

## SECOND DIVISION

[ G.R. No. 117482, May 08, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO ESGUERRA, ALIAS "BOTOG," ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

Appellant **ROMEO ESGUERRA** was charged with statutory rape for having carnal knowledge with the eleven-year old victim **ROSALINA GARBO**.

The Information<sup>[1]</sup> against him reads:

"That on or about May 1987 and subsequent thereto, in the Municipality of Camiling, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Romeo Esguerra alias "Botog" armed with a knife which he pointed at Rosalina Garbo and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously succeeded in having sexual intercourse with the said Rosalina M. Garbo, 11 years old, against her will.

"Contrary to law."

The Information for rape against appellant was filed on March 20, 1988 at the Regional Trial Court, Branch LXVIII, Camiling, Tarlac. The next day, Presiding Judge Rafael B. Hidalgo issued an order for appellant's arrest. Appellant could not be found and the warrant for his arrest was never served. The case was temporarily archived for failure of the police authorities to locate appellant. It was only in the later part of 1993, or after more than six (6) years, that appellant was apprehended by the police authorities in Camiling, Tarlac. He was arraigned and then tried.

The prosecution evidence consisted of the testimonies of **ROSALINA, HELEN and LILIAN, all surnamed GARBO**, and **DR. EDGARDO LOPEZ** of the Camiling District Hospital.

The records show that **LILIAN GARBO**, a widow, residing at Diego Silang Street, Camiling, Tarlac, was working as a waitress/entertainer at a restaurant in the Camiling public market. She has three (3) daughters, namely: **HELEN, ROSALINA and CHARITO, then aged 14, 11 and 6, respectively**. Having been widowed in April 1987, Lilian subsequently met appellant **ROMEO ESGUERRA** and became his paramour.<sup>[2]</sup>

In May 1987, **ROSALINA GARBO**, the eleven-year old daughter of Lilian, and her

two (2) sisters were in their house in Camiling, Tarlac. Their mother, Lilian, was working in the public market. At about 9:00 a.m., while Rosalina was cleaning the house, appellant suddenly grabbed her and, poking a knife at her neck, dragged her into a room downstairs. As there was no bed in the room, appellant forced her to lie on the ground. Appellant then removed his pants and forcibly took off Rosalina's underwear. He then raised her shirt, exposing her breasts. Rosalina struggled to fend off appellant's lecherous advances but to no avail. Appellant mounted her and spread her legs apart using his hands and legs. He then forced his organ into hers and succeeded in having carnal knowledge with her. Rosalina resisted but her efforts were fruitless due to appellant's strength. She tried to shout for help but appellant muffled her voice by covering her mouth with his hand or smothering her mouth with kisses. From the moment she was dragged into the room until her penetration, appellant held a *balisong* with his right hand. He only let go of the knife when he reached orgasm. Hearing a noise outside the room, appellant ordered Rosalina to get dressed. Feeble from her ordeal, Rosalina could not put back on her underwear so appellant did it himself. Rosalina saw her underwear stained with blood and felt intense pain in her organ. Her two sisters, Helen and Charito, who were watching television in a bedroom upstairs, had no inkling about the horrifying fate that befell Rosalina. They remained undisturbed throughout their sister's harrowing ordeal.<sup>[3]</sup>

Rosalina was unable to stand up as she suffered from intense pain in her pelvis. Appellant carried her into the sala and after about half an hour, ordered her to take a bath. She did as she was told. Appellant stood outside the bathroom, guarding and watching her every move.<sup>[4]</sup>

Appellant's lust had not run its course. At about 3:00 p.m. that same day, appellant, brandishing his *balisong*, again dragged Rosalina into the same room downstairs and sexually attacked her a second time. Rosalina tried to fight off his advances, kicking and pushing him, but her efforts proved futile. She tried to make noise, hoping that her sisters, who were still watching television in their bedroom upstairs, would hear her. Nobody did. Appellant covered her mouth with his palm, and drowned her pleas for help. After satisfying his lustful desire, appellant warned Rosalina not to report the incident to any one, otherwise her two sisters would also suffer the same fate. He also threatened to kill her mother. Appellant then left. Gripped with fear, Rosalina kept the incident to herself and thought that was the end of her misfortune. Sadly, she was mistaken.<sup>[5]</sup>

In the morning of June 12, 1987, appellant, with knife in hand, again forcefully deflowered Rosalina in the same room of their house. As they were wont to do, her two sisters, Helen and Charito, were in the bedroom upstairs bewitched by the television. They were completely unaware of the bestial crime perpetrated by appellant against their sister. So was Rosalina's mother who was in the public market attending to her work.<sup>[6]</sup>

At lunchtime, Helen and Charito took their lunch in the bedroom upstairs. Rosalina, on the other hand, partook of her lunch alone in the dining room. At about 1:00 p.m., Helen left the house and went with her friends to the public market.<sup>[7]</sup> An hour later, appellant also left the house and went to a restaurant in the public market to drink beer. He was seen by Lilian, his paramour, when the latter passed by the restaurant on her way to a nearby store.<sup>[8]</sup>

At about 3:45 p.m., Rosalina went to the bedroom upstairs to prepare their clothes for laundry. Her six-year old sister, Charito, was then playing at the ground floor. After a couple of minutes, appellant arrived. Inebriated, appellant barged into the bedroom upstairs and once more forced Rosalina on the bed. He undressed, stripped Rosalina's underwear and again sexually abused her.<sup>[9]</sup>

When Helen returned to the house, she heard the creaking sound of the bed upstairs. She rushed upstairs and peeped into the glass portion of their bedroom door. She was shocked to see appellant lying on top of her sister Rosalina. She kicked the bedroom door and then used her shoulder to break down the locked door. She succeeded in entering the bedroom but appellant just glanced at her. Despite Helen's presence, the drunken appellant continued ravishing Rosalina who could only weep.<sup>[10]</sup>

Helen ran to their nearest neighbors to seek succor. She also went to the public market to look for her mother. When their neighbors proceeded to the house of the Garbo's, they failed to find appellant. He had already fled.<sup>[11]</sup> Helen and her mother rushed back to their house and saw Rosalina still crying, with bleeding and swollen lips. Rosalina confirmed she was raped by appellant and that he had been molesting her in the past. Forthwith, Lilian and Helen accompanied Rosalina to the police station where they gave their statement.<sup>[12]</sup> They also brought Rosalina to the Camiling District Hospital for medico-legal examination. The examination revealed the following:

"FINDINGS:

- Conscious, Coherent, Ambulatory, not in distress.
- LMP - April 2 to April 11, 1987 with irregular mense.
- Breast - conical, firm
- I.E. vagina admits 2 fingers with difficulty.
- Hymen - with laceration at 6:00 o'clock, fresh.**
- Vaginal Smear Done - June 12, 1987.**
- Result - Positive for Spermatozoa."**<sup>[13]</sup>

Appellant denied committing the crime at bar. He claimed that he was working in Manila, doing maintenance work at Masinag Supermarket in Cogeo, Rizal at the time of the incident. He, however, admitted that Lilian Garbo was his paramour and that, at times, he would see Lilian's children at the latter's house whenever he visits.<sup>[14]</sup>

After trial, the trial court found appellant guilty of statutory rape.<sup>[15]</sup> The dispositive portion of the Decision reads:

"WHEREFORE, the Court finds and so holds that the crime of rape charged against the accused has been clearly established beyond reasonable doubt and he is hereby sentenced to suffer the extreme penalty at that time (now more severe, by death) of reclusion perpetua and, to indemnify the offended party the amount of P50,000.00. Costs