, 1996.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 (the Death Penalty Law), states:

*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 is demented.

The crime of rape shall be punished by reclusion perpetua.

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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.

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The Court agrees with the trial court's finding that the fact that accused-appellant had carnal knowledge of his daughter Genelyn was established

beyond reasonable doubt during the trial. Genelyn testified that accused-appellant inserted his penis into her vagina:

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FISCAL ESTOLANO

When you said he undressed you, what particularly did he remove from your body?

A My underwear

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Q After the accused undressed you, what did he do to himself?

A He went to me.

Q What did he do to his pants and brief?

A He also undressed himself.

Q How about your dress did he also remove your shirt?

A Yes, sir.

Q After the accused undressed you and remove his pants and brief, what did he do?|

A He knelt on me.

Q What was your position?

A I was lying down.

Q When he knelt in front of you, what else did he do?

A He let me lay down.

Q After kneeling in front of you, what else did he do?

A He went on top of me.

Q After going on top of you, did he make pumping motion?

A Yes, sir.

COURT

(to witness)

What did he do with your private part?

A He inserted his male organ in my vagina.<sup>[17]</sup>

Her testimony corroborates her earlier declaration in her Sworn Statement dated January 29, 1996 that accused-appellant inserted his penis into her vagina while he was lying on top of her near their cornfield at about 4:00 p.m. on January 22, 1996.  
<sup>[18]</sup>

In contrast, all that the defense presented to rebut the charge of rape was the bare statement of accused-appellant that he could not recall the events which transpired in the afternoon of January 22, 1996 because he was dead drunk. The Court has repeatedly held that alibi is an inherently weak defense and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration