# THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DONATO BERNALDEZ Y LAMAGAN, ACCUSED-APPELLANT.

*G.R. Nos. 132779-82. January 19, 2000*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

These cases are here on automatic review from the decision[1] of the Regional Trial Court, Branch 163, Pasig City, in Criminal Case Nos. 11860-H to 11863-H, finding accused-appellant Donato Bernaldez y Lamagan guilty of four counts of rape and imposing on him for each crime the penalty of death. In addition, accused-appellant was ordered to pay the total amount of P500,000.00 as moral damages to the private complainant.

Complainant Mary Jane Bernaldez is accused-appellant's daughter. She was born on April 19, 1979,[2] the second of nine children and the eldest of seven daughters.[3] In her testimony[4] in the trial court, she accused her father of raping her in their house at 553 Daang Bakal, Dulong Tanyag, Taguig, Metro Manila, four times when she was 17 years old.

Her testimony is as follows: On December 23, 1996, at two o'clock in the morning, her father arrived home from work. He proceeded to his room upstairs and then called her to clean the room. She told him that she would clean it the next day, but he insisted that she clean his room right away. She, therefore, did as bidden, but as she was picking up the litter in the room, accused-appellant closed the door. He then took her into his arms and started kissing her, first on the lips and then on the lower part of her body, even as he started disrobing her. He kissed her on the breast, laid her on the bed, and then went on top of her and had sexual intercourse with her. After he was through, accused-appellant warned her not to tell anybody about the incident, otherwise he would kill her and her brothers and sisters.

Again, on January 11, 1997, while Mary Jane was asleep on the bench inside their house, she felt herself being lowered to the floor by accused-appellant, who started kissing her. He later removed her shorts and panty, telling her that "he's doing that to me because I look alike [sic] my mother and he wanted me to have experience." She told him that nonetheless she is his daughter, but this did not deter accused-appellant from having his way.

After the previous incidents, Mary Jane decided to sleep downstairs. Her brothers and sisters slept on the floor while she occupied the papag (bamboo bed). On January 30, 1997, she felt accused-appellant touching her thighs. She mustered enough courage and asked him why he was abusing her. He said it was because she was "a good girl," and she was the only one who looked like her mother. He then proceeded to undress her and have sex with her while she cried.

The last rape took place near midnight of February 24, 1997. Mary Jane was sleeping on the papag while her siblings were lying on the floor. Accused-appellant told her to let him sleep beside her ("tabi tayo"). She refused, but accused-appellant insisted. Mary Jane turned her back to him, but accused-appellant embraced her and made her face him. Then, accused-appellant kissed her and removed her shorts and panty and had sexual intercourse with her.[5] After the act, accused-appellant went to sleep.

Mary Jane said that unknown to her father and herself, her sister Marivic saw her father sleeping beside her with only his briefs on. Marivic reported what she had seen to their aunt, Jonalyn Ramos, who later confronted Mary Jane. The latter broke down and told her aunt "everything from the start what my father [did] to me." With Jonalyn's support, Mary Jane filed a complaint-affidavit (Exh. A)[6] against accused-appellant. She underwent a medical examination on February 24, 1997 by Dr. Anthony Joselito R. Llamas, medico-legal officer of the Philippine National Police (PNP), who prepared the following report:[7]

> FINDINGS:
> GENERAL AND EXTRAGENITAL:
>
> Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with dark brown areola and nipples from which no secretions could be pressed out. Abdomen is soft and flabby with striae of pregnancy.
>
> GENITAL:
>
> There is moderate growth of pubic hair. Labia majora are full, convex and gaping with the pinkish brown labia minora presenting in between. On separating the same disclosed unculae myrtiformis. External vaginal orifice offers slight resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is wide with flattened rugosities. Cervix is normal in size, color and consistency.
>
> CONCLUSION:
>
> Findings are compatible with recent sexual intercourse.
>
> There are no external signs of application of any form of violence.
>
> REMARKS:
>
> Vaginal and peri-urethral smears are negative for gram-negative diploccoci but positive for spermatozoa.
>
> TIME AND DATE COMPLETED: 1515H, 26 February 1997.

