

## THIRD DIVISION

[ G.R. No. 101213-14, October 28, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY APILO, ACCUSED-APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

Despite the effort of our officers in law enforcement and in the administration of justice, the incidence of rape and other violent crimes against minors has continued unabated, constituting a veritable flood tide of barbarism, depravity and bestiality that threatens to engulf and destroy the innocent and helpless youth of our country. Thus, while we hail the accused's conviction in this case as another important victory in the battle against dastardly and vicious crimes, our elation is dampened by our consternation at the sheer indiscretion and apparent dereliction of duty on the part of the prosecutor who charged only the accused-appellant notwithstanding the offended party's insistent testimony that another person was involved in the multiple rapes.

Accused-appellant Henry Apilo was charged with two (2) counts of rape committed on October 1 and 2, 1989. The two Amended Informations<sup>[1]</sup> contained identical allegations, except only as to the dates of the incidents:<sup>[2]</sup>

#### **"AMENDED INFORMATION**

The undersigned Assistant Prosecutor, hereby accused (sic) HENRY APILO of the crime of RAPE, at the instance, relation and written complaint of MADONNA SALDIVAR, copies of her statements are hereto attached and made an integral part of this Information, committed as follows:

That on or about the 2nd day of October, 1989, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of force or intimidation with the use of a handgun, have carnal knowledge of the complainant MADONNA SALDIVAR, a minor -- 11 years of age, against the latter's will and consent."

On arraignment, appellant, duly assisted by counsel, pleaded not guilty to both charges.<sup>[3]</sup> Thereafter, trial on the merits ensued.

The prosecution presented five (5) witnesses, including complainant Madonna Saldivar. On the other hand, the defense presented the accused-appellant and two former elementary school teachers of the complainant.

After trial, the trial court<sup>[4]</sup> rendered judgment finding appellant guilty of both counts of rape and sentenced him thus:<sup>[5]</sup>

"Wherefore, Judgement (sic) is hereby rendered as follows:

1. In Criminal Case No. 7129-R, the Court Finds accused Henry Apilo guilty beyond reasonable doubt of the offense of Rape defined and penalized under Article 335 of the Revised Penal Code as charged and hereby sentences him to suffer imprisonment of Reclusion Perpetua; to indemnify the offended party Madonna Saldivar the sum of P40,000.00 as Moral Damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused Henry Apilo being a detention prisoner is entitled to 4/5 of his preventive imprisonment in the service of his sentence in accordance with Art. 29 of the Revised Penal Code.

2. In Criminal Case No. 7130-R, the Court Finds accused Henry Apilo guilty beyond reasonable doubt of the offense of Rape defined and penalized under Article 335 of the Revised Penal Code as charged and hereby sentences him to suffer imprisonment of Reclusion Perpetua; to indemnify the offended party Madonna Saldivar the sum of P40,000.00 as Moral Damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused Henry Apilo being a detention prisoner is entitled to 4/5 of his preventive imprisonment in the service of his sentence in accordance with Art. 29 of the Revised Penal Code."

### **The Facts**

The trial court made the following factual findings:<sup>[6]</sup>

"x x x Madonna Saldivar is a young orphan, born of the late Sally Saldivar with an unknown father sometime May 23, 1978 (Exhibit H), living with her grandmother Esperanza Saldivar Laureta at San Roque Village, Baguio City, and a Grade III pupil of the Baguio Central School.

On October 1, 1989, at about 3:30 PM, Madonna Saldivar stayed at the house of her classmate, Princess Balisi, because her (Madonna) grandmother lost some money and she was afraid to go home as she may be whipped.

The house of Princess Balisi is located at San Carlos Heights, Baguio City. At the time Madonna Saldivar stayed in the Balisi house, with Catherine, another classmate, those who were in the house were Princess Balisi, her brother Victor Balisi, their mother Rhodora Balisi, the accused Henry Apilo, who was a visitor in said house and Joey (Jun) Balisi. The Balisi house has three rooms.

On the night of October 1, 1989, Madonna Saldivar, Princess Balisi and Catherine, who were all classmate, slept in the room of Princess.

However, sometime later that night, Princess Balisi and Catherine were called by the mother of Princess. While waiting for them to come back, Madonna fell asleep only to be awakened subsequently as she felt somebody who was naked embraced her. Madonna saw accused Henry Apilo on top of her and Victor Balisi at her feet.

Henry Apilo boxed Madonna on the stomach, put a cloth in her mouth, and then carried and transferred her to the other room, the third room. There, Henry Apilo ordered her to remove her dress while holding a gun. Scared, Madonna complied. Henry Apilo placed himself on top of Madonna and had sexual intercourse with her by spreading her legs and inserting his penis on her vagina and Madonna felt a white sticky substance in her vagina.

Thereafter, Henry Apilo went out and Victor Balisi entered the room and did the same thing to her. Afterwards, they locked Madonna inside the room.

The next day, October 2, 1989, Madonna was afraid to go home as she might be killed and besides she was locked inside the room.

And on the night of October 2, 1989, Bong Balisi, together with two others entered the room and were told by Victor Balisi to use Madonna or to have sexual intercourse with her. But Bong Balisi and the two others said they could not do it with her and so went out of the room.

