

EN BANC

[G.R. No. 130504, June 29, 2000]

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

DECISION

PANGANIBAN, J.:

In accusations involving incestuous rape, the relationship of the accused with the offended party as well as the latter's age must be alleged in the information and proven by the prosecution with competent evidence during the trial. A bare photocopy of the victim's Birth Certificate which is neither certified nor offered formally in evidence is not sufficient proof of her age.

Statement of the Case

For automatic review is a Joint Decision^[1] dated May 16, 1997 issued by the Regional Trial Court (Branch 39)^[2] of Calapan, Oriental Mindoro, in Criminal Case Nos. C-4775, C-4776 and C-4777, convicting Rolando Tabanggay on three counts of qualified rape and sentencing him to suffer the supreme penalty of death for each count.

In three separate Informations^[3] all dated July 18, 1995, appellant was charged with the crime of rape allegedly committed once against his daughter Rynalyn Tabanggay, then 14 years old; and twice against his other daughter, Genalyn Tabanggay, then 13 years old. Except as to the time, the date and the name of the victim, the Informations similarly read as follows:

"That on or about the 14th day of May, 1994, at around 2:00 o'clock in the morning, in Barangay Sta. Mesa, Municipality of Victoria, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd design, and by means of force and intimidation, using a deadly weapon, wilfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge with his daughter, RYNALYN TABANGGAY y RAMIREZ, 14 years old, against the latter's will and consent.

Contrary to law."

The other two Informations state that the accused likewise raped his other daughter, Genalyn, on two different occasions when she was only 13 years old.

On September 7, 1995, the accused-appellant, with the assistance of his counsel *de oficio*,^[4] pleaded not guilty to the charges.^[5] The prosecution and the defense thereafter agreed on a joint trial of the three cases, since common witnesses were

to be presented.

The Facts

Version of the Prosecution

The evidence for the prosecution are summed up by the Office of the Solicitor General, as follows:^[6]

"On May 14, 1994, at around 2:00 in the morning, private complainant Rynalyn Tabanggay, then turning 14 years old, was sleeping inside a nipa hut in Sta. Mesa, Victoria, Oriental Mindoro together with her sister Everlyn Tabanggay. Rynalyn was awakened when she felt that she was being kissed and hugged by appellant, her father, who told her to keep still. Appellant went on touching Rynalyn's breasts and vagina. Frightened, Rynalyn pleaded appellant to have mercy on her. However, appellant ignored Rynalyn's plea and instead told her "(a)nak, mahal na mahal kita(,) bago ang iba makinabang ako muna." Rynalyn tried to wake up her sister but failed to do so because appellant boxed her, thereby rendering her unconscious. Later, when Rynalyn regained consciousness, she felt pain all over her body and her knees were trembling. She also saw her vagina bleeding. When she tried to get out of the hut, appellant followed Rynalyn and, while holding on to her clothes, appellant threatened her not to tell the incident to anybody, otherwise he would kill her. Thereafter, appellant left the hut and went to the house of a neighbor.

"Meanwhile, Rynalyn and several others harvested palay. In the afternoon of the same date, she went home [to] San Antonio, also in Victoria, Oriental Mindoro, but she did not tell anybody about the sexual assault upon her.

"On May 17, 1994, Rynalyn left their house and went to Manila and applied for a job as a housemaid. She wanted to be far from home so that she could forget what appellant had done to her.

"While working as a housemaid in Manila, Rynalyn wrote her mother Gundina Tabanggay a letter, informing the latter that appellant raped her. After receiving the said letter sometime in August 1994, Gundina got angry and confronted appellant about the same. When informed that the contents of Rynalyn's letter were not good, appellant bowed his head and could not look straight in Gundina's eyes. And when Gundina asked appellant if, by bowing his head, appellant was admitting the truth, appellant replied that he committed something wrong to her and his daughter.

"Later, on June 8, 1995, Gundina looked for Rynalyn who had gone to Guinangan, Quezon. After finding Rynalyn in the said place, Gundina brought her home [to] Oriental Mindoro on June 12, 1995. The following day, Dr. Ma. Cristina A. Gonzales of the Oriental Mindoro Provincial Hospital examined Rynalyn. According to the Medical Certificate dated

June 14, 1995 issued by Dr. Gonzales, Rynalyn suffered hymenal laceration at two, three, five, seven and eight o'clock positions. Appellant, through counsel, admitted that Dr. Gonzales [was] a medico-legal expert and that, in connection with her examination of Rynalyn, Dr. Gonzales issued the aforesaid medical certificate.

"Sometime in February 1995, private complainant Genalyn Tabanggay, Rynalyn's sister who was then turning 13 years old, was with her six other siblings inside a room in their house. Appellant approached Genalyn and told her to keep quiet. Thereupon, appellant touched Genalyn's private parts and kissed her on the left cheek. Appellant also inserted his penis into Genalyn's vagina. As a result of the rape, Genalyn's vagina and thighs became painful. She also cried. Thereafter, appellant left and went to his bed outside the room.

"The sexual assault upon Genalyn was repeated on March 19, 1995 at around 1:00 o'clock in the morning. On the said date and time, appellant went to the room where Genalyn was sleeping. Appellant placed himself on top of Genalyn and tried to insert his penis into her vagina, as a result of which Genalyn felt pain in her vagina. Appellant threatened to kill Genalyn if she would not keep quiet. This notwithstanding, Genalyn cried and cried until her sister Rosalyn, who was then 10 years old, was awakened. Later in the morning, after appellant had left the house and [gone] to the ricefield, Genalyn told her sister Rosalyn about the second rape incident. Rosalyn in turn told Gundina, upon the latter's arrival from Manila, that appellant raped Genalyn. Gundina then asked Genalyn if what Rosalyn had told her was the truth. Genalyn replied in the affirmative.

