

## EN BANC

[ G.R. No. 118937-38, April 24, 1998 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOSE DELEVERIO, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

Before the Court for automatic review is the decision of the Regional Trial Court ("RTC") of Basilan, 9<sup>th</sup> Judicial Region, Branch 2, in the consolidated Criminal Case No. 2125-414 and Criminal Case No. 2136-418 for rape. The accused, Jose Deleverio, is a 58-year old farmer respected and revered by the complainant, Roxan Benarao, an eight-year old child. Indeed, the complainant is the step-granddaughter of the accused, he being married to the girl's natural grandmother (Maria Sarah). Accused Jose Deleverio is the second husband of Maria Sarah.

The accused was charged with two counts of rape, in two separate complaints, one in Criminal Case No. 2125-414 and the other in Criminal Case No. 2136-418, viz:

Criminal Case No. 2125-414

#### "COMPLAINT

"The undersigned complainant, an 8-year old minor, under oath, accuses Jose Deleverio of the crime of Rape, committed as follows:

"That on or about the 7<sup>th</sup> day of April, 1994, and within the jurisdiction of this Honorable court, viz., at Maloong Legion, Municipality of Lamitan, Province of Basilan, Philippines, the above-named accused, by the use of force, threat and intimidation, and with lewd designs, did then and there willfully, unlawfully and feloniously point a knife on her stomach, remove her dress and short pant, and by the use of force and lewd designs, succeeded to have carnal knowledge with the undersigned complainant, against her will.

"Contrary to law.

"Isabela, Basilan Province, May 30, 1994.

(SGD.) ROXAN BENARAO

Complainant"<sup>[1]</sup>

Criminal Case No. 2136-418

#### "COMPLAINT

"The undersigned complainant, an 8-year old minor, under oath, accuses Jose Deleverio of the crime of Rape, committed as follows:

"That on or about the 13<sup>th</sup> day of May, 1994, and within the jurisdiction of this Honorable Court, viz., at Maloong Legion, Municipality of Lamitan, Province of Basilan, Philippines, the above-named accused, by the use of force, threat and intimidation, and with lewd designs, did then and there willfully, unlawfully and feloniously point a knife on her stomach, remove her dress and short pant, and by the use of force and lewd designs, succeeded to have carnal knowledge with the undersigned complainant against her will.

"Contrary to law.

"Isabela, Basilan Province, May 30, 1994.

(SGD.) ROXAN A. BENARAO

Complainant"<sup>[2]</sup>

Provincial Prosecutor Domingo B. Kinazo confirmed, in his resolution of 30 May 1994, that the results of the preliminary investigation, after considering particularly the accusatory affidavit and fitting it against the evidence for the defense, would sufficiently show that the complainant had been a victim of rape on two occasions.<sup>[3]</sup>

Following the filing of the informations in the two separate criminal cases, an Order of Arrest was issued on 06 June 1994 by Executive Judge Salvador Memoracion. The order of arrest was duly served and effected on 05 July 1994.<sup>[4]</sup>

When arraigned on 13 June 1994 in Criminal Case No. 2125-414 and on 05 July 1994 in Criminal Case No. 2136-418, the accused pleaded not guilty. The parties agreed to have the cases jointly tried.<sup>[5]</sup>

The evidence for the prosecution, in main consisting of the testimony of Roxan given in the Visayan dialect, was culled by the Solicitor General; his brief narration -

"Roxan Benarao, an 8-year old child, and her brother Ramon lived with her grandfather, herein appellant Jose Deleverio, in Legion Maloong, Lamitan, Basilan, wherein they shared the same room.

"On April 7, 1994 at 8:00 o'clock in the evening, while they were already resting, the appellant poked a knife at the stomach of his 8-year granddaughter Roxan Benarao after which he loosened her short pants (TSN, July 5, 1994, p. 7).

"Notwithstanding the cries of Roxan, the appellant managed to insert his penis into Roxan's vagina as a result of which she felt dizzy (TSN, July 5, 1994, p. 8). Afterwards, Roxan reported the incident to her older brother Ramon and to her grandmother Maria Deleverio who did not believe her (TSN, July 6, 1994, p. 17).

"On May 13, 1994 at about 9:00 o'clock in the evening, the appellant again inserted his penis into the vagina of Roxan for which she cried (TSN, July 1994, p. 18). When Roxan reported the molestation to her grandmother, the latter refused to believe her (TSN, July 16, 1994, p. 18). Roxan then reported the matter to her mother who brought her to the police."<sup>[6]</sup>

Dr. Joel Absin, the physician who examined Roxan, issued on 27 May 1994 a medical certificate, viz:

"- physical virginity recently lost on a child of Roxan Binarao." [8].

