

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGELIO BARROZO Y CASTRO, APPELLANT.

G.R. Nos. 138726-27. July 03, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The failure of the prosecution to prove beyond reasonable doubt the minority of the victim at the time the crime happened bars a conviction for rape in its qualified form. Thus, the proper penalty is reclusion perpetua, not death.

The Case

For automatic review by this Court is the April 7, 1999 Decision^[1] of the Regional Trial Court (RTC) of Urdaneta City (Branch 46), acting as a Special Criminal Court in Criminal Cases U-9810 and U-9811. The RTC found Rogelio Barrozo y Castro guilty of rape beyond reasonable doubt and imposed on him the death penalty. The decretal portion of the Decision reads:

“WHEREFORE, finding ROGELIO BARROZO, in CRIM. CASE NO. U-9811, guilty beyond reasonable doubt of aggravated rape, an offense punishable under Art. 266-A, R.A. 8353, in relation to R.A. 7659, the Court sentences Rogelio Barrozo to suffer the penalty of DEATH, to be implemented in the manner provided by law; ordering the accused to indemnify Rowena Barrozo the sum of P75,000.00 for moral damages, further sum of P20,000.00 as exemplary damages and other accessory penalties of the law.

“For failure of the prosecution to prove the guilt of Rogelio Barrozo beyond reasonable doubt in CRIM. CASE NO. U-9810, the Court ACQUITS said accused.”^[2]

Appellant was accused of raping his own daughter, Rowena Barrozo y Castro, in two separate Informations,^[3] both dated October 14, 1998, which read as follows:

Crim. Case No. U-9810

“That sometime in January, 1996, at Barangay Mermer, Manaoag, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threats and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge with his own daughter, Rowena Barrozo y Esteron, a minor below 12 years of age, against her will and to her damage and prejudice.”^[4]

Crim. Case No. U-9811

“That on or about August 16, 1998, between 12:00 o’clock midnight and 1:00 o’clock early dawn, at [B]arangay Mermer, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats, and intimidation, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with his own daughter, Rowena Barrozo y Esteron, a minor of 14 years of age, against her will and to her damage and prejudice.”^[5]

When arraigned on January 12, 1999, appellant, with the assistance of his counsel,^[6] pled not guilty.^[7] After pretrial and due trial, the RTC convicted him in Criminal Case No. U-9811, but acquitted him in Criminal Case

No. U-9810.

The Facts

Version of the Prosecution

The Office of the Solicitor General presents the prosecution's version of the facts in this wise:

"Rowena Barrozo, private complainant herein, testified that she was born in May 06, 1984. She is the daughter of appellant, Rogelio Barrozo and one Magdalena Aquino. Her parents were separated since she was a young girl. Her mother, who now has her own family, left her in the company of her father, where they lived in the house of her uncle, Melecio Barrozo, at Barangay Mermer, Manaoag, Pangasinan.

"On the night of August 16, 1998, the victim who was then fourteen (14) years old, recounted that when she was in the room of their house at Barangay Mermer, Manaoag, Pangasinan, her father, appellant therein, undressed her and also undressed himself and laid beside her. He covered her mouth and held her hands, went on top of her and inserted his penis in her vagina; she felt pain. Threatening to kill her if she files a complaint against him, appellant ran outside the house. The victim jumped out of the window and went to the nearby house of her Auntie Remeng where she spent the night. The following morning, she reported her ordeal to the Barangay Kagawad and the Barangay Captain, who however, did not believe her story.

"The victim proceeded to the house of her Aunt Lorie, who in turn brought her to her grandmother, Juliana Esteron, at Lelemaan, Manaoag, Pangasinan. A woman named Leah Bumanlag, Chairman of the Manaoag Multi-Purpose Cooperative and Secretary of Disiplina Mass Media Action offered to help her and accompanied the victim to the Manaoag Police Station where they reported the rape.

"Dra. Mary Gwendolyn Luna, c/o Region I Medical Center, Dagupan City, medically examined Rowena Barrozo. She (the doctor) testified further that the victim intimated to her that her father had abused her before, sometime in January 1996, when she was only twelve (12) years old. Her findings were incorporated in the Medical Certificate she issued, the text of which reads:

'MEDICO-LEGAL CERTIFICATE

-

Allegedly sexually abused by own father she was 12 years old

-

Abuse was repeated August 16 (Sunday) 1998 at 10:00 A.M. in Mermer, Manaoag, Pangasinan

-

Conscious, coherent, ambulatory, no signs of physical injuries

-

Menarche – 12 years old

IMP-August 2[nd] week 1998 – 4 days (August 15-18)

-

Breast – with breast buds

-

Genitalia – with healed lacerations at 5, 6 o’clock, vagina admits 1 finger with ease two fingers with slight difficulty and pain

-

Cervix closed, uterus small, adnexae free whitish discharge

-

Smear for presence of spermatozoa

-

Vaginal smear result: Negative for spermatozoa”[8] (Citations omitted)

Version of the Defense

Appellant, on the other hand, narrates his version of the facts as follows:

“ROGELIO BARROZO is the father of the complainant. He testified that he was never married to complainant’s mother. They separated when complainant was one year old. He left their only daughter in the custody of his in-laws. He said that complainant is mentally ill because he saw her burning her clothes for three times. One time, he saw her pouring kerosene over cooked rice.

“Accused-appellant denied having raped his daughter. He said that it was only a ‘solsol’ by the group of Jerry Cercado with whom he had a fight. Jerry’s group instigated the filing of the rape case against him to eliminate him or as a revenge. He belied that he had carnal knowledge with his daughter who was no longer living with him at the time of the alleged incident. Prior to August 28, 1998, Rowena was living with del Rosario. That was in June 1998. He loved his daughter and wanted her to have good things in life.”[9] (Citations omitted)

Ruling of the Trial Court

In convicting appellant of “aggravated rape,” the RTC gave full faith and credence to the testimony of complainant. The trial judge ruled:

“The detailed and specific narration of Rowena, how she was sexually abused and assaulted by her father, prevailed over the timid denial and negative assertions of [appellant]. Denial can easily be fabricated and made. It cannot outweigh and prevail over the positive and clear assertions of Rowena of what transpired on August 16, 1998 as their house at Mermer, Manaoag. The testimony of Rowena is most credible and to the mind of the Court, had actually happened to the exclusion of any other presumption.”[10]

Hence, this automatic review.[11]

The Issues

Appellant submits for our consideration the following alleged errors committed by the court a quo:

“I

The trial court gravely erred in convicting the accused-appellant notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt.

“II

The trial court gravely erred in not considering the defense interposed by accused-appellant.”[12]

The Court’s Ruling

The appeal is partly meritorious. Because of the prosecution's failure to prove the victim's minority when the rape was committed, reclusion perpetua -- not death -- is the proper penalty.

First Issue:

Sufficiency of the Evidence

After a thorough review of the records of the case, we are convinced that the RTC did not err in giving credence to the testimony of the victim and the other prosecution witnesses.

In a prosecution for rape, the Court is always guided by the following principles: (a) an accusation for rape can be made easily, but to disprove it can be difficult though the accused may be innocent; (b) in view of the nature of the crime which usually involves only two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and not be allowed to draw strength from the weakness of the evidence for the defense.[13]

The testimony of the victim, narrating how she was raped by her own father on August 16, 1998, was clear and convincing. It proceeded thus:

DIRECT EXAMINATION

FISCAL RESTITUTO A. Dumlao

"[Q]

Madam Witness, in one evening of the month of August, 1998, where did you sleep?

A

Up-stairs, sir.

Q

Up-stairs, you mean it is the house owned by your Uncle Melecio?

COURT: It is already established that she was living with her father in the house of her Uncle Melecio.

FISCAL Dumlao: Madam Witness, what did you do in that evening?

A

I slept, sir.

Q

When you slept up-stairs in that house, were you awakened?

A

Yes, sir.

Q

Why?

A

Because I saw my father, sir.

Q

What did your father tell you?

A

There was, sir.

Q

What was that?

A

My father told me that if I will report he will kill me.

Q

What happened next after that?

COURT: You said that your father told you that if you report, he will kill you, why did he say that?

A

No answer.

Q

What is it that your father told you not to report?

A

No answer.

COURT: You confer with the witness.

FISCAL DUMLAO: Yes, your Honor.

x x x x x x x x”[14]

PROS. DUMLAO: (CONT. OF DIRECT) With the kind permission of the Honorable Court.

Q

Madam Witness, you said that you are with your father Rogelio Barrozo in the house owned by your uncle Melecio Barrozo. Now, what did your father do to you?

WITNESS:

A

He raped me sir.

Q

How did your father Rogelio Barrozo rape you?

A

He undressed me and then he also undressed himself and he lied besides me, sir.

Q

After your father undressed you and undressed himself and lied besides you, what did your father do after that?

A

He covered my mouth and then he held my hands at the back and then he went on top of me, sir.

Q

As he went on top of you, what did he (Rogelio Barrozo) do?

A

He inserted his penis in my vagina, sir.

Q

What did you feel when he inserted his penis into your vagina?

A

It is painful sir.

Q

After that, what happened next?

A

He threatened me sir.

Q

How did your father Rogelio Barrozo threat you, could you tell the Honorable Court?

A

He told me that if I file a complaint, he will kill me sir.

Q

Now, after your father Rogelio Barrozo threatened you, what did he do next after that?

A

My father ran outside the house and I also jumped out of the window which is very high, sir.

Q

Who ran away?

A

My father sir.

Q

After you jumped through the window, where did you proceed?

A

I went to a Brgy. Kagawad and to the Barangay Captain to report but they did not believe me, sir.

COURT:

Q

When your father inserted his penis to your organ, what did your father do once he inserted his penis to your vagina.

Witness cannot answer.

Q

Your father inserted his penis to your vagina, is that it?

WITNESS:

A

Yes sir.

Q

Was he able to insert his penis to your vagina?

A

Yes sir.

Q

What did he do when he inserted his penis to your vagina?

A

He held it sir.

Q

What did he held?

A

His penis sir.

Q

And when he held his penis, what did he do with his penis?

A

He inserted sir.

Q

Where?

A

In my vagina sir.

Q

Was he able to insert his penis to your vagina?

A

Yes sir.

Q

When the penis was already inside your vagina, what did your father do with his penis, did he move?

A

Yes sir.

Q

How did he move his penis?

Witness cannot answer.

Q

Why did you jump out of the window?

A

Because I was afraid of him, sir.

PROS. DUMLAO:

Q

According to you madam witness, you ran to the Brgy. Kagawad and the Brgy. Captain and they do not believe you, where did you proceed after that?

WITNESS:

A

I went to the house of my auntie Lory, sir.

Q

Were you able to see your auntie Lory?

A

Yes sir.

Q

And what did your auntie Lory do?

A

She said that I will report the matter to another person, sir.

COURT:

Q

You mean, you went to the house of your auntie Lory?

WITNESS:

A

Yes sir.

Q

What did you tell your auntie Lory?

A

I reported the matter that I was raped by my father and my auntie Lory said I will report the matter to another person, sir.

PROS. DUMLAO:

Q

From the house of your auntie Lory, where did you proceed, madam witness?

WITNESS:

A

She brought me to Lelemaan, Manaog, Pangasinan, sir.

Q

Why did she bring you to Lelemaan, Manaog, Pangasinan?

A

I was brought there so that my grandmother will know about it, sir.

Q

What did you report to your grandmother?

A

I told my grandmother that I was raped by my father and my grandmother told me to report the matter to the Police, sir.

Q

Did you report that matter to the Police?

A

Yes sir.

Q

Who was your companion in reporting that matter to the Police?

A

Madam Leah, sir.

Q

Why did your madam Leah bring you to the Police?

A

Because we will file a complaint against my father, sir.

Q

What is the name of your grandmother?

A

Julia Esteron, sir.

Q

In fact madam witness, you gave your sworn statement to the Police of Manaog, Pangasinan, is that correct?

A

Yes sir.

Q

I am showing to you a sworn statement, is this the one you are referring to with your signature on the second page?

A

Yes sir. This the same.

x x x x x x x x[15]

COURT: Do you remember the month of August, 1998?

WITNESS:

A

Yes sir.

Q

What is the significan[ce] of this month and year?

In the month of August was there anything that happened to you?

A

There was sir.

Q

What happened, is it very important that happened to you on that month?

A

He touched my both thighs sir.

Q

Who do that?

A

My father sir.

Q

After that touching of your thighs, did your father do anything else?

A

He went besides me and then he touched my both thighs, sir.

Q

After your father held your both thighs, what else did he do?

Witness cannot answer.

Q

Do you remember having undressed by your father where he was holding your thighs?

Witness cannot answer.

Q

You said your father held your two (2) thighs?

A

Yes sir.

Q

Aside from holding your two (2) thighs, what else did your father do?

A

He went on top of me sir.

Q

When he went on top of you, what did your father do?

A

My father got a bolo, sir.

Q

What else did he do?

A

I was not able to take hold of the bolo because my both hands were tied at my back, sir.

Q

When your hands were tied at your back, what did your father do?

Witness cannot answer.

Q

Your father went on top of you?

A

Yes sir.

Q

So your father was on top and you are under?

A

Yes sir.

Q

What did your father do when he was on top of you and you are under?

A

He undressed me and then he undressed himself sir.

Q

And when you are already undressed, what did your father do?

A

He inserted his penis in my organ, sir.

x x x x x x x x"[16]

Appellant, on the other hand, denied raping his daughter. He claimed that the latter was mentally deranged, explaining that when she was still in primary school she had poured kerosene on the rice she was cooking. In an attempt to bolster this claim, he informed the RTC that his brother, Melecio Barrozo, was also mentally deranged and was harming people. He maintained that he could not have raped his daughter on August 16, 1998, because she had already been working as a housekeeper for Erlinda Rosario since June 1998. He also argued that the charges had been filed against him upon the instigation of Jerry Cercado -- with whom the former had quarreled -- as well as of Lorie Garcia and Leah Bumanlag.

The RTC did not believe appellant's instigation theory. It opined:

"Defense contention that Rowena was being instigated and used by Cercado with whom he had a score to settle is preposterous and childish. Rowena owed nothing to the Cercados for any favor. Rowena is too young to understand frame-up cases especially involving her own father. The Court is not swayed and persuaded that Rowena is being used to file these criminal charges against her own father on account of [the] instigation of other people." [17]

The court a quo likewise debunked appellant's contention that the rape charge had been fabricated. We disagree. The allegation of incestuous rape is a serious matter. Unless she is telling the truth, a girl would not concoct a story that would drag herself and her family to a lifetime of dishonor particularly when it could mean the death of her father. [18] For her to do so would go against human experience.

Moreover, Rowena's testimony was partly corroborated by the other prosecution witnesses and the medicolegal expert, [19] who testified as follows:

"Q

What was your findings in your physical examination?

A

I concentrated my findings on the genital area?

Q

You stated that you examined the genital area of the victim, what was your findings in the genital area?

A

There was healed laceration in the hymenal area.

Q

In your findings, Doctora, it says: healed lacerations at 5 o'clock and 6 o'clock and vagina admits one finger with ease, two fingers with slight difficulty and pain, what do you mean by that Doctora, when you said slight difficulty and pain?

A

An object penetrated the vaginal canal.

Q

You mean an object penetrated the canal which caused the laceration?

A

I mean hard object.

Q

In your opinion, Doctora, is it possible that a human penis could have caused the lacerations at 5 o'clock and 6 o'clock positions?

ATTY FLORENDO: The witness is incompetent to testify on that. She was not an eyewitness.

FISCAL DUMLAO: As expert witness, because according to the Doctor a hard object penetrated the canal which caused the lacerations, so it is possible that a human penis could have penetrated the canal, your Honor.

COURT: Hard object could [be] attributed to many factors, is it not Doctora?

A

Yes, sir.

Q

What are these factors, not only as Doctor but as wife?

A

First of all it could have been an erect penis, your Honor, maybe it could be a softdrink bottle, your Honor.

COURT: What else?

A

It could also be a finger, your Honor.

COURT: Go ahead.

FISCAL DUMLAO: Doctora, in your findings, vagina admits one finger with ease, two fingers with slight difficulty and pain, can we say, Doctora, that before the foreign object penetrated the genitalia of the victim, is it possible that the victim is virgin?

A

Possible, sir.

Q

Did you reduce your findings in writing, Doctora?

A

I did, sir.

Q

I am showing to you this medico Legal Certificate, is this the one you are referring to?

A

Yes, sir, this is the one I issued.

x x x x x x x x.”[20]

Additionally, the allegation of appellant that his daughter was mentally ill was not borne by the records. First, he did not present any medical certificate to validate this claim. Second, as can be gleaned from her testimony in court, Rowena was in complete command of her senses when she narrated how her father had raped her. Third, the contention of appellant that she worked as a housekeeper contradicted his contention that she was deranged. Indeed, no one would hire or employ a person of unsound mind.

The denial of appellant cannot prevail over the positive testimony of the victim, who identified him as her ravisher. It is a hornbook doctrine that “a bare denial is a negative declaration which deserves no consideration and cannot prevail over the affirmative testimony of the victim which is corroborated by more evidence. It cannot survive the positive identification of the malefactor by the victim. Affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness.”[21]

Further, in cases of incestuous rape, the Court usually gives more weight to the testimony of a young rape victim, especially a barrio lass like Rowena. “No woman would cry rape, undergo a public trial and relate the details of her defilement, unless motivated by her quest to right an injustice done to her.”[22]

As a general rule, the factual findings of the trial court will not be disturbed by an appellate court absent any clear showing that the lower court overlooked certain substantial and valuable facts which, if considered, might affect the outcome of the case. The rationale for this principle is that the trial court is in a better position to observe the

deportment or demeanor of witnesses firsthand.[23] Nothing in the present case warrants a deviation from this general rule.

Second Issue:

Proper Penalty

The prosecution was able to prove that appellant raped his daughter on August 16, 1998. However, we believe that it failed to substantiate her minority. “[T]he minority of the victim must be proved with equal certainty and clearness as the crime itself. Otherwise, failure to sufficiently establish the victim’s age is fatal and consequently bars conviction for rape in its qualified form.”[24]

Crucial to the imposition of rape in its qualified form is independent proof of minority such as the victim’s duly authenticated certificate of live birth[25] or baptismal certificate[26] or any other authentic document proving her age.[27] Because of this lapse, we have no other alternative but to hold appellant liable for simple rape only.

We also modify the award of damages. Consistent with current jurisprudence,[28] appellant should be made to pay P50,000 as civil indemnity for the rape committed. Although the RTC correctly granted moral and exemplary damages to the victim, the amounts do not conform to existing jurisprudence. Moral damages are awarded to rape victims without need of specific proof because the mental, physical and psychological trauma suffered by them is already presumed from the fact of rape.[29] Likewise, the aggravating circumstance of relationship justifies the grant of exemplary damages, consistent with case law.[30]

WHEREFORE, the automatically appealed Decision of the Regional Trial Court of Urdaneta City (Branch 46) in Criminal Case No. U-9811 is AFFIRMED with the MODIFICATION that the penalty of death is hereby reduced to reclusion perpetua. Appellant is ordered to pay the victim the amounts of P50,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

Quisumbing, J., abroad on leave.

