

EN BANC

[G.R. No. 123160, March 25, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLOS BATION Y ALAMAG, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

This is another despicable case of incestuous rape where the supreme penalty of death is imposed in accordance with Republic Act 7659. Considering that this means taking the life of a person, it is rather incumbent upon this Court to make sure that an, error-free judgment is rendered. Thus, for automatic review by this Court is the decision of the Regional Trial Court, 10th Judicial Region, Branch 14, Oroquieta City, rendered on October 23, 1993, the dispositive portion of which reads:

WHEREFORE, premises considered, this court finds accused Carlos Bation y Alamag guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the revised penal code, as amended, particularly by Republic Act 7659, and without considering any mitigating and/or aggravating circumstances, it being a statutory provision, accused Carlos Bation y Alamag is hereby sentenced to DEATH. He is further ordered to indemnify the victim, Rosemarie Bation, the sum of P50,000.00 and to pay the costs.

The information charging Carlos Bation y Alamag for raping his 13-year old daughter reads as follows:

That on or about August 18, 1994, at about 10:00 o'clock in the evening, more or less in barangay Corrales, municipality of Jimenez, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of his own daughter Rosemarie Bation, 13 years of age against her will.

CONTRARY TO LAW, with the presence of attendant circumstance of age of the private offended party Rosemarie L. Bation, being 13 years old and below 18 and relationship of the said private offended party with the accused Carlos Bation y Alamag, the latter being the father of the former.

Oroquieta City, Philippines, December 2, 1994.

Upon arraignment, accused-appellant pleaded not guilty.

Rosemarie Bation is the eldest of three children of Carlos Bation and Claudia Lapinig. Her parents lived in Carmen, Jimenez, Misamis Occidental, while she stayed with her grandmother Maria Lapinig at Taraka, Jimenez, Misamis Occidental where she was attending school. She was a second year high school student at St. John the Baptist.

In the evening of August 18, 1994, her father went to visit her. They talked about her examinations which she was having during that time in school.

At about 10:00 p.m., Carlos Bation invited her to go with him to the house of one Lourdes Cabalog residing in Barangay Corrales, Jimenez, Misamis Occidental which was just about one (1) kilometer away to get some clothes. Rosemarie wanted to bring along her sister to accompany her but Carlos objected.^[1]

Upon reaching the house of Lourdes Cabalog, only Carlos entered the house while Rosemarie waited outside. After Carlos finished with his alleged errand, they both headed back for home. While walking, Carlos suddenly stopped by at a Marang tree and called Rosemarie to come near him. His father was acting so strangely that she suddenly got scared. So instead of obeying, Rosemarie ran away from him. Carlos Bation ran after her and overtook her. Carlos held her tightly and brought her to a banana hill. Rosemarie struggled to free herself but to no avail. Her father who was definitely bigger than her threatened to kill her. At the banana hill, Carlos Bation forced Rosemarie to lie down on a pile of palay husk. Carlos Bation raised her skirt, opened the buttons of her blouse and removed his short pants. After pulling down Rosemarie's panties to her knees, Carlos Bation spread the thighs of her daughter and placed himself on top of her. Then he did a push and pull movement. Rosemarie felt pain in her vagina. The push and pull movements of Carlos Bation lasted for about 5 minutes but he stayed on top of her for about 10 to 20 minutes. After the act, Carlos Bation stood up. Rosemarie Bation put on her dress. Thereafter, both of them walked back to the house of Rosemarie's grandmother at Taraka, Jimenez, Misamis Occidental, where Carlos Bation also slept for the night.^[2]

The next morning, August 19, 1996, Rosemarie Bation attended her classes and took the examinations. She was, however, so disturbed about the incident that she was not able to concentrate on her examinations.

On August 20, 1994, at about 7:00 p.m. Rosemarie's mother came to visit her. Rosemarie did not say anything about what happened to her but only mentioned that she was brought by her father to Corrales, Jimenez in the evening of August 18, 1994.

It was only the next morning that Rosemarie mustered enough courage to tell her mother that she was molested by her father. Enraged, Claudia with Rosemarie tagging along, followed her husband in Taboo, Jimenez where he was working and told him to go home at that instance. To avoid being confronted by his wife, Carlos went to Palilan, Jimenez, Misamis Occidental, instead.

Rosemarie and her mother then proceeded to Taraka and asked for the help of her grandfather, Guillermo Bation. They all went to the municipal hall where Rosemarie and Claudia filed a complaint against Carlos Bation,^[3] Carlos Bation was eventually arrested and indicted for the crime of rape.

