

EN BANC

[G.R. Nos. 134769-71, October 12, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO BATION, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

The defense in the cases at bar blames lack of religious instruction in public schools^[1] for the moral depravity of the accused Roberto Bation who not just once, but thrice unleashed his bestiality on his own flesh and blood and reduced his daughter to a sex object. The excuse the defense offers is as preposterous as the lechery the accused committed for even animals who are not endowed with human rationality protect and care for their young; the accused in these cases did not only utterly fail to live up to his responsibility as a parent, he failed to live up to being a human being endowed with reason, temperance, and the capacity to respect others as fellow human beings.

On February 21, 1995, three informations were filed against the accused Roberto Bation in Criminal Case Nos. S-2529, S-2530, and S-2531. Except for the dates of commission of the crimes, the informations are similarly worded as that in Criminal Case No. S-2529, viz:

"The undersigned, Provincial Prosecutor, upon a sworn complaint originally filed by the private offended party, accuses ROBERTO BATION of the crime of RAPE, committed as follows:

That, at midnight, on or about the 16th day of July, 1994, in the municipality of Godod, Zamboanga del Norte, within the jurisdiction of the Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation succeeded in having sexual intercourse with one EDITHA BATION, his 15 year old (sic) daughter, against her will and without her consent, as a result of which she became pregnant.

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code)."^[2]

The accused entered a plea of not guilty to all three counts of rape. The three cases were tried together.

The prosecution evidence shows that the Bation family permanently resided in Tambalang, Salug, Zamboanga del Norte. They also had a farm and residence in Mauswagon, Godod, Zamboanga del Norte. From July 16 to 18, 1994, the accused

was in Mauswagon to farm. He brought with him his daughter Editha to cook food for him. Only the accused and his daughter were in their house in Mauswagon; Editha's mother, Candida Bation, was in Tambalang. On the night of July 16, 1994, Editha was sleeping in her room illuminated by the moonlight. Her room had no lock. Her father slept in another room. At about midnight, she woke up with her father already on top of her with only his shirt on, while she no longer had a panty on. He was doing the push and pull movement as he was inserting his penis into her vagina. The penetration caused pain in her private part. While the accused was abusing her, he warned her not to tell anybody about the incident, otherwise he would kill her and her mother. Editha was frightened. After the incident, she did not leave Mauswagon as she was afraid that the accused would cause harm upon her and her mother if she left. The following day, again at about midnight, the accused once more had carnal knowledge of Editha in their house in Mauswagon. As in the previous night, the accused warned her not to tell the incident to anybody or else he would kill her and her mother. This time, though, the accused had a *bolo* with him. The day after, the 18th of July, again at about midnight, the accused for the third time had his way with Editha in their house in Mauswagon. Again, he had a *bolo* with him and threatened Editha that he would kill her and her mother if she revealed the incident to anybody.^[3]

Months after the rape incidents, Editha's paternal aunt, Marianita Bation, brought her to Dorotea Am-is, a "manghihilot" because Marianita suspected she was pregnant. She was also examined by Dr. Guillermo Literatus who informed her that she was five months pregnant. On November 22, 1994, Editha executed a sworn statement regarding the rape incidents and filed a complaint against her father docketed as Crim. Case No. 1807-G in Godod, Zamboanga del Norte. On December 12, 1994, she filed two more complaints for rape against her father docketed as Crim. Cases No. 1816 and 1817-G. While the preliminary investigation for said cases was ongoing, however, Editha, assisted by her mother Candida Bation, executed an Affidavit of Desistance on January 25, 1995.^[4] She stated therein that she had "forgiven the accused for the acts he had committed against me after he had asked forgiveness from me" and that she was no longer interested in pursuing the cases. On February 12, 1995, seven months after those fateful days of July, Editha gave birth to a baby girl. On February 21, 1995, notwithstanding the affidavit of desistance, the above informations were filed against the accused.

In her initial testimony on January 12, 1996, Editha affirmed the contents of the affidavit of desistance she executed. She added that it was actually her aunt, Marianita, who was interested in filing the cases, and not her. When asked what was the wrong committed by the accused that she had already forgiven, Editha answered that the accused did not commit any wrong. She admitted that she got pregnant and gave birth, but she did not know who was the father of the baby.^[5]

Editha also testified that at the time of the rape incidents, she was fifteen years old and that her birthday is on December 21, 1979. Prior to July 16, 1994, she had not experienced sexual intercourse.^[6]

