

## EN BANC

**[ G.R. No. 127657, November 24, 1998 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE CABANELA, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

The proliferation of incestuous rape of minors, a crime which figuratively scrapes the bottom of the barrel of moral depravity, is a revolting phenomenon in a Catholic country like the Philippines. The man who violates his own progeny commits an act that runs against known biologic, legal and moral laws. When committed against a child of tender years, the lechery becomes compounded with apparent heartlessness that must be condemned, the perpetrator damned and prosecuted to the fullest extent. Victimized daughters are not only denied the right to body integrity, but to the essential self which is the core of autonomous personhood. By inflicting the primitive, bestial act of incestuous lust on his own blood, accused-appellant Felipe Cabanela committed a crime so monstrous that no punishment could possibly provide sufficient expiation for the offense.<sup>[1]</sup>

This is an automatic review of the Judgment<sup>[2]</sup> dated October 11, 1996, of the Regional Trial Court, 5th Judicial Region, Branch 41, Daet, Camarines Norte, convicting accused-appellant Cabanela of the crime of rape and imposing on him the death penalty. The dispositive portion of the decision reads:

"WHEREFORE, finding the accused Felipe Cabanela guilty beyond reasonable doubt of the crime of rape, he is hereby convicted of said crime and is imposed the death penalty pursuant to Article 335 of the Revised Penal Code, as amended by R.A. No. 7659 par. (1). He is ordered to pay the victim P50,000.00 as moral damages pursuant to existing jurisprudence and the additional amount of P20,000.00 as exemplary damages.

SO ORDERED."<sup>[3]</sup>

The case started when accused Cabanela was charged with the crime of rape under an Information, the accusatory portion of which reads:

"That on or about the 14th day of April, 1995, at around 6:00 o'clock in the afternoon at Barangay San Roque, Municipality of Mercedes, Province of Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused, urged with bestial sexual lust and by means of force and intimidation, unlawfully, feloniously and criminally, did then and there commit sexual intercourse with his own daughter, Genelyn O. Cabanela, a girl of 14 years old, (sic) against the will of the latter, to her damage and prejudice.

"CONTRARY TO LAW."<sup>[4]</sup>

Accused Cabanela pleaded not guilty when arraigned and trial ensued.

To prove its case, the prosecution called to the witness stand the victim, Genelyn O. Cabanela,<sup>[5]</sup> who testified that she was ravished three (3) times by her father, accused Cabanela, although she could no longer recall the dates of the first and second rape incidents. It was on Good Friday, April 14, 1995, at about 6 o'clock in the evening when she was sexually assaulted for the third time by the accused inside their house while her younger brothers and sisters were away. The accused removed his clothes after undressing her, then forcibly inserted his reproductive organ in her vagina. The force made her shout. She was in pain as he penetrated her for about two (2) minutes. The accused threatened her and her siblings with death if she would reveal the incident to anybody. His lust satisfied the accused left the house. The threat did not zip the lips of the victim she disclose the accused's dastardly act to her mother, Juanita O. Cabanela, who was in Naga City at the time of its commission.

Juanita O. Cabanela, mother of the victim and common-law wife of the accused, confirmed that Genelyn revealed to her sometime in September 1994, the prior rapes committed against her by the accused. She confronted the accused and he admitted the rape and asked for forgiveness. She and the victim went to Manila but returned after one and a half months. In April 1995, the victim again informed her that she has been raped by the accused Cabanela. When confronted, the accused once more admitted the charge. They then decided to file the case at bar against him.<sup>[6]</sup>

Eye-witness Gerry Cabanela, brother of the victim, corroborated the latter's story. He testified that from the kitchen of their house and through a hole in the sack which serves as partition, he saw his father undress the victim and box her thigh. Then, he covered her mouth. Afraid that his father might see and hurt him, he left the house and proceeded to the poblacion of Mercedes. Before he left, he saw his father on top of the victim.<sup>[7]</sup>

Dr. Marcelito D. Abas, medico-legal officer of Camarines Norte Provincial Hospital, examined Genelyn on May 15, 1995. He issued a Record of Confinement/Consultation<sup>[8]</sup> stating the following findings:

"x x x

"Genital Exam:

=Healed hymenal lacerations at 7 o'clock, 10 o'clock, 3 o'clock and 4 o'clock; Admits one finger with ease.

"x x x"

He opined that an erected penis or any round object caused the lacerations.<sup>[9]</sup>

The accused's defense was alibi. He declared that on April 14, 1995, at about 4

o'clock in the morning, he left his house located at Purok 2, Barangay San Roque, Mercedes, Camarines Norte, to join the crew of a fishing boat. He got there at about 5 o'clock in the morning, waited for his companions and left for the open sea. He returned to his house at about 7 o'clock in the evening. His wife and children including Genelyn were all in the house. After dinner, he went upstairs to rest. At that time, Genelyn was in the other room of their house. He denied doing anything wrong to Genelyn, saying he was not yet home at the time of the alleged rape incident.<sup>[10]</sup>

Victor Cabanel, the father of the accused, tried to corroborate the alibi of the accused. He testified that a companion of his son informed him on April 13, 1995, that he (the accused) would be going on a fishing expedition which was set to leave at about 5 o'clock in the afternoon of the same date.<sup>[11]</sup>

As aforesaid, the trial court convicted the accused Cabanela. In this automatic appeal, accused-appellant contends that:

"The trial court has erred in convicting the accused appellant of the crime charged in the information."

