

## EN BANC

[ G.R. Nos. 133008-24, February 06, 2002 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VIRGILIO  
RODAVIA Y TOXON, APPELLANT.**

### DECISION

#### PER CURIAM:

This is an automatic review of the Joint Decision<sup>[1]</sup> of the Regional Trial Court of Lipa City (Branch 13) penned by Judge Jane Aurora C. Lantion in Criminal Cases Nos. 449-95 to 452-95, 439-95 to 444-95, 428-95, 430-95, 431-95, 532-95, 434-95, 436-95 and 437-95 finding Virgilio Rodavia guilty beyond reasonable doubt of 17 counts of qualified rape and imposing on him the supreme penalty of death for each act of rape.

During his arraignment on February 6, 1995, appellant, with the assistance of his counsel de oficio, Atty. Luis Ilagan, Jr., pleaded not guilty to the rape charges.<sup>[2]</sup> In forty-three (43) separate criminal complaints,<sup>[3]</sup> appellant was accused of raping his minor daughter Michelle Rodavia on various occasions from April 13 to May 31 of 1995. After joint trial of all the criminal complaints, Criminal Case Nos. 464-95 to 470-95 were dismissed for lack of jurisdiction. Criminal Case Nos. 457-95 to 463-95, 445-95 to 448-95, 329-95, 433-95, 435-95 and 408-95 were dismissed for insufficiency of evidence. Nonetheless, the trial court convicted appellant in Criminal Case Nos. 452, 451, 450, 449, 444, 443, 442, 441, 440, 439, 437, 436, 434, 432, 431, 430 and 428-95 which, except for the date and place of the commission of the offense, uniformly charged as follows:

“That on or about the 31st day of May, 1995, at about 10:00 o’clock in the evening at Barangay San Salvador, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a kitchen knife, by means of threats and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, daughter of the said accused, and a minor of 14 years of age, against her will and consent, and at their house located in the said barangay.”<sup>[4]</sup>

After trial, the Court rendered its appealed Decision and disposed thus:

“WHEREFORE, premises considered, accused Virgilio Rodavia y Toxon is hereby found GUILTY beyond reasonable doubt of seventeen (17) counts of the crime of Rape (Criminal Cases Nos. 449-95 to 452-95, 439-95 to 444-95, 428-95, 430-95, 431-95, 432-95, 434-95, 436-95 and 437-95) and is hereby imposed the penalty of DEATH for each act of Rape. He is further ordered to indemnify Michelle Rodavia in the amount of P50,000.00 for each act or P850,000.00 In addition, accused is ordered

to pay Michelle Rodavia the amount of P10,000.00 as moral damages and P5,000.00 as exemplary damages for each count of rape or the total amount P255,000.00.”<sup>[5]</sup>

The Office of the Solicitor General, in its Brief, narrates how the 17 acts of rape were committed by appellant against his own daughter in a methodical and almost routinary manner thusly:

“The Rodavia family lived at Caramoan, Camarines Sur, Bicol until April 20, 1995 when accused-appellant Virgilio Rodavio, his daughter-victim Michel[l]e Rodavia and two (2) sons, Leon Rodavia, age 10 years old, and Joel Rodavia, age 8 years old, leaving behind his (appellant’s) wife Elvira Castillo in Caramoan, Camarines Sur, left for San Salvador, Lipa City, Batangas where they stayed with one uncle Romy for a week. Thereafter, Virgilio, Michelle, Leon and Joel transferred to the house owned by Virgilio’s employer, also in San Salvador, Lipa City, Batangas.

“On May 1, 1995, after taking their supper at about seven o’clock in the evening, Virgilio called Michelle to his room and told her to undress. Michelle refused to follow his orders, thus, Virgilio himself removed her shorts and panty. He forced her to lie down, went on top of her and forced his penis into her vagina. She cried as he made pumping movements and kissed her. After which, he stood up, wiped his penis and left her. She herself stood up, and went to the other room where her two brothers were already sleeping at the time of the incident.

“On May 2, 1995, at about 7 o’clock in the evening, Virgilio again called Michelle to his room and told her to give him a massage. Despite the May 1, 1995 Incident, she went to his room out of fear that he would hurt her since he kept a knife inside his room. Upon entering his room, he told (her) to undress and as she was about to go out of the room, he pulled her back. While she was standing, he undressed her by removing her shorts and panty. He pushed her to a lying position, undressed himself, went on top of her, and had sexual intercourse with her. She tried to push him away but to no avail. She could only cry. After satisfying his lust, he stood up, wiped his penis and left. Michelle then went to the other room.  
x x x.