On April 19, 1996, Editha was recalled to the witness stand. When confronted with the affidavit of desistance she executed on January 25, 1995, she admitted having executed it, but only because her Aunt Marianita forced her to do so to have her brother (the accused) released from jail; her Aunt Marianita threatened her that she

would box her like she had boxed her before if she would not sign the affidavit. She repudiated the contents of the affidavit and testified that her father asked forgiveness from her when the case was already filed, but she did not and has not forgiven him. She also retracted her previous testimony where she affirmed the contents of the affidavit and stated that she only did so because she was forced by her Aunt Marianita. This time around, however, she was no longer afraid of her Aunt Marianita because the Department of Social Welfare and Development (DSWD) was assisting her and she was advised by a social worker named Mrs. Castillo to tell the truth. Thus, in her second testimony, she revealed how the accused satisfied his lust upon her in July 1994.^[7]

Dr. Guillermo Literatus, Municipal Health Officer of Salug, Zamboanga del Norte since 1986, also testified. He examined Editha on November 21, 1994 and found that she was five months pregnant at the time of examination based on her abdominal distention.^[8]

Editha's mother, Candida Bation, also took the witness stand. In her initial testimony on January 12, 1996, she testified that she was with Editha when the latter executed her affidavit of desistance. She agreed to have the cases dismissed because she had forgiven her husband out of love. When asked what was the wrongful act for which she was forgiving her husband, she answered that she did not know what her husband had done to her daughter Editha. She also did not know who was the father of Editha's child. Similar to what Editha testified, Candida confirmed that it was Marianita Bation who was interested in filing the instant cases, and not her.^[9]

After Candida's first testimony on January 12, 1996, she told the DSWD that with her assistance, Editha executed an affidavit of desistance. When the DSWD learned of the affidavit and the real desire of Candida and Editha to pursue the cases against the accused, the DSWD helped them prevent the dismissal of the cases based on the affidavit. On July 26, 1996, when Candida was recalled to the witness stand, she retracted her testimony on January 12, 1996. She also repudiated the affidavit of desistance she assisted Editha to execute on January 25, 1995 and explained that she assisted Editha in executing it and initially affirmed its contents in court only because her sister-in-law, Marianita Bation, threatened that she would harm Editha if she did not do so. Marianita wanted to have her brother, the accused, released from jail. In fact, it was Marianita who accompanied her and Editha and paid for their expenses in going to Dipolog to execute the affidavit of desistance.

Candida also testified that sometime after the rape incidents, Editha told her that she was raped by her father in their house in Mauswagon. As a result, her daughter became pregnant and delivered a baby on February 12, 1995. Quite the opposite of her January 12, 1996 testimony, this time she said that she could not forgive her husband even if he is convicted to death.^[10]

Rosalie Casinillo also testified. She is a Social Worker Officer II of the Sindangan Unit Office of the DSWD. She learned of the alleged rape incidents when they were reported to their office by the Salug DSWD on January 23, 1995. Sometime after Editha executed the affidavit of desistance on January 25, 1995, Casinillo met Editha and her mother in the Salug DSWD and they told her about Editha's ordeal with the accused on July 16, 17, and 18, 1994. Casinillo conducted an assessment of and

investigation on the matter and wrote a summary report dated January 30, 1995, based on her interview with Candida and Editha.

Casinillo narrated that Editha was endorsed to the DSWD center in February 1995 so that her needs as a pregnant young mother could be addressed. It was also to protect her from further abuse by her father who would be released from jail because of the affidavit of desistance Editha executed the previous month. On February 12, 1995, Editha gave birth to Ma. Magnolia Adalla Bation who was surrendered to the DSWD with Editha and her mother's consent. Sometime in the last week of February, the child was adopted by parents from Belgium.^[11]

On January 12, 1996, when Editha and Candida testified confirming the affidavit of desistance, Casinillo was not present. On January 25, 1996, Editha and Candida went to Casinillo's office to ask for assistance to testify again to tell the court what really happened between Editha and the accused on those fateful days of July. Casinillo then wrote to the trial court about their forced desistance and revealed the truth and sent supporting documents.^[12] She submitted her summary report to the trial court wherein she stated that Candida was "innocent and ignorant, thus she was easily exploited and convinced to withdraw the complaint."^[13] She likewise noted that Candida mortgaged their coconut farm to Marianita for P5,000.00, but the amount was in the hands of Marianita, thus Marianita controlled Candida's expenses and dictated the decisions of Editha and her mother.^[14]

The defense presented Marianita Bation, sister of the accused. Marianita is the neighbor of the accused in Tambalang, Salug, Zamboanga del Norte. Their farms are adjacent to each other. Tambalang is about sixteen kilometers away from Mauswagon. One can take a passenger bus from Tambalang to Mauswagon, and from there walk two kilometers to the accused's farm. She observed that Roberto goes to his farm in Mauswagon every month, or sometimes weekly, with his daughter Editha and his wife, Candida.

