

EN BANC

[G.R. Nos. 124303-05, February 10, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO ATOP @ "ALI," ACCUSED-APPELLANT.**

DECISION

PANGANIBAN, J.:

The trial court sentenced the appellant to death, holding that his common-law relationship with the victim's grandmother aggravated the penalty. We hold, however, that Sec. 11 of RA 7659 prescribes the capital penalty in rape, only "when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim," and not by reason of any other kinship. On the other hand, "relationship" as an alternative aggravating circumstance under Art. 15 of the Revised Penal Code encompasses only "the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, and relative by affinity in the same degrees." Outside these enumerations and consistent with the doctrine that criminal laws must be liberally construed in favor of the accused, no other relationship, kinship or association between the offender and the victim may aggravate the imposable penalty for the crime committed. The fact, then, that the offended party is the granddaughter or descendant of appellant's live-in partner cannot justify the imposition of death upon the rapist.

The Case

This is a combined appeal from, and an automatic review of, the Joint Decision of the Regional Trial Court, Branch 12, of Ormoc City, finding Appellant Alejandro Atop, alias "Ali," guilty beyond reasonable doubt of three (3) counts of rape and sentencing him to two (2) terms of *reclusion perpetua* for the first two counts, and to death for the third.

On April 21, 1995, Provincial Prosecutor I Rosario D. Beleta filed four separate informations^[1] against accused-appellant charging him with rape on three separate occasions -- on October 9, 1992, sometime in 1993 and on December 26, 1994 -- as well as with attempted rape on December 31, 1994. The informations charging rape, except for the date of commission and the age of the victim, similarly allege the following:

"That on or about the 9th day of October, 1992, at Sitio Tambunan, Brgy. Sta. Rosa, Municipality of Matag-ob, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully [sic], unlawfully and feloniously have carnal knowledge of the herein offended party REGINA GUAFIN, 11 years old, the accused is the live-in partner of her grandmother with whom she is living with [sic], against her will and without her consent, with the use of a knife, mashed her breast,

embraced, kissed and inserted his penis over the victim's genital organ to accomplish his lewd design, to her damage and prejudice."

During his arraignment, appellant, assisted by Counsel *de Oficio* Wenceslao Vanilla of the Public Attorney's Office, pleaded not guilty.^[2] Thereafter, the cases were tried jointly. In his Decision,^[3] the trial judge^[4] disposed of the cases as follows:

"1. In Criminal Case No. 4627-0 finding the accused Alejandro Atop GUILTY beyond reasonable doubt of RAPE defined and penalized under Article 335 of the Revised Penal Code. Appreciating the aggravating circumstances of relationship and nighttime with no mitigating circumstance to offset any of the two, this court imposes upon the said ALEJANDRO ATOP the sentence of *RECLUSION PERPETUA* and to indemnify Regina Guafin the sum of THIRTY THOUSAND PESOS (P30,000.00) and to pay the costs.

2. In Criminal Case No. 4628-0 finding the accused Alejandro Atop GUILTY beyond reasonable doubt of RAPE defined and penalized under Article 335 of the Revised Penal Code. Appreciating the aggravating circumstances of relationship and nighttime with no mitigating circumstance to offset any of the two, this court imposes upon the said ALEJANDRO ATOP the sentence of *RECLUSION PERPETUA* and to indemnify Regina Guafin the sum of THIRTY THOUSAND PESOS (P30,000.00) and to pay the costs.

3. In Criminal Case No. 4630-0 finding the accused Alejandro Atop NOT GUILTY for insufficiency of evidence.

4. In Criminal Case No. 4629-0 finding the accused ALEJANDRO ATOP guilty beyond reasonable doubt of RAPE defined under Article 335 of the Revised Penal Code, as amended by Republic Act 7659. Appreciating the aggravating circumstances of relationship and nighttime with no mitigating circumstance to offset any of the two, this court imposes upon the said ALEJANDRO ATOP, also known as 'Ali', the sentence of DEATH. Further, the same Alejandro Atop is directed to indemnify Regina Guafin the sum of THIRTY THOUSAND PESOS (P30,000.00) as moral damages and to pay the costs.