Dr. Llamas testified that Mary Jane was positive for spermatozoa which indicated that she had had sexual intercourse less than 24 hours before she was examined on February 24, 1997. He also said that his examination showed unculae myrtiformis, i.e., the destruction of the vestigial portion of complainant's hymen, indicating that Mary Jane had not just had several sexual intercourses but had given birth. Dr. Llamas said he did not notice any external signs of violence on Mary Jane.[8]

Marivic Bernaldez, a younger sister of Mary Jane, testified that around two o' clock in the morning of February 24, 1997, she arrived from a party. She talked with her aunt Jonalyn Ramos for 15 minutes before going inside their house. She then saw her father and Mary Jane lying on the papag with her father embracing her older sister. She, therefore, went out and told her aunt, who accompanied her back to their house to see for herself. [9]

According to Jonalyn, she saw "the father still embracing Mary Jane." She waited until Mary Jane woke up before asking her niece to explain the scene she saw. Mary Jane was silent at first "then she cried and cried." Eventually she told her aunt that accused-appellant had just raped her for the fourth time. When Mary Jane indicated she was willing to file a complaint against her father, Jonalyn accompanied her niece to the police station.[10]

SPO2 Elpidio M. Cahanding testified that, after receiving Mary Jane's complaint, they invited accused-appellant for questioning.[11]

Accused-appellant was the sole witness in his defense. He testified[12] that he worked overtime until two o'clock in the morning of December 23, 1996 at Century Canning and that in fact he was not able to go home at all. He


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said that he was also out at work the night of January 11, 1997. He denied raping Mary Jane on January 30, 1997 and February 23, 1997. He claimed that he could not have been found by his daughter Marivic to be sleeping beside Mary Jane on the papag on February 24, 1997 "because that papag is my bed." According to accused-appellant, he does not know why his sister-in-law Jonalyn Ramos assisted his daughter Mary Jane in filing the rape charges against him although he said that when he was in jail, they (Jonalyn and Mary Jane) took over his assets, including the P120,000.00 benefits he received for the death of his wife as well as his appliances which Jonalyn transferred to his mother-in-law's house. Accused-appellant denied that Mary Jane looked like his wife.

On November 25, 1997, the RTC rendered its decision, the dispositive portion of which reads:

> WHEREFORE, foregoing premises considered, this Court finds accused, DONATO BERNALDEZ Y LAMAGAN guilty beyond reasonable doubt as principal of the crime of rape for four (4) counts and impose upon him -
>
> - Under Criminal Case No. 111860-H, the supreme penalty of death;
>
> - Under Criminal Case No. 111861-H, the supreme penalty of death;
>
> - Under Criminal Case No. 111862-H, the supreme penalty of death; and
>
> - Under Criminal Case No. 111863-H, the supreme penalty of death.
>
> The accused is also ordered to pay Mary Jane Bernaldez the sum of Five Hundred Thousand Pesos (P500,000.00) as moral damages.
>
> To pay the costs.
>
> SO ORDERED

Hence this appeal based on the following assignment of errors:

> - THE LOWER COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF HEREIN ACCUSED-APPELLANT OF FOUR (4) COUNTS OF RAPE HAS BEEN PROVEN BEYOND REASONABLE DOUBT.
>
> - THE LOWER COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE COMPLAINING WITNESS.

