

## FIRST DIVISION

[ G.R. No. 123113, March 31, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY ABALDE, ACCUSED-APPELLANT.**

### D E C I S I O N

**PARDO, J.:**

Accused Jerry Abalde appeals from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 25, Koronadal, South Cotabato finding him guilty beyond reasonable doubt of statutory rape<sup>[2]</sup> and three (3) counts of rape<sup>[3]</sup> and sentencing him to four (4) terms of *reclusion perpetua*, with all accessory penalties provided by law and to pay the costs. The trial court further ordered accused to pay complainant Ervie Tonelete moral damages in the amount of P50,000.00, in each case, with legal interest from finality of judgment until full payment.<sup>[4]</sup>

On August 23, 1991, First Assistant Provincial Prosecutor Isaac Alvero V. Moran of South Cotabato filed eight (8) separate informations<sup>[5]</sup> with the Regional Trial Court, Branch 25, Koronadal, South Cotabato, charging Jerry Abalde with rape, as follows:

*Criminal Case No. 701*

"That one day in the month of September, 1990, in the evening thereof, at Barangay Albagan, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, while being armed with a knife, and by means of force, violence and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of the complainant ERVIE TONELETE, then under twelve (12) years of age, against her will.

"CONTRARY TO LAW."<sup>[6]</sup>

*Criminal Case No. 702*

"That on or about the 4th day of March, 1991, at about 11:00 o'clock in the evening thereof, at Barangay Albagan, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, while being armed with a knife, and by means of force, violence and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of the complainant ERVIE TONELETE, then under 12 years of age, against her will.

"CONTRARY TO LAW."<sup>[7]</sup>

*Criminal Case No. 708*

"That on or about the 26th day of April, 1991, in the evening thereof, at Barangay Albagan, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, while being armed with a knife, and by means of force, violence and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of the complainant ERVIE TONELETE, against her will.

"CONTRARY TO LAW."<sup>[8]</sup>

On September 16, 1991, Second Assistant Provincial Prosecutor Florentino B. Tugas of South Cotabato filed another information for rape<sup>[9]</sup> with the Regional Trial Court, Branch 25, Koronadal, South Cotabato against accused Jerry Abalde, committed as follows:

*Criminal Case No. 714*

"That in or about the 3rd of March 1991, in Barangay Albagan, Municipality of Tampakan, Province of South Cotabato, Philippines, and within the jurisdiction of the honorable Court, the said accused armed with a knife, by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of ERVIE TONELETE against her will, and in her own house.

"CONTRARY TO LAW."<sup>[10]</sup>

Upon arraignment on October 1, 1992, in all the cases, accused Jerry Abalde pleaded not guilty. He waived pre-trial. Thereafter, a joint trial of all the nine (9) cases ensued.

The facts are as follows:

Complainant Ervie Tonelete, the second child of spouses Vedala and Ernesto Tonelete, was born on February 17, 1979.<sup>[11]</sup> Ervie, her parents and two (2) other siblings, Ervin and Ermie, lived in Barangay Albagan, Tampakan, South Cotabato, a dead-end place lying in the mountains, some twenty (20) kilometers away from the town proper of Tampakan.<sup>[12]</sup> Her elder brother Ernest stayed with a relative in General Santos City where he studied.

Sometime in June 1989, accused Jerry Abalde, Vedala's nephew by her first cousin,<sup>[13]</sup> arrived at the Tonelete household from Manticao, Misamis Oriental to work on a portion of their land.<sup>[14]</sup> He lived at the house of the victim, and during the night he slept at the sala while Ervie and her family slept in the only room of the house.<sup>[15]</sup> Considering that he was a relative, the children of Vedala and Ernesto, including

Ervie, called him uncle.<sup>[16]</sup>

On weekdays, Ervie's parents worked in the farm while Ervie and her siblings went to school. Every Saturday, her parents go to the *poblacion* of Tampakan to sell their produce for the week in time for the market day the following day, Sunday. Since Albagan is some twenty (20) kilometers away from Tampakan town proper, and due to the scarcity of public transportation, Vedala and Ernesto spent Saturday nights at the public market. Ervie and her two (2) younger siblings would be left alone at the house in Barangay Albagan, Tampakan, South Cotabato. Since the accused's arrival in June or July, 1989, the children were left with him.

One Saturday evening in September 1990, while Ervie's mother was in Tampakan public market selling the week's produce and her father was attending a church seminar, also in Tampakan,<sup>[17]</sup> Ervie was left in the house with her younger siblings and the accused Jerry Abalde. That evening, Ervie slept on the floor, in between her younger siblings, while accused slept in the sala. She was awakened, however, when she noticed somebody crawling towards her. Though their room has a door, it could not be locked or securely closed from the inside.

Ervie recognized the intruder as accused Jerry because there was a moon that night. She immediately stood up and moved away from the accused, but did not leave the room. Accused then transferred her sleeping siblings to the other side of the room.

Armed with a knife, accused forced Ervie to lie down on the floor. He held her by the hand and undressed her, removing her skirt and panty. Ervie tried to move her body to avoid the sexual assault, but accused overpowered her. Accused was able to spread her legs apart and insert his penis into her vagina. After the sexual congress, accused left the complainant crying and her sexual organ painful and bleeding.<sup>[18]</sup>

The following morning, as was her normal routine, she woke up early and cooked breakfast. When Ervie saw the accused coming from the farm after grazing the animal, she became afraid. She ate breakfast with him in silence.<sup>[19]</sup> When Ervie's parents arrived, she did not tell them about what happened to her the previous night out of fear that accused would kill her if she told them.

As of September 1990, Ervie was eleven (11) years and seven (7) months old, while Ervin was seven (7) years and eight (8) months and Ermie was four (4) years and five (5) months old.

