

## SECOND DIVISION

[ G.R. No. 117324, April 27, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROGELIO GUIWAN Y BAGTONG, ACCUSED-APPELLANT.**

### DECISION

**BELLOSILLO, J.:**

ROGELIO GUIWAN Y BAGTONG was charged before the trial court with having raped his 14-year old daughter Rochelle R. Guiwan.<sup>[1]</sup> The Information alleged that on or about 8 September 1990 at 12:00 o'clock midnight, at Purok 3, Bongaitan District, Barangay Mangagoy, Bislig, Province of Surigao del Sur, the accused by means of violence and intimidation willfully and feloniously had carnal knowledge of Rochelle R. Guiwan against her will, with the aggravating circumstance of abuse of confidence he being the father of his 14-year old victim, to her damage and prejudice.<sup>[2]</sup>

Sometime in May 1988 Elsa Guiwan together with her four (4) daughters, then aged between less than one (1) year to three (3) years old, left her husband Rogelio Guiwan in Bislig, Surigao del Sur, and settled in Panaytayon, Agusan del Norte. That was the second time she left him on account of the physical abuse she suffered in his hands. In 1990 he fetched the children and brought them back to Bislig.

On 8 September 1990, at around midnight, while Rochelle Guiwan was sleeping with her three (3) younger sisters in their bedroom in Bongaitan District, Mangagoy, Bislig, Surigao del Sur, she was awakened by her father, Rogelio Guiwan, who was already inside their room. He touched her right arm and then immediately embraced her. He was drunk. She resisted, so he poked a gun at her and ordered her to take off her clothes. Since she refused, he forcibly removed her panty, held her hands and pressed his feet on her feet. Initially, he inserted his fingers into her vagina, then followed by his penis. She felt pain. While pumping his penis into her organ, he kept his gun at his right side. In her helplessness, Rochelle could only cry. But he warned her not to disclose the matter to anyone otherwise he would kill her.

The incident was not Rogelio's first nor his last assault on his daughter's womanhood. The first was in May 1990 while the other incidents took place thereafter and stopped only in March 1991 when her mother returned home.

On 3 November 1992 at about 4:00 o'clock in the afternoon Rochelle was on her way home from school with some classmates when they met her father who appeared angry. He forced her to ride with him on his motorcycle and threatened to kill her. She went with him out of fear without even knowing where he would take her. Fortunately for her, their motorcycle broke down so she grabbed the opportunity to run away. She proceeded home at once and told her mother that her father had raped her on 8 September 1990. Rochelle explained that she did not immediately

tell her about the sexual abuse because he threatened to kill her, her mother and himself. Her mother cried when she learned about Rochelle's ordeal.

Elsa played her role prudently. She did not confront Rogelio right away. She decided to wait for the proper time so that he would not get mad. She first observed his behavior. She noticed that he would go home drunk and easily got hot tempered. He would threaten them and poke a gun at them. He was jealous of any suitor of Rochelle. He even inspected her notebooks for any letter. When he would find one, he would let her eat it, followed by a glass of water. On 14 November 1992, when Elsa could no longer take his behavior, she reported the matter to the police authorities and had Rochelle physically examined. Her examining physician found her hymen no longer intact since it bore healed lacerations at 3, 6, 8, 10 and 12 o'clock positions.<sup>[3]</sup>

Rogelio denied having raped Rochelle on 8 September 1990. He however admitted having engaged her in sexual intercourse several times but claimed these were consensual as she was even the one who provoked him. According to him, the first time was on 28 August 1990 when they stayed overnight in a lodging house in Tandag, Surigao del Sur, after attending the wedding of his brother. She refused to sleep on the floor and insisted on sharing the bed with him. She initiated the act by touching different parts of his body. He was drunk at that time.

According to Rogelio, while he and Rochelle were in Bongaitan, Surigao del Sur, she treated him not as a father but as a lover. She would kiss him upon arriving home from work and would close the door of their house for fear that he would go away. She did the marketing and acted like a mother to his other children. A neighbor even observed that they did not have a father and daughter relationship, so much so that with such comment from a neighbor, he was prompted to write his wife and told her to return home. It was only when his wife arrived that Rochelle distanced herself from him. She resented the return of her mother and her parents' reconciliation because, according to her, there was no need for a mother like her. Rochelle became mad at him only when he told her that she was giving preference to her classmates over her own family.

