

## EN BANC

[ G.R. No. 139180, July 31, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROLANDO RIVERA, ACCUSED- APPELLANT.**

### D E C I S I O N

#### **MENDOZA, J.:**

This is a review pursuant to Rule 122, §10 of the Rules of Criminal Procedure of the decision,<sup>[1]</sup> dated June 22, 1999, of the Regional Trial Court, Branch 49, Guagua, Pampanga, finding accused-appellant Rolando Rivera guilty of rape and sentencing him to suffer the penalty of death and to pay the offended party, Erlanie Rivera, the sum of P75,000.00 as compensatory damages and P50,000.00 as moral damages.

The information against accused-appellant charged--

That sometime in the month of March 1997, in barangay Santiago, municipality of Lubao, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ROLANDO RIVERA, by means of violence, threat and intimidation, did then and there willfully, unlawfully and feloniously, and maliciously succeeded in having carnal knowledge [of] his 13 year old daughter, Erlanie D. Rivera, against the latter's will and without her consent.

Contrary to law.<sup>[2]</sup>

When the information was read to him in the local dialect (Pampango) during his arraignment on September 30, 1997, accused-appellant, duly assisted by counsel *de oficio*, pleaded not guilty to the crime charged,<sup>[3]</sup> whereupon trial was held.

The prosecution presented as its witnesses complainant Erlanie Rivera, her aunt, Marietta Pagtalunan, and Dr. Demetria Barin, who conducted the physical examination of complainant.

Complainant Erlanie Rivera testified that sometime in March 1997, her younger sister, Zaira,<sup>[4]</sup> was taken by their parents to the Escolastica Romero Memorial Hospital in Lubao, Pampanga. Complainant's mother stayed with her sister in the hospital, but her father, herein accused-appellant, went back home to Santiago, Lubao, Pampanga. At around 11 o'clock in the evening of the same day, complainant was awakened as accused-appellant started kissing her and fondling her breasts. Complainant tried to resist by kicking and pushing accused-appellant, but her efforts were to no avail. Accused-appellant removed her shorts and panty, touched her private parts, and then had sexual intercourse with her. After he was through with her, accused-appellant told complainant not to tell anyone what had happened or he would kill complainant's mother and sister. Hence, when her mother came home the

following day, Erlanie did not tell her what had happened because she was afraid of accused-appellant.

On April 9, 1997, however, Erlanie, in the presence of her mother, told her aunt, Marietta Pagtalunan, and her grandmother, Maxima Payumo, that she had been raped by accused-appellant. For this reason, she was referred to Dr. Barin for physical examination. She also executed a sworn statement before the police of Lubao, Pampanga.<sup>[5]</sup>

Erlanie testified that she became pregnant as a result of the rape committed against her by accused-appellant, but the pregnancy was aborted.<sup>[6]</sup> On cross-examination, she said she was 13 years old at the time of her testimony, the second child in the family. She said that her parents were not on good terms with each other and that she knew that her father had a mistress. Atty. Mangalindan, then defense counsel, questioned Erlanie about other supposed acts of molestation committed by accused-appellant against her previous to the rape subject of the present case, but, upon objection of the prosecution, the trial court disallowed the question on the ground that it concerned matters not covered by her direct examination.<sup>[7]</sup>

Erlanie testified that her mother, grandmother, aunt, and a certain Nora Baluyut were present when she made her sworn statement before the police. She said that her father raped her only once, sometime in March 1997. She could not remember the exact date when she was raped by accused-appellant, but she did remember that the same took place in March as her sister, Zaira, was hospitalized at the time. When the rape occurred, her younger brother and sister were in their house asleep. She did not tell her mother after the latter had returned home that she had been raped by accused-appellant because she was afraid of her father who had threatened her. After the rape, accused-appellant would only come home on Sundays.<sup>[8]</sup>

