

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERMINIGILDO MUÑOZ, DEFENDANT-APPELLANT.***G.R. No. L-45517. December 19, 1980*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9b5a81aab639/>**PER CURIAM:**

This is an automatic review of the judgment of the Court of First Instance of Davao del Sur, Branch V, in Criminal Case No. 45(74) imposing the death penalty on Herminigildo Muñoz for having raped his own daughter with the use of a deadly weapon.

The evidence for the prosecution shows that in 1971 Marina Muñoz, the victim, was residing in Barrio Basuga, Magsaysay, Davao del Sur, together with her parents, three brothers and four sisters.[1] One night, during the latter part of March of that year, only Marina, her father Herminigildo, her two little brothers and three younger sisters were left in the house. The mother, Teodora, had earlier gone to Davao City and did not re-turn for the night and Marina's elder brother attended a barrio dance.[2]

By about 8:00 o'clock in the evening, the little brothers and sisters of Marina were already asleep, the girls in the sala, and the boys in the kitchen. When Marina was about to retire beside her sisters in the sala, Herminigildo, armed with a knife, suddenly approached Marina and asked her not to make any noise. Surprised, Marina asked her father, "What are you going to do with me?" The father answered, "Don't ask any question. Just follow all that I want you to do." Forthwith, Herminigildo removed his pants and underwear with his free hand, grabbed Marina's shoulders and pulled the girl's dress down to the waist. He then removed Marina's jer-sey panties. Herminigildo went on top of Marina and with the knife pointed at the armpit, sucked his daughter's nipples. He then spread Marina's legs apart with his knees, told Marina not to move or shout "or else I would kill all of you", thrust his penis into the girl's vagina and kept on thrusting with a push and pull motion. Marina felt a searing pain and thereafter lost consciousness. When she regained consciousness she saw her father getting up and putting his pants on. Herminigildo then warned Marina, "Don't tell anybody about this, or else I would kill you and your brothers and sisters, and then thereafter I would kill myself, because I could not bear the shame if others would know about it." [3]

Prior to the incident in March, 1971, Marina was asked by her father to stop going to school.[4] After the rape, Herminigildo kept a close watch on Marina, stayed in the house most of the time and did not allow Marina to go out. A month later, there was a second rape.[5] That time, Teodora was working in the ricefield while the younger children were out having been told by Hermini-gildo to buy some candies. The sexual abuse was repeated many times thereafter during instances when Marina and Herminigildo were left alone in the house, Herminigildo, all the while, repeat-ing the threat that he would kill her and the rest of the family members should the matter be reported to anybody.

On June 5, 1973, Antonio Gavina, Marina's cousin-in-law and Vicente Collado, Antonio's farmhelp - both of whom stayed in the Muñoz house for sometime in 1972 - visited Marina. Antonio and Vicente had been, after leaving the Muñoz house to live in another house which they built for themselves, in the habit of visiting the Muñozes thereby leading Marina's parents to suspect that she was being courted by Vicente. Such suspicion, in

turn, prompted Herminigildo's anger everytime he saw Vicente. Such that on June 5, 1973, Herminigildo, upon seeing Vicente again, punished Marina in a fit of violent anger. He hit Marina on the breast with a closed fist, pulled her hair, pushed her to the floor and kicked her. Teodora took pity on her daughter but when she tried to intercede, Herminigildo elbowed her, hitting her in the abdomen. Turning to Marina, Herminigildo stated, "Magpakatanda ka na lang sa akin, ang suso mo, ako lang ang maghawak." He then looked for a weapon threatening to kill all those present. He did not find any as Marina's sister-in-law was able to hide all that could be found in the house.[6]

The following morning, after Herminigildo left for the farm, Marina told her mother that she has been raped by her father. Teodora cried, and upon her advise, Marina wrote to and asked for the help of her maternal uncle, Roman Fernandez.[7]

The next day, Teodora became weak and was brought by Herminigildo to the hospital in Bansalan. On the suggestion of Roman Fernandez, she was later transferred to the Davao Regional Hospital in Davao City where Herminigildo was arrested by P.C. elements. Marina, who was then still at Casuga, was fetched therefrom by Antonio and a son of Roman Fernandez and brought to Roman Fernandez' house in Davao City.[8] When Marina arrived at Roman's house, Teodora was already there. The following morning Marina, accompanied by Teodora, went to the Davao Regional Hospital and was examined by Dr. Emilia Afafe Cruz.[9] That same day, she and her mother went to the P.C. Barracks for investigation. Subsequently, Marina, again accompanied by her mother, signed a complaint for rape against her father at the Fiscal's Office at Digos.[10] They then returned to Casuga.

