

EN BANC

[G.R. No. 130187, October 20, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
GILBERT MOTOS, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

Gilbert Motos, herein accused-appellant, was charged before the court *a quo* in a sworn complaint, hereinbelow reproduced, with the crime of rape.

"SWORN COMPLAINT

"The undersigned State Prosecutor accuses GILBERT MOTUS of the crime of STATUTORY RAPE, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act Nos. 7610 and 7659 committed as follows:

"`That on March 3, 1994 in the Municipality of Taguig, Metro Manila and within the jurisdiction of this Honorable Court, said accused GILBERT MOTUS, actuated by lust, and by means of force and intimidation did then and there, willfully, unlawfully and feloniously had carnal knowledge of me, against my will and consent to my damage and prejudice.'

"CONTRARY TO LAW.

"Manila, July 15, 1994

(SGD)JENALYN OLIS

Complainant

"Assisted by:

(SGD)EDNA OLIS

(Mother)

"SUBSCRIBED AND SWORN to before me this 15 day of July, 1994

(SGD)EMMANUEL D. MEDINA

State Prosecutor"^[1]

When arraigned, the accused entered a plea of not guilty.

The Solicitor General gave a detailed narrative of the evidence presented at the court below by the prosecution; viz:

"Sometime in the later afternoon of March 3, 1994, seven-year old Jenalyn Olis and her sister Jennifer, who was nicknamed 'Jin Jin' and about a year and a month old, were playing inside the jeepney of appellant Gilbert Motos. Said jeepney was parked in front of the house where both appellant and Jenalyn lived. Appellant was the husband of the niece of Jenalyn's father. They all lived in a two-storey house at Taguig, Metro Manila. The first floor of the house was occupied by the parents-in-law of appellant, while the second floor was divided into three rooms; one of the rooms was occupied by boarders, the second by Jenalyn's family, and the third by appellant and his family (pp. 4-5, tsn, J. Olis, June 6, 1995; pp. 5-7 and 9, tsn, E. Olis, October 19, 1995; pp. 31 and 34-35, Decision).

"After playing inside the jeepney, Jenalyn decided to go home. She took Jin Jin with her. Before they could reach their room, appellant, who was inside his room, called out to Jin Jin. Jin Jin went inside his room. Jenalyn went after Jin Jin to bring her back. But, as soon as Jenalyn was inside appellant's room, appellant closed and locked the door (pp. 4-7, tsn, J. Olis, June 6, 1995; pp. 4-6, tsn, J. Olis, July 26, 1995).

"Inside appellant's room on top of a wooden bed, Jin-Jin played with the doll of Donna, appellant's daughter. Apparently, Donna was not in the room with them. Jenalyn, on the other hand, became drowsy as it was nearly nighttime, and eventually fell asleep on the wooden bed beside her sister who continued playing with the doll (p. 7, tsn, J. Olis, June 6, 1995; pp. 6-12, tsn, J. Olis, July 26, 1995).

"Jenalyn was roused from sleep when she felt appellant's heavy body on top of her. Appellant was naked from the waist down. Jenalyn, who found that she was no longer wearing her shorts, felt appellant's penis inside her vagina and excruciating pain as blood streamed out of her genitalia. She cried and cried. After having sexual intercourse with the seven-year old Jenalyn, appellant plugged in a computer which he had in his room and told her to play with it. All this time, Jin-Jin was beside them on the wooden bed, playing with the doll (pp. 8-13, tsn, J. Olis, June 6, 1995; pp. 12-13 and 16-18, tsn, J. Olis, July 26, 1995).

"Appellant told Jenalyn to take a bath, Jenalyn retorted that she was going to tell her mother and father about what happened. He thus made her take a blue-and-white colored capsule which she swallowed with water. Jenalyn thought that the medicine he gave her was for the purpose of stopping the flow of blood from her genitalia. Appellant then let the sisters out of his room. (pp. 13-15, tsn, J. Olis, June 6, 1995; pp. 12-26, tsn, J. Olis, October 4, 1995).

