

## EN BANC

[ G.R. Nos. 138439-41, June 25, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO PANGANIBAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**DAVIDE, JR., C.J.:**

Before us for automatic review is the joint decision<sup>[1]</sup> of 19 April 1999 of the Regional Trial Court of Manila, Branch 18 in Criminal Cases Nos. 97-158615, 97-158616 and 97-158617, finding accused-appellant Mario Panganiban (hereafter MARIO) guilty beyond reasonable doubt of the crime of rape in each case committed against his daughter Maria Regina G. Panganiban (hereafter REGINA) and sentencing him to suffer the penalty of death in each of the first two cases, and *reclusion perpetua* in the third case.

These criminal cases stemmed from three separate informations filed against MARIO which read as follows:

Criminal Case No. 97-158615

That in or about and during the month of September 1986, and for sometime subsequent thereto, in the City of Manila, Philippines, the said accused, father of the said Maria Regina Panganiban y Gonzaga with lewd designs, and by means of force, violence, and intimidation, to wit: by then and there threatening to harm her should she make an outcry, did then and there willfully, unlawfully, and feloniously lie with and have carnal knowledge with (sic) the said MARIA REGINA PANGANIBAN y GONZAGA a minor, then (8) eight years of age, against her will and consent.<sup>[2]</sup>

Criminal Case No. 97-158616

That in or about and during the month of January 1996, and for sometime subsequent thereto, in the City of Manila, Philippines, the said accused, with lewd designs, and by means of force, violence, and intimidation upon the person of MARIA REGINA PANGANIBAN y GONZAGA, to wit: by then and there suddenly barging inside the bath room and threatening her with harm, did then and there willfully, unlawfully, and feloniously succeeded (sic) in having carnal knowledge with (sic) the said MARIA REGINA PANGANIBAN y GONZAGA against her will and consent.<sup>[3]</sup>

Criminal Case No. 97-158617

That in or about and during the month of November 1996, and for sometime subsequent thereto, in the City of Manila, Philippines, the said accused, with lewd designs, and by means of force, violence, and intimidation upon the person of MARIA REGINA PANGANIBAN y GONZAGA, to wit: by then and there threatening to harm her should she make an outcry, did then and there willfully, unlawfully, and feloniously succeeded (sic) in having carnal knowledge with (sic) the said MARIA REGINA PANGANIBAN y GONZAGA against her will and consent.<sup>[4]</sup>

On 13 August 1997, MARIO, duly assisted by counsel *de officio*, entered a plea of not guilty in each of the three cases.<sup>[5]</sup> On motion of the prosecution, the cases were consolidated and jointly tried.

The prosecution presented REGINA and the examining physician, Dr. Armie Soreta Umil. We quote *verbatim* the trial court's faithful summary of the evidence for the prosecution as follows:

The records show that the private complainant, Maria Regina Panganiban, is the daughter of the accused. She and her two brothers were staying with the accused on No. 1857 Mayon Street, Punta, Sta. Ana, Manila.

In July, 1986, the wife of the accused left for abroad and worked as a housemaid in Hongkong. One evening in September, 1986, the complainant, who was then eight (8) years old, was sleeping on the second floor of their house when she was awakened by the accused, who instructed her to go with him to the ground floor, and she complied. When they were already downstairs, the accused undressed the complainant and made her lie down. He applied oil on his penis and on her sex organ and then raped her. The complainant did not resist because the accused threatened to beat her if she would do so, and at the same time, promised to give her money if she would be obedient. Fearful of the accused, the complainant did not tell, or confide to anyone the atrocious and disgraceful episode in her young and innocent life. And the accused exploited the innocence and docile nature of the complainant by thereafter ravishing her twice a week until the return of her mother from Hongkong in July 1990.

In April 1994, the complainant's mother again worked as a housemaid in Hongkong, and the accused resumed the sexual molestation of the complainant on a regular basis.

In the middle of January 1996, between the hours of 3:00 and 4:00 o'clock in the afternoon, the complainant was bathing when the accused surreptitiously entered the bathroom situated at the back of the house and sexually assaulted the complainant. The complainant testified that the accused was drunk and armed with a balisong when he raped her in a standing position; that she detested him, and considered him as a filthy person, "nandidiri ako sa kanya". She likewise attested that the accused was a drunkard, and a drug dependent, and that occasionally, the

accused and his friends held pot session in their bathroom and she had seen him sniffing shabu from an aluminum foil.

In November 1996, the complainant returned home after a one-week stay in the house of her grandparents on 2228 Dimasalang Street, Sta. Cruz, Manila. A few days later, at around 3:00 p.m., the accused, who earlier that afternoon had a pot session with his friends in their bathroom and was high on shabu, forcibly satisfied his bestial lust on the complainant who cried in utter helplessness and indignation for the outrage inflicted on her by the accused.

In March 1997, the complainant weary of being a sex slave of the accused, left their house and stayed in the house of her grandparents. Her aunt, Josie Igoy, noticed that she was unusually quiet and sensed that something was wrong with her. On the prodding of her Aunt, the complainant finally had the courage to reveal the ordeal she had gone through and narrated in detail to her Aunt what her lecherous father had done to her. Aunt Igoy in turn made along distance telephone call to Hongkong and reported the matter to the complainant's mother. On April 24, 1997, the complainant's mother arrived from Hongkong. She later accompanied her daughter to the Police Headquarters on U.N. Avenue, Ermita, Manila, where she filed a criminal complaint for rape against her father. And in support thereof the complainant executed as sworn statement, Exhibit "C".

