

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CLAUDIO GALENO Y MAGBANUA ALIAS "ODING";
ACCUSED-APPELLANT.**

G.R. Nos. 135976-80. June 20, 2001

Ponente: VITUG, J.

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VITUG, J.:

A human being who indulges in an incest relationship descends, it is said, to the level of the beast and manifests a depravity of the worst kind.[1]

At bar is a mandated automatic review on the findings of the Regional Trial Court ("RTC"), Branch 55, of Himamaylan, Negros Occidental, which has found herein appellant CLAUDIO GALENO guilty, on five (5) counts, of rape committed against his own daughter, Jenny Galeno, decreeing thereby the extreme penalty of death on him.

Appellant CLAUDIO GALENO, a.k.a. "Oding," was charged with the crime of RAPE in each of the following informations -

"That, sometime in the month of August, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of a deadly weapon, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'

"and

"That, sometime in the first week of September, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of a deadly weapon, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'

"and

"That, sometime in the second week of September, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of deadly weapon, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'

"and

"That, sometime in the third week of September, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused,

who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of a deadly weapon, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will.'

"and

"That, sometime in the fourth week of September, 1995, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, with lewd design, by means of force, violence and intimidation, and with the use of a deadly weapon, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with JENNY GALENO y ABKILAN, 17 years old, against her will."[2]

Claudio Galeno pleaded NOT GUILTY to the charges. Joint hearings were conducted, following his arraignment, on the five cases.

The evidence for the prosecution, in substance, was testified to by private complainant. JENNY A. GALENO, at the witness stand, claimed to be 17 years old, single, a student and a resident of Sitio Limbo, Barangay Nabali-an, Himamaylan, Negros Occidental. She was raped on five occasions, she said, by her own father.

The first incident occurred in August 1995 when she was barely sixteen years old. It was noontime. Not having school classes that day, she was told by her mother to stay home to look after their animals and pets. Her mother and elder brother were then working in the sugarcane field while her other brothers and sisters were not in the house attending to some other matters. She was resting inside the room located on the first floor of the house when her father foisted himself upon her, pointed a long sharp bolo at her neck and told her to completely undress. Overcome by fear, she did just as she was told. She resisted, although in vain, her father's advances. After taking off his clothes, he forced her legs open and placed himself on top of her. She felt pain when he finally succeeded in penetrating her. It took her father about half an hour, doing the "push and pull" motion, until she felt his discharge inside her bleeding vagina. Withdrawing from her, appellant threatened to kill "them all" if she were to tell on him.

Once, during the first week of September 1995, about midnight, she was roused from bed by her father who already had a knife pointed at her. Her mother was sleeping at the upper part of the house with her other brothers and sisters. Jerked from sleep, she tried to shout but her father timely covered her mouth with his hand. She struggled to free herself but he was too strong for her. He removed her panty, placed himself on top of her and, like before, succeeded in taking her.

A week later, the second week of September 1995, also about midnight, she awoke when her father held both her hands and forthwith covered her mouth. He spread her legs open and raped her for the third time. By then, she was determined to report the matter to her mother but as she was about to do so, her father looked at her with piercing eyes while holding a bolo in his hand. She was immediately silenced.

Around the third week of the same month, at noontime, appellant, armed with the same weapon, forced himself on Jenny. When she refused to submit to his sexual demands, appellant held her hands, covered her mouth and forced himself on her for the fourth time.

The fifth and last incident happened during the fourth week of September 1995. It was no different from what she experienced before - except that this time, the sexual assault by her father took place at the second floor of their house.

Alarmed by the fact that her monthly period had failed to arrive, Jenny took "penbid" drugs to induce her

menstruation. On 04 March 1996, by now worried, she consulted Dr. Jocson at the Doctor's Hospital in Bacolod City. She was discovered to be pregnant. On 31 May 1996, she delivered a baby boy. The "hilot," ELISA TEJIDO, testified that on 31 May 1996, about two o'clock in the morning, she was fetched by OFELIA GALENO (mother of Jenny) to assist Jenny who evidently was experiencing labor pains. When she asked who sired the child, Jenny answered that it was her father.

The defense, controverting the evidence given by the prosecution, submitted differently. Appellant Galeno testified that in August 1995, when the alleged rape took place for the first time, he was busily engaged in weeding the sugarcane field with his wife. The couple did not go home for lunch because they brought along the food with them. It was only in the afternoon that they returned home. During the first week of September 1995, when the second rape supposedly occurred, he left the house as early as four-thirty in the morning. His wife joined him a few hours later. He went home at about four-thirty in the afternoon. Around the second week of September 1995, when the third rape was said to have occurred, he was likewise in the sugarcane field, leaving the house at five o'clock in the morning and going back home at four-thirty in the afternoon. When the supposed fourth and fifth incidents of rape took place during the third and fourth week of September 1995, he was not home, having left with his wife, with food provisions, at five o'clock in the morning for the sugarcane field where they stayed until about four-thirty in the afternoon. On the whole, he asserted, there was never an instance when he was home at about noontime.

Later in his testimony, however, he changed tune and admitted having had sexual congress with his daughter. He testified:

"QUESTION:

In the course of your testimony you admitted having a sexual intercourse with Gina?

"ANSWER:

Yes, sir.

"QUESTION:

How many times?

"ANSWER:

I cannot remember how many times.

"QUESTION:

But the fact is there were many times?

"ANSWER:

I just cannot be sure.

"QUESTION:

Could have it been twice?

"ANSWER:

Maybe more than two (2) times.

"QUESTION:

Four (4) times.

"ANSWER:

Maybe around that number.

"QUESTION:

But definitely it was not six (6) times?

"ANSWER:

No, sir.

"x x x x x x x x

"QUESTION:

The first time you fuck your daughter Jenny was she still studying?

"ANSWER:

Yes, sir.

"QUESTION:

Where did you fuck your daughter the first time, in what place?

"ANSWER:

In our house.

"QUESTION:

What time did you did it happen?

"ANSWER:

Night time.

"QUESTION:

The second time?

"ANSWER:

During the day time.

"QUESTION:

Were you not confused that it might be at the first time in the noon and second, evening?

"ANSWER:

I am sure the first time was during night time and the second time day time.

"QUESTION:

During 3rd time?

"ANSWER:

Also day time.

"QUESTION:

The 4th time?

"ANSWER:

Also day time."[3]

After hearing both parties at the trial, the court a quo passed judgment thusly:

"WHEREFORE, based on the foregoing premises and considerations, the court finds the accused, Claudio Galeno y Magbanua alias 'Oding', guilty beyond reasonable doubt of five (5) counts of rape and he is hereby sentenced to suffer five (5) death penalties.

"The accused is hereby ordered to indemnify the victim the sum of P250,000.00 with accessory penalties."[4]

In his appeal to this Court, the convicted accused assigned a lone but encompassing error -

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT CLAUDIO GALENO Y MAGBANUA GUILTY BEYOND REASONABLE DOUBT OF FIVE (5) COUNTS OF RAPE AND IN SENTENCING HIM TO SUFFER FIVE (5) DEATH PENALTIES"[5] -

bewailing his conviction and the imposition of the penalty of death by the trial court.

Appellant would have it that the coitus between him and his daughter were all consensual. She never had once resisted, he argued, in any of the incidents of rape complained of. No weapon was used, nor was force or intimidation employed, in their sexual intercourse. The complainant had all the opportunity to report the matter to her mother, brothers or sisters, or to the police, but she instead kept mum and only mentioned it for the first time when she was discovered to be pregnant. The element of force or intimidation, expressed in Article 335 of the Revised Penal Code, could not be substituted, appellant would claim, by the mere moral ascendancy or influence he might have had on his daughter. In any event, he averred, he could only be held guilty of simple rape, the prosecution having failed to conclusively establish that Jenny was under 18 years of age at the time the acts complained of were committed.

Thus, like in most cases of this nature, it is the word of the complainant pitted against that of the accused. This issue, being one of credibility or that which bears on the veracity of conflicting testimony, this Court would be rightly bound by the evaluation made by the trial judge before whom the declarants have been seen, heard and observed during the oral testimony.

The Court finds no cogent reason to discard the assessment made by the court a quo giving full credence to the testimony of the complainant and rejecting that of appellant who, in fact, has given a dissonant defense, at first claiming denial and alibi and then ultimately asseverating consensuality in the incest relationship. There is no valid justification, upon the other hand, for disbelieving Jenny Galeno whose testimony, the trial court has aptly described, appears to be "spontaneous, unflinching and straightforward." Thus:

"QUESTION:

Awhile ago, Miss Witness, you testified that you were raped by your father for the first time sometime in August, 1995, could you please narrate to this Honorable Court what particular day in August, 1995 you were raped by your father?