"Upon reaching her family's room, Jenalyn took a bath. Afterwards, she dressed herself and went to bed. It was already nighttime. Jenalyn woke up when her elder brother Julius arrived. She told him to fetch their mother because her vagina was bleeding (pp. 14-15, tsn, J. Olis, June 6, 1995).

"Julius immediately went to fetch their mother Edna Olis, a vendor of peanuts, at a stall in General Santos Avenue in Taguig, Metro Manila.

Around seven o'clock that evening, Edna was at the stall with her husband Victoriano who was also a vendor. Julius told her that Jenalyn had blood all over her shorts and t-shirt. Edna asked Julius why but the boy replied that Jenalyn refused to speak. Edna went home immediately (pp. 4 and 7-10, tsn, E. Olis, October 19, 1995).

"Edna found Jenalyn lying on the cement floor of their room. Edna asked Jenalyn why she had blood on her clothes. Jenalyn did not answer her mother. Edna then carried Jenalyn to their wooden bed and took off her daughter's short pants. Edna found an old pair of panties folded like a napkin and pressed against Jenalyn's vagina. As Edna removed the folded panty, blood gushed out of Jenalyn's genitalia (pp. 10-12, tsn, E. Olis, October 19, 1995).

"Edna started questioning Jenalyn. Edna asked Jenalyn if she came from school or she sat on a sharp object. She also asked Jenalyn who inflicted injury on her. However, to all these questions, Jenalyn, whose entire body was trembling, merely shook her head and stared at the ceiling. Edna wrapped Jenalyn in a blanket and continued questioning her. Jenalyn finally pointed her right hand towards the general direction where appellant lived. Edna thus asked her if she came from the house of appellant and Jenalyn nodded. Edna persisted in persuading her daughter to reveal the identity of the person who had hurt her. But, Jenalyn refused or could not speak (pp. 12-13, tsn, E. Olis, October 19, 1995).

"Edna left Jenalyn on the wooden bed. She went back to their market stall to fetch her husband. When they got home, Edna saw blood still gushing out of Jenalyn's vagina. Victoriano and Edna thus wrapped their daughter in a blanket, called for a taxi and brought her to the Philippine General Hospital (PGH). (pp. 13-14, tsn, E. Olis, October 19, 1995).

"Upon their arrival at the hospital, Jenalyn was brought to the emergency room. The doctor who first attended to her, namely, Dr. Ma. Theresa Reyes, found Jenalyn unconscious and saw that her vagina was bleeding. Dr. Samson ordered a 'stat CBC' and a chest X-ray. She referred Jenalyn to an obstetrician-gynecologist who then performed an internal examination under a general anesthesia (pp. 6-12, tsn, Reyes, May 7, 1996).

"Dr. Rosemarie Samson, the obstetrician-gynecologist who examined Jenalyn, found that the victim had 'uncontrolled bleeding secondary to sexual abuse, secondary to a forceful entry of something to a whole' (p. 16, tsn, Samson, February 20, 1996). Dr. Samson likewise found that Jenalyn suffered from vaginal lacerations which needed surgical repair (pp. 6-7, tsn, Samson, February 20, 1996). Jenalyn bore (1) a 1 centimeter-deep laceration at the vaginal wall; (2) a laceration of 1 centimeter at the perineal body which is the portion between the anus and the vagina; and (3) a laceration of 3 centimeters in the vagina at the eight o'clock position. Said lacerations were found to be actively bleeding (p. 12, Samson, February 20, 1996).

"Jenalyn was likewise referred for toxicology clearance to the National Poison Control and Information Service of the UP-PGH because she was

unconscious when she was brought to the hospital. Urine and blood samples were taken from her (pp. 3, 6-10 and 15-16, tsn, Panganiban, March 25, 1996). Dr. Lynn Panganiban, the doctor who examined the laboratory results of Jenalyn's urine and blood tests, found that 'Serum and urine barbiturate levels done at the laboratory of the Department of Pharmacology, showed the serum barbiturate level of 4.337 and a urine barbiturate level of 14.48 mg. over 100. Presence of barbiturates in the biologic fluids of this patient who does not have any indication for the administration of the drug or whose parents deny administration of the drug may indicate that it may have been given to her without her knowledge' (pp. 11-12, tsn, Panganiban, March 25, 1996).