By reason of the imposition of two reclusion perpetua and of the death penalties the jail warden is directed to immediately commit the person of Alejandro Atop to the National Penitentiary at Muntinlupa, Metro Manila while awaiting the review by the Supreme Court of this decision."^[5]

The Facts

Version of the Prosecution

The prosecution's evidence is narrated by the trial court ^[6] as follows:

"Private complainant Regina Guafin, told the court that she is a granddaughter of Trinidad Mejos and that the accused Alejandro Atop is the common law husband of said Trinidad Atop [sic]. Her mother is a daughter of said Trinidad Atop [sic] and lives in Pangasinan. She is an illegitimate child and she does not even know her father. Since her early childhood she stayed with her grandmother Trinidad Atop [sic] and the accused at Barangay Santa Rosa, Matag-ob, Leyte. Sometime in 1991 when she was already 10 years of age the accused started having lustful desire on her. The accused then inserted his finger into her vagina. She told her grandmother about this but her grandmother did not believe her. She was then told by her

grandmother, Trinidad Mejos, that what her grandfather did to her was just a manifestation of fatherly concern. She continued staying with her grandmother and her common law husband Alejandro Atop, the herein accused.

On October 9, 1992, she was called by the accused Alejandro Atop to do something for him. When she approached him the accused rushed towards her, removed her panty and inserted his male organ into her vagina. She was not able to do anything to resist him because the accused gagged her mouth and was carrying a knife with him. She was then 12 years old when the first rape was committed to her and at that time her grandmother was then attending a delivery since her grandmother was a 'hilot'. When her grandmother returned home she told her what the accused did to her but her grandmother, again, refused to believe her. She also remember [sic] of another incident wherein she was raped again by the accused Alejandro Atop. It was in the year 1993 but she could not recall the month when it was committed. Only she and the accused were then at their house at Barangay Santa Rosa, Matag-ob, Leyte as her grandmother was at San Vicente attending to a delivery. Again, she told her grandmother about the heinous acts that the accused did to her but her Lola refused to believe her.

On December 26, 1994, the accused again raped her. She could not ask for help because her mouth was gagged by the accused. Aside from gagging her, the accused also carried a knife which he placed at his side.

On December 31, 1994, while she together with her Aunt Gloria Montealto and her two (2) nieces Rubilen and Jubilen Atop were about to go to sleep, she noticed that the accused was looking for her. Upon seeing her the accused rushed towards her and was about to lay on top of her. She kicked him. After that, the accused caressed and touched his nieces but his nieces also kicked him. Thereafter, the accused stopped molesting her and his nieces and went to sleep instead. In the following morning, January 1, 1995, she went to the barrio to go to school. She then forgot that there were no classes. She was not able to get a ride towards the school, so she went directly to the house of her grandfather Zacarias Geva. While she was at the house of her Lolo Geva, the accused arrived and immediately entered the house of her grandfather. The accused was met by Rubilen Atop who was about to box him but they immediately went out of the house and the accused followed them. The accused wanted to bring her back to their house but she refused. So, the accused pulled her. The accused kept on holding her until they reached the waiting shed where the accused smashed her to the concrete wall.

She reported the incidents of rape that happened in 1992, 1993 and 1994 only in January 1995. It took her so long to report the said incidents because she was afraid. The accused threatened to kill her should she tell anybody about the incidents. She was accompanied by her Aunts Fe Decio and Rosenda Andales in reporting the said incidents to the police. Her statement was taken by the police at the police headquarters. Thereafter, she filed a complaint with the Municipal Trial Judge of Matag-ob, Leyte. x x x In her sworn statement which was also marked as Exhibit '1' for the defense, she only stated therein that what was inserted into her vagina on July 1991 was only the finger of the accused. Out of fear, she deliberately concealed from the investigator what actually had happened to her because at that time, because the accused was not yet apprehended and she was afraid that the accused would kill her. Then she filed complaints with the Office of the Provincial Prosecutor and requested the fiscal to make a re-investigation in these cases. She

told the Fiscal the truth of what was done to her by the accused because at that time the accused was already arrested. x x x

X X X

X X X

X X X

Another prosecution witness Fe Decio, an aunt of the private offended party Regina Guafin, testified that she knows the accused Alejandro Atop, the latter being her stepfather. She pointed in court the said accused. She testified also that when her niece Regina Guafin went to her residence at Himarco, Palompon, Leyte on January 2, 1995, she noticed that Regina Guafin had abrasions on her body and was then crying. She asked her the reason why she cried and Regina told her that on January 1, 1995 the accused again tried to rape her but did not succeed because she fought back and was able to resist. The abrasions in her body was the result of the maltreatments made by the accused who forcibly pulled her back to their house. Further, Regina told her that the said accused Alejandro Atop had raped her 3 to 4 times. She was told by Regina when the said incidents happened but she forgot the actual dates that the latter told to her. She accompanied Regina to the police authorities of Matag-ob, Leyte and reported the said incidents. During the time that Regina was investigated by the police authorities, the accused had also fled. Thereafter, she submitted Regina for a medical examination at the Ormoc District Hospital. Then, Regina Guafin filed a complaint at the MCTC of Matag-ob, Leyte.

