

EN BANC

[G.R. No. 124129, January 28, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO BRIGILDO, ACCUSED-APPELLANT.**

DECISION

QUISUMBING, J.:

For automatic review is the consolidated Decision of the Regional Trial Court, Ormoc City, Branch 12, dated November 7, 1995, in Criminal Cases No. 4591-0 and No. 4607-0, for Rape; and No. 4606-0 for Attempted Rape allegedly committed by appellant Domingo Brigildo against complainant Marites Belic, the youngest daughter of his common-law spouse, Alfreda Mabale. He was acquitted of the charge of attempted rape. But the trial court found him guilty of two counts of rape, for which he was twice sentenced to death.

The accusatory portion of the Information in Criminal Case No. 4591-0 for Rape reads:

"That on or about the 30th day of March 1994, at Purok Bangkal, Barangay Anislag, Municipality of Isabel, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there wilfully (sic), unlawfully and feloniously have carnal knowledge of the herein offended party MARITES BELIC, his step daughter who is 11 years old, against her will and without her consent, by holding her arms and removing her panty, pin down to the ground, lock her limb (sic), lay on top of the victim, insert his penis over (sic) the victim's genital organ to accomplish his lewd design, to her damage and prejudice.

"CONTRARY TO LAW."^[1]

In Criminal Case No. 4606-0 for Attempted Rape, the Information charged:

"That on or about the 3rd day of November 1994, at Purok Bangkal, Barangay Anislag, Municipality of Isabel, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs, did then and there wilfully (sic), unlawfully and feloniously with force and intimidation, touched (sic) the shoulder and vagina of the herein offended party MARITES BELIC, his step-daughter who is 11 years old, whereupon accused proceeded to perpetrate the initial acts of sexual intercourse with her, all these against the latter's tenacious desistance (sic), the accused thereby commencing the commission of the crime of rape directly by overt acts but nevertheless, unable to perform all the acts of execution which would have produced the crime of rape as a

consequence by reason of causes other than accused's spontaneous desistance, the victim reported to her mother about the accused (sic) malicious intention, giving her the chance to escape.

"CONTRARY TO LAW."^[2]

In Criminal Case No. 4607-0 for Rape, the Information alleged:

"That on or about the month of October 1994, at Purok Bangkal, Barangay Anislag, Municipality of Isabel, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully (sic), unlawfully, and feloniously have carnal knowledge of the herein offended party MARITES BELIC, his step-daughter who is 11 years old, against her will and without her consent, and while she was in the copra drier in a (sic) broad daylight where the accused took a sack and there the victim was made to lie down, the accused lay on top of her, insert (sic) his penis over (sic) the victim's genital organ to accomplish his lewd design, to her damage and prejudice.

"CONTRARY TO LAW."^[3]

When arraigned, appellant Domingo Brigildo, assisted by counsel, pleaded not guilty to the charges. Trial on the merits ensued.

As the charges were founded on a common set of facts, which formed a series of offenses and involved the use of common evidence, the cases were tried jointly.

The trial court synthesized the evidence for the prosecution as follows:

"The first witness for the government Dr. Refelina Cerillo, Rural Health Physician of Isabel, Leyte testified that on December 14, 1994, she conducted an examination on one Marites Belic and reduced her findings into writing. The Medical Certificate issued to Marites Belic was marked as Exhibit "A". She stated in the second paragraph of Exhibit "A" the [g]enital findings: Pubic hair absent labia majora & minora to (sic) slightly coaptated. Hymenal opening no longer intact with healed hymenal tear correspondent to the 7:00 o'clock & 1:00 o'clock position in the face of the watch. No present laceration abrasions or any injuries noted. Vaginal canal tight. In her findings; she could not definitely say that the victim has (sic) previous sexual intercourse because a hymen can be lacerated even if the victim has (sic) no previous sexual intercourse. Probably the victim has (sic) a previous trauma during childhood, fell down from a tree and hit her vaginal area, medical instrumentation and foreign bodies can also cause hymenal laceration. However, it could also be possible that this laceration could have been caused by sexual intercourse. In her findings, she testified that the healed hymenal tear has (sic) been there for more than a months (sic) time.

