

EN BANC

[G.R. No. 136257, February 14, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
OSCAR Y BAÑEZ, ACCUSED-APPELLANT.**

DECISION

MELO, J.:

In order to warrant the imposition of the death penalty, the special qualifying circumstance of the victim's minority and her relationship to the offender should be both alleged in the Information and proved during the trial. This is the principle which finds application in the case at bar.

Before us on automatic review is the decision dated September 25, 1997 of Branch 71 of the Regional Trial Court of the Fourth Judicial Region stationed in Antipolo, Rizal, in its Criminal Case No. 94-11878, finding accused-appellant Oscar Ybañez guilty of rape and sentencing him to suffer the supreme penalty of death.

The instant case was initiated by a complaint against accused-appellant Oscar Ybañez y Dagulpo filed by the victim Erika Dialogo, which charged:

That on or about the 1st day of January, 1995, in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Erika Dialogo y Dialogo, a minor, ten (10) years of age, without her consent and against her will.

CONTRARY TO LAW.

(p. 5, Rollo.)

Accused-appellant pleaded not guilty to the charge and stood trial, resulting in a judgment of conviction, accordingly disposing:

WHEREFORE, the Court finds the accused Oscar Ybañez y Dagulpo GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized under Art. 335 of the Revised Penal code, as amended by R.A. No. 7659, and he is hereby sentenced to suffer the supreme penalty of DEATH, to indemnify the private complainant in the amount of P50,000.00, and to pay the costs.

(p. 16, Rollo.)

The prosecution's version of the events is based principally on the testimony of victim Erika Dialogo, Celestino Dialogo, uncle of the victim, and Dr. Jesusa Vergara of the PNP Crime Laboratory Services.

Erika testified that on January 1, 1995, at around 3 o'clock in the afternoon, she was requested by accused-appellant, her mother's common-law husband, to gather firewood. As she was about to do so, accused-appellant told her not to go and instead she was brought by him to the forest near their house. At that point, he forced her to lay down on a wooden bed, and despite her strong resistance and lack of acquiescence, accused-appellant took her panties off. Nevertheless, Erika seized a chance to get up and attempted to ran, but accused-appellant was quick in grabbing her back. As a preliminary to his intended beastful act, Erika tearfully narrated, accused-appellant inserted his finger into her vagina, and naked as he was, he laid on top of her and indoctrinated her into eroticism and libidinal gratifications. Thereafter, accused-appellant left her. Erika, on the other hand, left home and went to a certain Ate Rosal where she dozed off. When she woke up, she went home and found therein accused-appellant and her crying baby sister.

Erika continued her silence about her ordeal even as she brought her sister that same day to a certain Ate Tilde. Therefrom, she proceeded to her Ate Dolly, residing nearby. No longer able to keep to herself what she had just gone through, Erika told her Ate Dolly that she was raped by Oscar Ybañez. Consequently, she was brought by her other relatives, including prosecution witness Celestino, to Camp Crame.

Prosecution witness Dr. Jesusa Vergara, the medico-legal officer who conducted a physical examination of Erika confirmed the claim of the victim that she was raped. Dr. Vergara testified that Erika's external vagina orifice admits the tip of the examiner's smallest finger with shallow healed lacerations at 3 and 6 o'clock; and that Erika physically was in a non-virgin state.

The defense is based on the testimony of its sole witness, accused-appellant. He denied the charge and testified that on January 1, 1995, he was on his way home when he met Erika along the road. He gave her a fatherly kiss on the cheek, considering that he treated her as his own child from the time he started cohabiting with the victim's mother in 1987. Nothing more happened after that, so he claimed. He alleged that the crime imputed to him was a way of getting back at him, as initiated by prosecution witness Celestino. According to accused-appellant, Celestino used to live with them but was ordered to move out, hence, Celestino's motive to implicate accused-appellant in this case.

The trial court did not accord credence to the testimony of accused-appellant, pointing out that the defense of denial cannot prevail against the affirmative testimony of Erika who was only 10 years old when subjected to accused-appellant's sexual perversity. Further, Erika showed no ill motive to falsely testify against accused-appellant, and that her testimony was straightforward and impeccable.

Accused-appellant is now before us insisting on his innocence and pleading for acquittal on the ground of reasonable doubt. He imputes to the trial court the error of finding him guilty beyond reasonable doubt of the crime charged notwithstanding the victim's admission that she was not threatened by accused-appellant. He would also make much capital of the circumstance that the victim failed to divulge the rape committed against her to the first person she met after the incident.