

## EN BANC

[ G.R. No. 137647, February 01, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WILFREDO FERNANDEZ Y MALINAO, ACCUSED-APPELLANT.**

### D E C I S I O N

**DAVIDE JR., C.J.:**

Under automatic review is the decision<sup>[1]</sup> of the Regional Trial Court of Pasig, Branch 265, in Criminal Case No. 111534-H, finding accused-appellant Wilfredo Fernandez y Malinao, alias Alfredo Fernandez y Malinao (hereafter WILFREDO), guilty of rape and sentencing him to suffer the extreme penalty of death.

The information<sup>[2]</sup> which charged WILFREDO with rape was filed with the Regional Trial Court of Pasig, Branch 265. It reads:

On or about December 20, 1996 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the said accused, with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Melissande Pasasala y Bohol, a minor, fifteen years of age, against her will and consent.

Upon arraignment, WILFREDO entered a plea of not guilty.

At the trial, the prosecution first presented the victim, Melissande Pasasala who was already seventeen years old at that time. She testified that her mother Dionisia had been living together with WILFREDO since she was nine (9) years old. She, her mother, WILFREDO (whom she reverently addressed as "Papa") and her three siblings all lived together in her mother's house in Bahayang Pag-asa, Ibayong Tipas, Taguig. Her youngest sister was born out of the union of her mother and WILFREDO.<sup>[3]</sup>

Melissande described their house as made of plywood with a mezzanine. The mezzanine was partitioned into two rooms. She shared a room with her younger sister while the opposite room was occupied by her older brother. Her mother and WILFREDO occupied the room at the ground floor.<sup>[4]</sup>

In the afternoon of 28 December 1996, she and her younger sister were the only ones left home. WILFREDO then arrived from work with some companions and began a drinking spree which ended at around 7:00 p.m. When his guests left, WILFREDO inquired from Melissande where her mother was. She replied that her mother was at a meeting in the multi-purpose hall. She proceeded to clear the used utensils. WILFREDO thereafter called her and told her to watch the television show. She declined and continued her chore in the kitchen. WILFREDO called her anew. He

asked about her studies. She replied that she was doing fine. He further inquired as to what course she was planning to take. At this point, Melissande no longer answered him. She tearfully narrated that WILFREDO was already holding her waist and she was trying to avoid him. He then left her and proceeded to the master's bedroom. Her sister, who was in the same room, went out and called her to say that WILFREDO was asking for her.<sup>[5]</sup>

Melissande entered the bedroom and was told by WILFREDO to lie down over his chest. He laid her on the bed and asked if she wanted to go away with him at a faraway place where they could both be happy. Suddenly, he heard a noise. He immediately pushed the girl away. He thought Melissande's mother had arrived. Melissande went back to the kitchen to finish her chore. When WILFREDO realized that her mother was not yet home, he followed her to the kitchen and held her shoulders. He then told her to leave the dishes and follow him. WILFREDO brought her to a long bench where he sat down. WILFREDO requested her to accommodate him (*pagbigyan ko raw po siya*). She understood the statement as an expression of his attraction to her. But she felt afraid.<sup>[6]</sup>

WILFREDO asked her to go to his room, but she refused. Instead, he told her to go to the bathroom and actually pushed her there. Inside, he sat on her thighs. She begged, "*Papa, I don't like,*" but he threatened her with a foot-long knife and asked her if she wanted him to kill her. He even declared that he was in the urge to kill. She moved to the corner and begged him once more not to proceed. Instead, he told her to obey what he wished and she reluctantly obliged. WILFREDO dragged her back to and roughly pushed her down (*Ibinalibag niya ako*) the bench. He thereafter attempted to open her shorts. When he failed, he went out of the house but immediately returned inside the house. He then turned off the lights and dragged the girl. But, he merely switched on the light and went out again, after which, he proceeded to the bathroom. She told him that she was going to sleep. WILFREDO, instead, told her to go up and he followed her.<sup>[7]</sup>

In her mezzanine bedroom, Melissande pleaded, "*I don't want.*" Unheeding, WILFREDO removed her dress and underwear and laid her down. He removed his pants and brief and positioned himself on top of her. She shouted at him to stop but he punched her and ordered her to be quiet. She could not ask succor from her sister because of his threats to kill them both. He kissed her and as he remained on top of her, he heard her mother knocking. By that time he had penetrated her. He wanted to continue but instead, immediately got up, went down and exited at the back door. Her mother was able to push the bedroom door open as she hurriedly dressed up. Her mother entered the bedroom but Melissande ran out of the house and sought refuge in the home of her older brother Efren Casamayor, who lived in San Joaquin, another town.<sup>[8]</sup>

Melissande revealed to Efren that WILFREDO raped her. This angered Efren but she dissuaded him from going to her mother's place. She spent the night at Efren's home. The following afternoon, on an errand, she chanced upon her neighbor who informed her that her mother and brother Nobee Jun had been looking for her. She told her neighbor that she was staying with her brother Efren. That evening Nobee Jun visited her at San Joaquin. She admitted to Nobee Jun that she was raped by WILFREDO. Nobee Jun raged and threatened to kill WILFREDO. He further inquired if she had reported the matter to the police. She in fact did go to the police station

accompanied by Efren and her sister-in-law on 31 December 1996.<sup>[9]</sup> October 1998, 2-5.9 There, Melissande executed a sworn statement relating to her harrowing experience.<sup>[10]</sup> On 3 January 1997, she was physically examined at Camp Crame and the doctor confirmed that she was raped (*nagalaw nga raw po ako*). The knife used by WILFREDO to threaten her was turned over to the police by her mother.<sup>[11]</sup>

