

## EN BANC

[ G.R. No. 127568, January 28, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROLANDO BACULE, ACCUSED-APPELLANT.**

### D E C I S I O N

**KAPUNAN, J.:**

For automatic review is the decision of the Regional Trial Court of Lapu-lapu City<sup>[1]</sup> finding appellant guilty of rape beyond reasonable doubt and sentencing him to suffer the death penalty.

Appellant was charged in an information that reads:

That on the 9th day of May 1995, at or about 10:00 p.m., in sitio Guiwanon, Looc, Lapu-lapu City, Philippines, within the jurisdiction of this Honorable Court, while the offended party - an 8 - year old girl - was then sleeping in their house, the aforementioned accused did then and there willfully, unlawfully and feloniously have carnal knowledge of her, and when the undersigned offended party was awakened the said accused pointed a knife at her and, by means of a threat to kill her, did then and there willfully, unlawfully and feloniously continue on having carnal knowledge of her, against her will, to the damage and prejudice of the offended party.<sup>[2]</sup>

The evidence for both the prosecution and the defense are succinctly set forth by the trial court as follows:

The prosecution built its case for the People on the testimony of the rape victim corroborated by the findings of Dr. Joycelyn Gonzales. Complainant recounted that on May 9, 1995, at about 10:00 o'clock in the evening, while she was asleep together with the accused, her common-law father, in their house and while her mother was in Sibonga, Cebu, she was awakened when the accused undressed her by removing her dress, short pants and panty. She tried to shout for help but the accused covered her mouth with his hand while the other hand was pointing a knife on her neck. The accused kissed her arms, face, lips and nipples and licked her vagina. She was instructed by the accused to spread her legs apart and the latter inserted his penis into her vagina. She felt the pain but she could do nothing because of the threat on her life by the accused. A while later, the accused pushed his penis towards the direction of her anus. She agonized in pain again and felt so tired in her efforts to free herself. Thereafter, the accused stood up while she remained crying because of the pain she felt on her vagina and anus. She went to the comfort room and dressed up herself. Immediately on the following morning, she revealed and narrated the sad experience she suffered in the hands of

the accused to her aunt who occupied the second floor of the house. On that same day she was brought to the hospital for medical examination.

In her cross-examination, she testified that, when she started schooling, she used to live with her mother and the accused in the same house. Her mother instructed her to call the accused her "Papa." Upon her mother's return from Sibonga, Cebu, she narrated to her the whole incident but the latter disbelieved her.

Dr. Joycelyn Gonzales, a resident physician of Lapu-lapu City District Hospital, testified she conducted a medical examination on the rape victim/complainant. Based on her findings, a contusion appeared on the hymenal wall on both sides of the vagina, while the result of the sperm analysis was negative of the presence of spermatozoa. She stressed that the contusion of the hymenal wall may have been caused by friction or injury on account of a hard object. A penis could cause a contusion of the hymen. There was no deep penetration as to cause the laceration. However, in rare cases, the hymen would still remain intact even if there is deep penetration. x x x.

Genoveva Epe, a Barangay Tanod of Looc, Lapu-lapu City, testified that on May 10, 1995 at 5:30 in the afternoon (a day following the incident), she was informed by Magdalena Baring (aunt of the rape victim) that her niece was raped by the accused. She immediately went to the residence of the accused together with Barangay Tanod Ricardo Dungog. She confronted the accused while Ricardo Dungog held the hand of the victim. Because many people converging at the place wanted to maul the accused, the latter was hurriedly brought to the police station of Lapu-lapu City for safekeeping.

Another prosecution witness, Magdalena Baring (aunt of the rape victim), testified she knew the accused who is the common-law husband of her cousin (rape victim's mother) who rented the first floor of her house. On May 10, 1995, at 9:00 o'clock in the morning, she noticed something unusual in the appearance of the complainant. She was very weak and refused to eat her meal. When asked about her problems, she narrated to her the sad experience the night before with the accused. She brought the complainant to the hospital for medical examination. On the same day, she brought her (rape victim) to the police headquarters of Lapu-lapu City where an investigation was conducted. A rape charge was filed with the City Prosecutor's Office of Lapu-lapu City.

She likewise testified that, when the accused was confronted by Barangay Tanod Genoveva Epe and Ricardo Dungog, she was present together with the rape victim/complainant. The accused was brought to the police headquarters of Lapu-lapu City for safekeeping because many people wanted to maul him.

In his defense, the accused testified that on May 9, 1995, at 10:00 o'clock in the evening, he was at home together with the complainant and no unusual incident ever transpired on that night. On the following day (May 10) when he went home from work, he saw many people

gathered in the vicinity of their house. He was met by Magdalena Baring who advised him to run away so that nothing would happen to him but he remained afoot until he was arrested by a Barangay Tanod, whose name he could not remember anymore, and who brought him to Lapu-lapu City Police Station where he was investigated and subsequently incarcerated.

He likewise testified that at the time of the alleged incident, her common-law wife (mother of the complainant), was in Sibonga, Cebu to attend the wedding of her cousin.

