

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FRANCISCO BALAS @
“FRANCING,” APPELLANT.**

G.R. No. 138838. December 11, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Where the father-daughter relationship between the offender and the offended party was not alleged in the information, an appellant cannot be convicted of rape in its qualified form and, hence, cannot be sentenced to death therefor. Accordingly, the Court affirms herein appellant's culpability for simple rape only and reduces the penalty to reclusion perpetua.

The Case

Before this Court on automatic review is the Decision[1] of the Regional Trial Court (RTC) of Kalibo, Aklan (Branch 1) dated April 29, 1999, in Criminal Case No. 4391. The RTC found appellant guilty of rape beyond reasonable doubt and sentenced him to death.

The Complaint, dated January 12, 1995,[2] charged appellant as follows:

"That on or about the 11th day of January, 1995, in the evening, in Poblacion, Municipality of Libacao, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, while armed with bolo and knife, with lewd design and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the complainant LUSMINDA C. BALAS, 13 years of age, against her will and without her consent thereby causing physical injuries upon the latter, to wit:

`FINDINGS:

VULVA----- Clean

VAGINA----- Redish Discoloration

sign of irritation

No laceration noted.

as per Medico-Legal Report on Physical Injuries issued by Dr. Chedy S. Bueno, M.D., Rural Health Physician, Rural Health Unit, Libacao, Aklan, attached hereto as Annex `A' and forming part of this complaint."

Assisted by his counsel,[3] appellant pleaded not guilty during his arraignment on February 6, 1995.[4] After due trial, the court a quo rendered its Decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered finding accused Francisco alias 'Francing' Balas guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 (Death Penalty Law), Section 11 thereof, the accused being the father of the victim as the attendant circumstance. He is sentenced to suffer the ultimate penalty of DEATH. He is also ordered to indemnify Lusminda Balas the amount of P75,000.00 pursuant to the ruling of the Court in People vs. Esteban Victor y Penis, G.R. No. 127903 promulgated on July 9, 1998."[5]

The Facts

Version of the Prosecution

The Office of the Solicitor General presents the prosecution's version of the factual incidents in this manner:[6]

"Appellant was a resident of Hilwan, Tapaz, Capiz where he stayed with his family. He maintained in his residence 2 wives, namely Jordeni Tamayo (also known as Nene or Melia) and Tita Culas. Appellant had 14 children, 8 from Jordeni Tamayo and 6 from Tita Culas. The victim, Lusminda Balas, was his second child by Tita Culas.

"Sometime in December 1994, Lusminda was brought by Jordeni Tamayo to Poblacion, Libacao, Aklan to work as a 'school girl' in the house of Ruel and Helen Mia. As a 'school girl', Lusminda would be working as a helper while Ruel and Helen Mia would be paying for her education. Lusminda would also be paid a salary of P250.00 a month.

"On January 11, 1995, appellant and Jordeni Tamayo went to Poblacion, Libacao, Aklan to visit Lusminda. Upon arriving at Poblacion, Libacao, Aklan in the afternoon, appellant told Jordeni Tamayo to proceed to the house of his brother in law while he would go to the house of Ruel and Helen Mia, the employers of Lusminda.

"Appellant arrived at the house of Ruel and Helen Mia at about 7:00 o'clock in the evening. He was invited by the Mias to sleep over. After eating his dinner, appellant went to sleep with Lusminda in her room which was located above the room of Ruel and Helen Mia.

"At about 11:45 that evening, Lusminda was awakened by appellant. Appellant told her to keep quiet, poked a knife at her neck and placed a bolo by her side. Appellant undressed her, went on top of her and inserted his penis inside her vagina. To prevent her from shouting, appellant covered her mouth with his hand. Appellant warned her that if she shouted, he would kill her.

"Feeling pain, Lusminda struggled and was able to kick some boxes kept inside the room which fell to the floor.

"Finished with his dastardly act, Lusminda asked appellant why he did this to her. Appellant answered that it was 'alright that he will devirginize her.'

"Downstairs, in their room located below the room of Lusminda, Ruel and Helen heard a noise coming from the room of Lusminda. They went out of their room and Helen called for Lusminda to prepare milk for her. Lusminda came downstairs and told them about the rape.

"Ruel Mia immediately left their house and proceeded to the police station of Libacao, Aklan and asked for assistance. PO2 Mayulito Remedio and PO3 Elmer de Jose accompanied Ruel Mia back to their house.