Accused-appellant contends that Mary Jane's testimony does not show that he used force and intimidation to have sexual intercourse with her and that her behavior after the rapes (continuing to stay in the same house with him and keeping quiet about her alleged defilement) does not indicate that she had been dishonored. Accused-appellant stresses that Mary Jane is not an innocent and inexperienced girl because the fact is that at 13, she was a runaway and at 15, she was impregnated by her boyfriend and bore a child. Assuming they had sexual relations, accused-appellant insists that the same was "consensual."[13]

We find accused-appellant's contentions to be without merit. Mary Jane's testimony shows that accused-appellant employed intimidation in order to have sexual intercourse with her. Anent the December 23, 1996 rape, she testified that "much as I would like to fight back, I could not do [so] because I'm afraid of him."[14] She expressed the same sentiments with regard to the rapes on January 11 and 30, 1997 and February 23, 1997.[15] After being raped on December 23, 1996, accused-appellant told her that "he will kill us if I reported the matter, 'baka gusto daw po namin na magaya kami sa mga nagma-massacre.'" It must not be forgotten that accused-appellant is complainant's father. In case of rape by a father, his moral ascendancy and

influence over his daughter takes the place of violence or intimidation.[16]

Nor is it true that Mary Jane kept quiet about her misfortune. She did ask help from a coworker after the rape on December 23, 1996, but nothing came out of it.[17] She said she did not tell her relatives because she did not want them to know about the matter and wanted to solve her "problem" by herself. She did not try to run away from their house because she did not want to leave her brothers and sisters[18] who by that time did not have a mother to take care of them.

Accused-appellant claims that his sexual relationship, if any, with Mary Jane was consensual, she being a woman of loose morals who by her own admission had ran away from home at the age of 13 and had a child by the time she was 15.

Mary Jane testified that the reason why she ran away from home when she was 13 was precisely because even then her father was already molesting her, inserting his finger in her vagina. She said: "I left the house because of what he did to me so that my mother will not know about it because I don't want our family to be destroyed."[19] After staying with an aunt in Fairview, Quezon City, she went to work as a maid in Iriga, Bicol. There she met a certain Arnold Fernandez and bore his child.[20] In 1995, she went back to Taguig because "I wanted to help my family."[21] She went to work in a factory after her mother died.[22]

Even granting that complainant was a woman of loose morals, she could still be the victim of rape. For the essence of rape is the carnal knowledge of a woman against her consent.[23] The victim's moral character in rape is immaterial where, as in these cases, it is shown that intimidation was used to force her to have sex with the accused.[24] Thus, in People v. Malagar,[25] where the accused impugned the moral character of his own daughter, whom he was similarly accused of having raped, it was held that the same, even if true, has no positive effect on this Court. For that matter, even a prostitute may be the victim of rape.[26]

For this reason, the Court finds complainant's testimony, as well as those of the other witnesses for the prosecution, positive, credible, and convincing. The same could not be said of accused-appellant's testimony. His claim that Mary Jane and his sister-in-law Jonalyn filed charges against him to allow them to get his assets is hard to believe. A daughter would not accuse her own father of a serious offense like rape had she really not been aggrieved.

Indeed, accused-appellant's testimony suffers from inconsistencies which place in doubt his defense. Anent the rape on December 23, 1996, accused-appellant denied he went home on that day because he allegedly worked overtime in the factory. But he admitted that he asked Mary Jane that night to clean his room and that because the latter asked to be allowed to do so the next day, he slapped her.[27] He also claimed that he was out working the whole night of January 11, 1997 when the second rape occurred. As for the other rapes, accused-appellant simply denied them.[28] His alibi and denials are unavailing against the clear and convincing testimony of his daughter. We, therefore, hold that the trial court correctly held accused-appellant guilty of four counts of rape.

However, the death penalty cannot be imposed on accused-appellant for failure of the prosecution to allege in the informations the relationship of accused-appellant and complainant. Except for the dates, the informations in these cases uniformly allege:

> On or about [date] in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Mary Jane R. Bernaldez, a minor, seventeen years of age, against her will and consent.

