

EN BANC

[G.R. No. 146790, August 22, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOVITO SITAO ALIAS "BETO," ACCUSED-APPELLANT.**

DECISION

PUNO, J.:

This is an automatic review of the Decision,^[1] dated October 31, 2000, of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, in Criminal Case No. 9930-99, finding the accused-appellant, Jovito Sitao, guilty of incestuous rape and sentencing him to suffer the penalty of death.

In an Information dated September 20, 1999, accused-appellant Jovito Sitao alias "Beto" was charged with the crime of rape committed as follows:

"That on or about the 19th day of July, 1999 at midnight, at Purok 12, barangay Tongantongan, municipality of Valencia, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, prompted by lewd design, with threats with the use of a handgun and intimidation on the person of JOVY SITAO, a fourteen (14) year-old minor and accused's daughter, did then and there willfully, unlawfully and criminally undress, kiss and touch the private parts of the latter, place himself on top of JOVY SITAO, forcibly insert his penis into the vagina and have sexual intercourse with JOVY SITAO, against her will, to the damage and prejudice of JOVY SITAO in such amount as may be allowed by law.

Contrary to and in violation of R.A. 7659 as amended by R.A. 8353.

City of Malaybalay, September 20, 1999."^[2]

On October 19, 1999, the accused-appellant was arraigned, and pleaded not guilty.^[3] Thereafter, a pre-trial was held, and the following facts were stipulated by the parties, viz:

"1. That the private complainant, Jovy Sitao, is the daughter of the accused and was only fourteen years old at the time of the alleged commission of the offense.

2. That private complainant, Jovy Sitao, was medically examined by Dr. Joselyn M. Baeyens of the Bukidnon Provincial Hospital on July 28, 1999, whose findings, as indicated in the Medical Certificate (hereby marked as Exhibit "A"), are true and correct."^[4]

Jovy Sitao was presented as the lone witness for the prosecution. According to her, she was born on February 15, 1985, and the accused-appellant is her father.^[5] At

the age of three (3), she was taken by her maternal grandparents to live in Wao, Lanao del Sur. They transferred to Cagayan de Oro City in 1998. The following year, Jovy was sent back by her grandmother to her parents in Purok 12, Barangay Tongan-tongan, Valencia, Bukidnon, to study at the Batangan Elementary School. She enrolled as a grade IV student in the said school.^[6]

On July 19, 1999, Jovy's mother went to Wao, Lanao del Sur to get a school card, leaving Jovy and her eight (8) siblings at home with their father, the accused-appellant. At about 9:00 in the evening, Jovy was ordered by the accused-appellant to sleep in the sala (living room) with her younger brother. Apparently, Jovy's parents sleep in the sala with her two younger brothers, while the rest of her siblings sleep in the bedroom. When Jovy expressed her desire to sleep in the bedroom, the accused-appellant became angry, and was about to scold her when his friends suddenly arrived for a drinking session. While the accused-appellant was drinking liquor with his friends, Jovy went to the bedroom and slept.^[7]

After the drinking session, the accused-appellant repaired to the bedroom and angrily woke Jovy up. He fired his gun towards the floor and said, "Why are you sleeping there when you are suppose to sleep in the sala?"^[8] Terrified, Jovy went to sleep in the sala.

At about midnight, Jovy was awakened by the accused-appellant, saying, "Ne, I'll find out whether you are still a virgin or not."^[9] The accused-appellant inserted his fingers into Jovy's vagina. Thereafter, he undressed the victim and removed his own short pants. The accused-appellant then began inserting his penis into the victim's vagina. The process was painful but she kept silent because the accused-appellant had his gun.^[10] After having sexual intercourse with her, the accused-appellant left without a word. Jovy could only cry.

The following day, Jovy revealed to her mother, who just arrived from Wao, Lanao del Sur, her violent deflowering. She also told her mother that her younger sister, Juvelyn, was also forced by their father to have sex with him. But Jovy's mother refused to believe her; worse, she again left for Wao, leaving Jovy and her siblings with the accused-appellant.

Out of fear, Jovy decided to leave their house and ask for help from a barangay kagawad. The kagawad accompanied her to the police station of Valencia, Bukidnon, where they reported the incident. Later, Jovy was examined at the Bukidnon Provincial Hospital of Malaybalay City by Dr. Joselyn M. Baeyens who had the following findings, to wit:

- "- Old hymenal laceration at 3'0 9'0 11'0 o'clock.
- Admits 2 finger[s] with ease.
- Vaginal Smear - Gram Staining
- No Spermatozoa."^[11]

The accused-appellant interposed the defense of denial. He admitted that Jovy is his daughter, and that at the time of his testimony, Jovy was fifteen (15) years old.^[12] He denied staying in the same house with Jovy after she was taken by her grandparents to live with them in Wao, Lanao del Sur. He last saw her in 1998,

before she was brought by her grandparents to live in Cagayan de Oro City. Later, he was informed by his brother-in-law that Jovy was working there as a household helper. He denied that Jovy enrolled as a grade IV student at the Batangan Elementary School. [13]

After trial, the court *a quo* rendered judgment dated October 31, 2000, the dispositive portion of which reads:

“WHEREFORE, judgment is entered finding accused Jovito Sitao guilty beyond reasonable doubt of the crime of rape committed against her (sic) own daughter under eighteen (18) years of age in violation of the pertinent provision of Article 335 of the Revised Penal Code, as amended by Republic Act 7659, and he is therefore sentenced to suffer the penalty of DEATH. He is further ordered to indemnify his victim Jovy Sitao the sum of P75,000.00 and moral damages of P50,000.00.

SO ORDERED.”[14]

Hence, this appeal where the accused-appellant raises the following assignments of error:

“I.

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE THE REAL AGE OF THE VICTIM.

II.

THE TRIAL COURT GRAVELY ERRED IN AWARDING THE AMOUNT OF P75,000.00 AS CIVIL INDEMNITY DESPITE THE ABSENCE OF THE QUALIFIED CIRCUMSTANCE OF MINORITY OF THE VICTIM.”[15]

The appeal is meritorious.

The accused-appellant does not question his conviction of the crime of rape. He only assails the imposition of the death penalty by the trial court in light of the provision of R.A. No. 8353, viz:

“ART. 266-B. Penalties.—xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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 x x x x x”[16]

The accused-appellant contends that the trial court erred in considering the qualifying circumstance of minority of the victim on the basis of the latter’s testimony alone and without any documentary or corroborating testimonial evidence. The Solicitor-General, on the other hand, contends that the minority of