Questioned further on cross-examination, Erlanie said that she gave her sworn statement before the police and that her answers to questions asked during her direct examination were freely given without coaching by anyone. She could understand Tagalog, the language used in her sworn statement. She told the court that she struggled against accused-appellant, kicking and pushing him, but she was overpowered by her father. At that time, Erlanie's younger sister, Corazon, was lying beside her, but Erlanie did not shout even when her father succeeded in penetrating her. Erlanie could not remember how long the sexual act took place, but she felt something like urine come out of her father's penis after he was finished with her. Erlanie testified that she was 12 years old when she was raped by her father.<sup>[9]</sup>

On re-direct examination, when asked about the discrepancy between her testimony that her mother returned home only the day after the rape and her statement in her affidavit that accused-appellant slept beside her mother after the rape, Erlanie replied that she made a mistake as the incident narrated in her affidavit referred to a different occasion when no rape was committed against her by accused-appellant.<sup>[10]</sup>

The next witness for the prosecution was Marietta Pagtalunan, complainant's aunt and the sister of complainant's mother, Evangeline. Marietta corroborated Erlanie's testimony that the latter told her sometime in April 1997 that she had been raped

by accused-appellant. Marietta said she took complainant to Dr. Barin, who examined complainant.<sup>[11]</sup>

Dr. Demetria Barin was Chief Physician of the Escolastica Romero District Hospital. Her findings are as follows:

P.E. FINDINGS:

- No signs of external Physical Injuries

I.E. FINDINGS:

HYMEN - healed laceration at 3:00 o'clock

VAGINA - Admits one finger with ease two fingers with difficulty

UTERUS - not enlarged

LMP - March 3, 1997

Pregnancy Test (+)<sup>[12]</sup>

Dr. Barin testified that on April 10, 1997, she examined complainant Erlanie Rivera and found that the victim had an injury in the hymen at the 3 o'clock position which could possibly have been caused by the insertion of a hard object, such as a male organ. Dr. Barin testified that complainant Erlanie went back to see her on May 2, 1997 because she suffered from vaginal bleeding indicative of a threatened abortion. She said that she found that complainant was then pregnant. Upon examination of the patient at that time, Dr. Barin found that abortion had not yet taken place and prescribed medicines for the complainant. Erlanie was subjected to another pregnancy test on May 13, 1997, but the result was negative. Dr. Barin stated that the vaginal bleeding suffered by complainant could have caused the abortion of the fetus.<sup>[13]</sup>

Thereafter, the defense presented its evidence. Accused-appellant, his sister, Concepcion Sayo, and Natividad Pinlac, Records Officer of the Escolastica Romero District Hospital, were presented as witnesses.

Accused-appellant denied that he raped Erlanie Rivera. He alleged that the rape charge was filed against him because his wife, Evangeline, had a paramour and resented him because he hurt her. He explained that he saw his wife talking with another man in their house and beat her up on April 1, 1997 because he heard that she had a lover. He also said that his wife was angry with him because he had a mistress who stayed in their house for three weeks. He further stated that his wife's relatives were likewise angry with him because he caused the lot owned by his father-in-law in Santiago, Lubao, Pampanga to be registered in his name. He said that he was compelled to sign a waiver of his rights over the land owned by his parents-in-law.<sup>[14]</sup> The defense presented a letter to accused-appellant written by his wife, who was asking him to sign a document so that she could attend to it before he got out of prison.<sup>[15]</sup>

The defense also offered as evidence a document, designated as Waiver of Rights,<sup>[16]</sup> signed by accused-appellant, in which he acknowledged that he was a tenant of a parcel of land and that he waived and voluntarily surrendered his right over the

said landholding to the "SMPCI," recommending that a certain Ponciano Miguel be given the land to work on the same. The document was identified by accused-appellant in open court. He said that Ponciano Miguel was a first cousin of his wife and that he signed the document because his wife's relatives promised him that he would get out of prison after signing the document.<sup>[17]</sup>

