

EN BANC

[G.R. No. 138983, May 23, 2001]

**PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. GENER
B. AGONCILLO, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

This is an automatic review of the Decision^[1] dated April 27, 1999 of the Regional Trial Court of Kalibo, Aklan, Branch 2 in Criminal Case No. 5006 finding the accused, Gener B. Agoncillo guilty beyond reasonable doubt of the crime of rape committed with the use of a deadly weapon.

On August 28, 1997, Rosalyn Salvador y Patricio assisted by her mother, Artily P. Salvador filed a complaint^[2] for rape against the accused. The complaint alleged:

"That on or about the 2nd day of July, 1997, in the evening, in Barangay Napti, Municipality of Batan, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously with use of a scythe, has carnal knowledge with the said ROSALYN P. SALVADOR, a minor of fourteen (14) years of age, against her will and without her consent."

On September 21, 1998, the accused was arraigned and with the assistance of counsel entered a plea of not guilty.^[3] Thereafter, trial ensued.

The trial court summarized the evidence presented by the prosecution and the defense as follows:

"EVIDENCE FOR THE PROSECUTION

The following are the witnesses presented by the prosecution and the substance of their testimonies:

1) Dr. Lendelino B. Meñez, 52 years old, married, physician and a resident of Villa Emilia Subdivision, Estancia, Kalibo, Aklan, testified:

That he is one of the physicians of Aklan Provincial Hospital; that on July 3, 1997, the victim was in the said hospital for a medico-legal examination in connection with her complaint that she was raped; that as

per his examination on the victim, the latter suffered slight hymenal laceration at 6:00 o'clock position; that he also found "Endurated area around the vagina (reddening)"; that the hymenal laceration was caused by a male sex organ (TSN - Anino, 12/10/98; Exh. "B").

2) PO2 Jose Patron, 32 years old, married, PNP Member and a resident of Barangay Angas, Batan, Aklan, testified:

That he is a police office officer assigned at Batan, Aklan; that on July 5, 1997, at around 8:30 A.M., the victim and her mother went to the police station and reported to him that the victim was raped; that it was the victim herself who told him that it was the accused who sexually assaulted her; that he entered the said report in the police blotter; that he thereafter referred the case to the Women's Desk, PNP, New Washington, aklan (TSN - Anino, 12/10/98; Exh. "O").

3) Rosalyn P. Salvador, 15 years old, single, student and a resident of Barangay Napti, Batan, Aklan, testified:

That she is the victim in this case; that she is 14 years old at the time of rape, having (sic) born on August 22, 1982; that in the evening of July 2, 1997, her father and mother went to the river to catch fish; that her only companions in their house during that night were her three (3) younger brothers, namely: Julie (8 years old), Cris (10 years old) and Victor (13 years old); that they went to bed at around 8:00 P.M.; that at around 11:00 P.M., she roused to look at their wall clock if it is already time to prepare their breakfast; that suddenly, somebody covered her mouth and told her not to shout or else, he will cut off her head; that the said person was armed with a scythe; that she was then dragged to the banana plantation where she was ordered to lie on the ground and not to shout under threat that if she will not obey, he will sickle her neck; that the said person then started to kiss her; that because of the frequent flashes of light in the sky (caused by lightning), she was able to recognize that person as the herein accused; that she knows the accused since the latter was always passing near their house; that the accused kissed her lips and vagina; that he spread her legs, placed himself on top of her and tried to insert his penis into her vagina; that because the accused found it difficult to insert his penis into her vagina, he instead inserted his finger until such time that he was able to insert his penis; that the accused then pushed and pulled his penis in her vagina; that it was painful; that after several minutes, the accused stood up and wiped his sweat; that thereafter, she was accompanied by the accused up to the bamboo plantation and warned her that he will kill them all if she will tell her parents on what happened to her (TSN - Anino, 1/11/99; 1/13/99; TSN - Gumban, 1/12/99; Exh. "A" and "I").