"The second witness for the government Marites Belic, the private offended party, 11 years old...testified that she knows the accused Domingo Brigildo, the latter being her stepfather. x x x In the evening of

March 30, 1994, while she was in the house, the accused held her shoulder, forcibly laid her down and removed her panties. Then the accused laid on top of her and performed a push and pull motion by inserting his penis into her vagina. Thereafter, the accused kissed her cheeks and neck. She cried and shouted for help but the accused choked her neck. After the accused inserted his penis into her vagina, the accused fucked her again for the second time on that same evening. At the time of the said incident, her mother was then fishing in the sea. She told her mother upon arrival that the accused raped her. However, her mother did not believe her. In October 1994, the accused raped her again at the copra drier owned by a certain Polinar in Brgy. Anislag, Isabel, Leyte. At that time, the accused held her shoulder and placed a sack on the ground. Thereafter, the accused laid on top of her, kissed her and performed a push and pull movement by inserting his penis into her vagina. She cried. However, the accused warned her that if ever she will tell somebody about the incident he will kill her. In the early morning of November 3, 1994, when her mother was preparing their food at their house, the accused held her up and was about to fuck her again but she was able to wake up. She resisted and stood up. She told her mother what the accused did to her. However, her mother replied: "You are just making wild accusations." Since her mother was accusing her of making wild accusations, she reported the matter to her elder sisters Jenny Belic, Ailene Belic, Nida Belic, Alita Belic and Aida Belic at Sitio Gemelina of Isabel, Leyte. Thereafter, they reported the incident to the police authorities of Isabel, Leyte. The Sworn Statement of Marites Belic taken before (sic) the Police Headquarters of Isabel, Leyte dated December 20, 1994 in the vernacular was marked as Exhibit "B" and the translation thereof was marked as Exhibit "C". The Complaint in Criminal Case No. 6739 which she filed before the office of the Municipal Trial Judge of Isabel, Leyte now attached to the record of Criminal Case No. 4591-0 was marked as Exhibit "D". Since only one case was filed at the Municipal Trial Court of Isabel, Leyte, she went to the office of the Provincial Prosecutor to lodge a complaint. The complaint in I.S. No. 9505 which she filed with the Prosecutor's Office now attached to Criminal Case No. 4606-0 was marked as Exhibit "E" and her signature as Exhibit "E-1." The complaint in I.S. No. 95-04 which she filed with the Prosecutor's Office now attached to the Criminal Case No. 4607-0 was marked as Exhibit "F" and her signature thereof (sic) was marked as Exhibit "F-1." Further, she testified that she was examined by a doctor in Isabel, Leyte before she filed a complaint.

"The third witness for the government Ailyn Acebedo...testified that she knows the accused Domingo Brigildo, the latter being the husband of her mother. x x x She also knew the victim Marites Belic, the latter being her youngest sister. When Domingo Brigildo and her mother were living together, Marites Belic lived with them. She testified also that in the last part of November 1994, Marites Belic went to her house and told her that she was raped by "Minggoy". After she was told, they proceeded to see a doctor and submitted her sister Marites Belic for an examination. Thereafter, they reported the incident at the police headquarters....A complaint was also filed by her sister Marites Belic at the Municipal Trial Court of Isabel, Leyte."^[4]

The accused, on the other hand, denied the accusations. His version as summarized by the trial court was:

"Accused Domingo Brigildo denied that he raped the private complainant Marites Belic inside his house on March 30, 1994 at Purok Bancal, Brgy. Anislag, Isabel, Leyte. He claimed that a case was filed against him because they wanted him and his wife to be separated from each other. Had he done what he is accused of, the private complainant Marites Belic would have reported it to her mother upon arrival and also to her brothers and sisters. He also denied of raping (sic) the said private complainant for the second time at the copra drier of Brgy. Anislag, Isabel, Leyte since the copra drier had no walling and was situated just beside the road. All the time, the people used that road in coming to and from the barangay. He did not bring the private complainant to the copra drier. It was the private complainant and her mother who went to the copra drier to bring food for him the following morning. The private complainant was not permanently staying at his house but in the house of Genita Noya. When the private complainant arrived at his house, the games that she usually played together with her friends were climbing the trees, Chinese garter and carabao riding. Further, he denied of (sic) attempting to rape Marites Belic in the early morning inside his house while his wife was present.