"According to Dr. Panganiban, a person of Jenalyn's age who is administered phenobarbital '... usually will be unconscious, could be asleep and hardly to wake up' (p. 12, tsn, Panganiban, March 25, 1996) and would be unconscious for '...twenty-four (24) hours or it could be lasting for weeks based on the half-life' (p. 13, tsn, Panganiban, March 25, 1996).

"On 04 March 1994, Victorino Olis went to the National Bureau of Investigation and reported the rape of his daughter. He came back with an NBI agent, Cyrus Alusan, who took down the statement of Jenalyn. Two days later, Victoriano likewise reported the rape of his daughter to the Taguig Police. The police took down his statement as regards Jenalyn's rape by appellant (pp. 15-16, tsn, E. Olis, October 19, 1995; p. 9 Decision)."[2]

The Office of the Public Attorney, upon the other hand, pictured a brief but totally divergent account of what had happened. The defense counsel asseverated, in line with the accused's declaration before the court, thus:

"Gilbert Motus testified that on March 3, 1994 at 1:30 P.M., while on the way home, he [met] the victim Jenalyn Olis coming from a[n] alley walking abnormally. He assisted her and brought her upstairs at the second floor of their house. He laid down the victim in the wooden bed of the victim's room. After that, he went down to look for Jenalyn's mother because he saw blood and fluid from the victim and had a hard time in walking. While waiting for the victim's parents he fall asleep and woke up at about 5:30 PM."[3]

On the following day of 04 March 1994, the accused claimed, he saw Jenalyn's mother and later her father who both informed him that Jenalyn had been hospitalized. The accused offered to extend financial help to Jenalyn. On 15 December 1994, on his way home from work, the accused was met by several persons, introducing themselves as *barangay tanods*. He was invited to go with them to the house of the Barangay Captain from where, in turn, he was escorted by two policemen to the municipal hall in Pulilan. At the police headquarters, Edna Olis pointed to him as being Jenalyn's rapist. He was detained in Pulilan until he was transferred, two days later, to the Taguig municipal jail.

After assessing the evidence before it, the Regional Trial Court, Branch 264, NCJR, of Pasig City found accused Gilbert Motos guilty beyond reasonable doubt of the

crime of rape defined and penalized under paragraph 3, Article 335, of the Revised Penal Code. The trial court sentenced Motos "to suffer the penalty of death."

The pronouncement of death sentence by the court *a quo* has brought the case up for automatic review by this Court. Accused-appellant has interposed the following assignment of errors:

"1. The trial court gravely erred in considering the letter of the accused as an offer of compromise and operates as an admission of the crime charged.

"2. The trial court gravely erred in imposing the death penalty despite the absence of qualifying circumstance."^[4]

The Court finds merit in the appeal but only insofar as the imposition by the trial court of the death penalty is concerned. As so hereinafter explained, the judgment of conviction should be upheld but the sentence pronounced on accused-appellant will have to be reduced to *reclusion perpetua*.

Appellant Gilbert Motos has been positively identified by his rape victim, Jenalyn Olis, as being the perpetrator of the bestial act. The explicit narration made by Jenalyn of the events that transpired before, during and after the rape incident appears to be completely forthright. Almost nothing indeed has apparently been left to chance by the prosecution at the trial. The pertinent testimony of Jenalyn is hereunder reproduced at length.

"ATTY. AMBROSIO:

"Q Jenalyn, do you know the accused?

"A Yes, ma'am.

"Q If the accused Gilberto Motus is here can you point him up?

"A Yes, ma'am.

"Q Please point him up?

"ATTY. AMBROSIO:

Witness pointing to a person.

"COURT:

What is your name?

"A Gilbert Motus.

"ATTY. AMBROSIO:

We would like to manifest that the accused when asked his name manifested that his name is Gilbert Motus.

"Q Jenalyn, why do you know the accused?

"A His my cousin-in-law.