Accused-appellant Cabanela asserts that "x x x, there is a shadow of doubt regarding the accusation because it is unlikely for a father/parent of eight (8) children x x x to commit such a heinous crime of rape. Normally, as in the case in bench, a parent of such number of children is too much occupied (sic), devoted and concentrated in [sic] their care and welfare. Likewise, it would be unlikely for the accused to commit such an odious act against his own daughter since it was a time for consecration during the alleged time of incident. It was a Holy Week at that moment. April 14, 1995 was a Good Friday. x x x In the same way, the alleged victim herself admitted that the accused has no vice at all. x x x This fact (or circumstance) surely bolsters his innocence of the charge. Moreover, prosecution witness Gerry Cabanela disclosed that the accused punishes him, his brothers and sisters (including the alleged victim) whenever they commit a mistake. x x x It can be said that the charge was only an offshoot of spite or ill will on his (Gerry Cabanela) part and on the part of the alleged rape victim. Furthermore, the accused vehemently denied the charge made. He was at the seashore waiting for his fellow fishermen when the alleged incident occurred. x x x This was confirmed and corroborated by Victor Cabanela. x x x"<sup>[12]</sup>

We affirm the conviction.

It is well-settled that in crimes against chastity, the testimony of the offended party should not be received with precipitate credulity.<sup>[13]</sup> The reason is because such charges are fairly easy to make and difficult to defend by the accused party who may be innocent.<sup>[14]</sup> Thus, we require proof beyond reasonable doubt to convict but it does not mean such degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.<sup>[15]</sup>

We hold that the prosecution succeeded in meeting the quantum of proof required to overturn the constitutional presumption of accused-appellant's innocence. The trial court correctly convicted him on the basis of the credible testimonies of the victim

and the other prosecution witnesses. Settled is the rule that the proper assessment of the credibility of the victim in a rape case falls primarily with the trial judge. He is in a better position to determine conflicting testimonies because he heard the witnesses themselves, observed their deportment and manner of testifying.<sup>[16]</sup> In the case at bar, the trial court observed that the victim testified in a positive, categorical, straightforward and spontaneous manner. He gave her testimony full faith and credit. Indeed, the transcripts of stenographic notes reveal that complainant shed tears during her direct and cross-examination. Her tears are trustworthy evidence that she was violently deflowered by accused-appellant. We also note the testimony of the mother of the victim that accused-appellant begged for forgiveness. Such an act is an admission of guilt.<sup>[17]</sup>

We are not impressed by the argument of accused-appellant that it was impossible for him to rape his daughter on April 14, 1994, a Good Friday, a time of consecration for Christians. We have repeatedly held that lust is not respecter of time and place.<sup>[18]</sup> Accused-appellant cannot maintain that he was lust-free on April 14, 1994. Indeed, there is no evidence that accused-appellant is even a good Christian. By his own testimony, accused-appellant did not observe Good Friday for he went fishing on that day from 5 o'clock in the morning up to 7 o'clock in the evening. As sharply observed by the Solicitor General, this irreligious act of the accused-appellant negates his Christian pretension.

Nor can we agree with accused-appellant that as father of eight (8) children, he is "too occupied (sic), devoted, and concentrated to [sic] their care and welfare" and since he has no vice, it was unlikely that he would rape his daughter. Again, his pretension cannot stand a reality check. As the Solicitor General pointed out, the victim and Gerry are out-of-school youths. Additionally, the victim testified that they could not buy all their needs because accused-appellant's earnings from fishing were not enough.<sup>[19]</sup> If accused-appellant was a responsible father, he would have sent his children to school and would have provided enough for his family. Further, his lack of vice does not mean a lack of lust.

We also reject the contention of accused-appellant that the rape charge was due to spite or will on the part of the victim and her brother Gerry since he punished them whenever they erred.<sup>[20]</sup> Parental punishment is not a good reason for a daughter to falsely accuse her father of rape. In the case at bar, the victim is a fourteen year old lass and it is unlikely for her to fabricate a story of rape, have her private parts examined, subject herself to the indignity of a public trial and endure ridicule just because she resented the punishments of her father. It takes depravity for a young girl to concoct a story which would put her own father on death row and drag herself and the rest of her family to a lifetime of shame. We believe her testimony that she charged the accused-appellant with rape for fear that her younger sisters might be his next victims.

Lastly, accused-appellant's alibi will not exculpate him. Court have looked upon the defense of alibi with suspicion not only because it is inherently weak and unreliable but also because it is easily fabricated. Time and again, we have ruled that alibi must be established by clear and convincing evidence. In the case at bar, it is the burden of accused-appellant to show that he was not present at the scene of the crime at the time of its commission; he must also show that it was physically