"ANSWER:

There was no class at that day.

"QUESTION:

What day of the week?

"ANSWER:

I cannot recall what day but I can only remember that there was no class.

"QUESTION:

What time of the day did your father rape you?

"ANSWER:

It was noontime.

"QUESTION:

Where were you raped by your father sometime in August 1995?

"ANSWER:

Inside our house.

"QUESTION:

Where is your house located?

"ANSWER:

So. Limbo, Brgy. Nabali-an, Himamaylan, Negros Occidental.

"x x x x x x x x

"QUESTION:

Now, could you please narrate to this court how your father raped you in August, 1995?

"ANSWER:

He pointed a long sharp bolo at my neck and told me to undress myself.

"QUESTION:

What were you doing before your father raped you?

"ANSWER:

I was sitting downstairs, lying and listening to the radio because I was alone.

"QUESTION:

Now, you said that your mother was out at that time including your brothers and sisters, why is it that you were alone in your house?

"ANSWER:

Because I was told by my mother not to go out to watch our animals and pets around.

"QUESTION:

You said that your father pointed a bolo at your neck before he raped you, why, where did your father bring you and what part of your house were you raped by your father?

"ANSWER:

Inside the room of our house.

"QUESTION:

And could you describe in details how your father raped you?

"ANSWER:

He pointed a bolo at my neck and told me to undress myself. I don't want to do it but I was afraid the bolo might cut my neck, so, I obeyed what he said.

"QUESTION:

You said that he told you to undress, did you undress?

"ANSWER:

Yes, sir.

"QUESTION:

After you undress, what happened next?

"ANSWER:

He laid me down.

"QUESTION:

Did you lie down voluntarily?

"ANSWER:

No, sir, he forced me to lie down.

"QUESTION:

Did you struggle not to lie down?

"ANSWER:

Yes, sir.

"QUESTION:

Were you able to free yourself?

"ANSWER:

I struggled to free myself but he was stronger than I am, being a man, so, I was not able to do it.

"QUESTION:

After you lay down what happened next?

"ANSWER:

He also undressed himself.

"QUESTION:

You said he took off something, what did he take off?

"ANSWER:

His short pants.

"QUESTION:

How about his clothes?

"ANSWER:

Only his brief but his shirt was left.

"QUESTION:

After he took off his brief, what happened next?

"ANSWER:

He let me spread out my legs.

"QUESTION:

Then after that, what happened?

"ANSWER:

He placed himself on top of me.

"QUESTION:

While he was on top of you, did you struggle?

"ANSWER:

Yes, sir.

"QUESTION:

Were you able to free yourself when he was already on top of you?

"ANSWER:

No, sir.

"QUESTION:

After that, what happened next when he was already on top of you?

"ANSWER:

He made a motion of push and pull.

"QUESTION:

That was already when he was on top of you?

"ANSWER:

Yes, sir.

"QUESTION:

When he was making this motion of push and pull, what did you do?

"ANSWER:

I felt that there was something getting inside my vagina.

"QUESTION:

Do you know what was that something getting inside your vagina?

"ANSWER:

Yes, sir, his penis.

"QUESTION:

And how long did he do that?

"ANSWER:

About half an hour.

"QUESTION:

And after half an hour, what did he do?

"ANSWER:

He pull out his penis and I felt something hot inside my vagina.

"QUESTION:

You said, awhile ago, that he was holding a bolo while he was on top of you, making a push and pull, where was the bolo?

"ANSWER:

The bolo was still pointing at my neck.

"QUESTION:

And according to you, when you were already lying down, he took off his shorts, where was the bolo when he was taking of his shorts?

"ANSWER:

He was still holding the bolo.

"QUESTION:

And could you show or describe to this Honorable Court how was he able to spread your legs?

"ANSWER:

His other hand was holding my legs and his other hand was holding the bolo.

"QUESTION:

For about thirty minutes, he withdrew his penis from your private part, after he withdrew his penis from your private part, did you feel anything?

"ANSWER:

Yes, sir.

"QUESTION:

What?

"ANSWER:

Pain.

"QUESTION:

In what part of your body did you feel the pain?