"On cross examination, he testified that Marites Belic treated him as her very own father. That the said child was calling him "Papa". He came to know that Marites filed the present cases for rape against him only upon his arrest on December 27, 1994."^[5]

The defense also presented appellant's common-law spouse to testify on his behalf. The trial court summarized her testimony as follows:

"Defense witness Alfreda Mabale testified that she knows the accused Domingo Brigildo, the latter being her common-law husband. She also knew Marites Belic, the latter being her daughter. She testified also that she had ten (10) children with her first husband Sulpicio Belic. One of her children was residing at Cantohawon and some were residing at Brgy. Anislag. On March 30, 1994, she was then fishing in the sea. She left her home at about 4:00 o'clock in the afternoon. She went home at about 10:00 o'clock in the evening. She had no knowledge about the accusation made by her daughter Marites Belic against her common-law husband Domingo Brigildo because at that time, she was then fishing in the sea. When she arrived home at about 10:00 o'clock in the evening, her daughter Marites Belic was already sleeping. At that time, Domingo Brigildo was also sleeping. She did not notice anything unusual in the physical features of her daughter Marites Belic. In the following morning, her daughter Marites Belic did not tell her that she was raped. She came to know for the first time that Domingo Brigildo was charged of rape when the latter was arrested on December 16. She testified also that her daughter Marites Belic usually stayed at the house of the latter's elder sister and sometimes visit (sic) them. The games that Marites Belic usually play (sic) were climbing of tree (sic), riding on top of the carabao and Chinese garter. Further, she testified that the reason why her

common-law husband was being charged with the crime of rape because they wanted her and Domingo Brigildo to be separated. That her daughter Ailyn wanted them to be separated.

"On cross examination, she testified that she had been living with her common-law husband Domingo Brigildo for about seven (7) years. At the time she started living with the said accused, her daughter Marites Belic was still eight (8) years old. That Marites Belic called her common-law husband as "Papa." That her common-law husband Domingo Brigildo treated her daughter Marites Belic as his own child while Marites treated him also as her true father. She was testifying in favor of Domingo Brigildo because of her undying love for him. She wanted to do everything to save him from this case, inspite of the fact that her children were mad at her. On November 3, 1994, she was not told by her daughter Marites Belic that Domingo Brigildo tried to rape again the said private complainant. She only knew it at the time that Domingo Brigildo was arrested."^[6]

The lower court rendered its decision, the decretal portion of which reads:

"WHEREFORE, decision is hereby rendered in Criminal Case No. 4591-0 finding the accused Domingo Brigildo GUILTY beyond reasonable doubt of RAPE (as) defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659. Finding the victim Marites Belic to have been below eighteen (18) years of age at the time of the rape on March 30, 1994 and finding the offender to be the common-law spouse of Marites' mother, this court imposes upon the same Domingo Brigildo the mandatory penalty of DEATH. Further, the accused is directed to indemnify Marites Belic the sum of Thirty Thousand Pesos (P30,000.00) as moral damages, and to pay the costs.

"Decision is also hereby rendered in Criminal Case No. 4607-0 finding the accused Domingo Brigildo GUILTY beyond reasonable doubt of RAPE (as) defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659. Finding the victim Marites Belic to have been below eighteen (18) years of age at the time of the rape in October 1994 and finding the offender to be the common-law spouse of Marites' mother, this Court imposes upon the same Domingo Brigildo the mandatory penalty of DEATH. Further, the accused is directed to indemnify Marites Belic the sum of Thirty Thousand Pesos (P30,000.00) as moral damages, and to pay the costs.

"Decision is also hereby rendered in Criminal Case No. 4606-0 finding the accused Domingo Brigildo NOT GUILTY for insufficiency of evidence.

"As the penalty imposed is DOUBLE DEATH the jail warden of the Leyte Sub-Provincial Jail is directed to immediately commit the person of Domingo Brigildo to the National Prisons at Muntinlupa, Metro Manila.

"SO ORDERED."^[7]