Thus, Henry Apilo entered the room again but this time without a gun. Instead, Henry Apilo had a knife and told Madonna not to shout or he will kill her. And he again put himself on top of Madonna, kissed her, touched her breasts, and inserted his penis in her vagina, and moved his body up and down, and after which Madonna felt a whitish sticky substance went out of him. And after the sexual intercourse, Henry Apilo went out of the room.

Like the first time, Victor Balisi followed inside the room thereafter and did the same thing to Madonna. Victor Balisi went on top of her, spread her legs, inserted his penis inside her vagina, and had intercourse with her. And when the whitish sticky substance came out of him, Victor Balisi left the room and locked Madonna inside the room.

The next morning of October 3, 1989, Henry Apilo told Madonna to dress up as he was bringing her home. But instead, he took her in a taxi to the Victory Liner Bus Station. And they rode in a Victory Bus going down all the way to a place Madonna did not know. (The place could be Pasay City in Metro Manila as that is the last station of Victory Liner in their Baguio Pasay route) Henry Apilo took Madonna to his Auntie's place which appears to be a Disco house or a club as at night they told her to dress up and put on some make-up as she would be invited to a table by a male customer apparently to be a hostess or a hospitality girl.

Madonna stayed in said place for about 5 days only as on the fourth day she did not like the work and so was made a janitor and cleaner of the

place. And when she took money as she wanted to go back to Baguio and told them about it, they relented and allowed her to go back to Baguio. Thus, the aunt of Henry Apilo even called for a police to accompany Madonna to the Victory Liner Station and, ultimately, Madonna was able to go home to Baguio.

Back in Baguio, Madonna immediately proceeded to her lola at the latter's store at the Empire theatre and related all that happened. And her lola told her to tell her Ninong Bert Arquinte, who worked at City Hall at the City Jail, about it.

And so by the morning of October 9, 1989, Madonna went to the police station to report but her ninong was not around and by chance she met Atty. Rolando Vergara of the NBI, who was at the Police Station at the time to whom she reported the incident and who invited her to go to the NBI office.

Thus, on October 10, 1989, Madonna Saldivar went to the NBI office and complained about what happened to her and signed a Complaint Assignment Sheet under oath (Exhibit B). After which, Atty. Rolando Vergara brought her to the Baguio General Hospital for medical examinations by Dr. Eileen Mae Bandonill, whose findings (Exhibit A) were as follows:

`Republic of the Philippines  
Department of Health-CAR  
DR. EFRAIN C. MONTEMAYOR MEMORIAL MEDICAL CENTER  
Baguio City

11

October 1989

TO WHOM IT MAY CONCERN:

This is to certify that I have seen and examined MADONNA SALDIVAR, 13 years old, from #12 San Roque Village, Baguio City who was brought by Atty. Rolando Vergara because of alleged rape (multiple) committed against her person by known assailant

NOI	:	Alleged Rape (Multiple) (4x)
DOI	:	October 1 and 2, 1989
TOI	:	Unrecalled (nighttime)
POI	:	San Carlos Heights, B.C.

Menstrual History : No menarche yet.

Pertinent P.E.:

General Survey: Fairly nourished, fairly developed, conscious, coherent, ambulatory, with no signs of external physical injury at the time of examination.

Perineal Inspection: No hematoma nor lacerations noted at the vulva ad

perineum.

Hymen - - with old laceration at 5 & 7 o' clock position.

Internal Exam.: Non-parous introitus

Vagina admits 2 fingers snugly.

Cervix-small, closed, non-tender.

Uterus-small, non-tender.

Bleeding-none.

Discharge-minimal, whitish, non foul discharge.

Specimen taken for gram's stain and sperm cell identification.

(Sgd) EILEEN MAE B. BANDONILL, M.D.

OB-Resident on Duty - 101-10-89

Result :

Gram Stain : Smear shows plenty of gram (-) negative rods and coccie in pairs.

Pus cells - rare

Sperm cell Identification: Negative for sperm cell.'

Dr. Bandonill, in her testimony in Court, explained that the old laceration of the hymen at 5 to 7 o'clock position is indicative of the fact that Madonna had sexual intercourse prior to the examination as her hymen is no longer intact and that means her vagina was already penetrated by a male organ possibly more than 7 days prior to examination.

After the medical examination of October 10, 1989, Madonna returned to the NBI office in Baguio and there the NBI formed a team to apprehend Henry Apilo and Victor Balisi since Madonna said she can identify them and point to their place.

And so NBI agent Rolando Vergara and other NBI agents, with Madonna Saldivar, proceeded to the Balisi house in San Carlos Heights in the afternoon of October 10, 1989.

Once inside the Balisi house, Madonna Saldivar immediately saw Henry Apilo and pointed to the letter, who was thus arrested by the NBI. On the same occasion, Victor Balisi, too, was apprehended.

Thus, Henry Apilo, Victor Balisi and Rhodora Balisi were apprehended, while Joselito Balisi and Albert Balisi were invited for questioning. And all were brought to the NBI office."

Not unexpectedly, accused-appellant interposed the defense of alibi and narrated, in essence, that on the dates of the incidents, he was in Metro Manila with Victor and Lito Balisi. Thereafter, he was invited by the two to go to Canlubang, Laguna and they stayed there for one week.<sup>[7]</sup>

Having failed to persuade the trial court, appellant is now before this Court