"The 2 policemen saw Lusminda Balas crying. When asked why she was crying, Lusminda told them that she was raped by her father. The police called appellant to come down from the room. Appellant obliged and went with them peacefully to the police station. Ruel Mia went to the room of Lusminda and got the bolo of appellant and turned it over to the policemen. The knife, however, was nowhere to be found. He and Lusminda also went with the policeman and appellant to the police station. The case was, thereafter, turned over to the Women's desk at the Libacao Police Station.

"The following day, January 12, 1995, Lusminda was brought to the Libacao Health Unit, Libacao, Aklan for examination. As found by Dr.Chedy Bueno, `the vulva area is clean. That the vagina ha[d] a redish discoloration and sign of irritation.'"[7] (Citations omitted)

Version of the Defense

On the other hand, appellant narrates his version of the facts as follows:[8]

"Accused-appellant, on the other hand, vehemently denied the accusation. To bolster appellant's claim of innocence, he presented three (3) witnesses, namely: Joveny Balas, Jordeni Tamayo and accused-appellant himself.

"Accused-appellant Francisco Balas testified that he ha[d] been staying in Hilwan, Tapaz, Capiz with his family for 20 years; that sometime on January 11, 1995, he went to Libacao, Aklan with his first wife, Nene Tamayo, with whom he has eight (8) children, to visit his daughter Lusminda who was then working as babysitter in the house of Ruel Mia; that it was his wife Tita who told him to visit his daughter and to take her back as she was only receiving P250.00 a month; that when he and Nene Tamayo arrived in Labacao, they proceeded to the house of Alot Villore[n]te, who is Tita's first cousin where Lusminda later met him; x x x around 5:00 o'clock in the afternoon, Lusminda came to fetch him in order for the two of them to proceed to the house of her employers; that when he told Ruel Mia that he wanted to take his daughter back the latter got angry; that he slept in the attic of the house of Ruel Mia while Lusminda slept downstairs with the children of Ruel Mia; that he was suddenly awakened when a policeman accosted him and took him to the police station where he was asked if he raped his daughter; that it was Ruel Mia who wanted [his] daughter to file this case against him.

"Joveny Balas, testified that the accused is her father while the victim is her younger sister; that on January 11, 1995 she was working as a housekeeper in the house of Sonny Turang in Poblacion, Libacao, Aklan; that on said date at around 6:00 o'clock in the afternoon, she met her father in the house Alot Villorente; and after sometime Lusminda arrived to fetch their father and brought him to the house of Ruel Mia; that at around 12:00 o'clock midnight she left the house of Ruel Mia. Her father was then already asleep at the attic of the Mias' while Lusminda was still washing the dishes; that when she, Lusminda and her father went to the house of Mia from the house of Alot Villorente she never saw her father carrying any bolo or knife; that she came to know that her sister was allegedly raped by her father when a certain Nene Tamayo came to the house of her employer; thereupon, she asked Lusminda if she was indeed molested by her father and the latter answered in the negative; she was further informed by Lusminda that the former [sic] was given P500.00 by the Mias in order to pin down their father.

"Jordeni Tamayo, testified that on the date of the alleged crime she and the accused went to Libacao to visit Lusminda who was then working as a domestic helper with the Mias; that she slept in the house of Sofronio Gabi, while the accused slept in the house of Ruel Mia; that on the following day, she went to Ruel Mia's house to fetch Lusminda and her spouse, but she was told by Ruel Mia's wife that her husband was already in jail because he raped Lusminda; that she asked Lusminda whether she was indeed raped by her father and Lusminda answered that it was not true." (Citations omitted)

The Trial Court's Ruling

The court a quo found appellant's denial of the charge to be "unsubstantiated by clear and convincing evidence." It brushed aside the claim of appellant that the rape charge was fabricated by the employer of his daughter to prevent him from taking her back. Such contention, the trial court said, is incredible for the following reasons: (1) the injury in Lusminda's genital organ refuted appellant's denial; (2) the significant inconsistencies in the testimonies of appellant and his other daughter, Joveny Balas, belie the latter's presence on the night the rape was allegedly committed; and (3) Lusminda denied that the reason she said she had been raped by her father was the

P500 she supposedly received from Ruel Mia (her employer), as alleged by Jordeni Tamayo (one of appellant's "two wives"). On the victim's credibility, the trial court observed as follows:

"As heretofore noted, the behavior and appearance of the offended party revealed a person who [could] discern what is fundamentally wrong. She did not give the impression of someone who could easily be swayed by money so as to commit a grievous wrong of falsely charging her own father of defiling her. Considering her age and rural background, she was no Judas [I]scariot who would sell her own father for less than 30 pieces of silver."[9]

Convinced beyond reasonable doubt that appellant had committed the crime, the RTC sentenced him to death.

