

EN BANC

[G.R. No. 142726, October 17, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
APOLONIO ACOSTA, ACCUSED-APPELLANT.**

DECISION

BELLOSILLO, J.:

This is an automatic review of the decision of 3 February 2000 of the Regional Trial Court, Br. 46, San Jose, Occidental Mindoro, in its Crim. Case No. R-4328 finding accused Apolonio Acosta guilty of rape and imposing upon him the penalty of death and ordering him to pay his victim P50,000.00 as civil indemnity and P50,000.00 as moral damages.^[1]

Maritess Acosta was born on 16 January 1985 in Barangay Canwaling, San Jose, Occidental Mindoro, where she lived with her family, the third of seven (7) children of the spouses Pablo Acosta and Narcisa Acosta. She did not finish Grade One although she could write her name.

In December 1997 Maritess was left home to take care of her two (2) younger sisters and a less-than-a-year old brother Joseph as her parents went to the mountains to gather *cogon*, which was their routine, and would be home only after a week. At about 12 o'clock noon, while her two (2) younger sisters were asleep and she was taking care of her baby brother Joseph, her paternal grandfather Apolonio Acosta who was living about a hundred meters away, arrived. Apolonio shouted invectives at Maritess and ordered her to go to his house, or else he would kill her.

^[2] At around 3 o'clock in the afternoon, Maritess did as she was told, carrying Joseph with her but leaving behind her two (2) younger sisters. When she arrived at the house of Apolonio, the latter took Joseph from Maritess and placed him on the floor. Apolonio then poked a *bolo* at Maritess and undressed her, removing first her t-shirt and then her skirt. She did not resist as she was scared of the *bolo* pointed at her. Thereafter, Apolonio undressed himself. He told Maritess to lie down on the floor and then placed himself on top of her. While mashing her breasts, Apolonio inserted his penis inside her vagina. She felt pain and sensed that she was bleeding.

^[3] She could not muster enough strength to fight him because he was bigger than she was and his *bolo* was pointed at her all the while. When it was over, Apolonio instructed Maritess to get dressed and warned her not to report the incident to anybody otherwise he would kill her. Maritess cried but could not do anything. After Apolonio gave her P60.00, she picked up Joseph from the floor and went back home. Apolonio followed her and again threatened to kill her if she told anybody about the incident. This turned out to be only the first of so many other similar incidents she had with her grandfather Apolonio.

In March 1998, while Maritess and her father Pablo were resting outside their home, Apolonio dropped a hundred peso bill (P100.00) in front of her. Pablo asked Apolonio

about it but the latter remained silent and left. Pablo then turned to Maritess who likewise remained quiet, as she was ashamed, embarrassed and afraid. Later, with her mother Narcisa around, Maritess opened up and finally told her parents that Apolonio had raped her several times. Narcisa lost no time in reporting the matter to Leonida Santiago, Barangay Captain of San Isidro, who instructed her to submit Maritess to a medical examination.

On 20 March 1998 Narcisa brought Maritess to Dr. Nuela Manzanida, Municipal Health Officer of San Jose, Occidental Mindoro. As reflected in Maritess' medico-legal certificate, Dr. Manzanida had the following findings: Hymen - healed lacerations at 3 o'clock and 6 o'clock positions; Location - nulliparous and admits one finger. Dr. Manzanida opined that the healed lacerations were approximately one (1) - month old and could have been caused by a human penis.^[4]

Not long after, as private complainant, Maritess charged Apolonio with rape, qualified by relationship.^[5]

Apolonio denied the charge. He claimed that for the whole month of December he lived in Sabadeco in the house of Arsenio Mactal where he worked as a farm helper and caretaker of the latter's ampalaya plantation. Meantime, his daughter Violeta Carman and her family lived in his house in San Jose, near the house of his son Pablo, father of Maritess. Apolonio argued that he could not have raped Maritess as he did not visit his house in December 1997, not even on Christmas Day nor on New Year's Eve, as he was busy in the plantation.

Violeta Carman, Apolonio's daughter corroborated his statement by claiming that she never for a moment left the house because she was then looking after her youngest child; thus, with her being around, she insisted that Apolonio could not have had the opportunity to rape Maritess in his own house. Instead, Apolonio claimed that the charge stemmed from a quarrel over a piece of land to which he was granted the right to cultivate. Upon learning that he turned over his rights to Venancio, another son, Pablo got mad, accused him of favoring his brother and threw punches at him. Apolonio said that he was charged with rape as Pablo's family felt deeply aggrieved ("*masakit ang kalooban nila*").

The trial court found the testimony of Maritess consistent and free from serious contradictions, and on the basis thereof, convicted Apolonio. The court rejected his defense of alibi and denial. It ruled that the physical impossibility of Apolonio being at the *locus criminis* was not properly established as Apolonio's house in Canwaling was only a thirty (30)-minute walk away from the farm of Arsenio Mactal where he claimed to have stayed in December 1997. Moreover, defense witnesses themselves testified to have seen him on occasion in Canwaling thereby nullifying his claim of absence.

The court *a quo* likewise cast aside the defense's contention of family discord over cultivation rights as Pablo Acosta was a laborer and not a farmer. He did not own a carabao or any farm implement, and therefore had no interest in tilling the land. Significantly, the trial court found that Apolonio's own daughter, likewise named Maritess, had previously charged him with rape although the case was dismissed. Thus, the trial court sentenced him to death, and ordered him to pay his granddaughter Maritess P50,000.00 as civil indemnity and P50,000.00 as moral