

## EN BANC

[ G.R. Nos. 137037-38, August 05, 2002 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VIRGILIO ROMERO, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUISUMBING, J.:**

On automatic review is the joint decision<sup>[1]</sup> dated December 17, 1998, of the Regional Trial Court of Ligao, Albay, Branch 13, in Criminal Cases Nos. 3598 and 3599, which decreed as follows:

WHEREFORE, judgment is hereby rendered:

(a) in Criminal Case No. 3598 finding the accused, Virgilio Romero, guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and consequently sentences him to suffer the death penalty;

(b) in Criminal Case No. 3599 finding the accused, Virgilio Romero, guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and consequently sentences him to suffer the death penalty.

In addition, accused Virgilio Romero, is ordered to indemnify the offended party the amount of P50,000.00 each in both cases or a total amount of P100,000.00 and to pay the costs.

The records of these two (2) cases, exhibits and transcripts of stenographic notes are ordered immediately transmitted to the Supreme Court for automatic review.

SO ORDERED.<sup>[2]</sup>

The case stemmed from two separate informations, both for rape, filed on September 12, 1997 against appellant Virgilio Romero. In Criminal Case No. 3598, the information alleged:

That sometime in April, 1996 at around 10:00 o'clock in the morning, more or less, at *Barangay Apad*, Municipality of Polangui, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own ward and stepgrand-daughter MARILOU ROMERO, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.<sup>[3]</sup>

In Criminal Case No. 3599, the information contained substantially the same averments, except the time of the alleged rape, which was allegedly 1:00 o'clock in the afternoon.

When arraigned in each of the two cases, Romero pleaded not guilty. Trial ensued.

The prosecution presented Rodolfo Sameniano, Dr. Arnel Borja, and Marilou Romero as witnesses, while the defense presented appellant Virgilio Romero and Flora Romero.

RODOLFO SAMENIANO, the *barangay* chairman of Apad, Polangui, Albay,<sup>[4]</sup> at the time of the alleged offense, testified that in March 1997, Marilou Romero lodged a complaint with his office against Flora Romero, Marilou's grandmother, for physical abuse and against her *ama-amahan*, Virgilio Romero, for rape. Rodolfo Sameniano testified that according to Marilou, her *ama-amahan* first raped her when she was 10 years old and while they were still in Batangas.<sup>[5]</sup> She was again raped twice in April 1996, when she was about 13, at 10:00 A.M. and at 1:00 P.M.<sup>[6]</sup> Rodolfo accompanied Marilou to the police headquarters of Polangui, Albay, to have the incident of April 1996 entered in the blotter. Thereafter, he and Marilou went to Dr. Arnel Borja for medical examination. Rodolfo reported the incident to the Department of Social Welfare and Development (DSWD) in Albay, which advised him to temporarily take custody of Marilou because said office could not accommodate her. Marilou stayed with Rodolfo's family for a couple of days, after which she was transferred to DSWD.<sup>[7]</sup>

On cross-examination, Rodolfo stated that he did not want Marilou to stay with his family for he had grown male children and he also had other obligations.<sup>[8]</sup>

DR. ARNEL BORJA was the Rural Health Unit Officer of Polangui. He testified that on March 6, 1997, he conducted physical, genital and internal examinations on Marilou and reported that there was no sign of minor or major injury in the genitalia.<sup>[9]</sup> The internal examination revealed that Marilou's vagina admitted examining fingers freely and there were old hymenal lacerations along the 5:00 o'clock and 7:00 o'clock positions. These lacerations could have been caused by sexual intercourse that happened several months before the examination.<sup>[10]</sup>

During cross-examination, Dr. Borja admitted that the hymenal lacerations could also have been caused by engaging in strenuous exercises.<sup>[11]</sup> He also stated that the lacerations could have occurred at least three months before the date of examination.<sup>[12]</sup>

MARILOU ROMERO, private complainant was 15 years old<sup>[13]</sup> when she testified in court. She is the daughter of Asuncion Wasnon,<sup>[14]</sup> one of the children of Flora Romero<sup>[15]</sup> by a previous marriage. Flora is the common-law wife of appellant Virgilio. Marilou had been under the care of Flora and Virgilio since she was one year old.<sup>[16]</sup> Before they transferred to Polangui, they resided in Batangas.<sup>[17]</sup>