"ANSWER:

In my vagina.

"QUESTION:

Did you examine what was it, why it is that it was painful?

"ANSWER:

Yes, sir.

"QUESTION:

Did you discover anything?

"ANSWER:

Yes, sir, it was bleeding.

"x x x x x x x x

"QUESTION:

How did your father raped you for the second time during the first week of September, 1995?

"ANSWER:

He pointed a knife at my leftside.

"QUESTION:

What were you exactly doing when your father raped you for the second time?

"ANSWER:

I was sleeping.

"QUESTION:

Where?

"ANSWER:

Downstairs.

"x x x x x x x x

"QUESTION:

According to you, your father pointed a knife at the left side of your body, after that, what did he do?

"ANSWER:

He removed my panty and he placed himself on top of me.

"QUESTION:

Awhile ago, you said that you were sleeping and then your father pointed a knife, were you surprised?

"ANSWER:

Yes, sir, I was surprised.

"QUESTION:

Did you shout because you were surprised?

"ANSWER:

He covered my mouth with his hand.

"QUESTION:

Did you struggle?

"ANSWER:

Yes, sir.

"QUESTION:

Were you able to free yourself from him?

"ANSWER:

No, sir.

"QUESTION:

Why?

"ANSWER:

Because he was strong.

"QUESTION:

Can you describe how long was that knife?

"ANSWER:

About 10 inches.

"QUESTION:

After your father pointed a knife at the side of your body, what did he do?

"ANSWER:

He removed my panty.

"QUESTION:

What else did he do?

"ANSWER:

He placed his body on top of me.

"QUESTION:

What did he do while he was on top of you?

"ANSWER:

He made a motion of push and pull.

"x x x x x x x x

"QUESTION:

Could you describe again to this Honorable Court how your father raped you for the third time in the second week of September, 1995?

"ANSWER:

He was holding my hands so that I cannot move and at the same time covering my mouth.

"QUESTION:

In what particular part of your house did your father rape you for the third time on the second week of September, 1995?

"ANSWER:

The same - downstairs.

"QUESTION:

How did your father raped you?

"ANSWER:

He was holding my hands and covering my mouth and then he spread out my legs.

"QUESTION:

Since this happened at nighttime, where was your mother at that time?

"ANSWER:

My mother was sleeping upstairs.

"QUESTION:

How about your brothers and sisters?

"ANSWER:

They were also sleeping.

"QUESTION:

How about you, where were you sleeping at that time?

"ANSWER:

I was sleeping downstairs.

"QUESTION:

Who was your companion, if any, sleeping downstairs?

"ANSWER:

My brother who was also sleeping on the other bed.

"QUESTION:

How about your father?

Did you report this incident after your father repeatedly raped you for the third time?

"ANSWER:

No, sir.

"QUESTION:

Why?

"ANSWER:

Because whenever I came near to my mother, he looked at me with a piercing eyes and at the same time he will hold a bolo.

"QUESTION:

How about the fourth time that your father raped you, where did this happen?

"ANSWER:

The same - in our house.

"QUESTION:

And how did your father raped you, will you please describe before this Honorable Court?

"ANSWER:

He forced me even if I refused.

"QUESTION:

Did he have any weapon when he raped you for the fourth time?

"ANSWER:

Yes, sir.

"QUESTION:

What?

"ANSWER:

The same - knife.

"QUESTION:

And could you remember the day of the week when he raped you for the fourth time?

"ANSWER:

I think it was Saturday because I have no class at that time.

"QUESTION:

What time of the day did your father rape you for the fourth time?

"ANSWER:

Noon time.

"QUESTION:

Do you have any companion when your father raped you for the fourth time on the third week of September 1995?

"ANSWER:

I was alone.

"x x x x x x x x

"QUESTION:

How about for the fifth and the last time, how did your father rape you?

"ANSWER:

If I will not submit to what he wants, he will kill us all.

"QUESTION:

Where did he rape you?

"ANSWER:

In our house also.

"QUESTION:

In what particular part of your house?

"ANSWER:

Inside our room.

"QUESTION:

Ground floor or second floor?