On cross examination, she testified that they offer no objection with the relationship of the accused to her mother. In fact during the time that the accused and her mother were living together, they were in good terms with the accused. She denied the fact of sending her mother to Manila for the purpose of separating her from the accused Alejandro Atop because it was only the decision of her mother to have a vacation in Manila. She testified also that the age of her mother is more than 50 years old.” [7]

The third prosecution witness, Dr. Judith V. Lomocso who was a resident gynecologist at the Ormoc District Hospital, testified that she examined Regina Guafin. Her findings were reduced in writing, as follows:

“External Findings:

1. Incised wound with scab formation (L) middle finger.
2. Tenderness (L) breast.

OB-Gyne Findings:

External genitalia [sic] - grossly normal

- negative pubic hair

Vaginal canal - admits 2 fingers with ease

hymen - healed laceration

uterus - small

LMP - December 4, 1994”[8]

Version of the Defense

Appellant denied the accusations of Guafin and imputed ill motive upon her aunts, who were the daughters of his live-in partner.^[9] The trial court summed up his testimony this wise:

“Accused Alejandro Atop [then 37 years old] testified that he and Trinidad Mejos had been living together as husband and wife for about 10 years already. When they started living together, Trinidad Mejos was already a widow with eight (8) children of her previous marriage. When he started to live with Trinidad Mejos the latter’s children became mad at him because their mother was already old and he was still young. He personally knew Regina Guafin, the latter being their adopted child. Regina Guafin was still 2 years old when he and his wife took care of her. That Regina Guafin continuously resided at Sta. Rosa, Matag-ob, Leyte. The other persons who also lived with them aside from Regina Guafin, were the three sons of Trinidad and his two (2) nieces whom he took from Butuan City and sent them to school. He denied committing rape against Regina Guafin on October 9, 1992, in the year 1993 and on December 26, 1994. On December 31, 1994, while he was at his house, Regina went to the barrio proper to go to school. In the afternoon of the same date, he went to fetch Regina Guafin because at that time classes were not regular yet. At that time, the companions of Regina were Jovelyn and Rubilyn. He also denied committing an offense against Regina Guafin on December 31, 1994. He testified also that he did not evade arrest by going out of Matag-ob, Leyte because during that time he was working in Hideco as a laborer. The reason why Regina Guafin filed a case against him because the said private complainant was coached by her aunt who wanted him and his wife Trinidad to be separated.

On cross examination, he testified also that he was told by his cousin Nicolas Valencia that her [sic] wife Trinidad was prevented by her children from visiting him in jail upon her arrival from Manila.”^[10]

Ruling of the Trial Court

The court *a quo* evaluated the testimony of the offended party in this manner:

“x x x this court observed both the complainant and the accused when both were on the witness stand. The tears that spontaneously flowed from the private complainant’s eyes and the sobs that punctuated complainant’s testimony when asked about her experience with the accused eloquently conveyed the hurt, the pain, and the anguish the private complainant has suffered and lived with during all the years. When she told the court that she was raped by the accused she said it all with candor. The mixed expression of sadness and anger shown in the private complainant’s face during her testimony convinced this court that she was telling the truth. This court then found nothing in the evidence which would indicate in any way that the said Regina Guafin was motivated in narrating to the court her ordeal other than her quest for justice. The defense’s claim that Regina was coached by her aunts to fabricate her rape story in order to force their mother Trinidad Mejos to separate from the accused is nothing but a mere speculation [upon] which this court found no probative value. This court then gives the testimony of the private offended party full faith and credit.”^[11]

The trial court also ruled that the circumstances of nighttime and relationship aggravated all the three incidents of rape, but that there was no sufficient evidence proving attempted rape on December 31, 1994. Considering that the last rape occurred