According to Marianita, Editha liked to roam around and spent nights wherever she found herself when night descended. She scolded Editha's parents about this, but the latter did not discipline Editha on it. She always reprimanded Editha about her ways and told her that she is a hardheaded woman. Upon learning on the first week of December that Editha was pregnant, Marianita scolded her and pressed her to reveal the father of the child. Editha broke her silence and told her that it was a certain Eyok who was no longer living in their place.^[15]

Marianita learned for the first time that her brother Roberto was a suspect in the rape of Editha when he was apprehended. She got angry at Roberto for raping his daughter, but Roberto denied the accusation. She later realized and testified that Roberto could not have done the dastardly acts upon Editha because from July 15-20, 1994, Roberto was in their mother's residence in Kayok, Liloy, Zamboanga del Norte. Roberto was with Marianita and their five other siblings planning how to commemorate the ninth death anniversary of their father on July 18. Roberto's children, Nestor and Rosa, were with him in Kayok but his wife, Candida, and Editha were left in their home in Mauswagon. Kayok is about fifteen kilometers away from Mauswagon. The distance could be negotiated by motor vehicle from one to two hours.^[16] When Marianita's other siblings learned that Roberto was implicated in the rape of Editha, they believed that Roberto did it. However, when Marianita

reminded them that he was with them during the alleged dates of the rape, they believed Roberto's innocence.^[17]

Marianita testified that she knew Rosalie Casinillo, the DSWD worker, because she entrusted Editha to her. She brought Editha and her mother to Casinillo in DSWD Salug upon learning from a friend that Casinillo was looking for the two. Marianita agreed to entrust Editha to her upon the latter's assurance that she would defray the expenses for the delivery of Editha's child and would be responsible for the latter, that she would send Editha to school, and that she would pay P2,500.00 each to Editha and Candida every month.

Marianita claims that she did not know that Editha and Candida executed an affidavit of desistance and learned about it for the first time on the first hearing on January 12, 1996. She denied having anything to do with the execution of the affidavit nor having instigated the withdrawal of the complaints. She denied threatening Editha and Candida that they would be jailed for putting Roberto behind bars and insisted that Candida and Editha themselves wanted to withdraw the cases against the accused. On cross-examination, however, she admitted that she helped Editha and Candida, upon their request, to talk to Atty. Mejorada to have the cases dismissed. She surmised that Editha had ill feelings towards Roberto which prompted her to file cases against him. After Editha and her mother's desistance, Marianita claims that Casinillo and the prosecutor told Editha and Candida that if they withdrew the case, they would be jailed, thus prompting the mother and daughter to pursue the cases against the accused. Marianita admitted that Roberto's coconut land was sold to her and the money therefrom used to defray Roberto's expenses.^[18]

Rosita Guitones also testified for the defense. She is a neighbor of the accused in Tambalang, Salug. She learned of the instant cases in January 1995. While Guitones was in the post office adjacent to the DSWD, Marianita passed by. Guitones then went with Marianita to the DSWD office. Marianita was with Editha and Candida. When they arrived in the DSWD office, Guitones listened as the three talked to Rosalie Casinillo, a DSWD employee. The latter offered that the DSWD would take care of Editha's child, adopt it and spend P2,500.00 per month for the child's subsistence and education; and that another P2,500.00 would be given to Editha. Sometime after their visit to the DSWD, Guitones and Marianita met Editha and Candida along the road and the latter told them that they would pursue the cases against the accused because Casinillo and Prosecutor Guantero told them that they would be jailed if they withdrew the cases.^[19]

The accused Roberto Bation took the witness stand. He testified that Editha was born on November 18, 1979. He denied the rape charges as according to him, he was already too old to experience erection. Moreover, on July 15-17, 1994, he was not in Mauswagon where the alleged rapes were committed, but in Kayok to commemorate the ninth death anniversary of his father. He was in Kayok with his brothers and sisters and his children, Rosa and Nestor. Editha and his wife, Candida, were left in Mauswagon to tend their carabao and pigs. On July 20, 1994, the accused left Kayok and went home to Tambalang. He then proceeded to Mauswagon and upon arriving there, Editha and Candida went back to Tambalang. The accused stayed in Mauswagon until November when he went home to Tambalang. It was then that his wife told him that Editha was pregnant because of her habit of roaming