Hence, this automatic review before us.[10]

The Issues

In his Brief, appellant raises the following alleged errors for our consideration:

"I

The court a quo gravely erred in finding that the guilt of herein accused-appellant has been proven beyond reasonable doubt.

"II

Assuming that the guilt of the accused-appellant has been proven beyond reasonable, the court a quo gravely erred in imposing the extreme penalty of death."[11]

The Court's Ruling

The appeal is partly meritorious.

Main Issue

Sufficiency of Evidence

Appellant argues that the testimony of the victim does not meet the quantum of evidence required by law. According to him, the testimony was merely couched in general terms and lacking in critical details that would sufficiently describe the crime charged.

Appellant's argument is a desperate attempt to belittle the victim's otherwise clear, consistent and unwavering narration of the rape incident. A precise and picture-perfect recollection cannot be expected of a complaining witness, especially with respect to the lurid details of an experience so humiliating and so painful like rape. Indeed, a truthful and factual narration of the sexual assault is all that is required.

We believe that the victim's testimony more than adequately shows the dastardly act perpetrated by appellant on the offended party while they were sleeping in the upper room of the house of Ruel and Helen Mia. The victim related her painful ordeal on that fateful night as follows:

"Fiscal Ofialda:

Q:

Miss witness, do you remember where were you on January 11, 1995 at about 11:45 in the evening?

A:

At the house of Ruel Mia.

x x x x x x x x

Q:

Where is this house of Ruel Mia located?

A:

Poblacion, Libacao, sir.

Q:

What were you doing at the house of Ruel Mia at about 11:45 in the evening?

A:

I was sleeping.

Q:

Which part of the house of Ruel Mia were you sleeping, in the first or second floor?

A:

Upstairs.

Q:

Do you remember if you had [a] companion with you sleeping at the second floor at the house of Ruel Mia?

A:

Yes, sir, Francisco Balas.

Q:

Are you related to Francisco Balas?

A:

Yes, sir. He is my father.

Q:

While you and your father Francisco Balas were sleeping at the house of Ruel Mia [o]n that evening of January 11, 1995, do you remember if somebody awakened you?

A:

Yes, sir.

Court:

Q:

Miss witness, you are crying. Are you sure you can continue with the hearing?

A:

Yes, your Honor.

Fiscal Ofialda:

Q:

And who awakened you?

A:

Francisco Balas.

Q:

When he awakened you, do you also remember if he x x x told you anything?

A:

Yes, sir, he told me to keep quiet.

Q:

After that, what happened if any?

A:

He undressed me, my clothes and underwear.

Q:

Which of your clothes which was first removed by Francisco Balas?

A:

My dress.

Court:

Q:

When you say clothes, what were you wearing?

A:

Short[s] and t-shirt your Honor.

Fiscal Ofialda:

Q:

You said that Francisco Balas undressed you. After he undressed you, what did he do, if any?

A:

He inserted his penis in[to] my vagina.

Q:

Do you remember if he did anything before he inserted his penis to your vagina?

A:

Yes, sir, he threatened me [with] a fighting bolo and a knife.

Q:

When this Francisco Balas inserted his penis [in]to your vagina, what did you feel?

A:

Pain, sir.

Q:

What else did he do to you while he was inserting his penis into your vagina?

A:

He put his hand in my mouth.

Q:

While Francisco Balas was covering with his hands your mouth and at the same time inserting his penis [in]to your vagina, do you remember if he said to you anything?

A:

He said that if I will create noise he will kill me.

Q:

What else did he tell you?

A:

No more.

Q:

While you and Francisco Balas were upstairs, do you remember if someone called you?

A:

Yes, sir.

Q:

And who called you?

A:

Auntie Helen.

Q:

Who is this auntie Helen you are referring to?

A:

The wife of uncle Ruel Mia.

Q:

Did you go downstairs?

A:

Yes, sir.

Q:

And what did he ask you or why did he call you?

A:

He asked me to prepare milk.

Q:

Were you able to prepare mil[k]?

A:

Yes, sir.

Q:

Do you remember if this auntie you are referring to asked you anything?

A:

She asked me what happened upstairs?

Q:

And did you tell her?

A:

I told her that I was raped by my father.

Q:

What about Ruel Mia, where [was] he at that time when you [told your auntie] of what had happened to [you]
x x x?

A:

He was also there.

Q:

What did your auntie or uncle Ruel Mia do after you inform[ed] them of what happened upstairs?

A:

They called a police.

Q:

Who called for a police?

A:

My uncle Ruel Mia.

Q:

If that Francisco Balas is in the Courtroom, could you identify him?