"ANSWER:

Upstairs."[6]

It is said that it would hardly be conceivable for a young lass, such as Jenny in this case, to weave a story against her own father and put the family honor at stake, for no compelling and just cause. No woman, for that matter, would wish to go through the humiliating trial for such an outrageous offense and senseless depravity unless she truly has been the victim of abuse.[7] The records do not disclose even an attempt to impute ill motives against Jenny other than an alleged intent to conceal an incestuous sexual union.

The defense of "mutuality" is a much-abused defense that often derides the intelligence of a court and only serves to test its patience. The failure of Jenny to shout or to successfully resist her father do not mean her having necessarily consented to the dastardly acts. If resistance would be futile, then offering none certainly is no consent by the victim to the sexual act.[8] It is, in fact, a doctrine that in a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter could be more than sufficient to cow the child-victim to submission. It is this rationale that the Court would at times state that such ascendancy and influence could be equated to the requisite "violence or intimidation that normally is otherwise characterized by physical acts or uttered threats."

Jenny may have failed to promptly report the matter to her relatives and to the police but that should not imply that her charges have been fabricated. It is not unknown for rape victims to suffer, initially at least, in silence. The Court takes judicial notice of a young woman's inbred modesty and shyness and her antipathy in publicly airing acts which blemish her honor and virtue.[9] Rape stigmatizes the victim not the perpetrator.[10]

Appellant, nevertheless, cannot be meted the capital penalty of death. Under Section 11(1) of Republic Act No. 7659,[11] in relation to Article 335 of the Revised Penal Code, the death penalty may be imposed when the rape victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The concurrence of the minority of the victim and her filiation with the accused is essential to qualify the crime and warrant the imposition of the death penalty.[12] The twin circumstances are required to be duly alleged and proved.[13]

While the father-daughter relationship of herein appellant and the complainant was alleged and established, the latter's minority, however, although similarly alleged, was not satisfactorily established. Except for the bare testimony of complainant of being still a minor when the offenses charged were committed, no other evidence was adduced to support the statement. It was not explained why a duly certified certificate of live birth, that could have accurately shown the age of complainant, or a document recognized to be competent evidence[14] for like purpose, had not been duly presented. Nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime must be substantiated for the extreme penalty of death to be upheld. Verily, the minority of the victim should not only be alleged but likewise be proved with such equal certainty and clearness as the crime itself.[15]

Relative to the award of damages in favor of complainant, the Court reiterates the rule that a rape victim is entitled to the grant of P50,000.00 civil indemnity[16] as being the equivalent and in the concept of compensatory damages,[17] a separate award of P50,000.00 moral damages based on a jural foundation that refers to the victim's shame, mental anguish, besmirched reputation, moral shock and social humiliation which rape necessarily brings to the offended party,[18] and a further amount of P25,000.00 exemplary damages on account of the relationship between the accused and the victim that exacerbates the offense.

WHEREFORE, the assailed decision of the court a quo convicting the accused of five counts of rape is AFFIRMED with MODIFICATION in that appellant should be, as hereby he is, sentenced to suffer five terms of reclusion perpetua and to pay complainant Jenny Galeno P50,000.00 civil indemnity, P50,000.00 moral damages, and P30,000.00 exemplary damages, for each of the five counts of rape or, altogether, a grand sum of P650,000.00. Costs de oficio.

SO ORDERED.

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

[1] People vs. Joaquin, Jr., 225 SCRA 179.

[2] Rollo, pp. 9-13.

[3] TSN, 13 May 1997, pp. 18-20.

[4] Rollo, p. 30.

[5] Rollo, p. 43.

[6] TSN, 05 September 1996, pp. 11-29.

[7] People vs. Lopez, 302 SCRA 669.

[8] People vs. Agbayani, 284 SCRA 315.

[9] People vs. Taño, G.R. No. 133872, 05 May 2000.

[10] People vs. Luzonota, 286 SCRA 487.

[11] An act to impose the death penalty on certain heinous crimes, amending for that purpose the Revised Penal Code, as amended, other special laws, and for other purposes.

[12] People vs. Licanda, G.R. No. 134084, 04 May 2000.

[13] People vs. Licanda, G.R. No. 134084, 04 May 2000.

[14] People vs. Tahanggay, G.R. No. 130504, 29 June 2000.

[15] People vs. Javier, 311 SCRA 122.

[16] People vs. Betonio, 279 SCRA 532.

[17] People vs. Fuertes, 296 SCRA 602.

[18] People vs. de Guzman, 265 SCRA 228.

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