

FIRST DIVISION

[G.R. Nos. 133448-53, October 06, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSELINDO CUTAMORA AND ALLAN CUTAMORA, ACCUSED-
APPELLANTS.**

DECISION

YNARES-SANTIAGO, J.:

Accused-brothers Roselindo and Allan Cutamora were each charged with three (3) counts of rape committed against their nieces Virginia Cutamora, Gina Cutamora and Beatriz Cutamora Tampos. The Informations read:

Crim. Case No. 647:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon sworn complaint originally filed by the offended party, accuses ROSELINDO CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1989 up to May, 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Virginia Cutamora when she was seven (7) years old until she became eleven (11) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 651:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon a sworn complaint originally filed by the offended party, accuses ALLAN CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1989 up to 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Virginia Cutamora when she was seven (7) years old until she became eleven (11) years old against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 648:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon a sworn complaint originally filed by the offended party, accuses ROSELINDO CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1991 up to 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Gina Cutamora when she was six (6) years old until she became eight (8) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 649:

"The undersigned Prosecutor III, as Officer-in-Charge, Officer of the Provincial Prosecution, Agusan del Sur, upon a sworn complaint originally filed by the offended party, accuses ALLAN CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1991 up to 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Gina Cutamora when she was six (6) years old until she became eight (8) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 646:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon a sworn complaint originally filed by the offended party, accuses ROSELINDO CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1990 up to 1993, inside the house of Uldarico

Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Beatriz Tampos y Cutamora when she was ten (10) years old until she became thirteen (13) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 650:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon sworn complaint originally filed by the offended party, accuses ALLAN CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1990 up to 1993, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Beatriz Tampos y Cutamora when she was ten (10) years old until she became thirteen (13) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Accused-brothers entered a plea of "not guilty" to all the charges. Trial on the merits thereafter ensued.

The prosecution satisfactorily established that the complaining witnesses, Virginia Cutamora, Gina Cutamora, and Beatriz Tampos y Cutamora were all staying at the house of their grandparents Uldarico and Cedra Cutamora at Kalaitan, Bayugan, Agusan del Sur. Also residing with them were their uncles, accused Roselindo and Allan Cutamora.

Virginia Cutamora was first sexually assaulted by her uncle Roselindo Cutamora when she was only seven (7) years old. She was ordered to bow down her head after which accused Roselindo, having removed his pants and briefs, inserted his penis into her anus. She felt excruciating pain but could not do otherwise. Having satisfied himself, Roselindo warned Virginia not to tell on him or she would be hurt.

The following day, Virginia suffered the same fate at the hands of accused Allan Cutamora. While inside the room, Virginia was made to lie down. Allan took off his clothes, mounted her and made push and pull movements. The accused then warned her not to tell on him else she would be killed.

Roselindo and Allan repeatedly performed those bestial acts on Virginia until she

became eleven (11) years old.

In 1991, Gina Cutamora was then six (6) years old. At such a tender age, she already suffered at the hands of her uncles Roselindo and Allan Cutamora. It was daytime when she was first ravished by accused Allan inside the house of her grandparents. Gina was made to lie down while accused Allan positioned himself on top of her and made push and pull movements.

Roselindo took his turn the following day. After all the other members of the household have left for the farm, he molested Gina inside their kitchen.

Beatriz was only ten (10) years old when she was subjected to the lustful desires of Roselindo. Her ordeal at the hands of Roselindo lasted until she was thirteen (13) years old. Everytime she was raped, it was always at knife point. Roselindo warned her not to tell on him else she would be killed.

Accused Allan likewise did not spare Beatriz. Beatriz's first sexual assault at the hands of Allan happened inside their kitchen. Beatriz could not recall how many times she was assaulted. She did not divulge to anybody her ordeal because she feared for her life.

Accused-appellants denied the charges filed against them. They averred that the accusations thrown against them are devoid of any basis and are utterly meritless. They maintained that they were at their farm at the time of the supposed incidents.

After an exhaustive assessment of the evidence presented by both parties, the trial court found the two accused guilty as charged and accordingly sentenced them, thus:

"In Crim. Cases Nos. 646, 647 and 648, accused Roselindo Cutamora is sentenced to:

- 1] Three separate penalties of reclusion perpetua;
- 2] Indemnify Virginia Cutamora, Gina Cutamora and Beatriz Tamos the amount of P50,000.00 each;
- 3] Pay Virginia Cutamora, Gina Cutamora and Beatriz Tamos P20,000.00 each representing moral damages; and
- 4] Indemnify Virginia Cutamora, Gina Cutamora and Beatriz Tamos P30,000.00 each for exemplary damages.

In Crim. Cases Nos. 649, 650 and 651, accused Allan Cutamora is sentenced to:

- 1] Three separate penalties of Reclusion Perpetua;
- 2] Indemnify victims Gina Cutamora, Virginia Cutamora and Beatriz Tamos the sum of P50,000.00 each;
- 3] Pay Virginia Cutamora, Gina Cutamora and Beatriz Tamos P20,000.00