Marilou testified that she was first raped by appellant when she was ten years old, in the grassy portion of a coconut plantation in Batangas where they lived.<sup>[18]</sup> She was raped again twice in April 1996 after they transferred to Apad, Polangui, at 10:00 in the morning and at 1:00 in the afternoon. Marilou recounted that on the first

occasion, she and appellant went to the ricefield cultivated by the latter, purportedly to get *kangkong* (native vegetable). When they reached the place, appellant ordered her to go near the ditch and undress. As appellant threatened to kill her, she obeyed. Thereafter, appellant, who had already removed his clothes, told Marilou to lie down on the grassy portion. He lay on top of her, inserted his penis into her vagina and did push and pull movements. Marilou felt pain and noticed that something came out from her and appellant. After venting his lust on her, appellant told Marilou to put on her dress and go home. Upon arriving home, Marilou told her grandmother about the incident. Instead of expressing sympathy, Flora got angry at her and refused to believe that Virgilio would do such a dastardly act.<sup>[19]</sup>

The second rape happened in the same place where the first rape occurred. Appellant told Marilou to go with him to the ricefield for they would harvest palay. They did harvest palay, but after they have done so, appellant again told Marilou to go near the ditch. On the same grassy portion, appellant ravished her again. Marilou vividly recounted that she cried because of the pain she felt as appellant inserted his penis. She noticed that something came out of her and from the penis of appellant who wiped it with his own clothing. She went home at 1:30 in the afternoon and again told her grandmother about the incident. Once more, the latter refused to believe her.<sup>[20]</sup>

As Marilou was continuously beaten by her grandmother who started calling her a traitor, she went to the office of their *barangay* chairman and told the latter that her grandmother maltreated her and her stepgrandfather raped her.<sup>[21]</sup> The *barangay* chairman brought her to the doctor for medical examination and later to the police headquarters where she executed a sworn statement.<sup>[22]</sup> Marilou testified that as an aftermath of the rape, she could hardly sleep at night.<sup>[23]</sup>

On cross-examination, Marilou admitted that appellant never forced himself on her on occasions when she and appellant were left alone in the house by her grandmother. Nor did appellant sexually assault her again after the two rapes up to the time she reported her ordeal to the *barangay* chairman.<sup>[24]</sup> She denied sleeping in other people's houses, stating that this was merely concocted by her grandmother.<sup>[25]</sup> Marilou also said that although her real mother visited her after April 1996, she did not tell her of the incident because she was afraid.<sup>[26]</sup>

For his part, appellant interposed the defense of alibi. He stated that Flora was his common-law wife who had seven children by her previous marriage. He knew Marilou for she was Flora's granddaughter who had been living with them since she was nine months old.<sup>[27]</sup> He recounted that before they transferred to Apad, they lived in Batangas where he was engaged in the buy and sell of copra.<sup>[28]</sup> Said business required him to be away from home most of the time, including Saturdays and Sundays.<sup>[29]</sup> In 1996, they decided to transfer to Polangui. As appellant had to find a place to reside in, he went there ahead of Flora and Marilou in January 1996.<sup>[30]</sup> While in Polangui, he shifted to buying and selling mangoes which, like his previous business, demanded a lot of his time.<sup>[31]</sup> It was only in May 1996 when he fetched Flora and Marilou from Batangas.<sup>[32]</sup> Hence, he could not have raped Marilou for he was in Polangui when the alleged rapes were committed. Appellant testified that Marilou charged him with rape because of the spanking she got from her grandmother, which he discovered only after Marilou went to the *barangay*

chairman in March 1997.<sup>[33]</sup> He also said that he did not have a chance to confront Marilou regarding the rape complaint and that he only learned of it when he was apprehended.<sup>[34]</sup>

On cross-examination, appellant cited another possible motive for the accusation. He said Marilou's mother wanted to take her back so she could work as a housemaid.<sup>[35]</sup> Appellant also said that it was only in December 1996, when the ricefield was entrusted to him, that he started working on it.<sup>[36]</sup>

FLORA ROMERO, the grandmother of complainant, corroborated Virgilio's testimony. She affirmed her common-law relationship with him.<sup>[37]</sup> She denied that Virgilio sexually assaulted complainant, who is her granddaughter. She explained that the controversy started when she spanked complainant.<sup>[38]</sup> The office of the *barangay* chairman informed them that there would be a confrontation to clarify matters but this did not materialize and instead, a case was filed against Virgilio.<sup>[39]</sup> Flora described complainant, Marilou, as "intellectually slow" and stubborn. She cut classes in school and slept in other people's homes. Sometimes she would do household chores.<sup>[40]</sup> Flora denied that Marilou had ever gone to the coconut plantation or the ricefield as it was she who accompanied her husband there. She also said that Marilou never knew when appellant would go there.<sup>[41]</sup> Flora revealed that because of Virgilio's job, he would sometimes return home only a week after he left home.<sup>[42]</sup> She corroborated Virgilio's story that she and Marilou were fetched from Batangas to Polangui in May 1996,<sup>[43]</sup> but contradicted him when she said that Virgilio went ahead of them in April 1996.<sup>[44]</sup> She said Marilou never told her of the alleged sexual assaults. She added that she only learned of the allegations from the people in the municipal office when the criminal cases were filed.<sup>[45]</sup>

