

## EN BANC

[ G.R. Nos. 138726-27, July 03, 2002 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGELIO  
BARROZO Y CASTRO, APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

The failure of the prosecution to prove beyond reasonable doubt the minority of the victim at the time the crime happened bars a conviction for rape in its qualified form. Thus, the proper penalty is *reclusion perpetua*, not death.

### The Case

For automatic review by this Court is the April 7, 1999 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Urdaneta City (Branch 46), acting as a Special Criminal Court in Criminal Cases U-9810 and U-9811. The RTC found Rogelio Barrozo y Castro guilty of rape beyond reasonable doubt and imposed on him the death penalty. The decretal portion of the Decision reads:

"WHEREFORE, finding ROGELIO BARROZO, in CRIM. CASE NO. U-9811, guilty beyond reasonable doubt of aggravated rape, an offense punishable under Art. 266-A, R.A. 8353, in relation to R.A. 7659, the Court sentences Rogelio Barrozo to suffer the penalty of DEATH, to be implemented in the manner provided by law; ordering the accused to indemnify Rowena Barrozo the sum of P75,000.00 for moral damages, further sum of P20,000.00 as exemplary damages and other accessory penalties of the law.

"For failure of the prosecution to prove the guilt of Rogelio Barrozo beyond reasonable doubt in CRIM. CASE NO. U-9810, the Court ACQUITS said accused."<sup>[2]</sup>

Appellant was accused of raping his own daughter, Rowena Barrozo y Castro, in two separate Informations,<sup>[3]</sup> both dated October 14, 1998, which read as follows:

#### Crim. Case No. U-9810

"That sometime in January, 1996, at Barangay Mermer, Manaoag, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threats and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge with his own daughter, Rowena Barrozo y Esteron, a minor below 12 years of age, against her will and to her damage and prejudice."<sup>[4]</sup>

"That on or about August 16, 1998, between 12:00 o'clock midnight and 1:00 o'clock early dawn, at [B]arangay Mermer, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats, and intimidation, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with his own daughter, Rowena Barrozo y Esteron, a minor of 14 years of age, against her will and to her damage and prejudice."<sup>[5]</sup>

When arraigned on January 12, 1999, appellant, with the assistance of his counsel, <sup>[6]</sup> pled not guilty.<sup>[7]</sup> After pretrial and due trial, the RTC convicted him in Criminal Case No. U-9811, but acquitted him in Criminal Case No. U-9810.

### **The Facts**

#### **Version of the Prosecution**

The Office of the Solicitor General presents the prosecution's version of the facts in this wise:

"Rowena Barrozo, private complainant herein, testified that she was born in May 06, 1984. She is the daughter of appellant, Rogelio Barrozo and one Magdalena Aquino. Her parents were separated since she was a young girl. Her mother, who now has her own family, left her in the company of her father, where they lived in the house of her uncle, Melecio Barrozo, at Barangay Mermer, Manaoag, Pangasinan.

"On the night of August 16, 1998, the victim who was then fourteen (14) years old, recounted that when she was in the room of their house at Barangay Mermer, Manaoag, Pangasinan, her father, appellant therein, undressed her and also undressed himself and laid beside her. He covered her mouth and held her hands, went on top of her and inserted his penis in her vagina; she felt pain. Threatening to kill her if she files a complaint against him, appellant ran outside the house. The victim jumped out of the window and went to the nearby house of her Auntie Remeng where she spent the night. The following morning, she reported her ordeal to the Barangay Kagawad and the Barangay Captain, who however, did not believe her story.

"The victim proceeded to the house of her Aunt Lorie, who in turn brought her to her grandmother, Juliana Esteron, at Lelemaan, Manaoag, Pangasinan. A woman named Leah Bumanlag, Chairman of the Manaoag Multi-Purpose Cooperative and Secretary of Disiplina Mass Media Action offered to help her and accompanied the victim to the Manaoag Police Station where they reported the rape.

"Dra. Mary Gwendolyn Luna, c/o Region I Medical Center, Dagupan City, medically examined Rowena Barrozo. She (the doctor) testified further that the victim intimated to her that her father had abused her before, sometime in January 1996, when she was only twelve (12) years old.