A:

Yes, sir.

Q:

Please stand up and point him to the Court? (Witness stood up pointing to a person inside the Courtroom who when asked his name, answered Francisco Balas)."[12]

The victim's testimony was corroborated by Ruel Mia who testified that, on that same occasion, he and his wife heard noises in the room upstairs where the victim and appellant were sleeping. When they called the victim to inquire about the commotion, she told them of the sexual abuse committed by appellant. Thereupon, Ruel Mia immediately sought the assistance of the police and the apprehension of appellant.[13]

The candid, concise and categorical declarations of complainant, coupled with the corroborative testimony of the other prosecution witnesses, more than sufficiently establish appellant's culpability. Certainly, it is unthinkable for a victim of tender years to impute a crime as serious as rape, if she was not motivated solely by her desire to have the culprit apprehended and punished.[14] Moreover, it would be highly inconceivable for her to accuse her own father of such evil act, if it was not the truth.[15]

Well-settled is the rule that when an alleged victim of rape says she has been violated, she says in effect all that is necessary to show that rape has been inflicted on her. So long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[16]

Appellant points to the medical examination on record showing the absence of hymenal lacerations on the genitals of the victim. He asserts that such finding is incompatible with her claim of vaginal penetration. However, neither the full penetration of the vagina nor the laceration of the hymen is necessary to establish the crime of rape.

It bears noting that full penetration of the woman's sex organ is not an element of the crime of rape.[17] Likewise, a finding that the victim's hymen is intact does not necessarily negate rape.[18] Laceration of the hymen, even if considered a physical evidence of sexual assault, is not always essential to establish the crime's consummation.[19] As a matter of fact, a conviction for rape may be sustained even in the absence of genital lacerations.[20]

In *People v. Sandico*,[21] the Court rejected the accused's theory that the absence of any laceration in the victim's hymen disproved the commission of rape. It relied on the explanation given by the medicolegal expert that resulting lacerations would depend largely on the elasticity of the victim's hymen. Moreover, it reiterated the established principle that full penetration is not required to sustain a finding of rape:

"Accused-appellant theorizes that the absence of any laceration in the victim's genital organ completely negated rape, there being no physical evidence of the same. This, according to him, was confirmed by the findings of the medico-legal officer who examined the victim. However, this phenomenon was satisfactorily explained by the medico-legal officer when she said that 'Marivic's hymen is the elastic type which would allow penetration by an average-size Filipino male organ in full erection without genital injury.' In other words, according to Dr. De Perio-Daniel, it was possible that Marivic's hymen would not break even if there was penetration. After all, and perhaps more importantly, full penetration is not required to sustain the conviction of rape, and that it is enough that there be proof of the entrance of the male organ within the labia of the pudendum of the female organ. In fact, penetration of the penis by the entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape." [22]

It is a generally accepted principle that the factual findings of the trial court are entitled to great weight and are generally not disturbed on appeal, because it had the unique opportunity to observe the demeanor of the witnesses and thus to assess their credibility.[23] Absent any showing of facts or circumstances that the trial court failed to

appreciate and that would change the result if they were considered, the factual findings it laid down are binding upon the Supreme Court.[24]

To be sure, appellant has not presented any evidence that the RTC overlooked a material fact or circumstance that would warrant a deviation from the aforementioned rule. Accordingly, his appeal for a reversal of the assailed Decision must be rejected, and the finding of his guilt beyond reasonable doubt becomes inevitable.

Second Issue

Proper Penalty

We agree, however, with appellant's contention that the trial court erred in imposing the death penalty, because the qualifying circumstance of father-daughter relationship between him and the victim had not been alleged in the Information. Such failure is fatal and bars conviction for rape in its qualified form, which is punishable with death.[25] The concurrence of the minority of the victim and her relationship to the offender is a special qualifying circumstance that should both be alleged in the Information and proven during the trial in order to warrant the imposition of the death penalty.[26]

This Court explained the rationale behind this judicially inscribed rule in *People v. Arillas*,[27] as follows:

"For the crime of rape to be elevated in its qualified form, the circumstance that qualifies it should be alleged in the information. If the qualifying aggravating circumstance is not alleged but proved, it shall only be considered as an aggravating circumstance since the latter may be proven even if not alleged. It follows that in such cases, the accused cannot be convicted of the crime in its qualified form. It is fundamental that every element of an offense must be alleged in the complaint or information. The purpose of the rule is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense. Thus, we ruled that it is a denial of the right of an accused to be informed of the nature of the accusation against him, and consequently, a denial of due process if he is convicted of a crime in its qualified form notwithstanding the fact that the information, on which he was arraigned, charges him only of the crime in its simple form by not specifying the circumstance that qualifies the crime." [28]