"On June 15, 1995, Dr. Romeo G. Andal of the Oriental Mindoro Provincial Hospital examined Genalyn. According to the Medical Certificate of even date, which was issued by Dr. Andal, Genalyn suffered hymenal laceration at three, six, nine, and eleven o'clock positions. Appellant, through counsel, also admitted that Dr. Andal [was] a medico-legal expert and that, in connection with his examination of Genalyn, Dr. Andal issued the aforesaid medical certificate."

Version of the Defense

Appellant's defenses, on the other hand, consist of alibi and denial. His counter-statement of the facts is as follows:^[7]

"As regards Criminal Case No. 4775, said accused testified that while it is true that on May 14, 1994 he was in Sta. Mesa, Victoria, he was, however, with several male companions and they were then sleeping in a patio outside the nipa hut.

"That he could not possibly commit the crime of rape on Rynalyn Tabanggay because there were many persons in said place, especially when Rynalyn Tabanggay was in a nipa hut with several companions sleeping side by side. In fact, the accused testified that in the morning of said date they started threshing palay at the early dawn together with

several companions and when they returned to the hut to take their breakfast, Rynalyn Tabanggay was there together with several male and female companions and everything was casual and normal.

"To corroborate the testimonies of the accused with respect to Criminal Case No. 4775, Rolly Rivas took the witness stand and testified that the accused was with him at the patio in Sta. Mesa, Victoria, Oriental Mindoro from the evening of May 13, 1994 up to morning of May 14, 1994. That it was even at the early dawn of May 14, 1994 when they started threshing palay until they went back to the nipa hut and took their breakfast and Rynalyn Tabanggay was there. That when they were taking their breakfast, everything was normal and casual.

"With regard to Criminal Case Nos. 4776 & 4777, the accused testified that [i]n the month of February 1995 he was in Sta. Mesa, Victoria, Oriental Mindoro working in a ricefield. That Barangay Antonio of Victoria, Oriental Mindoro [was] five (5) kilometers away from Sta. Mesa.

"That on March 19, 1995, said accused was in Barangay Alcate and was not in Barangay Antonio. Accused testified that he did not rape G[e]nalyn Tabanggay.

"Said accused likewise testified that these cases of rape were filed against him in order to put on said accused the blame on what the [T]iyo Untog of the offended parties did to them in Bongabon, Oriental Mindoro. That when the accused came to know that his wife was receiving money from this [T]iyo Untog and the offended parties were likewise receiving monies from this [T]iyo Untog, he felt suspicious that something bad was going on between his wife, the offended parties and this [T]iyo Untog, who [was] a relative of the accused. The accused then transferred their residence from one place to another against the will of his wife inasmuch as the accused was not a good provider. Domestic quarrels ensued between the accused, his wife and the offended parties until these cases of rape were filed against him because of bad blood."

Ruling of the Trial Court

After considering the evidence proffered by both parties and citing jurisprudence on rape cases, the trial court concluded as follows:

"All considered, the Court finds accused liable, as principal, for Rape (3 counts) defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act 7659, for having sexual intercourse by means of force and intimidation once with his daughter Rynalyn Tabanggay, then 14 years of age, and twice with his other daughter Genalyn Tabanggay, then 13 years of age, with the qualifying circumstance that the victim[s are] under eighteen year[s] of [age] and the offender is a parent in all these cases.

"A child especially that of [the] fair sex, looks up to [her] father with high regard and as protector and guardian against all evils and aggressions. If a father deflowers his daughter under eighteen years of age, he is a

beast[;] he does not only deserve to be deprived of his parental authority over her but has no place in society. The crimes committed by herein accused, [those] of having sexual intercourse with his daughters under eighteen years of age by means of force and intimidation cry to the high heavens for the imposition of the most severe punishment, i.e., death."

The court thus disposed of the cases in the following manner:

"ACCORDINGLY, the Court finds accused Rolando Tabanggay guilty beyond reasonable doubt, as principal, of the crime of Rape (3 counts) with the qualifying circumstance in all these cases that the victim is under eighteen years of age and the offender is a parent and hereby sentences him to suffer THREE DEATH PENALTIES, together with the accessory penalties provided by law, and to indemnify the victim Rynalyn Tabanggay [in] the amount of P50,000.00 in Criminal Case No. C-4775 and Genalyn Tabanggay the total amount of P100,000.00 in Criminal Cases Nos. C-4776 and C-4777, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"For services rendered as counsel *de officio*, Atty. Rodrigo C. Dimayacyac is awarded attorney's fees in the amount of P1,500.00, subject to availability of funds."

Issue

In his appeal^[8] before us, accused-appellant assigns this single error:^[9]

"The trial court erred in finding the accused guilty of the crime of rape on three (3) counts."

The Court's Ruling

We affirm the trial court's finding that the appellant is guilty of rape on three counts. However, we reduce the penalty to *reclusion perpetua*, because of the failure to prove sufficiently the minority of the private complainants.

Main Issue:

Sufficiency of Prosecution Evidence

Appellant first argues that the testimony of Rynalyn did not establish with moral certainty that he had indeed raped her. She did not present any corroborating testimony despite her allegation that she was lying side by side with her companions when the incident took place. Besides, it remains unrebutted that Rynalyn had previously been sexually molested by her uncle for a monetary consideration. Furthermore, her examining physician was not presented to give an expert opinion on whether she had been truly raped on the date and at the time in question.^[10]

With respect to Genalyn's testimony, appellant contends that the same was impressed with uncertainties. It was supposedly inconceivable that she was raped while lying side by side with several companions. Moreover, she was silent when her mother confronted her as to the truth of the rape incidents.^[11]

Appellant further insists that private complainants and their mother were ill-