

EN BANC

[G.R. No. 136840-42, September 13, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMEO NAVARETTE Y AQUINO, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

The case before the Court involves three counts of incestuous rape said to have been committed by herein appellant Romeo Navarette y Aquino against his 12-year old daughter. The trial court, following a finding of guilt, has imposed the penalty of death.

Navarette was charged before the court *a quo* in three separate informations, *viz*:

"CRIMINAL CASE NO. 2901

"That on or about June 11, 1994, at nighttime purposely sought to ensure and facilitate the commission of crime, in Barangay Bonfal Proper, Municipality of Bayombong, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Romeo Navarette y Aquino, who is the parent or father of herein complainant, with lewd design and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, who is under 12 years of age, in her dwelling while she was sleeping or otherwise unconscious, although she subsequently woke up from her sleep while being raped, against her will and consent, to her damage and prejudice including her mother."^[1]

"CRIMINAL CASE NO. 2902

"That sometime in the month of October or thereabout in the year 1994, at nighttime purposely sought to ensure and facilitate the commission of crime, in Barangay Bonfal Proper, Municipality of Bayombong, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Romeo Navarette y Aquino, who is the parent or father of herein complainant, with lewd design and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, who is under twelve years of age, in her dwelling while she was sleeping or otherwise unconscious, although subsequently woke up from her sleep while being raped, against her will and consent, to her damage and prejudice including her mother."^[2]

"CRIMINAL CASE NO. 2903

"That on or about December 5, 1994, at nighttime purposely sought to ensure and facilitate the commission of crime, in Barangay Bonfal Proper, Municipality of Bayombong, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Romeo Navarette y Aquino, who is the parent or father of herein complainant, with lewd design and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, who is under twelve years of age, in her dwelling while she was sleeping or otherwise unconscious, although she subsequently woke up from her sleep while being raped, against her will and consent, to her damage and prejudice including her mother."^[3]

Appellant was arraigned, tried, and after a protracted hearing, convicted by the Regional Trial Court ("RTC") of Nueva Vizcaya, Branch 28, in its 13th November 1998 consolidated decision. The convicted accused was meted the extreme penalty of DEATH and "to indemnify the offended party, Massachusette Navarette, damages in the amount of FIFTY THOUSAND (P50,000.00) pesos and to pay exemplary damages in the amount of TWENTY FIVE THOUSAND (P25,000.00) pesos to deter other sex perverts from sexually assaulting hapless and innocent girls, especially their own kins."^[4]

Pleading for his life, Navarette, in this automatic review of his case by the Court, maintains that the trial court has "ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT."^[5] Counsel for appellant capsulized the evidence for the defense; thus:

"Evidence for the defense shows that since 1986, accused-appellant, his wife and his two (2) children resided at Bonfal Proper, Bayombong, Nueva Vizcaya. When his wife, Aprilyn left for Hongkong in 1991, his daughter, Massachusette was left with him while his son, Romeo, Jr., stayed with his mother-in-law, Primitiva Aggabao at Inatub, Quezon, Nueva Vizcaya. When his son started attending school in 1994, he brought him home to Bonfal. Accused-appellant described his daughter as a normal child who attended school at Bonfal Pilot Central School where she actively participated in their school activities. Accused-appellant further testified that in the beginning, he had a fine relationship with his mother-in-law until they had a little misunderstanding over a T.V. set which caused her mother in law to leave and went back to Inatub. When his wife came from abroad, accused-appellant and his mother-in-law had another misunderstanding concerning a parcel of land bought by his wife. Since then, they harboured ill-feelings towards each other.

"As to the charges of three (3) counts of rape against him, accused-appellant testified that these could not be true because on June 11, 1994, Massachusette was then in Inatub and slept with her brother and

grandmother. On the second charge of rape, accused-appellant testified that for the whole month of October, Massachusette had her own beddings while he slept with his son, Romeo, Jr. Likewise, he could not have raped his daughter on December 5, 1994 because at that time, they were all busy with the packages sent by his wife and finished arranging the same by midnight.

"Accused-appellant testified that the charges of rape against him were all instigated by his mother-in-law who wanted him to be separated from his family and anticipated that he would be mortgaging the lot that his wife bought once the latter leave for abroad. He further testified that he loves his children very much and he did not know of any other reason why he was accused of such crime. (TSN, September 17, 1998, p. 2-16)."^[6]

Appellant submits that the *onus* required of the prosecution to overcome the constitutional presumption of innocence accorded to every accused, as well as the legal mandate that the guilt of the accused must be proven beyond reasonable doubt, has not properly been discharged by the prosecution. Specifically, appellant contends that the medical findings do not tally with the testimony of complainant relied on by the trial court.

In the defense brief, appellant stressed:

"Massachusette claimed that it was on December 30, 1994 when her grandmother allegedly noticed the 'yellowish stain' on her panty. It was at this point that she told her grandmother that she was raped by her father. Immediately the following day on December 31, 1994, she was subjected to a physical examination. Contrary to Massachusette's allegation, no secretion of any kind or color was found in her vagina. This prompted the medical officer to conduct internal examination by inserting a finger into Massachusette's vagina. It was found that there were some old lacerations therein, however, during cross examination, such laxities in the vagina of Massachusette may have been due to the fact that she has been a physically active child, having engaged herself into various sports. The medical officer even admitted that independently of the insertion of a blunt instrument, her physical activities could have caused the laxity.