But the trial court was convinced that Rogelio Guiwan was indeed guilty of raping his own 14-year old daughter on 8 September 1990, threatening her with his gun as alleged in the Information. The court found Rochelle's testimony very credible and took against him the circumstance that he had a weird understanding of his daughter's natural love for him as her father. It also found that the five (5) other instances of rape committed by him on different dates and places were established by the evidence as it theorized that considering the normal sexual appetite of Rogelio at age thirty-nine (39), he must have engaged in sexual intercourse with Rochelle not less than two hundred (200) times in a span of three (3) years. Thus, on 23 February 1994 it rendered judgment finding him guilty beyond reasonable doubt of five (5) counts of rape and sentencing him to five (5) penalties of *reclusion perpetua*.<sup>[4]</sup>

Accused-appellant now assails his conviction both on procedural and substantive grounds. According to him, the circumstance that he was first presented to testify on 14 December 1993 while Rochelle was cross-examined on 9 August 1994 is violative of the Rules of Court tantamount to denial of due process. He admits that

he engaged in sexual intercourse with her less than two hundred (200) times, as theorized by the trial court, but assails her credibility by banking on her almost three (3)-year delay in reporting the rape incident. He faults the trial court for not taking into consideration the presence in this case of *oedipus complex* or child attachment to the parent of the opposite sex. He asserts that Rochelle was considered a "*corpo*" in school, meaning, she slept around with different boys. Also, he disputes the qualification of the physician as an expert witness since she was just thirty-three (33) years old and a general practitioner when she examined the complainant. Finally, he asseverates that assuming he is guilty of rape there was only one (1) Information for rape filed against him, thus, he submits that the trial court erred in convicting him of five (5) counts of rape.

We agree with accused-appellant that the Information against him charges only one (1) rape which he allegedly committed on 8 September 1990. He cannot therefore be convicted of five (5) counts of rape committed on other dates. But his conviction for raping his daughter Rochelle on 8 September 1990 must be sustained as the trial court found the testimony of Rochelle straightforward and almost flawless to the smallest detail. Hence, we find no reason to withhold concurrence to his conviction. As the trial court observed, Rochelle was composed and consistent throughout her entire testimony in the face of intense and lengthy interrogation.<sup>[5]</sup> And a barrio lass, still in her teens, innocent and naive to the ways of the world is not likely to accuse her own father of so serious a crime as rape if it was not the plain truth, or if her motive was not purely to bring her sexual ravisher to justice.<sup>[6]</sup> The insinuation of accused-appellant that Rochelle only filed the case against him because she got mad when he scolded her for preferring her classmates over her family is hardly believable. Parental punishment is not a good reason for a daughter to falsely charge her father with rape.<sup>[7]</sup> Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to fabricate a story which would put her own father for the most of his remaining life in jail and drag herself and the rest of her family to a lifetime of shame.<sup>[8]</sup> A review of the totality of the evidence draws us to the conclusion that no material facts that may alter accused-appellant's conviction were overlooked or misunderstood by the trial court.

Not even the arguments of accused-appellant can dissuade us from upholding his conviction. The claim that the trial court violated procedural rules and corollarily denied him due process misleads. Rochelle was first presented for direct examination on 6 August 1993. She was cross-examined on 9 August and 19 November 1993. Accused-appellant must have relied on the cover page of the transcript of stenographic notes of the 9 August 1993 hearing which was erroneously dated as "August 9, 1994." However, the header of the succeeding pages of the same transcript was dated 9 August 1993. The last page even contained the order of the trial court setting the hearings on 11 and 12 October 1993.

It is well entrenched in our jurisprudence that delay in reporting a carnal violation committed by a father against his daughter due to threats is hardly unjustified. In this case, Rochelle was threatened by accused-appellant with death should she report the incident to anyone. Rogelio possessed a gun as an asset of the 28th Infantry Batallion.<sup>[9]</sup> Thus her delay of almost two (2) years and two (2) months does not produce a negative effect on her accusation. In the numerous cases of rape that have reached this Court, we find that it is not uncommon for young girls to