“In the evening of May 3, 1995, after taking their supper, Virgilio called Michelle thrice to his room but she did not go, so he pulled her to his room. At that time, he was only wearing briefs and he told her to undress. She tried to go out of the room but he slapped her on her right cheek. She cried and sat down on the floor near the wall. He held her by her dress and force her to lie down, went on top of her, undressed her and had sexual intercourse with her. He inserted his penis into her vagina where she felt pain. She allowed Virgilio to have sex with her because he threatened to kill her if she refused. He had threatened her similarly on May 1, 1995 and May 2, 1995. The following morning, he warned her not to tell anybody of the incident, otherwise, he would also kill her mother.

“On May 4, 1995, he called her to his room and again forced her to lie down. He removed his shorts and briefs and started to undress her. She

beg him not to do it again to her because 'kaawaawa naman ako pag nagbuntis ako.' Nonetheless, he went on top of her, kissed her, made pumping motions and inserted his penis into her vagina. She felt pain in her stomach and vagina due to the force he was exerting on her. After the sexual act, he wiped off sticky substance from his penis. She also wiped off sticky substance from her vagina.

x x x

x x x

x x x

"On the night of May 15, 1995, while Michelle and her two brothers were sleeping in their rooms, Virgilio pulled Michelle to his room and told her to undress. Since she refused to do his bidding, he forcibly undressed her, removed her shorts and panty, forced her to lie down, went on top of her and inserted his penis into her vagina. She did not resist because of his threat that if she shouted he would hurt her. After the sexual act, she noticed a white-colored and sticky substance emitting from his penis. He wiped off the substance and she also did the same to her vagina. He put on his pants and lay down. She then went to sleep.

"On May 16, 1995, after taking their supper, Virgilio again called Michelle to his room and told her to give him a massage. She told him that one of her brothers would give him the massage but he refused and insisted that Michelle do it. When inside Virgilio's room, he held a knife and told her to lie down and when she refused, he pushed her down. He held her on the neck and forced her to lie down. He then undressed her, took off his clothes and went on top of her. He inserted his penis into her vagina and made pumping movements. She could only cry. Virgilio's knife had a wooden handle with a blade 5-6 inches long and 1 inch wide. While raping her, the knife was placed beside him. After the sexual act, he wiped his penis and she also wipe her vagina. She put on her shorts and went to the other room and slept beside her brothers. She could not sleep and prayed to God for help. Her brothers knew what was happening to her and Virgilio because everytime they quarreled, they would mention it to her. But they kept silent on the matter because of fear of their father.

"On the night of May 17, 1995, Virgilio called her to his room and asked how she was feeling. She answered that she was 'nahihirapan' because of what he was doing to her. She was not made to study and her mother did not know what was happening to her. He was angry with her answers and said that it was useless for her to study and added that he will not allow her mother to come to Lipa City. He asked her to undress and said that no one can stop him from doing what he was doing to her. He pushed her to a lying position, went on top of her, inserted his penis into her vagina and made pumping movements on her. He also kissed her. After this, he wiped his organ.

"On May 18, 1995, Virgilio called her to his room. He pulled her by her dress, pushed her to make her lie down, undressed himself and Michelle, went on top of her and inserted his penis into her vagina. She cried and tried to push him away but failed in this. He said that she should just bear what he was doing to her ('tiisin na lang').

"On May 19, 1995, while Michelle was sleeping beside her two brothers in their room, he undressed her. He went on top of her, inserted his penis into her vagina and made pumping movements. She was not aware whether her brothers were awakened by the incident because she kept her eyes closed. After satisfying his bestial desire, he left her. She did not bother to awaken her brothers because they could not do anything.