Three days later, Teodora went to the P.C. Barracks where Herminigildo was detained. She returned to Casuga with a letter from her husband asking for, among other things, Marina's pardon. By then, Teodora, after having talked with her husband, had completely changed her attitude towards her daughter's case, for, when Marina asked her about Herminigildo's letter, she told Marina that "You have no business, whether you like it or not, your father will be released." [11]

Not willing to grant the pardon requested by her father, and sensing that her mother had taken the side of her father, Marina, through the help of Antonio Damian, another uncle, went back to her Uncle Roman's house at Davao City. While residing thereat, Teodora repeatedly came to her and pleaded that the case against Herminigildo be withdrawn. Marina stood firm on her decision to go on with the case.[12]

Two conferences by and among Marina's close relatives were held to discuss the matter. During these conferences, Marina's aunts requested her to withdraw the case. But Marina insisted on her decision to pursue the case against her father.

Teodora, thereafter, filed a petition for habeas corpus to recover custody over her daughter from Roman Fernandez so that she may "further verify the truth of the complaint for rape." In October, 1973, the court below dismissed the petition noting that Marina stated on the witness stand that "she prefers to stay with her uncle x x x because x x x her mother threatened her with bodily harm even to the extent of death should she not sign a statement of desistance relative to her complaint of rape against her father." [13]

For his defense, Herminigildo Muñoz denied having raped Marina. He declared that Marina fabricated the charges against him after he punished her on June 5, 1973 "because she was telling a lie as she denied being the sweetheart of Vicente Collado." [14] He also testified that the mastermind behind the filing of the rape case was Roman Fernandez, the latter having previously blamed him for having impregnated Fernandez' younger sister and for having been one of the leaders of Fernandez' tenants in filing a petition with the DAR for the distribution to them of Fernandez' land.[15] Herminigildo further averred that he was detained at the P.C. Stockade where he was

maltreated and made to sign a statement contain-ing an admission that sometime in the month of March, 1971, he had carnal knowledge of his daughter.[16] He presented the alibi that from the first week of March, 1971 until the first week of April of the same year, he was in Bo. Bagnan, Baba, Agusan, looking for land "because I was informed before that we, tenants, will be driven out of the land, because it is already Martial Law." [17]

As priorly mentioned, the Court below found Herminigildo guilty beyond reasonable doubt of the crime of rape. After a painstaking scrutiny of the entire records of the case, We find no reason to disturb this finding. We cannot accept the position taken by the counsel de officio in this appeal that the evidence of the prosecution and of the defense stand upon an equipoise.

Marina's straightforward account of the incident in March, 1971, with a recitation of each and every sordid detail of the manner by which her father, Herminigildo, forced his lust upon her, even mentioning the occurrences that took place before and after the crime, convinces Us beyond doubt that she was telling the whole untainted truth. The statement in Canastre,[18] repeatedly made in subsequent rape cases passed upon by this Court, that "it is hard to believe that a young unmarried girl would make such a revelation and allow an examination of her private parts and there-after permit herself to be the subject even of a public trial, if she was not motivated solely by a desire to have the culprits apprehended and punished", is an observation most fitting in this case. Indeed, it is inconceivable that Marina, a barrio lass, still in her early teens would bring her own father to court on a charge of rape, thereby destroying her family, casting it into the very center of scandal and shame and into the difficulties of distressed finances that come with a lawsuit, if there was no truth to the charge leveled against her father.

And Marina's testimony is supported by the fact that she was no longer a virgin after the incident complained of. Dr. Emilia Afable Cruz, who examined Marina's private parts, issued a certi-fication that the hymen had lacerations at 9 and 3 o'clock positions and that the vagina admits one finger. She testified that the lacerations could have been caused by sexual intercourse and the introitus, by the penetration of the male organ.[19] Then too, it appears from the records that Herminigildo had, before this rape case, impregnated his sister-in-law; that he was overly cruel to Marina and that he oddly reacted with unrestrained anger everytime there were reports that Marina was entertaining suitors. Herminigildo's established predisposition towards liaison with close kins and his possessive, nay jealous, nature manifested to the excess in his treatment of and relations with Marina bolster be-lief in the truth of the charge that he raped his daughter. On top of all these, he presented as his own evidence,[20] through counsel in the court below, the portion of his extrajudicial con-fession taken while he was in the custody of the P.C. at Davao City to the effect that he had, in fact, sexual intercourse with his daughter Marina sometime in the month of March, 1971.

We find it difficult to believe, as reiterated in this appeal, that Marina concocted a tale of rape because of the severe punishment dealt on her by her father on June 5, 1973 and that the cri-minal suit was masterminded by Roman Fernandez.

There is no indication from the records that Marina had the makings of a scheming shrew. On the contrary, she was then young, rustic and a mere Grade IV pupil. She may not even be called re-calcitrant for it appears that she accepted her father's decision to let her stop going to school for the given reason - which was denied by Marina - that she has had two sweethearts in school. It is easier to accept that hers was an innocent and undiscerning mind which so readily admitted the reality of her father's threats that for two years she was not able to muster enough courage to come out with the truth that she had been the hapless object of the lat-ter's perversion. Certainly, if Marina was the woman of guile and craft that her father wanted her seen, then she could have, as early as the day when she was forced out of school, come out with a story of rape. But this was not so. She was so easily intimi-dated by her father that even if she had, in fact, been raped, it had to take the severe corporal punishments in June, 1973 - during which she felt she would die from the pains - to jolt her out of her indecision, arrange her

confused reasoning and lead her to the firm resolve, maintained till the last day of court trial, to seek justice for the wrong done on her.

