

EN BANC

[G.R. No. 124300, March 25, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RENANTE ROBLES Y BURGOS, JR., ALIAS "TITING". ACCUSED-
APPELLANT.**

D E C I S I O N

PER CURIAM:

Renante Robles Jr. alias "Titing" was charged with rape with homicide under the following information:

"That at or about 10:00 o'clock in the morning of August 29, 1995 at 4th Street, Guingona Subdivision, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Gerafil Cabatingan who is a minor, against her will and by reason or on the occasion of the rape still not satisfied kill Gerafil Cabatingan

CONTRARY TO LAW:"

Upon arraignment, the accused pleaded guilty to the crime charged, but the plea was disregarded as he was not assisted by a lawyer. The court appointed PAO Head Attorney Rogelio P. Dagani, as counsel *de officio* and the accused pleaded not guilty upon re-arraignment. At the initial hearing, the lawyer of the accused manifested that the latter will withdraw his previous plea and change it to a plea of guilty. The court was informed by his lawyer that the accused was properly apprised of the legal consequences of his change of plea from not guilty to guilty, that his plea of guilty will not change the imposable penalty of death. The case was set for re-arraignment and after reading to him the information in the Cebuano dialect which the accused knows and understands, the court propounded questions to satisfy itself that the plea of guilty is voluntary and that he fully understood the consequences of his plea of guilty. He thereupon entered his plea of guilty to the offense charged.

The prosecution presented five witnesses: Randy Cabatingan, twelve years old, half-brother of the victim; Sheila Vernie L. Yañez, a neighbor of the victim; Dr. Julie D. Lagare, Medical Officer III, City General Hospital; Luzviminda E. Villaro, an eight-year old, playmate and neighbor of the victim; and Edgar Cabatingan, father of the victim together with the following documentary evidence.:

1. Exh. "A" - Sworn statement of Luzviminda E. Villaro;
2. Exh. "B" - Sworn statement of Randy L. Cabatingan;
3. Exh. "C" - Sworn statement o Edgar Cabatingan;

4. Exh. "D" - Medical Certificate dated August 29, 1995 issued by Dr. Julie D. Lagare;
5. Exh. "E" - Medical Certificate subsequently issued by Dr. Julie D. Lagare indicating substantially the injuries sustained by the victim and the physician's findings for medico-legal purposes;
6. Exh. "F" - Sworn statement of Sheila L. Yañez; and
7. Exh. "G" - Certificate of Live Birth of the victim (Gigi).

The prosecution's evidence consisted of the following:

Randy Cabatingan, twelve years old, half-brother of the victim, testified that at about 7:00 o'clock in the morning of August 29, 1995, he and his two sisters, Gerafil or Gigi and Jeline, were in their house at 4th Street, Guingona Subdivision, Butuan City. Their parents had already gone to work.^[1] The accused Renante B. Robles, a.k.a. Titing, was then lying outside the house of the Cabatingan family. Gigi, five years old^[2] was crying. Titing approached her and gave her P2.00, and brought her to the store where he bought some foodstuff for her. They went back to the house. Titing put Gigi on his lap and caressed her thighs. Titing gave Randy P5.00 to buy ice candy and cigarettes; when he returned, Titing asked him to buy "Kulafu" at Montilla Boulevard which was quite a distance away. On his way home Randy saw his father Edgar, who had returned from work and was looking for Gigi. Randy told his father that he left Gigi and Jeline in the house but his father countered that only Jeline is in the house. In their search for Gigi, Randy met Gigi's playmate, "Badoy" (Luzviminda Villaro), and asked her if she had seen Gigi. Badoy pointed to the direction of the Barangay Health Center where she last saw Gigi with Titing Robles. Randy saw Titing coming out from the back door of the Health Center wiping something on the walls and appeared to be sweating and bloodied. He hid behind the fence so that Titing would not see him, and when the latter had already gone, he went to the Center and tried to open the door. He heard what seemed to him the voice of his sister moaning in pain. With the help of his cousin Irwin, Randy opened the door of the Center, and together with his father Edgar and Titing, now wearing a pair of white shorts, went inside. There they saw Gigi with blood in the mouth, lying on the sink and she was soiled all over apparently unconscious, without her panty and with her legs full of blood.^[3]

Sheila Vernie Yañez who lives ten meters away from the health center and who saw the accused and Gigi walking towards the back portion of the said building, heard a "terrible cry," as if a small child was being beaten or mauled.^[4]