On cross-examination, Flora admitted that she was not always with her husband whenever he would go to the farm, but insisted she never told Marilou to bring food for him in the farm as Marilou claimed. It was always Flora who brought Virgilio food. Lastly, Flora declared that Marilou was a liar and that people should not believe her.<sup>[46]</sup>

Giving credence to the testimony of prosecution witnesses, the trial court found appellant Virgilio Romero guilty beyond reasonable doubt of qualified rape in both Criminal Cases Nos. 3598 and 3599, and imposed upon him the penalty of death. Hence, this automatic review where appellant assigns the following errors:

I. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY AS CHARGED DESPITE THE DISCREPANCIES AND CONTRADICTIONS IN THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II. THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY DESPITE THE ABSENCE OF THE QUALIFYING CIRCUMSTANCE OF MINORITY IN CHARGE SHEETS.<sup>[47]</sup>

Simply put, the issues before us are: (1) whether the prosecution witnesses are credible; and (2) whether the rape committed was in its qualified form.

On the first issue, appellant claims prosecution witnesses were inconsistent. Regarding the date when the rape was reported to *barangay* chairman Rodolfo

Sameniano, Marilou testified that she reported the incident in March 1997. The chairman corroborated this during his direct examination and added that since said date, Marilou had been under his custody until she was transferred to DSWD. However, when cross-examined, he contradicted himself and said that he had custody of Marilou beginning January 1997. According to appellant, he could not have raped Marilou in April 1996 because as Dr. Borja testified, the hymenal lacerations had "only healed several days ago," counting from the date of examination on March 6, 1997. Appellant points to the one-year delay in reporting the rape, which appellant claims tainted Marilou's credibility as a witness.

The Office of the Solicitor General argues that witness Sameniano's inconsistency regarding the date when the rape was committed does not impair his credibility, but rather bolsters it. Inconsistencies in the testimonies of prosecution witnesses on minor details and collateral matters do not affect the substance, veracity or weight of their declaration, but add credence to their categorical, straightforward, and spontaneous testimonies. Also, the OSG stresses, even though the defense tried to mislead Marilou on the matter of dates, during her cross-examination, she consistently maintained that she reported the rape to *barangay* chairman Sameniano in March 1997. The OSG points out that at no time did Dr. Borja mention that the lacerations in complainant's hymen were healed only days ago. He merely stated in the medical examination that he noted old hymenal lacerations along the 5:00 o'clock and 7:00 o'clock positions. Nor did Marilou keep silent about the rape, according to the OSG. For indeed, Marilou testified that she related it to her grandmother, who did not believe her but instead got jealous of her. The OSG notes that no improper motive was ascribed to Marilou in making her complaint. Undoubtedly, says the OSG, she was actuated by no other purpose than the desire to tell the truth and seek redress for the wrong inflicted on her.

As consistently held on review, the trial judge is in the best position to rule on the credibility of witnesses, for he has the vantage point of observing first hand their conduct, demeanor and deportment in court. In the absence of proof that the trial judge had overlooked or disregarded arbitrarily certain significant facts and circumstances, his assessment of the credibility of witnesses will not be altered on review.<sup>[48]</sup> Nothing on record appears to show that the trial court omitted or misinterpreted any important detail that would significantly affect the result of this case. The alleged inconsistency regarding the date when Marilou reported the rape appears to us a minor lapse that should not adversely affect the credibility of prosecution witnesses and the weight of their testimonies. Witnesses, including private complainant, are not expected to remember an occurrence with perfect recollection of minute details. A miscalculation as to the exact time of an occurrence is insufficient to discredit the testimony of a witness, especially where time is not an essential element of the offense. In a rape charge, what is decisive is the positive identification of the accused as the malefactor.<sup>[49]</sup> This requirement, in our view, was sufficiently met in this case by the direct testimony of the offended party herself.

Delay in revealing the commission of rape is not an indication of a fabricated charge.<sup>[50]</sup> It is not uncommon for a young girl to conceal for some time the assault on her virtue. Her hesitation may be due to her youth, the moral ascendancy of the ravisher, and the latter's threats against her.<sup>[51]</sup> In the present case, we cannot deny appellant's moral ascendancy over Marilou because he had taken the role of a father to Marilou since her childhood. Note that Marilou did not totally keep silent