

EN BANC

[G.R. No. 135976-80, June 20, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CLAUDIO GALENO Y MAGBANUA ALIAS "ODING," ACCUSED-
APPELLANT.**

D E C I S I O N

VITUG, J.:

A human being who indulges in an incest relationship descends, it is said, to the level of the beast and manifests a depravity of the worst kind.^[1]

At bar is a mandated automatic review on the findings of the Regional Trial Court ("RTC"), Branch 55, of Himamaylan, Negros Occidental, which has found herein appellant CLAUDIO GALENO guilty, on five (5) counts, of rape committed against his own daughter, Jenny Galeno, decreeing thereby the extreme penalty of death on him.

Appellant CLAUDIO GALENO, a.k.a. "Oding," was charged with the crime of RAPE in each of the following informations -

"`That, sometime in the month of August, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of a deadly weapon, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'

"and

"`That, sometime in the first week of September, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of a deadly weapon, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'

"and

"`That, sometime in the second week of September, 1995, in the

Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of deadly weapon, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'

"and

"`That, sometime in the third week of September, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of a deadly weapon, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'

"and

"`That, sometime in the fourth week of September, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of a deadly weapon, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'"^[2]

Claudio Galeno pleaded NOT GUILTY to the charges. Joint hearings were conducted, following his arraignment, on the five cases.

The evidence for the prosecution, in substance, was testified to by private complainant. JENNY A. GALENO, at the witness stand, claimed to be 17 years old, single, a student and a resident of Sitio Limbo, Barangay Nabali-an, Himamaylan, Negros Occidental. She was raped on five occasions, she said, by her own father.

The first incident occurred in August 1995 when she was barely sixteen years old. It was noontime. Not having school classes that day, she was told by her mother to stay home to look after their animals and pets. Her mother and elder brother were then working in the sugarcane field while her other brothers and sisters were not in the house attending to some other matters. She was resting inside the room located on the first floor of the house when her father foisted himself upon her, pointed a long sharp bolo at her neck and told her to completely undress. Overcome by fear, she did just as she was told. She resisted, although in vain, her father's advances. After taking off his clothes, he forced her legs open and placed himself on top of her. She felt pain when he finally succeeded in penetrating her. It took her father about half an hour, doing the "push and pull" motion, until she felt his discharge inside her bleeding vagina. Withdrawing from her, appellant threatened to kill "them all" if she were to tell on him.

Once, during the first week of September 1995, about midnight, she was roused from bed by her father who already had a knife pointed at her. Her mother was sleeping at the upper part of the house with her other brothers and sisters. Jerked from sleep, she tried to shout but her father timely covered her mouth with his hand. She struggled to free herself but he was too strong for her. He removed her panty, placed himself on top of her and, like before, succeeded in taking her.

A week later, the second week of September 1995, also about midnight, she awoke when her father held both her hands and forthwith covered her mouth. He spread her legs open and raped her for the third time. By then, she was determined to report the matter to her mother but as she was about to do so, her father looked at her with piercing eyes while holding a bolo in his hand. She was immediately silenced.

Around the third week of the same month, at noontime, appellant, armed with the same weapon, forced himself on Jenny. When she refused to submit to his sexual demands, appellant held her hands, covered her mouth and forced himself on her for the fourth time.

The fifth and last incident happened during the fourth week of September 1995. It was no different from what she experienced before - except that this time, the sexual assault by her father took place at the second floor of their house.

Alarmed by the fact that her monthly period had failed to arrive, Jenny took "penbid" drugs to induce her menstruation. On 04 March 1996, by now worried, she consulted Dr. Jocson at the Doctor's Hospital in Bacolod City. She was discovered to be pregnant. On 31 May 1996, she delivered a baby boy. The "*hilot*," ELISA TEJIDO, testified that on 31 May 1996, about two o'clock in the morning, she was fetched by OFELIA GALENO (mother of Jenny) to assist Jenny who evidently was experiencing labor pains. When she asked who sired the child, Jenny answered that it was her father.

The defense, controverting the evidence given by the prosecution, submitted differently. Appellant Galeno testified that in August 1995, when the alleged rape took place for the first time, he was busily engaged in weeding the sugarcane field with his wife. The couple did not go home for lunch because they brought along the food with them. It was only in the afternoon that they returned home. During the first week of September 1995, when the second rape supposedly occurred, he left the house as early as four-thirty in the morning. His wife joined him a few hours later. He went home at about four-thirty in the afternoon. Around the second week of September 1995, when the third rape was said to have occurred, he was likewise in the sugarcane field, leaving the house at five o'clock in the morning and going back home at four-thirty in the afternoon. When the supposed fourth and fifth incidents of rape took place during the third and fourth week of September 1995, he was not home, having left with his wife, with food provisions, at five o'clock in the morning for the sugarcane field where they stayed until about four-thirty in the afternoon. On the whole, he asserted, there was never an instance when he was home at about noontime.

Later in his testimony, however, he changed tune and admitted having had sexual

Congress with his daughter. He testified:

"QUESTION:

In the course of your testimony you admitted having a sexual intercourse with Gina?

"ANSWER:

Yes, sir.

"QUESTION:

How many times?

"ANSWER:

I cannot remember how many times.

"QUESTION:

But the fact is there were many times?

"ANSWER:

I just cannot be sure.

"QUESTION:

Could have it been twice?

"ANSWER:

Maybe more than two (2) times.

"QUESTION:

Four (4) times.

"ANSWER:

Maybe around that number.

"QUESTION:

But definitely it was not six (6) times?

"ANSWER:

No, sir.

"x x x

x x x

x x x

"QUESTION:

The first time you fuck your daughter Jenny was she still studying?

"ANSWER:

Yes, sir.

"QUESTION:

Where did you fuck your daughter the first time, in what place?

"ANSWER:

In our house.

"QUESTION:

What time did you did it happen?

"ANSWER:

Night time.

"QUESTION:

The second time?

"ANSWER:

During the day time.

"QUESTION:

Were you not confused that it might be at the first time in the noon and second, evening?

"ANSWER:

I am sure the first time was during night time and the second time day time.

"QUESTION:

During 3rd time?

"ANSWER:

Also day time.