The evidence for the prosecution, in the main, consisted in the testimonies of Rosemarie Bation, Claudia Lapinig and Dra. Carolyn Q. Galleros, the medical officer who examined Rosemarie Bation.

For the defense, only the accused-appellant testified on his own behalf. He vehemently denied having raped her daughter. He asserted that in the evening of August 18, 1994, he was in Mialen, Jimenez, Misamis Occidental in the house of Dario Becoy. The house of Dario Becoy where he stayed on the night of August 18, 1994 is about 12 kilometers away from where his daughter was staying. He and Dario Becoy reached the latter's house at about 4:00 in the afternoon after they towed bamboos in the river. He slept at 8:00 that evening and woke up at 3:00 a.m. He did not wake up at 10:00 p.m. and had not been to the house of Rosemarie.^[4] He could not possibly rape Rosemarie Bation since she is his own blood. He loved his wife and daughter very much.^[5]

Carlos Bation further testified that his wife left their residence in 1990 because she was jealous of his sister, auntie and even their daughter. They reconciled in 1991 and since then, they had lived together in Carmen, Jimenez, Misamis Occidental. He would just visit his daughter in Jimenez to give her money.^[6] He added that his daughter has a boyfriend in Jimenez, Misamis Occidental but could not remember his name.^[7]

No other witness or evidence was presented to corroborate the testimony of the accused.

On October 23, 1995, the trial court rendered the assailed decision.

The Public Attorney's Office (PAO) submitted with this Court the appellant's brief on behalf of the accused.

The Free Legal Assistance Group (FLAG) Anti-Death Penalty Task Force, in collaboration with the PAO, also filed a supplemental brief^[8] in behalf of accused-appellant.

The lone assignment of error hinges on whether or not the accused-appellant is guilty beyond reasonable doubt of raping his own daughter.

The crime of rape is peculiar in that it is difficult to prove since usually there are no witnesses. It is only the two people involved - the accused and the complainant - who can testify as to the commission of the crime. It is the word of one against the other. While such accusation, though easily made, is hard to prove, it is even harder for the accused to defend himself. Thus, it is imperative to scrutinize the testimonies and the evidence altogether and see if the conviction of appellant can be sustained.

As always, it is the credibility of the witnesses that is put to test.

In the instant case, we find that the trial court did not commit any error in giving credence to the testimony of the victim which was direct and positive.

Q From the house of Lourdes Cabalog going to Taraka to the house of your grandmother Maria Lipinig, was there unusual incident that happened between your father and yourself?

A When we return?

Q Meaning to say from the house of Lourdes Cabalog when you were already going back to Taraka, was there unusual incident that happened?

A Yes.

Q Please tell us what transpired if any while you were going from the house of Lourdes Cabalog to the house of your grandmother in Taraka?

A When he stopped near the marang tree he told me to go near to him.

Q That marang tree, you are referring to a tree that bear fruit?

A Yes.

Q Why, have you seen a Marang fruit that evening?

A I cannot see but it bears fruit,

Q In other words, you are referring to that Marang tree that bears fruit?

A Yes.

Q Now, you stated that your father told you that you have to go near to him, after that, what happened next?

A When I went near to him I was scared because of his actuation which is quite different.

Q Now, did you actually go near to him as requested by him?

A I did not go near to him because I was afraid so, I ran away towards home.

Q Now, when you ran away towards home leaving your father, what happened next if any'?

A He ran after me.

Q Did he overtook (sic) you considering that he run after you?

A Yes.

Q What did he do upon overtaking you?

A He hold (sic) me tightly,

Q What- part of your body being held by your father Carlos Bation?

RECORD

The witness demonstrating by touching her shoulder demonstrating further that the right hand of her father was placed upon her shoulder while the left hand was placed on her waistline below, her arm.

Q While he was holding you, was he in front of you?

A He was at my side.

Q While your father was holding you, what was your reaction if any?

A I struggled to free from his hold.

Q Having struggled were you able to release yourself from the hold of your father?

A No, because he hold (sic) me strongly and tightly.

Q Who is bigger, your father or yourself?

A My father.

PROS. SARIGUMBA

We would like to make some observation that the accused is very much bigger than (sic) the daughter.

COURT

Noted.

Q Considering that you were not able to release from the hold of your father, what happened next if any?

A While he was holding me strongly and tightly he brought me to a banana hill.

Q Were you able to reach that banana hill?

A Yes.

Q When you reach (sic) to that banana hill what happened next, please tell us?

A He was still holding me and he forced me to lie, down.

x x x

Q What happened after that despite the fact that you struggled very hard