The informations merely allege the minority of complainant. However, an allegation of her filial relationship with

accused-appellant is essential because these two (minority and relationship) constitute a special qualifying circumstance, which, in accordance with the settled rule, must be alleged in the information and proven.[29] Thus, in People v. Garcia,[30] it was held that qualifying circumstances, which increase the penalty by degree rather than merely affect the period of penalty as in the case of aggravating circumstances, must be properly pleaded in the information consistent with the constitutional right of the accused to be informed of the charges against him. Consequently, there would be a denial of due process if after being charged with simple rape, he is convicted of its qualified form punishable with death. In these cases, the attendant circumstance qualifying the offense was not completely alleged in the indictments on which he was arraigned. For this reason, the death penalty imposed on accused-appellant in each case should be reduced to reclusion perpetua.

The trial court also erred in awarding P500,000.00 to Mary Jane as moral damages. Evidently, the award is intended as indemnification to the complainant as the text of the decision indicates. Civil indemnity is mandatory upon the finding of the fact of rape. It is not to be considered as moral damages, the latter being based on different jural foundations and assessed by the court in its sound discretion.[31] As the death penalty is not imposed in each of the four cases, the total award for civil indemnity should be reduced from P500,000.00 to P200,000.00, at the rate of P50,000.00 for each crime.[32]

In addition, moral damages should be awarded even without proof, for it is assumed that the complainant has suffered moral injuries entitling her to such an award.[33] Under current rulings, such award should be in the amount of P50,000.00 for each crime.

WHEREFORE, the decision of the Regional Trial Court, Branch 163, Pasig City, is AFFIRMED with the MODIFICATION that accused-appellant's sentence in each of the four cases is reduced to reclusion perpetua, and the award of indemnity of P500,000.00 is reduced to P200,000.00 (or P50,000.00 for each crime). In addition, accused-appellant is ordered to pay moral damages to complainant Mary Jane Bernaldez in the amount of P200,000.00 at P50,000.00 for each crime.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 19-28.

[2] TSN, p. 15, May 13, 1997. Her birthdate was also stated in Medico-Legal Report No. M-782-97(Exh. B), Records, p. 3.

[3] TSN, pp. 5 & 35, May 13, 1997.

[4] Id., pp. 2-28.

[5] TSN, p. 13, May 14, 1997.

[6] Records, pp. 4-5.

[7] Exh. B, id., p. 3.

[8] TSN, pp. 7-9, May 19, 1997.

[9] TSN, pp. 6-7, May 20, 1997.

[10] TSN, pp. 15-20, May 19, 1997.


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[11] TSN, p. 5, June 16, 1997.

[12] TSN, pp. 2-7, Sept. 2, 1997; TSN, pp. 3-24, Sept. 10, 1997.

[13] Reply Brief, p. 1; Rollo, p. 110.

[14] TSN, p. 9, May 13, 1997.

[15] Id., p. 32.

[16] E.g., People v. Panique, G.R. No. 125763, Oct. 13, 1999.

[17] TSN, pp. 19-21, May 14, 1997.

[18] Id., p. 22.

[19] TSN, p. 38, May 13, 1997.

[20] TSN, pp. 3, 10, May 14, 1997.

[21] Id., p. 4.

[22] Id., p. 19.

[23] Under R.A. No. 8353, the concept of rape has been extended to any person who under any of the circumstances associated with the traditional concept of rape shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[24] See People v. Blance, 45 Phil. 113 (1923)

**[25] 238 SCRA 512 (1994)**

[26] People v. Samillano, 207 SCRA 50 (1992)

[27] TSN, p. 6, Sept. 10, 1997.

[28] Id., pp. 7-8.

[29] People v. Panique, G.R. No. 125763, Oct. 13, 1999; People v. Acala, G.R. No. 127023, May 19, 1999; People v. Maglente, G.R. Nos. 124559-66, April 30, 1999; People v. Manggasin, G.R. No. 130599-600, April 21, 1999.

**[30] 281 SCRA 463 (1997)**

[31] People v. Victor, 292 SCRA 186 (1998)

[32] Supra note 29.

[33] People v. Prades, 293 SCRA 411 (1998)


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