To repeat, a person charged with committing rape in its simple concept cannot be convicted of the crime in its qualified form.[29] It would be a denial of the constitutional right of the accused to be informed of the nature of the charge against him -- and consequently a denial of due process -- if he is charged with simple rape, but convicted of qualified rape and sentenced to death.[30]

Since we are reducing the penalty of appellant to reclusion perpetua, the damages awarded by the RTC are modified accordingly, as follows: the P75,000 civil indemnity awarded to the victim is reduced to P50,000, because the defective Information filed against appellant prevents the imposition of the death penalty. However, pursuant to current jurisprudence, additional awards of P50,000 as moral damages and P25,000 as exemplary damages in her favor are in order. Moral damages are automatically granted in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[31] Pursuant to our ruling in *People v. Catubig*,[32] exemplary damages are awarded because of the presence of aggravating circumstances in the commission of the rape - there was a father-daughter relationship and appellant was armed with a bolo and a knife when he raped the victim.

WHEREFORE, the Decision of the Regional Trial Court of Kalibo, Aklan (Branch 1) in Criminal Case No. 4391 is hereby AFFIRMED with the following MODIFICATIONS: (a) the penalty is reduced to reclusion perpetua, (b) the civil indemnity ex delicto granted to the victim is reduced to P50,000, (c) moral damages of P50,000 and exemplary damages of P25,000 are granted to the victim. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Puno, and Buena, JJ., abroad on official business.

[1] Rollo, pp. 26-34; penned by Judge Marietta J. Homena-Valencia.

[2] Records, p. 1; signed by Complainant Lusminda C. Balas and her guardian, Ruel U. Mia, and subscribed before Second Assistant Provincial Prosecutor Remedios Tumlos-Mapeso.

[3] Atty. Eleuterio Dalipe of the Public Attorney's Office.

[4] Records, p. 14.

[5] RTC Decision, p. 9; rollo, p. 34; records, p. 204.

[6] Appellee's Brief, pp. 4-8; rollo, pp. 93-97. The Brief was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Fernanda Lampas Peralta and Associate Solicitor Marietta S. Brawner.

[7] Ibid., pp. 93-97.

[8] Appellant's Brief, pp. 5-7; rollo, pp. 56-58. This was signed by Attys. Arceli A. Rubin, Amelia C. Garchitorea and Beatriz G. Teves-de Guzman of the Public Attorney's Office.

[9] RTC Decision, p. 7; rollo, p. 32; records, p. 202.

[10] This case was deemed submitted for resolution on December 26, 2000, upon receipt by this Court of appellee's Reply Brief.

[11] Appellant's Brief, *supra*, p. 52; original in upper case.

[12] TSN, September 13, 1995, pp. 2-5.

[13] TSN, June 29, 1995, pp. 15-17.

[14] *People v. Onabia*, 306 SCRA 23, April 20, 1999.

[15] *People v. Javier*, 311 SCRA 122, July 26, 1999.

[16] *People v. Ambray*, 303 SCRA 697, February 25, 1999.

[17] *People v. Sagun*, 303 SCRA 382, February 19, 1999.

[18] *People v. Baygar*, 318 SCRA 358, November 17, 1999.

[19] *People v. Marcelo*, 305 SCRA 105, March 22, 1999.

[20] *People v. Tabarangao*, 303 SCRA 623, February 25, 1999.

[21] 307 SCRA 204, May 18, 1999.

[22] Ibid., at pp. 213-214, per Bellosillo, J.

[23] *People v. Soriano*, 272 SCRA 760, May 29, 1997; *People v. Daquipil*, 240 SCRA 314, January 20, 1995.

[24] *People v. Valles*, 267 SCRA 103, January 28, 1987; *People v. Lapuz*, 250 SCRA 250, November 23, 1995.

[25] *People v. Ambray*, 303 SCRA 697, February 25, 1999.

[26] *People v. Cantos Sr.*, 305 SCRA 786, April 14, 1999; *People v. Alcala*, 307 SCRA 330, May 19, 1999.

[27] 333 SCRA 765, June 19, 2000.

[28] *Ibid.*, at p.774, per Puno, J.

[29] *People v. Bonghanoy*, 308 SCRA 383, June 17, 1999.

[30] *People v. De la Cuesta*, 304 SCRA 83, March 2, 1999.

[31] *People v. Supnad*, GR Nos. 133791-94, August 8, 2001.

[32] GR No. 137842, August 23, 2001.

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