Jose Deleverio vehemently denied having raped Roxan. He stated that on 07 April 1994, the first time she allegedly had been raped, Roxan was no longer in fact staying with the couple, her mother having fetched her and her brother shortly at the close of the schoolyear in Maloong Elementary School. The accused testified that on the night of 13 May 1994, the date of the supposed second rape, he was all the time with his wife, Maria Sarah, in their house at Maloong Legion. He said that he had always treated Roxan and her brother Ramon like they were his own children but he would, of course, discipline them so long as he had to. He believed that the two counts of rape lodged against him had been merely fabricated by Susan

Benarao who did not like the idea of her children being sent home to her by Maria Sarah.<sup>[9]</sup>

Maria Sarah Deleverio declared that she was once the common-law wife of Donatilo Agustin before marrying the accused. She had four children with Donatilo among whom being Jesusa (Susan). She said that on 07 April 1994, when her husband supposedly had sexual intercourse with Roxan, the latter was already in Lamitan proper with her mother. On 13 May 1994, Maria Sarah was at their house in Maloong Legion. Roxan never told her about the alleged rape, and she learned for the first time that Roxan and Susan had a complaint for rape against her husband only on 28 or 29 May 1994 when the police arrested the accused and brought him to the police station at Lamitan. She would conjecture that the only possible reason why Susan falsely charged him was because the couple had stopped caring for the children.<sup>[10]</sup>

After trial, the court *a quo*, presided over by Judge Salvador Memoracion, rendered its decision, dated 07 December 1994, finding the accused guilty on two counts of rape. The trial court adjudged:

"WHEREFORE, premises considered, this Court finds the accused, JOSE DELEVERIO, 58 years old, GUILTY beyond any shadows of doubts of committing two (2) counts of Rape[s], one committed on April 7, 1994 and the other committed on May 13, 1994, against his own eight (8) years old grand-step-daughter, Roxan Binarao which two (2) crimes are defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 of 1993 and hereby sentences him to suffer two (2) extreme and supreme penalties of DEATH.

"And to pay the total amount of P60,000.00 for both cases as moral damages and the costs of these proceedings.

"IT IS SO ORDERED."<sup>[11]</sup>

In this automatic review, appellant assigned a lone error; i.e., that -

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT JOSE DELEVERIO GUILTY BEYOND REASONABLE DOUBT OF HAVING COMMITTED RAPE ON TWO COUNTS"<sup>[12]</sup>.

and reminded that -

"The Court has stressed time and again that in view of the severity of the penalties for the offense of rape, justified by the `traumatic consequences for the unfortunate victim and grievous injury to the peace and good order of the community, there is need `for extreme care on the part of the judiciary to avoid an injustice done to an accused. For it is equally true that this is an offense to which, as is often the case, only two people can testify, thus requiring the most conscientious effort on the part of the arbiter to weigh and appraised the conflicting testimony. If a reasonable doubt exists, the verdict must be one of acquittal. It must be borne in mind that it is an accusation easy to be made, hard to be proved but harder to be defended by the accused, though innocent. The evidence for conviction must be clear and convincing to overcome the constitutional presumption of innocence."<sup>[13]</sup>

Appellant would consider it rather strange that the complainant did not even attempt to wake up his brother Ramon, to whom she later confided the incidents and said to be sleeping all the while in the same room with her, when she was being sexually assaulted by the accused.<sup>[14]</sup>

As usual, in a prosecution for rape, the credibility of the victim is almost always the single and most important issue to hurdle. If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof,<sup>[15]</sup> otherwise, he should be acquitted of the crime. Corroborative testimony, frequently unavailable in rape cases, is not essential to warrant a conviction for the crime.

In the instant case, the trial court gave its own assessment on the credibility of Roxan; it said:

"This Court also found that this Roxan Binarao, an eight-year-old-second grade pupil, to be a very competent witness, because her testimonies, in open Court were not punctured with serious inconsistencies as to lead this Court to believe that she [had] been coached to make known her perception of the traumatic incident x x x.

"While it is true that she sometimes commits inconsistencies in her declaration, but this Court finds that such honest lapses did not impair her intrinsic credibility as a witness x x x.

"This Court could not find any cogent reasons for this eight (8) years old girl to accuse her grand-step-father of having raped her. Because of the facts that when she and her two (2) brothers, Ramon and Rodolfo were staying with the couple in Maloong Legion, Lamitan, for three (3) years where in fact they attended primary schooling there, the accused, Jose Deleverio and his wife Maria Sarah Deleverio, the grandmother of these three (3) children were treating them well and even considered them as their own children, never punished them, except to discipline which is very normal attitude between parent and children relationship. Neither could this Court [find] any dubious motive on the part of Susan Binarao to induce her small daughter to file serious charges of rape against her step father who [has] been very kind to take care of her children while she work[s] or go[es] to Sabah, Malaysia to look for work."<sup>[16]</sup>

This Court itself has gone over the testimony of Roxan. Like the trial court, we find the child's narration of the incident to be as forthright and straightforward as a young girl of eight years of age can possibly make it. Here is how her testimony goes:

"Q Before April 7, 1994 where were you residing?

"A I was already staying in Legion.

"Q Whose house are you staying?

"A Their house.

"Q You are referring to the house of the accused and Maria Deleverio, the wife?

"A Yes, sir.