"While we adhere to the postulate that findings of the trial court are accorded great respect on the matter of the credibility of witnesses, it is our view that this case cannot come under said rule as the lower court misapplied some facts of weight and substance which, if only taken into account would have altered the result of the instant case. (People vs. Camay, 152 SCRA 401)

"Massachusette's testimony is hardly positive and convincing. Her so-called 'harrowing experience' might solicit and win the sympathy of this Court but [it] does not mean that she could be telling the truth, especially when the records revealed that her grandmother and accused-appellant herein had a fight over a parcel of land. Be it noted that it was

Massachusetts's grandmother who allegedly noticed the 'stain' in her underwear which proved to be non-existent as no secretion was found in her vagina during the physical examination."^[7]

The Solicitor General, on his part, seconds the findings of the court *a quo*; he states:

"Private complainant, Massachusetts Navarette filed a complaint for rape against her father, the accused, Romeo Navarette, for having molested her on three occasions, particularly on June 11, sometime in October, and December 5 of 1994 when she was about to be ten years having been born on September 29, 1984 as evidenced by her Certificate of Birth marked as Exh. 'A'.

"That the first incident happened on June 11, 1994 at Bonfal Proper, Bayombong, Nueva Vizcaya when at night, while Massachusetts and her younger brother, Romeo, Jr., were asleep, Massachusetts was awoken by the fact that the accused, who was only wearing an underwear, was on top of her. As she tried to fight, the accused held her hands upwards and spread her legs apart. Amidst her silent cries, her duster was put up and her panty was removed. And when the accused removed his underwear and did a pumping motion, which lasted for a few minutes, Massachusetts felt pain in her vagina. After satisfying his bestial lust, accused warned her not to tell the incident to anybody. As she was afraid of her father for his cruelty, she did not report what happened. In October and on December 5, under the same circumstances, the incident was again repeated.

"It was only sometime on December 30, 1994, when Massachusetts and her younger brother stayed with their grandmother, Primitiva Aggabao, during the Christmas vacation, that she first reported the incident. It so happened that the grandmother noticed the yellowish stain in her panty. Out of suspicion, Mrs. Aggabao asked Massachusetts to spread her legs and there she saw that the lower portion of her labia majora had been slashed. When asked what it was all about, Massachusetts confessed that she was raped by her father. On the following day, Mrs. Aggabao accompanied her granddaughter to the hospital for physical examination.

"The medical and physical examination to which Massachusetts underwent on December 31, 1994, as contained in the Medico-Legal Certification (Exhs. 'E', 'E-1' and 'E-2') issued by Dra. Marietta Anne Balbas, the attending physician, showed the following findings:

- menarche - (-)
- conscious, coherent, ambulatory, not in CR distress
- skin - no sign of physical injury
- Genitalia: External: Well-coaptated labia majora
 - IE: Vagina, admits 1 finger with ease
 - Hymen: (+) old, healed lacerations
 - (-) secretions

"Based on such findings, it appeared that the genitalia of the patient in its external findings has a well-coaptated labia majora which means that they were intact. However, in the internal examination of the vagina, it admits one finger with ease which is not usual, generally, for a ten-year old girl and such laxity of the vaginal mucosa could have been caused by the insertion of any blunt object or material, which may include a male organ, or involvement in strenuous physical activities. Likewise, the hymenal opening showed multiple old lacerations which could have been caused a few weeks, months or years back. There were negative secretions.

"Aprilyn Navarette, Massachusetts's mother, who was then in Hongkong, was informed of the incident and immediately came home. As she was to leave again, it was Mrs. Aggabao who assisted Massachusetts in filing the complaints before the police in Bayombong, Nueva Vizcaya. Three months after Aprilyn left, she died of cardio-respiratory arrest due to acute renal failure. The fact that Massachusetts was raped and the untimely demise of Aprilyn caused hurt feelings to Mrs. Aggabao and since then became indifferent to the accused. Having found out about the complaints, the accused scolded and whipped Massachusetts asking her what she had been telling to her grandmother. This made Massachusetts very angry and felt extreme dislike to his father and since then had been staying with her grandmother. During the incarceration of the accused, the latter wrote a letter (Exhs. `H' and `H-1') to them asking for forgiveness.^[8]

The Court, in carefully examining the records and reviewing the case has kept in mind the guiding principles in the evaluation of rape cases, i.e., that -

"x x x (a) an accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent, to disprove it; (b) in view of the nature of the crime in which only two persons are involved, the testimony of complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense."^[9]

In assailing the credibility of the complainant, appellant would call attention to the fact that the medical finding of Dr. Marietta Ann B. Balbas found no secretion in complainant's vagina. The yellowish substance, he argued, could have very well been there for a variety of causes or reasons. But the medical examination was conducted a day after the stain found in the victim's panty was discovered. At all events, the presence of either injury or secretions in the victim's genitalia would be unessential in the commission of, or a conviction^[10] for, rape. The testimony alone of a victim of rape, if credible, is sufficient to convict an accused for such a crime.^[11]

The complainant testified categorically and in great detail that she was raped by her