4) Artily Salvador, 45 years old, married, and a resident of Barangay Napti, Batan, Aklan, testified:

That she is the mother of the victim; that in the evening of July 2, 1997, she and her husband went fishing at the swamp; that they left their house at around 5:30 P.M. and stayed at the swamp the whole night;

that they were able to return home at around 6:00 A.M. the following day, July 3, 1997; that when they reached their house, she saw the victim by the door who was about to cry; that when they went inside the house, the victim cried and told her that she was raped by the accused; that upon hearing that news, she dumped her thermo chest and proceeded to the house of the accused; that she saw the accused feeding his pigs; that she asked the accused where he was on the night of July 2, 1997; that the accused replied that he was in the house of a certain Delia watching T.V. show; that she then went to the house of Delia and tried to verify the allegation of the accused; that Delia informed her that the accused was indeed in their house on that night up to 10:30 P.M.; that on her way home, she again met the accused on the road; that when the accused asked her why she was looking for him, she did not tell him the reason and merely said: "Nothing"; that the accused told her to file a case against him if she so desires; that she then went to the house of the Barangay Captain and reported what the accused did to her daughter; that thereafter, they reported the matter to the Batan Police Station; that the police officer of Batan advised her to go to New Washington, Aklan to report this to Policewoman Isada; that Policewoman Isada brought them to the Provincial Hospital and had the victim medically examined; that on August 23, 1997 at around 6:00 P.M., the father and two uncles of the accused went to their house to talk of settling the case against the accused; that the said trio wanted that the accused and the victim be married to each other; that when she refused, the said persons went home (TSN - Anino, 1/13/99; TSN - Gumban, 1/14/99).

Recalled as a rebuttal witness, Artily Salvador testified that it is not true that the father of defense witness Rene dela Cruz was already dead at the time of the subject rape as the said person died in June 1998; that the accused used to sport long hair; that the testimony of defense witness Pepito Torres to the effect that she was looking for a person with long hair and mustache is not true because what she asked from the said witness was the whereabouts of the accused; that it is not true that their banca and fishing net were destroyed (TSN - Gumban, 3/15/99, Rebuttal).

5) Delia Rosales, 57 years old, married, Municipal civil Registrar of Batan, Aklan and a resident of Ambulong, Batan, Aklan, testified:

That she is the Civil Registrar of Batan, Aklan; that she issued the certified true copy of the birth certificate of the victim (Exh. "D", TSN - Gumban, 1/14/99).

Ms. Rosales further testified that she also issued the certificate of death of one Remegio dela Cruz, who died on June 26, 1998 (Exh. "E"; TSN - Gumban, 3/15/99, Rebuttal).

EVIDENCE FOR THE DEFENSE

The following are the witnesses presented by the defense and the substance of their testimonies:

1) Rene dela Cruz, 36 years old, single, farmer and a resident of Barangay Napti, Batan, Aklan, testified:

That on July 2, 1997, his younger brother Roque arrived in his house together with his friend Regie and the accused at around 10:30 P.M.; that they came from the house of a certain Delia Torres where they watched T.V. shows; that the said persons slept in his house; that when he woke up to urinate at around 12:30 A.M., the accused was still sleeping in bed; that when he got up from bed at 4:00 A.M., the accused was still sleeping; that the accused woke up at 5:00 A.M. of July 3, 1997; that the accused was always sleeping in his house; that his brother Regie is no longer residing in his house because he went to Manila in June 1996 (TSN - Anino, 2/24/99).

2) Pepito Torres, 57 years old, fisherman, and a resident of Barangay Napti, Batan, Aklan, testified:

That in the evening of July 2, 1997, there were many people in their house watching television shows; that the accused was one of them; that the accused together with Rochie and Regie left their place at around 10:00 P.M.; that the following morning, July 3, 1997, the mother of the victim asked him and his wife Delia Torres who were those who watched television in their house on July 2, 1997; that the said mother of the victim also asked him if there was a person with a beard and sporting long, curly hair who watched television; that he replied in the negative; that the accused at that time was sporting a short hair and had a clean face (TSN - Gumban, 2/25/99).