Neither do the records show that Marina could not have gone to court were it not for her uncle, Roman Fernandez, who allegedly masterminded the whole thing. Instead what was underscored was Marina's determination to pursue her case until its end. As earlier mentioned, there were two family conferences during which the elder relatives tried to dissuade Marina from going on with the case. At least in one of these conferences, Herminigildo and Teodora were, admittedly, present and the latter, on the former's request, talked to Marina and pleaded for the withdrawal of the case. Marina, however, was unyielding and held on to her decision. The habeas corpus case filed by Marina's mother against her uncle Roman likewise proved futile as Marina openly declared that she preferred to stay with her uncle rather than with her mother who, after coming to grips with the large and real problem of having to raise a fatherless family, was determined to have her pull out of the rape case. And even during the trial of this case, Marina forthrightly stated that she would continue with the case, a decision which was wholly her own and of no one else. Thus:

"Court:

Are you sure that your uncle Roman Fernandez did not instruct you to be bold in declaring, as you are declaring now, because he want your father to go to prison, because your father disgraced one of your aunts, the sister of your mother?

"A :

I have nothing to do with the incident concerning my aunt. Besides, my uncle Roman Fernandez left the decision to me. In fact, in a conference called by my aunts, they suggested to me to withdraw the case, but this is the decision I have arrived at. My aunts, on two occasions, called for a conference, during which they requested me to withdraw the case. In fact, I felt ashamed to them. But I insisted on this decision of mine." [21]

It is therefore clear that the filing of the rape charge was done not by mere caprice or desire for revenge but was impelled by the enormity of the crime, for the sole purpose of telling the truth. [22]

In view of the positive testimony of Marina that it was Herminigildo who raped her during the latter part of March, 1971, We find the latter's alibi unavailing. To reiterate, there is no reason to disturb the trial court's finding of guilt beyond reasonable doubt. Said court correctly appreciated the fact, recited in the information, that the rape was committed with the use of a deadly weapon and the alternative circumstances of relationship as aggravating in accordance with Art. 15 of the Revised Penal Code. [23] The trial court, therefore, correctly imposed the death penalty on Herminigildo. To use the language in Porras, [24] the crime in this case was so monstrous that no punishment which it is in the power of this or any other human tribunal to decree, could possibly be a sufficient expiation of the offense.

WHEREFORE, the appealed decision is hereby affirmed. Costs de oficio.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., concurs with the separate opinion of Justice Teehankee that the penalty imposed should be reclusion perpetua. There is no sufficiency of the ten votes required for the imposition of the death penalty. Accordingly, the sentence is one of reclusion perpetua.

Teehankee, J., voted for the imposition of reclusion perpetua in a separate opinion.

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- [1] Folder of Original T.S.N., p. 361.
- [2] Ibid., pp. 363, 365.
- [3] Ibid., pp. 368-376.
- [4] Ibid., p. 379.
- [5] Ibid., p. 380.
- [6] Ibid., pp. 383-385.
- [7] Ibid., p. 386.
- [8] Ibid., pp. 388-390.
- [9] Ibid., pp. 391, 319.
- [10] Ibid., pp. 391-393.
- [11] Ibid., p. 395.
- [12] Ibid., pp. 396-398.
- [13] Decision of CFI, Davao del Sur, in Sp. Proc. No. 148, Habeas Corpus, dated Oct. 13, 1973. Marked as Exh. "D" and included in Folder of Original Exhibits.
- [14] Folder of Original T.S.N., pp. 536-537.
- [15] Ibid., pp. 576, 550.
- [16] Ibid., pp. 566-567.
- [17] Ibid., pp. 572-573.
- [18] People vs. Canastre, 82 Phil. 480, 483.
- [19] Exh. "A" in Original Folder of Exhibits; Original T.S.N., pp. 314, 316.
- [20] Original T.S.N., pp. 475-476.
- [21] Ibid., pp. 432-433.
- [22] Cf. United States vs. Vilorio, 27 Phil. 466.
- [23] People vs. Segura, 60 Phil. 933, 941.
- [24] People vs. Porras, 58 Phil. 578, 579.
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SEPARATE OPINION

TEEHANKEE, J.:

I vote for the imposition of reclusion perpetua. Although the crime committed by the accused on his own daughter is of the utmost depravity, I am not convinced of the presence of the special depravity, I am not convinced of the presence of the special qualifying circumstance of use of deadly weapon under Article 335 of the Revised Penal

Code, as amended by R.A. 4111. The crime committed is therefore unqualified rape for which is imposed the single and indivisible penalty of reclusion perpetua, and the alternative circumstance of relationship cannot be appreciated.

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