"On May 20, 1995, while Michelle and her brothers were sleeping, Virgilio entered their room and undressed her and when she woke up, she was already naked waist down. He went on top of her laughing. He Inserted his penis into her vagina. She thought he was an addict because he kept on laughing while having sex with her. He smelled of gin in his breath. She felt pain on her abdomen, stomach and vagina, as if she was being pinched ('parang kinukurot').

x x x

x x x

x x x

"On May 22, 1995, Virgilio went to the room where Michelle was sleeping. He undressed Michelle and took off her clothes. She stood up and tried to put on her shorts but he became angry and slapped her on the left cheek. She cried and sat down near the wall. He pushed her down, went on top of her, kissed her, inserted his penis into her vagina and made pumping movements. She could only cry silently as she was being raped. Her two brothers were already asleep at that time. He threatened to hit her if she cried out.

"On May 23, 1995 while Michelle was sleeping in their room, Virgilio awakened her. He ordered her to undress but she refused. He scolded her telling her that she was 'hardheaded.' He pulled down her shorts and undressed her. He went on top of her, inserted his penis into her vagina, kissed her and made pumping movements. After the sexual act, he wiped his penis and went to sleep. She also wiped off the sticky substance in her vagina.

x x x

x x x

x x x

"On May 25, 1995, Virgilio called Michelle to his room and told to bring a glass of water. He did not drink the water. He told her to lie down beside her. When she was still standing he pulled her dress and removed her shorts and panty. He pushed her down, went on top of her, kissed her, inserted his penis into her vagina and made pumping movements. She felt pain in her abdomen. He continued kissing her but she avoided him. He had bad breath because he smelled of gin. She did not ask help from her brothers since they could not help her anyway. x x x

"On May 27, 1995, when Michelle was sleeping in her room, Virgilio went near her and awakened her. He held her hand, pulled down her shorts and panty. He went on top of her, Inserted his penis into her vagina and made pumping movements. He was perspiring. A white substance came out his penis and into her vagina.

"On May 28, 1995, between 9:00 and 10:00 o'clock in the evening, he entered Michelle and her brothers' room and went near her holding a knife and started to undress her. She let him undress her because he warned her that if she refused, he would stab her with the knife. After undressing her, he went on top of her, and inserted his penis into her vagina.

"On May 29, 1995, when Michelle and her brothers were already sleeping in their room, Virgilio again went to Michelle's room and awakened her, inserted his penis into her vagina and made pumping movements. She tried to push him away but to no avail. She cried in silence, afraid that Virgilio would slap her if he heard her cry. He also threatened to kick her. After the sexual act, he warned her that he would kill her and her mother if she refused to be raped. x x x

"On May 31, 1995, Virgilio went to Michelle's room and put off the light. He pulled down her shorts and panty. He went on top of her, inserted his penis into her vagina, kissed her and made pumping movements. When he was done, he wiped off the sticky substance from his penis. She also wiped off the white and sticky substance from her vagina."<sup>[6]</sup> (Emphasis supplied)

The victim's painful and rigorous ritual of sexual abuses at the hands of her father was discovered sometime before June 15, 1995, when Merlinda Castillo Redito, the victim's aunt, came over to their house to inquire about appellant's plan to bring the victim to Manila. It was only then that Michelle was able to tell anyone of her woeful tale of defloration and the continuous desecration of her dignity by her very own father. Immediately thereafter, the victim, accompanied by Merlinda, reported the rape incidents to the Barangay Tanod, which eventually led to the filing of the appropriate criminal complaint. The Solicitor General detailed this as follows:

"Sometime before June 15, 1995, Merlinda Castillo Redito, the elder sister of Michelle's mother, received a letter from Virgilio stating that he will leave his two sons, Leon and Joel, under her care because he and Michelle will go to work in Manila. After reading the letter, she showed it to her father, Ladislao Castillo. Her father told her to go and ask Virgilio what kind of work they will be doing in Manila. Thus, on the same day, she went to see Michelle in their house in San Salvador, Lipa City. When Merlinda arrived in Michelle's house, Michelle welcomed her and said 'Salamat naman sa Diyos at may dumating na magtatakas sa akin.' (thank the Lord, somebody came to rescue me). Merlinda asked her why she made such comment. She said that it was very difficult to live with her father. Michelle told Merlinda that Virgilio had been raping her for a long time. Michelle looked sickly, very thin and pale. Merlinda told Michelle that if she really wanted to escape from her father, they would have to go to the Barangay Tanod to relate the rape incidents. They met Barangay Tanod Danilo Torres who asked her questions about the rape incidents. After hearing Michelle's story, Danilo and Merlinda went to the house of Michelle's maternal grandmother Trinidad Villanueva and explained the situation to her.