"Badoy" (Luzviminda Villaro) was playing with Gigi at about 9:00 o'clock in the morning of August 29, 1995 at the house of Gigi. She testified that Titing asked Gigi to buy posetos and ordered Randy to buy Kulafu and cigarettes and when Randy was out to buy Kulafu, Badoy saw Titing and Gigi towards the Barangay Center.^[5]

Edgar Cabatingan, Gigi's father, returned home at 9:00 o'clock a.m. and looked for Gigi and Randy who were not home. He saw the accused in Yellow T-shirt and maong pants come out of the side of the Barangay Hall. Titing was surprised to see

him. Edgar asked the accused whether he had seen his two children and Titing replied that he brought Gigi to the store to buy something. Edgar finally found his daughter in the barangay center lying on the sink, with blood on her mouth, on both ears and chest, and dying. He picked her up, embraced her and shook her to see if she is still alive. He brought Gigi to the City Hospital, where she expired at 3:00 o'clock in the afternoon of the same day.^[6]

Dr. Julie Lagare, who treated Gigi, and issued the medico-legal certificate, affirmed in court the findings therein:

"Patient examined semi conscious, restless, less responsive to verbal command and in respiratory distress with the following vital signs;

BP80/40 mm hg; - HR - 150 beats/min. - PR - 38 cycle/min.

Skin - Multiple contusions at the face, body and arm.

HEENT = (+) contusion at the right temporo-zygomatic area of the face, 4 x 3 cm. In size.

(+) two contusions at the chin, 1 x 1 cm. In size each.

(+) contusion at the right parietal area, 4 x 3 cm. In size with 0.7 cm. Length lacerated wound on top of it.

(+) small lacerated wound at the right pinna of the ear.

(+) blood at the mouth with laceration and contusion at the right upper inner lip and contusion at right lower inner lip.

Cardio-vascular; - Regular Rhythm, tachycardia.

Chest & Lungs; -- (+) contusion at the right anterior chest below the nipple; 4 x 3 cm. in size.

(+) contusion at the left anterior chest below the subcostal area, 4 x 4 cm. in size.

Extremities; -(+) contusion at the right arm 2 x 3 cm-in size.

Condition of the Patients; Cuddled by father, restless, semi-conscious and in respiratory distress

Back - (+) contusion at mid lumbar area, 4 x 4 cm. In size.

GIT - Anal orifice with 1 cm. Diameter and with mucosa slightly protruding

Internal Examination of the female genital organ.

(+) for blood at the perinium.

(+) laceration at the hymen at 3, 6, 9, o'clock position.

(+) laceration at the vaginal floor mucosa, 1st degree. Cervix essentially normal.

Vaginal Smear taken for presence of spermatozoa; Positive for sperm.

(Admitted) August 29, 1995 at 11:40 A.M.

Remarks : Patient died at 3:00 P.M. August 29, 1995 with diagnosis of Cardio Pulmonary Arrest. Consumated rape with multiple head and body injuries."^[7]

She testified that the victim suffered from multiple head and body injuries, and the genital organ was positive for spermatozoa. Cardio pulmonary arrest was the cause of death which occurred about four hours after Gigi's admission to the hospital. She stated that there was force applied that caused multiple head and body injuries.^[8]

The accused opted not to present evidence in his behalf.

The court *a quo* found the accused guilty of the crime of rape with homicide. The dispositive portion of the judgment reads:

"WHEREFORE, in the light of the foregoing findings of facts and law, and also on account of the plea of guilty knowingly and voluntarily made by the accused, the court finds accused Renante B. Robles guilty beyond reasonable doubt of the crime of rape with homicide under Art. 335, Revised Penal Code as amended by Sec. 11, R.A. No. 7659, thereby sentencing him to suffer the indivisible penalty of death. Further, accused Renante B. Robles is ordered to pay the heirs of Gerafil L. Cabatingan:

1. Actual damages in the amount of P60,000.00
2. Moral damages in the amount of P50,000.00 and
3. Death indemnity in the amount of P50,000.00.

Also to pay the cost.

Furthermore, the records of this case should be forwarded to the Supreme Court for review.

SO ORDERED."

The case is now under automatic review by this Court.

The accused appellant submits the lone error that:

"THE COURT A QUO ERRED IN FINDING THROUGH CIRCUMSTANTIAL EVIDENCE THAT THE ACCUSED HAD CARNAL KNOWLEDGE OF THE VICTIM BY USING FORCE OR INTIMIDATION AND BY REASON OR ON THE OCCASION OF THE RAPE, THE VICTIM WAS KILLED."