

SECOND DIVISION

[G.R. No. 143237, October 28, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCIS GAVINA Y QUEBEC, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] dated April 25, 2000, of the Regional Trial Court of Pasay City, Branch 109, convicting appellant, Francis Gavina y Quebec, of rape in Criminal Case No. 99-0295, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim P75,000 as indemnity and P50,000 as moral damages.^[2]

In an information dated February 22, 1999, appellant was accused of rape, committed as follows:

That on or about the 19th day of January, 1999, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, FRANCIS GAVINA Y QUEBEC, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant, MILET JURIAL Y ZAMORA, a minor, 14 years of age, against her will and consent.

Contrary to Law. ^[3]

When arraigned, appellant pleaded not guilty. Thereafter, trial ensued.

The prosecution presented private complainant Milet Jurial,^[4] Dr. Mariella Sugue Castillo of the University of the Philippines-Philippine General Hospital (UP-PGH) Child Protection Unit, and Pasay City social worker Delia Camacho as its witnesses.

MILET JURIAL testified that she hails from San Jose, Digos, Davao del Sur. She claimed to be only 14 years old^[5] at the time of the incident. Despite her tender age, she admitted to having been deflowered by a boy friend in the province. At the invitation of one Erlinda Undang, she came to Manila on October 20, 1998, to work as a saleslady, but wound up as a cook in Malate. Unable to take her employer's maltreatment, she fled from her employer on the night of January 18, 1999, with co-employee Susan Yap. They wound up in Luneta Park. They were seated near the Rizal Monument, when appellant approached them. He introduced himself as a National Bureau of Investigation (NBI) agent investigating cases of missing children and offered to help the two distressed girls. Fearing that their employer's security guard might find them, the two girls readily went with him. Appellant brought them to Harrison Street, Manila where his uncle, a policeman, supposedly resided. As the uncle was not there, they went for a stroll at the Philippine International Convention Center (PICC) complex. Appellant then invited her to buy *buko*. They left Susan

behind. She voluntarily went with appellant, as she believed he would not “touch her.” They took a cab to Pasay Rotonda, where they had a meal. He then brought her to Baclaran Church where they stayed until 4:00 A.M. When Milet complained she was sleepy, appellant offered her shelter for the night and brought her to *Mahal Kita* Motel in Pasay City.

Inside the motel room, complainant felt thirsty and asked for a glass of water from appellant. After she drank the water, she felt dizzy, fell on the bed, and slept. When she came to, she found herself naked on the bed with appellant lying on top of her, his penis inside her vagina. She tried to push him aside but he threatened to kill her if she resisted and shouted for help. Appellant succeeded in having carnal knowledge of her. They stayed in the motel until about 12:00 o’clock noon. She could not leave as appellant sat near the bedroom door.

From the motel, appellant brought Milet to Harrison Plaza where they had lunch. He next brought her to a chapel on the second floor of the mall. He left her at the chapel after telling her he would look for money, but promised to be back for her. After appellant left, she asked for help from one Aldwin Coronel who was also inside the chapel. Aldwin informed her that the man she was with was a pimp. Aldwin accompanied Milet to the office of the mall security force where she revealed that Gavina had raped her. Responding policemen immediately arrested appellant upon his return.^[6]

DR. MARIELLA SUGUE CASTILLO, a doctor at the Child Protection Unit of the UP-Philippine General Hospital, conducted the medico-genital examination on Milet. Her findings were summed up as follows:

External genitalia: (+) excoriation of labia majora

Hymen: estrogenized hymen, (+) fresh laceration at 5 o’clock position with redness of adjacent fossa navicularis, (+) localized redness of fossa navicularis at 7 o’clock, (+) notch with scar tissue at 8 o’clock position.^[7]

Dr. Castillo testified that these findings were consistent with complainant’s allegations that she had been sexually abused the day before. However, on cross-examination, the doctor admitted that there were no signs of physical abuse on complainant’s body, such that the injuries on her genitals could have also been due to consensual sexual intercourse.^[8]

DELIA CAMACHO, a social worker with the Child and Youth Protection Unit, Department of Social Welfare & Development (DSWD), Pasay City, testified that on the evening of January 19, 1999, she received a phone call about a complaint for rape being lodged at the Pasay City Police Station. She immediately went to the police station where complainant was introduced to her. She listened as Milet gave her sworn statement to the police. She read the written statement to the victim who thereafter signed it. She also witnessed the victim pointing to appellant as her ravisher. Camacho then brought Milet to the Serra Center for girls. On January 20, 1999, she accompanied complainant to UP-PGH for medico-genital examination. She confirmed the victim’s admission that she had a prior sexual experience with her boy friend in the province.^[9]

Appellant FRANCIS GAVINA was the sole witness for the defense. He testified that around 9:00 P.M. of January 18, 1999, he was walking in Luneta when he saw complainant and Susan Yap. The two girls smiled at him. Moments later, a security guard chased the girls who promptly hid among the bushes. When the guard left, the girls came out of their hiding place. They told him that they had run away from their employer who maltreated them and his guard was looking for them. He offered them shelter at a friend's house in Malate. They went to Malate but his friend was not around. From there, they proceeded to the PICC site where they had snacks until it began to rain. They took shelter at a nearby building where he sat beside complainant. The latter whispered that she wanted to leave Susan as she was bad company. On the pretext of looking for *buko*, they left Susan and took a cab to Pasay Rotonda where they again ate. Milet changed attire and put her soiled clothes in appellant's bag. She then invited him to go to Baclaran Church. At the church, complainant fell asleep. He woke her up and they went out for coffee. Milet complained that she was sleepy, so he offered to bring her to *Mahal Kita* Motel. She agreed. According to appellant, complainant knew that the place they were going to was a motel.

It was already 4:00 A.M. when they reached the motel. Once inside, Milet took a shower and asked appellant to hang her freshly washed underwear. With only a towel wrapped around her, she lay down on the bed with appellant. They began to kiss and proceeded to have sex for four consecutive times, according to appellant. Thereafter, they slept until noon of January 19, 1999, when Milet woke him up. They then went to Harrison Plaza to eat and visit the mall chapel. After praying, appellant told Milet to wait for him at the chapel while he called up his brother. He wanted her to stay at his brother's house. Unable to reach his brother, he went back to the chapel as promised. To his surprise, the Harrison Plaza security guards apprehended him and brought him, together with Milet, to their office. He was subsequently brought to the Pasay City Police Station. Appellant insisted that Milet went with him freely and voluntarily and that they had consensual sex. He claimed that Milet charged him with rape only because she was influenced by the guards to do so, after Aldwin Coronel informed her that he was a pimp.

The lower court found the prosecution version credible, convicted appellant of the charge, and sentenced him as follows:

The Court opines that the prosecution [has] proven the guilt of the accused Francis Gavina y Quebec for rape and hereby [sentences] him to an imprisonment of *reclusion perpetua* and to pay the victim indemnity of P75,000.00 and P50,000.00 for moral damages.

SO ORDERED.^[10]

Appellant now comes to this Court and seeks reversal of his conviction. He assigns to the trial court the following errors:

I

THE TRIAL COURT ERRED IN DECLARING THAT FORCE AND INTIMIDATION HAD ATTENDED THE SEXUAL ENCOUNTER BETWEEN THE VICTIM AND THE ACCUSED.

II