Her findings were incorporated in the Medical Certificate she issued, the text of which reads:

'MEDICO-LEGAL CERTIFICATE

- Allegedly sexually abused by own father she was 12 years old
- Abuse was repeated August 16 (Sunday) 1998 at 10:00 A.M. in Mermer, Manaoag, Pangasinan
- Conscious, coherent, ambulatory, no signs of physical injuries
- Menarche – 12 years old
- IMP-August 2<sup>nd</sup> week 1998 – 4 days (August 15-18)
- Breast – with breast buds
- Genitalia – with healed lacerations at 5, 6 o'clock, vagina admits 1 finger with ease two fingers with slight difficulty and pain
- Cervix closed, uterus small, adnexae free whitish discharge
- Smear for presence of spermatozoa
- Vaginal smear result: Negative for spermatozoa<sup>”[8]</sup>  
(Citations omitted)

**Version of the Defense**

Appellant, on the other hand, narrates his version of the facts as follows:

“ROGELIO BARROZO is the father of the complainant. He testified that he was never married to complainant’s mother. They separated when complainant was one year old. He left their only daughter in the custody of his in-laws. He said that complainant is mentally ill because he saw her burning her clothes for three times. One time, he saw her pouring kerosene over cooked rice.

“Accused-appellant denied having raped his daughter. He said that it was only a ‘solso’ by the group of Jerry Cercado with whom he had a fight. Jerry’s group instigated the filing of the rape case against him to eliminate him or as a revenge. He belied that he had carnal knowledge with his daughter who was no longer living with him at the time of the alleged incident. Prior to August 28, 1998, Rowena was living with del Rosario. That was in June 1998. He loved his daughter and wanted her to have good things in life.”<sup>[9]</sup> (Citations omitted)

**Ruling of the Trial Court**

In convicting appellant of “aggravated rape,” the RTC gave full faith and credence to the testimony of complainant. The trial judge ruled:

“The detailed and specific narration of Rowena, how she was sexually abused and assaulted by her father, prevailed over the timid denial and negative assertions of [appellant]. Denial can easily be fabricated and

made. It cannot outweigh and prevail over the positive and clear assertions of Rowena of what transpired on August 16, 1998 as their house at Mermer, Manaoag. The testimony of Rowena is most credible and to the mind of the Court, had actually happened to the exclusion of any other presumption.”<sup>[10]</sup>

Hence, this automatic review.”<sup>[11]</sup>

### **The Issues**

Appellant submits for our consideration the following alleged errors committed by the court *a quo*:

“I

The trial court gravely erred in convicting the accused-appellant notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt.

“II

The trial court gravely erred in not considering the defense interposed by accused-appellant.”<sup>[12]</sup>

### **The Court’s Ruling**

The appeal is partly meritorious. Because of the prosecution’s failure to prove the victim’s minority when the rape was committed, *reclusion perpetua* -- not death -- is the proper penalty.

#### **First Issue:** **Sufficiency of the Evidence**

After a thorough review of the records of the case, we are convinced that the RTC did not err in giving credence to the testimony of the victim and the other prosecution witnesses.

In a prosecution for rape, the Court is always guided by the following principles: (a) an accusation for rape can be made easily, but to disprove it can be difficult though the accused may be innocent; (b) in view of the nature of the crime which usually involves only two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and not be allowed to draw strength from the weakness of the evidence for the defense.”<sup>[13]</sup>

The testimony of the victim, narrating how she was raped by her own father on August 16, 1998, was clear and convincing. It proceeded thus:

#### **DIRECT EXAMINATION**

FISCAL RESTITUTO A. DUMLAO

“[Q] Madam Witness, in one evening of the month of August,

1998, where did you sleep?

A Up-stairs, sir.

Q Up-stairs, you mean it is the house owned by your Uncle Melecio?

COURT: It is already established that she was living with her father in the house of her Uncle Melecio.

FISCAL DUMLAO: Madam Witness, what did you do in that evening?

A I slept, sir.

Q When you slept up-stairs in that house, were you awakened?

A Yes, sir.

Q Why?

A Because I saw my father, sir.

Q What did your father tell you?

A There was, sir.

Q What was that?

A My father told me that if I will report he will kill me.

Q What happened next after that?

COURT: You said that your father told you that if you report, he will kill you, why did he say that?

A No answer.

Q What is it that your father told you not to report?

A No answer.

COURT: You confer with the witness.

FISCAL DUMLAO: Yes, your Honor.

x x x  
x

x x  
x x x"[14]

PROS. DUMLAO: (CONT. OF DIRECT) With the kind permission of the Honorable Court.