On the afternoon o April 28, 1997, the complainant was subjected to physical and genital examinations by Dr. Arnie M. Soreta-Umil, Medico Legal Officer of the NBI, and her findings among other things was that the complainant was no longer a virgin, Exhibits "B" and "B-1".<sup>[6]</sup>

The first witness for the defense was MARIO. He denied the accusations against him. He alleged that REGINA only concocted the charges of rape because he is against her relationship with her boyfriend, Bong Gallardo, whom he chased with a knife sometime in March 1997. He claimed that it was the latter who convinced REGINA to file these cases, thereby making good his threat that he would have the last ace.

The defense also presented the two other children of MARIO - William and Joseph. They testified that their sister, REGINA, never told them of the alleged rapes, and that there was nothing unusual in REGINA's behavior or in her physical appearance during the time the alleged rapes were committed.

To corroborate the testimony of MARIO and his two sons as to the alleged motive and behavior of REGINA, the defense also presented MARIO's relatives, namely, Feliciano Bondoc, Lucia Reyes, Edward Bales, and his neighbors, namely, Herminia Pangilinan and Maximina Molon.

The trial court gave full faith and credence to the testimony of REGINA. It characterized REGINA's narration of facts as "straightforward, credible and convincing." It rejected, for being lame and flimsy, MARIO's imputation of ill-motive on the part of REGINA. Thus, in its decision<sup>[7]</sup> of 19 April 1999, it convicted MARIO

of three counts of rape and in the imposition of the penalty it took into consideration the age of REGINA and her relationship with MARIO. It then decreed:

WHEREFORE, in Criminal Case No. 97-158615, the accused is convicted of the crime of rape and sentenced to suffer the penalty of death by lethal injection and the accessory penalties provided by law and to pay the costs.

In Criminal Case No. 97-158616, the accused is convicted of the crime of rape and sentenced to suffer the penalty of death by lethal injection and the accessory penalties provided by law and to pay the costs.

In Criminal Case No.97-158617, the accused is also convicted of the crime of rape and sentenced to suffer the penalty of reclusion perpetua and the accessory penalties provided by the law and to pay the costs.

On the civil aspects of the three cases, the accused is ordered to pay the private complainant, Maria Regina Panganiban, moral, nominal and exemplary damages in the respective sums of P300,000.00, P150,000.00 and P100,000.00.

SO ORDERED.

In view of the imposition of the death penalty in Criminal Cases Nos. 97-158615 and 97-158616, the said cases are now before us on automatic review pursuant to Article 47 of the Revised Penal Code, as amended. The judgment in Criminal Case No. 97-158617, where the penalty imposed is *reclusion perpetua*, will be considered to have been appealed to us despite absence of notice of appeal, which was necessary pursuant to Section 3(c) of Rule 122 of the Rules of Court, considering that only one decision was rendered in these consolidated cases.<sup>[8]</sup>

In his Appellant's Brief, MARIO attributes to the trial court the commission of the following errors:

## I

THE TRIAL COURT GRIEVOUSLY ERRED IN FINDING THAT THE APPELLANT HAD CARNAL KNOWLEDGE WITH THE PRIVATE COMPLAINANT IN SEPTEMBER, 1986 JANUARY 1996 AND NOVEMBER 1996.

## II

EVEN ASSUMING THAT THE APPELLANT HAD CARNAL KNOWLEDGE OF THE PRIVATE COMPLAINANT IN JANUARY AND NOVEMBER 1996, THE TRIAL COURT GRIEVOUSLY ERRED IN CONTENDING THAT THE SAME CONSTITUTED RAPE.

## III

EVEN ASSUMING THAT THE APPELLANT WERE GUILTY OF RAPE IN THE THREE AFOREMENTIONED CIRCUMSTANCES, THE TRIAL COURT GRIEVOUSLY ERRED IN IMPOSING THE DEATH PENALTY IN CRIMINAL CASES NOS. 97-158615 AND 97-158616.

#### IV

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT ALLOWING REGINA PANGANIBAN TO TESTIFY.<sup>[9]</sup>

In support of the aforesaid assignment of errors, MARIO claims that the testimony of REGINA is not worthy of belief because of circumstances that undermine her credibility. Her claim that MARIO regularly raped her almost twice a week from 1986 up to November 1996 or for a period of almost ten (10) years was belied by the testimony of the medico-legal expert that her hymen was lacerated only recently, *i.e.*, not earlier than four (4) months before the date of examination which was 30 April 1997. Likewise, it was impossible that MARIO could rape her in a 36-square meter unpartitioned house in the presence of her two (2) brothers. MARIO also submits that REGINA's testimony that she had been raped by him twice a week for ten years without being discovered is too fantastic to be true and credible. In any case, she could only remember the circumstances pertaining to the alleged three rapes.<sup>[10]</sup>

MARIO further asserts that REGINA's behavior during and after the incidents was inconsistent with her claim that she was raped. She never displayed any manifestation that she was undergoing any ordeal. Besides, she failed to satisfactorily explain why she concealed her plight for more than ten (10) years.

MARIO, moreover, contends that even if the narration of REGINA is true, he cannot be convicted of rape because of the absence of force, threat or intimidation.

Finally, MARIO maintains that the decision of the trial court must be reversed because there was a denial of due process of law when the trial court did not give him one additional hearing date.

In the Appellee's Brief, the Office of the Solicitor General submits that the trial court did not err in holding MARIO guilty beyond reasonable doubt of three counts of rape committed against his daughter. However, it recommends that MARIO be sentenced to the lower penalty of *reclusion perpetua* in Criminal Cases Nos. 97-158615 and 97-158616, and that the award of damages be modified.<sup>[11]</sup>

We affirm MARIO's conviction.

At issue is the credibility of REGINA. Settled is the rule that when the credibility of witnesses is in issue, appellate courts generally defer to the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. There are some exceptions to this rule, such as when