Lone witness for the defense Ellen Bacule, the common-law wife of the accused, testified that she lived with the accused since 1987. On May 9, 1995, at about 10:00 o'clock in the evening, she was at home together with her 8-year old daughter (the complainant) and the accused. There was no unusual incident that transpired in their house on that evening. The following day (or on May 10) at 1:00 o'clock in the afternoon, she left for Sibonga, Cebu to attend the wedding of her cousin. She left her only daughter (complainant) to her cousin, Magdalena Baring, while her common-law husband (accused) was out for work. On May 11, 1995, as she went home she was surprised upon learning that her daughter was raped by the accused. She confronted the latter who was already detained in jail at the Lapu-lapu City Police Station. The accused vehemently denied the charges against him and contended that everything was just fabricated. After the alleged incident, she never had the chance to see her daughter.

In her cross-examination, she insisted that at the time of the alleged incident, she was at home together with the accused and the complainant. However, when she was asked to comment on the contradicting testimony of the accused that, at the time of the alleged incident, she was in Sibonga, Cebu, she could not explain the inconsistencies.

She claimed that at one time after the alleged incident, she had a chance to talk to her cousin, Magdalena Baring, whom she suspected to have kept her daughter. She asked to allow her to talk to her daughter regarding the incident but her cousin never gave any information.

At the trial, she insisted that the accused was innocent and the latter could not do such rape against her daughter. She could not afford to see her husband (accused) to continue languishing in jail even if the findings of the physician would clearly show that her daughter was raped. She claimed that if it were true that her daughter was raped by her common-law husband, she would be the first one to complain x x x<sup>[3]</sup>

On July 10, 1996, the trial court rendered a decision the dispositive portion of which states:

WHEREFORE, finding the accused Rolando Bacule GUILTY of rape beyond reasonable doubt, attended by the aggravating circumstances of ignominy, moral ascendancy and being the common-law spouse of the

parent of the victim, he is hereby meted the maximum penalty of DEATH, and to pay the complainant the sum of P50,000,00 as Damages.

The penalty imposed on the accused being death, which under the rules has to be reviewed automatically by the Highest Court of the land, the Clerk of Court of this Branch is hereby directed to elevate the records of this case to the honorable Supreme Court as early as possible.

SO ORDERED.<sup>[4]</sup>

Appellant asserts his innocence before this Court.

First, he claims that the complainant could not have positively identified the man who raped her since the scene of the crime did not enjoy ample lighting. According to appellant, "The trial court merely assumed that there was a light coming from the outside."<sup>[5]</sup> Complainant testified:

ATTY. TAUB:

Q :    Going back to the incident. Can you still recall that a the time of the incident if your house was lighted.

WITNESS:

A :    It was not lighted.

Q :    So there was no light at all?

A :    There was none, sir.

Q :    But despite the fact, you were able to see your father wiping his penis with your panty?

A :    Yes, sir, because the only thing that served as curtain of our door was a sack of holes.

COURT:

Q :    You would want to tell the Court that the door of your house where you were staying, is not equipped with a door shutter?

A :    Yes, sir, only a sack.

Q :    You would want to tell the Court that because of this, the light from the outside goes inside your house?

A :    Yes, sir.

Q :    Was that the reason why you saw the accused clearly?

A :    Yes, Your Honor.<sup>[6]</sup>

We do not agree that the question of the trial judge regarding the source of the light was based on mere assumption. As may be gleaned from the testimony quoted above, complainant said that she saw her "father" wipe his penis with her panty "because the only thing that served as curtain of our door was a sack with holes." Such reasoning may seem non sequitur at first. However, it may be inferred from the context of the testimony that there was light passing through the holes in the sack enough to enable complainant to see the accused wipe his penis with her panty. Why else would complainant mention the sack with holes that served as a curtain? Complainant's statement thus prompted the judge to clarify whether "the light from the outside goes inside [complainant's] house," and if this was "the reason why [she] saw the accused clearly." To both questions, the complainant answered in the affirmative.

Appellant next assails complainant's credibility. He cites portions of complainant's testimony where complainant's answers were not responsive to the questions propounded to her, thus rendering her testimony unreliable:

PROS. GICALE:

Q : What did you do after you told your auntie about what happened to you?

WITNESS:

A : She brought me to a room and undressed me, and she found out that there were stains.

Q : What did your aunt do afterwards?

A : When my father arrived, he scolded me and pushed me and he told me that he will have another intercourse with me (Witness is crying again.).

X X X

Q : When your mother came back, did you tell your mother?

A : When my mother came back, my father was already detained.<sup>[7]</sup>

It must be remembered, though, that the complaining witness is an eight year-old child compelled to relive in court the trauma she suffered in the hands of a man whom she called "father." Indeed, the burden on any woman under the same situation would be immense, and for a child like complainant, unimaginable. Accordingly, the child witness cannot be expected to give a precise response to every question posed to her. Her failure to give an answer to the point, considering her age, does not make her a witness less worthy of belief. When an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape had been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.<sup>[8]</sup> We find no reason in this case to disturb the following assessment of the trial court regarding the credibility of complainant: