

## EN BANC

**[ G.R. No. 141881, November 21, 2001 ]**

### **THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO BERNABE Y RAFOL ACCUSED-APPELLANT.**

#### **DECISION**

##### **MELO, J.:**

In an Information dated October 30, 1998, accused-appellant was charged with the crime of rape allegedly committed as follows:

That on or about the 29<sup>th</sup> day of October, 1998 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Virgilio Bernabe y Rafol, by means of force and intimidation, employed upon the person of complainant Maria Esnelia Bernabe y Javier, his daughter, a 17 year old minor, did then and there wilfully, unlawfully and feloniously have carnal knowledge with said private complainant, against her will and consent.

Contrary to law.

(p. 13, *Rollo*.)

Upon arraignment, accused-appellant pleaded 'not guilty'. Thereafter, trial ensued.

The People's case is succinctly summarized by the Office of the Solicitor General in its Appellee's Brief as follows:

On October 29, 1998, around 1:30 o'clock in the morning, Maria Esnelia Bernabe was sleeping with her sister in a room of their house located at No. 1919-D Leveriza St., Pasay City, when her father (herein appellant) came home 'bangag' or very drunk (p. 9, TSN, December 4, 1999).

Appellant entered said room, approached Maria Esnelia and started kissing her nape as well as other parts of her body. Then, appellant removed her panty and inserted his penis into her vagina. She resisted by pushing him but to no avail. Appellant succeeded in satisfying his beastly desires on his own daughter just like what happened in the previous years starting 1994 (pp. 7-8, *ibid*).

Maria Esnelia could not take it anymore so she reported the incident to her cousin, Cristina Martin (p. 12, *ibid*; p. 16, TSN, December 11, 1998). Later, she also told her aunts, Marcelina and Analyn Bernabe, about it (p. 16, *ibid*).

At 2:00 o'clock in the morning of the same day, she was accompanied by

her aunts to the Pasay City police headquarters, where she lodged a complaint for rape against appellant and executed a sworn statement (Exhibit A; p. 5, TSN, December 4, 1998; p. 18, TSN, December 11, 1998).

At 4:00 o'clock in the morning, policemen came to Maria Esnelia's house and arrested appellant (p. 19, TSN, December 11, 1998).

Later that day, Maria Esnelia was examined by Dra. Anabelle Soliman (pp. 5-6, TSN, December 14, 1998). In her testimony, Dra. Soliman revealed, thus:

Q. And based on your findings and conclusions on the victim stated when interviewed by you that she was sexually abused sometime during the period 1995 up to 1998. Now, based on your findings, would it be compatible on the said allegation?

A. My conclusions was that, I did not find any injuries on the hymen, as well as on the outside genital parts of the victim, and the opening of the hymen is wide enough to accommodate the average size of a male organ without producing a hymenal injury.  
(pp. 7-8, TSN, December 14, 1998)

Appellant, on the other hand, denied raping his own daughter. He testified that Maria Esnelia charged him with rape because he resented her boyfriend who for sometime slept in their house. He also depicted her daughter as a rebel and an ingrate who played hooky in school and neglected her studies despite the fact that he works hard to send her to school, and her elder brother had to stop schooling just so she can continue with her studies. Appellant also claimed that his two sisters assisted his daughter in filing the rape case against him because of a land dispute between them. His sisters allegedly wanted to get back at him by using his own daughter through this case. It was also argued that no rape was committed as indicated in the finding of the medico-legal officer whose examination of complainant showed that her hymen has not been injured. Appellant pointed out too that his family lives in a very congested place with complainant sharing her room with a younger sister, for which cause it was impossible for him to have raped Maria Esnelia without being detected.

On January 29, 2000, the trial court handed down its judgment of conviction, disposing:

IN VIEW OF ALL THE FOREGOING, the Court opines that the prosecution has proven the guilt of the accused Virgilio Bernabe y Rafol for the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code as amended by RA 7659 and the Court hereby sentences the accused Virgilio Bernabe y Rafol to suffer the penalty of death and to indemnify the complainant P75,000.00, moral and exemplary damages in the amount of P50,000.00.

SO ORDERED.