

EN BANC

[G.R. No. 139904, October 12, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONRADO MERCADO, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is an automatic review of the decision of the Regional Trial Court of Agoo, La Union, Branch 32, in Criminal Case No. A-3314, convicting accused-appellant of rape, and sentencing him to death and to pay the victim civil indemnity of P50,000.00.^[1]

Accused-appellant was indicted of rape in an Information which reads:

That on or about the 13th day of August, 1997, in the Municipality of Rosario, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and being then armed with a knife, by means of violence and intimidation and by tying the hands and feet of the aforesaid Melinda P. Mercado, did then and there wilfully, unlawfully and feloniously have carnal knowledge of her for five times on the aforesaid date, against her will, to the damage and prejudice of the aforesaid Melinda P. Mercado, a minor then twelve (12) years of age.

Contrary to law.^[2]

Accused-appellant entered a plea of "Not Guilty,"^[3] after which trial proceeded.

Twelve-year old Melinda Mercado spent the afternoon of August 13, 1997 at the house of her cousin, Sonia Torralba, located in Inabaan Norte, Rosario, La Union. There she played with Sonia, Larry Torralba, and her brother, George. They also cut bamboo. At 6:00 in the evening, Melinda went to the bamboo hut of her uncle, accused-appellant Conrado Mercado, to return his bolo. The hut was located some ten to twelve meters away. When Melinda got there, accused-appellant pulled her into the hut, forced her to lie down on the floor and tied her hands and legs. Then accused-appellant gagged Melinda's mouth with a piece of cloth. Accused-appellant raised Melinda's dress and removed her panties. He then took off his shorts. While Melinda was lying on the floor, accused-appellant got hold of a knife and pointed it at Melinda's breast. He then lay down and had sexual intercourse with Melinda.^[4]

Accused-appellant kept Melinda bound and gagged on the floor of the hut for six hours. During that span of time, accused-appellant had sexual

intercourse with Melinda five times. At 12:00 midnight, while accused-appellant was outside the hut, Melinda was able to untie herself. She hurriedly ran out of the hut. Accused-appellant saw her and ran after her. Melinda arrived at her house and immediately told her mother that she had been raped by accused-appellant. When her mother saw the latter arriving, she threw a plastic container at him.^[5]

The following morning, Melinda's mother brought her to the house of Barangay Captain Rodrigo Molina to report the matter. The Barangay Captain summoned Councilman Jose Laroya to fetch accused-appellant. Later, Melinda was brought to the Rosario District Hospital for medical examination.^[6] Then, she was brought to the police station, where she gave her statement regarding the rape.^[7] Thereafter, she was brought to the Ilocos Regional Hospital for further medical examination.^[8]

Melinda's cousin, Larry Torralba, also twelve years old, saw accused-appellant pull Melinda into the hut from his house. He and Melinda's brother, George, approached the hut and peeped through a hole in the wall. He saw accused-appellant force Melinda to lie down on the floor, gag her mouth and tie her hands and feet. After that, he and George ran towards his house and reported what they saw to his brother.^[9]

Dr. Rosemarie Catapang, who examined Melinda at the Ilocos Regional Hospital on August 14, 1997, found incomplete healed lacerations on her genitals at 5:00 o'clock and 3:00 o'clock positions.^[10]

SPO2 Rodolfo Abella and SPO1 Dominador Gali of the Rosario Police were dispatched to the crime scene on August 15, 1997 to gather physical evidence.^[11] They were able to recover from accused-appellant's hut, the white t-shirt which he tied around Melinda's mouth,^[12] Melinda's panties,^[13] the kitchen knife which accused-appellant pointed at Melinda,^[14] and the nylon rope used to tie Melinda's hands and legs.^[15]

On August 15, 1997, Melinda filed a formal complaint for rape against accused-appellant with the Municipal Trial Court of Rosario, La Union.^[16] After finding a *prima facie* case against accused-appellant, Municipal Trial Judge Caroline B. Pañgan forwarded the records of the case to the Provincial Prosecutor of La Union.^[17] On September 16, 1997, the Information quoted above was filed with the Regional Trial Court of Agoo, La Union, and docketed as Criminal Case No. A-3314.^[18]

The defense relied on the lone testimony of accused-appellant. According to him, he was at Linapew, Tubao, La Union in the morning of August 13, 1997, which was three kilometers away, or about twenty minutes walk from his house in Inabaan Norte, Rosario, La Union. He went there to cut weeds at the field of his cousin, Leonardo Laroya. He finished at 5:00 o'clock in the afternoon, after which he drank gin with Laroya. At 7:00 p.m., he walked home. He arrived at his house at past 8:00 p.m.^[19]

Accused-appellant denied the accusation of rape against him. When asked if he knew of any reason why complainant would impute such charges on

him, accused-appellant surmised that his brother, Ernesto Mercado, who is Melinda's father, wanted to take away the land where he was staying.^[20]

On February 23, 1999, the trial court rendered the decision subject hereof, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing considerations, the accused Conrado Mercado is hereby found "GUILTY" of the crime charged and is hereby sentenced to suffer the extreme penalty of Death by lethal injection; to indemnify the victim in the amount of P50,000.00 for the rape and to pay the cost of the proceedings.

SO ORDERED.^[21]

Accused-appellant's Brief before this Court raises only one assignment of error, to wit:

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED BECAUSE THE QUALIFYING CIRCUMSTANCE THAT THE ACCUSED WAS A RELATIVE WITHIN THE THIRD DEGREE OF CONSANGUINITY OF THE VICTIM WAS NOT ALLEGED IN THE INFORMATION.^[22]

In other words, accused-appellant does not question his conviction or the findings of the trial court as to his guilt. He merely prays that the penalty imposed on him be modified to *reclusion perpetua*,^[23] which prayer is joined by the Solicitor General.^[24]

Accused-appellant's position is well-taken. The trial court's imposition of the death penalty was based on Article 335 (now Article 266-B) of the Revised Penal Code, *viz*:

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. xxx.

In quite a number of cases, we have consistently ruled that for death to be imposable under the above provision, both the minority of the victim and her relationship to the offender should be specifically alleged in the Information. It is not enough that the relationship was subsequently proved during the trial. Otherwise, accused-appellant can only be convicted of simple rape, the penalty for which is *reclusion perpetua*.^[25]

The informations merely allege the minority of complainant. However, an allegation of her filial relationship with accused-appellant is essential because these two (minority and relationship) constitute a special qualifying circumstance, which, in accordance with the settled rule, must be alleged in the information and proven. Thus, in *People v. Garcia* (281 SCRA 463 [1997]), it was held that qualifying circumstances, which increase the penalty by degree rather than merely affect the period of