

EN BANC

[G.R. Nos. 138395-99, July 18, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CIPRIANO RADAM, JR., DEFENDANT-APPELLANT.**

D E C I S I O N

PUNO, J.:

Fourteen-year old MA. ELENA O. DE GUZMAN charged accused CIPRIANO RADAM, JR., the common-law spouse of her mother, of ravishing her five (5) times successively in a span of six (6) hours. The five Informations^[1] filed against him were similarly worded, thus:

"That on or about the 12th day of June 1995, between 10:00 o'clock in the evening to 4:00 o'clock in the morning, more or less, at Brgy. Binalayan, Maripipi, Biliran Province, Philippines, and within the jurisdiction of this Honorable Court, said accused Cipriano Radam, Jr., a step-father, taking advantage of his superior strength, did then and there wilfully, unlawfully and feloniously cover the mouth of Ma. Elena O. de Guzman, a fourteen year old lass, with a handkerchief and tie her two hands together and have carnal knowledge of the complainant against her will.

All contrary to law and with aggravating circumstance that the said offense was committed in their dwelling, the latter not having given provocation for the offense.

In violation of Art. 33 of the Revised Penal Code." (emphasis supplied)

The prosecution evidence shows that Yolanda de Guzman bore two (2) legitimate children – Reynaldo de Guzman and complainant **MARIA ELENA DE GUZMAN** who was born on November 23, 1980. A couple of years after the birth of Elena, Yolanda maintained a common-law relationship with accused CIPRIANO RADAM, JR. They resided in Mandaluyong City until they transferred to Maripipi, Biliran Province in 1991. On May 25, 1995, Yolanda went to Manila to seek medical treatment. She stayed in Mandaluyong City, leaving Elena and Reynaldo with the accused.

On June 12, 1995, at about 10:00 p.m., Elena woke up to find the accused on top of her, pinning her upper arms with his knees. Wasting no time, he gagged Elena's mouth with a handkerchief and tied her hands behind her back. He took off Elena's panty and removed his shorts and brief. He then raised Elena's skirt and inserted his organ into hers. She felt intense pain but all she could do was cry. After satisfying his lust, the accused got up, went outside their house and lit a cigarette.

Unknown to Elena, that was only the beginning of her nightmare. After resting for a while, accused returned to Elena's room and repeated his bestial acts four (4) more times which lasted until about 4:00 a.m. the following morning. There were times

he would rub her nipples, kiss her and before consummating the coitus, utter: "*Masarap ito. (This will feel good.)*" Elena could not offer any resistance as her mouth was gagged, her hands were tied and she was already physically exhausted by the accused's consecutive sexual assaults.

Accused finally had his fill after five (5) successive rounds of abuse. He left Elena and went to the farm. Elena set her hands free by rubbing the rope tying her hands against the nails on the wall. After freeing herself, Elena sought refuge in the house of their neighbor, Inay Morit, and confided to her that she was abused by the accused. Not knowing what else to do, she returned to their house.

As she was washing the dishes that night, the accused arrived from the farm and approached her. He held her hands and told her to go to sleep. Petrified, Elena ran out of the house and hid in the house of Violy Cagado. After some time, the accused appeared drunk at the house of Violy and, with bolo in hand, threatened to kill everyone in the house. Elena hurriedly left Violy's house and spent the night in a pumpboat.

The next morning, she proceeded to the house of Lorna who advised her to stay with her for a while and hide from the accused. After two (2) days, she transferred to the house of Inay Lolita, a friend of her mother.

When accused's mother, Beatriz Radam, learned about the incident, she took Elena and made her stay in her house. On August 6, 1995, Severino Radam, brother of the accused, fetched Elena from Beatriz' house. He brought her to Mandaluyong City to visit her mother Yolanda. Severino, however, warned Elena not to tell her mother about the sexual abuses. After Severino left, Elena could no longer hold back. She tearfully recounted to her mother the details of the abuses she suffered in the hands of the accused.

Days later, Yolanda brought Elena to the National Bureau of Investigation (NBI) for medical examination.^[2] **DR. MAXIMO REYES**, a medico-legal officer at the NBI, examined Elena and found lacerations on her genitalia. Elena was no longer a virgin.^[3]

For his part, accused denied the charges. He submitted an alibi: on said date and time, he was in his mother's house in Binalayan West, Maripipi, Biliran. He spent the night there to help his siblings with their luggage as they were scheduled to depart the next day for Manila. It was only the next day when he was able to return to his house. He claimed that he could not have perpetrated the dastardly acts imputed to him as he considered Elena and Reynaldo as his own children.

Accused presented **MORITA "Morit" MONDOY** (a.k.a. Inay Morit) who denied that Elena confided to her about the sexual molestation. She alleged that on the night of June 13, 1995, Elena did not talk to her but to her daughter Menerisa. Elena left about half an hour later. On cross-examination, she admitted that it was the accused who requested her to testify and shouldered her transportation expenses and food allowance.^[4] **AMANCIO CAGADO**, husband of Violy Cagado, on the other hand, claimed that Elena went to their house on June 14, 1995 and talked only with his daughter Gelen.^[5]

After trial, the court *a quo* found the accused guilty on all five (5) counts of qualified rape and imposed on him the supreme penalty of death.^[6] The dispositive portion

reads:

"WHEREFORE, in view of the foregoing considerations, this Court finds the accused CIPRIANO RADAM, JR. y CASIO GUILTY beyond reasonable doubt of the crime of rape in five (5) counts under Criminal Cases Nos. N-1789 – 1793, hereby imposing upon him the maximum penalty of death for each count.

The accused shall indemnify the victim Maria Elena O. De Guzman One Hundred Fifty Thousand (P150,000.00) as moral damages.

With costs.

SO ORDERED."

On automatic appeal to this Court, appellant contends:

"I

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE LOWER COURT COMMITTED SUBSTANTIAL AND GRAVE PROCEDURAL LAPSES IN NOT TAKING INTO CONSIDERATION THE IMPROBABILITIES AND INCONSISTENCIES WHICH CAUSE SERIOUS DOUBTS ON THE VERACITY OF THE ALLEGED VICTIM'S TESTIMONY.

III

THE LOWER COURT ERRED IN BEING OVERZEALOUS IN HASTILY IMPOSING DEATH PENALTY, WITHOUT TAKING INTO CONSIDERATION THAT THE FIRST JUDGE, THE HON. BRICCIO T. AGUILOS, JR. WAS THE ONE WHO TRIED AND HEARD THE TESTIMONY OF THE PRIVATE COMPLAINANT, MA. ELENA DE GUZMAN WHICH WAS UNCORROBORATED AND THE HON. ENRIQUE C. ASIS WAS THE ONE WHO RENDERED THE DECISION AFTER HEARING ONLY THE TESTIMONIES OF THE DEFENSE WITNESSES.

IV

THE LOWER COURT ERRED IN NOT GIVING THE CHANCE FOR ACCUSED-APPELLANT, WHO IS A FARMER-FISHERMAN, TO SECURE THE SERVICES OF COMPETENT LEGAL COUNSEL, WHO IS NOT TOO BUSY TO DEFEND HIM, CONSIDERING THE GRAVITY OF THE CRIME CHARGED AGAINST HIM."

The appeal is partly meritorious. We find the appellant guilty not for qualified rape but for five (5) counts of **simple rape** and hold that the trial court erred in imposing the death penalty.

We shall discuss the issues in *seriatim*.