Another witness for the defense was Concepcion Sayo, accused-appellant's sister, who testified that in March 1997, accused-appellant lived with her family in Malawak, Bustos, Bulacan, to help her husband operate a fishpond. She said that accused-appellant stayed in their house during the entire month of March, except in March 19, 1997 when he stayed with their sister, Perla, in Tibagan, Bustos, Bulacan.<sup>[18]</sup>

The last defense witness was Natividad Pinlac, Records Officer of the Escolastica Romero District Hospital, who identified<sup>[19]</sup> a certification, dated April 29, 1999, in which it was stated that Zaira Rivera was confined at that hospital from March 1 to March 2, 1997.<sup>[20]</sup>

On June 22, 1999, the trial court rendered a decision, the dispositive portion of which stated:

WHEREFORE, the court finding the accused guilty beyond reasonable doubt of the crime of rape as charged. For having violated Article 335 of the Revised Penal Code, as amended by Republic Act 7659, with the attendant circumstances that the victim is under eighteen (18) years of age and the offender is the father of the victim and absent any circumstance that could mitigate the commission thereof, accused is hereby sentenced to suffer the supreme penalty of death by lethal injection.

In line with established jurisprudence, said accused is also ordered to indemnify the offended party Erlanie Rivera in the sum of P75,000.00 as compensatory damages and P50,000.00 as moral damages.

SO ORDERED.<sup>[21]</sup>

Hence, this appeal. Accused-appellant contends that:

1. The lower court failed to observe the constitutional right of the Accused-Appellant to due process and right to counsel;
2. The lower court failed to consider the evidence of the Accused-Appellant.<sup>[22]</sup>

I. Accused-appellant invokes his right to due process of law. He claims that he was denied the same because: (a) the trial judge disallowed his lawyer from cross-examining Erlanie Rivera concerning the latter's sworn statements on the ground of irrelevance and immateriality; (b) the trial court denied the motion made by accused-appellant's counsel *de officio* to postpone the cross-examination of Dr. Barin, the examining physician, because of which the said counsel consequently waived the cross-examination of Dr. Barin; (c) the judge propounded numerous questions to accused-appellant during his cross-examination by the prosecutor; and (d) the trial

court's decision was promulgated just one day after accused-appellant submitted his memorandum.

Procedural due process simply means that a person must be heard before he is condemned. The due process requirement is a part of a person's basic rights, not a mere formality that may be dispensed with or performed perfunctorily.<sup>[23]</sup> Considering both the evidence and the law applicable to this case, we hold that accused-appellant has been accorded his right to due process.

A. One basis for accused-appellant's contention that he was denied due process is the refusal of the trial judge to allow Atty. Mangalindan's questions concerning the other alleged acts of molestation committed by accused-appellant against complainant. Accused-appellant argues that no legal ground exists for the trial court's ruling.

The transcript of stenographic notes concerning this incident shows the following:

ATTY. MANGALINDAN:

Q You mentioned in your testimony that you were molested by your father since 1996.

COURT:

Are you referring to a chain of events because police station you are referring is something there are two places this girl testified that she was raped, you referred to us Acts of Lasciviousness and she did not testified about that, that is another case with another Court, we are only trying here a rape case that is only they you never mention. Only on the matters that she testified (sic).

ATTY. MANGALINDAN:

But this is also related to the rape case your Honor because I will confront it with another form of a question.

ATTY. MANGALINDAN:

Q Prior to this incident, were you molested by your father?

PROSECUTOR SANTOS:

Immaterial, your Honor, whatever acts w[ere] done by the accused is not a subject of the case at bar.

COURT:

Let us confine [questioning] to the complaint at bar which is a rape case.

ATTY. MANGALINDAN:

This is related to the incident because we are here your Honor to prove, we are trying to discredit her testimony. We will just direct our question touching on the direct examination.

COURT:

Only on the matters that she only testified that is only thing you can cross-examine. Only matters testified which is only a rape case let us not dwell the Court knows there are other