Melissande claimed that the incident brought her shame. It was not the first time that WILFREDO raped her. The first incident happened in 1994, but she chose to suffer in silence since he threatened to kill her and her mother. This time, however, she mustered the courage to file the rape charge against him. She could no longer consider him as her father. Her mother severed her relationship with him and her relatives disowned him as a member of the family. She wished for his death as penalty for the crime committed against her.<sup>[12]</sup>

Dionisia Pasasala, Melissande's mother, testified that WILFREDO was her common-law spouse. Since 1989, they had been living together in her house at Ibayong Tipas, Taguig. In the evening of 28 December 1996, she attended a meeting at the multi-purpose hall and arrived at their home at 9:00 p.m. As she knocked on the door, she heard a thud from the mezzanine. She peered through a small hole, about the size of a One Peso coin, near the door. She saw WILFREDO going down the stairs from the mezzanine, naked waist down. She immediately ran towards the back door which could be easily opened. She went to their room where she saw WILFREDO pretending to be asleep. She dragged him out of the room and demanded to know what he did to Melissande. He did not answer and she proceeded to the mezzanine but Melissande was no longer there; she had left. She looked for her son Nobee Jun, whom she found in a neighbor's house. She instructed him to look for Melissande but she was nowhere to be found.<sup>[13]</sup>

The following afternoon, Dionisia learned that a neighbor informed Nobee Jun that Melissande was seen in San Joaquin and sent word that she was staying with her older brother, Efren. On 31 December 1996, the police arrested WILFREDO at their home. That same night Dionisia went to the Pasig police station where she found Melissande. Only then did she learn that WILFREDO raped Melissande and threatened her with a knife. They were referred to the Taguig Police where she executed her sworn statement.<sup>[14]</sup>

The rape incident and several other despicable circumstances angered Dionisia, betrayed her trust for WILFREDO and destroyed her love for him. She then recalled that he drove her blind mother away from their home. He also had previously hit Melissande that caused her head to bleed. She admitted that she was not able to do anything then against WILFREDO because she, too, was afraid of him. He had killed a person and was just out on parole. She also confirmed that he had the habit of carrying a knife even when he sleeps. She also presented as documentary evidence WILFREDO's Certificate of Discharge from Prison,<sup>[15]</sup> his Certificate of Discharge on Parole<sup>[16]</sup> and Melissande's Birth Certificate.<sup>[17]</sup>

On the part of the defense, WILFREDO was the sole witness. His testimony was brief. He did not rape Melissande. He worked as a carpenter and would do repairs in the house he shared with Dionisia. He also denied that there was a hole anywhere near the main door.<sup>[18]</sup>

On rebuttal, the prosecution presented Nobe Jun Casamayor, Dionisia's son and Melissande's brother. He considered WILFREDO as his stepfather. He was able to confirm for himself what happened to Melissande after accompanying her to Camp Crame for her medical examination. He identified the medico legal report<sup>[19]</sup> on the examination conducted on her. He further expressed wonder why WILFREDO could not reciprocate the love they gave him. He was treated like a real father; yet, he did not treat them as his own children.<sup>[20]</sup>

In its decision of 7 December 1998, the trial court convicted WILFREDO and decreed as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding Accused, WILFREDO FERNANDEZ y MANILAO alias ALFREDO FERNANDEZ y MALINAO, GUILTY beyond reasonable doubt of the crime of RAPE, aggravated by the fact that the same was committed by the Accused, who is the common-law spouse of the parent of the victim, and hereby sentences him to suffer the penalty of DEATH, as provided for under R.A. No. 7659; to pay the Private Complainant, Melissande Pasasala y Bohol, the sum of FIFTY THOUSAND PESOS (P50,000.00) by way of indemnity; THIRTY THOUSAND PESOS (P30,000.00) as moral damages, plus all the accessory penalties provided by law, without subsidiary imprisonment in case of insolvency; and to pay the costs.

The trial court gave credence to the spontaneous and detailed testimony of Melissande on the facts that she was raped. It declared that Melissande's failure to run-away during WILFREDO's attempt to impose his lechery on her could not be interpreted as assent to the sexual act as insinuated by the defense during cross-examination. WILFREDO's moral ascendancy, physical dominance and influence over Melissande were too evident and apparent to be ignored. His tendency for violence, habit, temperament and position as "father" in the family were too much for the girl. Besides, he was threatening her with a knife. Thus, despite her feeble protests, this second rape was likewise consummated.

Hence, this automatic review, as earlier intimated, pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659.

In his lone assignment of error, WILFREDO no longer questions his conviction. Instead, he argues that the trial court erred in imposing the death penalty considering that while the information alleged that the victim was 15 years old at the time the rape was allegedly committed, it failed to allege that the offender was the common-law spouse of the victim's natural mother. The failure to allege these special qualifying circumstances mandated the imposition of the lesser penalty of *reclusion perpetua*, not death. Thus, the information merely charged him with simple rape. He could not, therefore, be convicted of qualified rape which is punishable by death.

WILFREDO further asserts that he was never married to Dionisia. Thus, he could not even be considered a stepfather of Melissande.

For its part, the Office of the Solicitor General refutes WILFREDO's latter argument by maintaining that the relationship between him and Dionisia was clearly