3) Jesus Penalba, 39 years old, married, tricycle driver and resident of Napti, Batan, Aklan, testified:

That he is a neighbor of defense witness Rene dela Cruz; that on July 2, 1997 at around 10:30 P.M., he was awakened by the noise created by the accused and his two companions, Rochie and Regie; that he saw them when he went down to his kitchen and peeped through its bamboo slats; that the weather was bad at that time; that the following morning, July 3, 1997, he plied his route as a tricycle driver; that when he returned home at around 9:00 A.M., his wife told him that the mother of the victim asked her what time did he go home the night before, July 2, 1997 (TSN - Gumban, 2/23/99).

4) Rael Trinidad, 43 years old, married, Barangay Kagawad and a resident of Napti, Batan, Aklan, testified:

That he is a member of the Barangay Council of Napti, Batan, Aklan; that the accused is his distant relative; that on July 3, 1997 at around 7:00 A.M., he met the father of the victim by the road; that the father of the victim brought him to the banana plantation where the victim was raped; that the said place is around 30 meters away from the house of the victim; that the said place is dark because it is full of banana plants and the banana leaves are dense; that the father of the victim informed him that the perpetrator has curly hair and bearded; that he was also

informed they were suspecting Roque and Regie because the said duo frequently hunt birds in that place (TSN - Anino, 2/26/99).

5) Gener Agoncillo, 40 years old, single, farmer and resident of Napti, Batan, Aklan, Testified:

That he is the accused in this case; that he knows the victim and the latter's parents for a long time already; that the parents of the victim have a hostile feeling to him as they suspected that he was the one who punched a hole in their fishing boat and slashed their fishing net; that on July 2, 1997 at around 8:00 P.M., he was in the house of defense witness Pepito Torres; that he, together with his two friends, Roque and Regie, left that place at past 10:00 P.M.; that before they left, they requested for a torch from Pepito Torres because the night was very dark; that they spent the night in the house of Roque dela Cruz; that they slept at around 11:00 P.M.; that he woke up at around 5:00 A.M. of July 3, 1997; that thereafter, he went home and fed his pigs; that while he was feeding his pigs, the mother of the victim arrived and asked him where he was on the night of July 2, 1997; that after answering her that he slept in the house of Rene dela Cruz, he asked her why she was asking him where he was at that time; that she answered: "Basta" (I just want to know), and then she left; that later on, he again met her and he asked her again what her problem was; that when she did not answer, he told her that if she has any complaint, she should just file it; that one of the police officers who was present when he was first invited to the Batan Police Station is the husband of the Barangay Captain of Napti, Batan, Aklan; that the said Barangay Captain is the principal sponsor in the wedding of the parents of the victim; that he has a misunderstanding with the family of the said Barangay Captain because he transferred to another camp during the barangay election; that it is not true that he frequently passes along the road near the victim's house; that his present hairstyle and mustache are the same as those before July 2, 1997; that he did not authorize his father and two uncles to negotiate with the family of the victim for the settlement of this case; that when he asked his father and two uncles if it is true that they went to the place of the victim to settle this case, they denied the same; that he knows that the parents of the victim are out fishing every night; that he is still single despite of his age; that he is not courting any girl anymore because he "was in despair" when the parents of his former girlfriend and supposed bride objected to their marriage in 1982 (TSN -Gumban, 3/1/99; TSN, Anino, 3/4/99)."^[4]

On April 27, 1999 the trial court rendered a decision finding the accused guilty beyond reasonable doubt of the crime of rape; the dispositive portion of the decision reads:

"WHEREFORE, the Court finds the accused GENER AGONCILLO Y BONSUELO, GUILTY beyond reasonable doubt of RAPE and hereby imposes upon him the supreme penalty of DEATH.

Further, the Court hereby orders the said accused to pay to the victim