On March 3, 1991, spouses Vedala and Ernesto left for Manticao, Misamis Oriental to attend the burial of Vedala's mother. They tagged along with them Ervie's youngest sister, Ermie. They returned only in the afternoon of March 9, 1991.<sup>[20]</sup> Hence, from March 3 until March 9, 1991, Ervie and her younger brother Ervin were left with the accused in their house at Barangay Albagan, Tampakan, South Cotabato.

In the evening of March 3, 1991, Ervie was awakened when she saw accused Jerry crawling towards her. Accused took hold of her arms and threatened to kill her if she would not submit to his desires, or would tell her mother about it. She noticed that like the first time accused abused her, her brother was no longer beside her and had been moved some distance away from her, but still inside the same room.<sup>[21]</sup>

Accused embraced Ervie and forced her to lie down. He forcibly removed her panty and had sexual intercourse with her against her will. Though she struggled against accused's advances, the latter was stronger and bigger than she was. After satisfying his lust, accused hurriedly left the room.<sup>[22]</sup>

The sexual assault was repeated, every night thereafter, on March 4, 5, 6, 7, 8 and 9, 1991. The assaults happened almost under the same circumstance; the victim was asleep in her room with her younger brother and the accused would creep into the room and sexually abuse her. Accused would leave the room after every sexual act, and the victim would be left bleeding and crying.

The last sexual assault happened on the night of April 26, 1991 when the victim's parents went to Tampakan town proper to sell vegetables. As usual, the victim was left in the house with the accused and her younger siblings. That night, accused Jerry took advantage of the absence of the victim's parents and raped the victim.<sup>[23]</sup>

On April 29, 1991, accused Jerry sold his pig for P600.00, left the Tonelete household, and brought all his clothes with him.<sup>[24]</sup>

The following day, or on April 30, 1991, Ervie told her mother about her ordeal. It took her this long before she could tell her mother that accused Jerry raped her because she was threatened by the accused that he would kill her if he told anyone about it. When Ernesto learned about the rape, he pursued the accused, with the assistance of the Albagan Brgy. Capt. Rogelio Guadaltiguir.<sup>[25]</sup> They caught up with the accused in Tampakan and they turned him over to the police authorities in Tampakan, South Cotabato.

Because of the sexual abuse committed against her, Ervie was embarrassed and her entire family was put to shame.<sup>[26]</sup> She denied that accused courted her or became her boyfriend.<sup>[27]</sup>

For his part, accused Jerry Abalde did not deny that he arrived at Tampakan, South Cotabato in July 1989 and lived with Ervie's family while working on a portion of their land.

However, he denied that he sexually molested Ervie in September 1990. He said that he courted her in December 1989 and she accepted his offer of love on February 17, 1991.

As regards the incidents between the dates of March 3 to 9, 1991, as well as that of April 26, 1991, accused admitted that he had sexual intercourse with the victim out of mutual love and desire. He said that everything happened at nighttime while the victim's parents were away.

Accused Jerry said that on three (3) occasions he and the victim went out together, with the knowledge of the victim's parents, to attend the festivities in the barangay. Complainant often visited him in the fields where he worked and brought him food.

Remedios Gutana, Jerry's aunt, corroborated his testimony and said that the two were lovers. On March 4, 1991, she said that in her presence, the victim and the

accused kissed and embraced each other at the balcony of her house. The three (3) of them were then eating guavas, when Ervie suddenly pulled down the shorts of the accused. Afterwards, she went to tend her store downstairs, while the victim and the accused went upstairs and she did not see what happened.<sup>[28]</sup>

On April 28, 1991, after he sold his pig, Jerry told Ervie that he would leave for Manticao, Misamis Oriental for vacation. Though Ervie did not agree, accused still went on and brought all his clothes with him.

On April 30, 1991, Ervie was physically examined by Dr. Arlene Anayon Cardos in her clinic at Tampakan, South Cotabato. The examination showed that there were old lacerations in the victim's hymen and her vagina easily admitted two fingers. Dr. Cardos opined that the lacerations could have been caused by severe physical exercise, masturbation, and possibly, by sexual intercourse.<sup>[29]</sup>

On May 2, 1994, during the pendency of the criminal cases against him, accused sent a letter to the mother of the victim and asked for forgiveness for the wrong he committed.<sup>[30]</sup>

On May 10, 1995, the trial court rendered decision the dispositive portion of which reads as follows:

"ACCORDINGLY, in Criminal Cases Nos. 701, 714, 702, and 708, accused JERRY ABALDE is hereby declared guilty beyond reasonable doubt of the felony of rape defined and penalized under Article 335 of the Revised Penal Code in each case, as principal, and there being no aggravating or mitigating circumstances which may affect the penalty, said accused is hereby sentenced to suffer the penalty of *reclusion perpetua* imprisonment, to suffer all the accessory penalties provided for by law, and to pay the costs, in each of the said cases.

"The period during which accused has undergone his preventive imprisonment for failure to post bail for his provisional liberty shall be computed and credited in his favor conformably to the provisions of Article 29, as amended, of the Revised Penal Code.

"Accused is further adjudged to pay private complainant Ervie Tonelete moral damages amounting to P50,000.00 in each case, with legal interest thereon reckoned from the finality of the judgment until fully paid.

"In Criminal Cases Nos. 703, 704, 705, 706, and 707, accused on grounds of reasonable doubt is hereby acquitted.

"SO ORDERED.

"GIVEN this 10th day of May, 1995 at Koronadal, South Cotabato, Philippines.

"(s/t) FRANCISCO S. AMPIG, JR.

"J u d g e"<sup>[31]</sup>