[1] Rollo, pp. 21-35. Written by Judge Modesto C. Juanson.

[2] RTC Decision, p. 14; rollo, p. 34; Crim. Case No. U-9811; records, p. 55.

[3] Signed by 2[nd] Asst. Provincial Prosecutor Restituto A. Dumlao Jr.

[4] Rollo, p. 9; Crim. Case No. U-9810; records, p. 1.

[5] Ibid., p. 10; Crim. Case No. U-9811; records, p. 1.

[6] Atty. Samson Florendo.

[7] Order dated January 12, 1999, Crim. Case No. U-9810; records, p. 39.

[8] Appellee’s Brief, pp. 2-4; rollo, pp. 87-89. The Brief was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Rodolfo G. Urbiztondo and Solicitor Encebrin E. Javier-Inanuran.

[9] Appellant’s Brief, pp. 4-5; rollo, pp. 53-54. The Brief was signed by Attys. Arceli A. Rubin, Amelia C. Garchitorea and Isabelito E. Sicat – all of the Public Attorney’s Office.

[10] RTC Decision, pp. 10-11; rollo, pp. 30-31.

[11] This case was deemed submitted for resolution on October 27, 2000, upon this Court's receipt of the Reply Brief.

[12] Appellant's Brief, p. 1; rollo, p. 50. Original in upper case.

[13] *People v. Bataller*, GR Nos. 134540-41, July 18, 2001; *People v. Diasanta*, 335 SCRA 218, July 6, 2000; *People v. Tabanggay*, 334 SCRA 575, June 29, 2000; *People v. Tabion*, 317 SCRA 126, October 20, 1999; *People v. Quijada*, 321 SCRA 426, December 22, 1999.

[14] TSN, February 10, 1999, pp. 12-13.

[15] TSN, February 22, 1999, pp. 2-6.

[16] TSN, February 22, 1999, pp. 9-11.

[17] RTC Decision, p. 32; rollo, p. 32; Crim. Case No. U-9811, records, p. 53.

[18] *People v. Tundag*, 342 SCRA 704, October 12, 2000.

[19] Dr. Mary Gwendolyn Luna, Medical Officer IV, Gov. Teofilo Sison Memorial Provincial Hospital (now Region I Medical Center), Dagupan City.

[20] TSN, February 10, 1999, pp. 6-7.

[21] *People v. Bataller*, supra, p. 23, per Panganiban, J. -- citing *People v. Diasanta*, supra, per curiam; and *People v. Cambi*, 333 SCRA 305, June 8, 2000, per De Leon Jr., J.

[22] *Ibid.*, citing *People v. Tundag*, supra, p. 713, per Quisumbing, J.; and *People v. Diasanta*, supra.

[23] *People v. Baybado*, 335 SCRA 712, July 14, 2000; *People v. Tundag*, supra; *People v. Diasanta*, supra; *People v. Librando*, 335 SCRA 232, July 6, 2000.

[24] *People v. Javier*, 311 SCRA 122, 141, July 26, 1999, per Melo, J.

[25] *People v. Bataller*, supra; *People v. Cula*, 329 SCRA 101, March 28, 2000.

[26] *People v. Veloso*, 330 SCRA 602, April 12, 2000; *People v. Vargas*, 257 SCRA 603, June 26, 1996.

[27] *People v. Bali-Balita*, 340 SCRA 450, September 15, 2000.

[28] *People v. Lalingjaman*, GR No. 132714, September 6, 2001; *People v. Bataller*, supra; *People v. Cula*, supra; *People v. Veloso*, supra; *People v. Vargas*, supra.

[29] *People v. Agravante*, GR Nos. 137297 & 138547-48, December 11, 2001; *People v. Prades*, 293 SCRA 411, July 30, 1998.

[30] *People v. Lalingjaman*, supra; *People v. Alipar*, GR No. 137282, March 16, 2001; *People v. Bataller*, supra.

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