

EN BANC

[G.R. No. 130659 & 144002, August 14, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO ROQUE, ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

Nine-year old Analiza and twelve-year old Arcely were the only daughters of Shirley Roque and herein appellant Antonio Roque. The couple had not been living together for sometime but it did not prevent appellant from occasionally visiting his family at their house in San Luis, Tarlac. Left alone with a brood to feed, Shirley eked out a living as a cook, doubling as a waitress, at the Ihaw-Ihaw del Mar restaurant. Daughter Arcely stayed with her paternal grandparents at nearby barrio Carangian, where she attended grade school, leaving her sister Analiza often alone in the family house with only her brothers for company. Weekends at the Roque household were livelier when Arcely would come home from Carangian to be with the family. And so it was until one day when Arcely, during one of her periodic visits, was seen lying beside her father under a blanket. Movements beneath the blanket aroused the suspicion of Analiza but Shirley dismissed her daughter's complaint as just the child's fancy. The second time Analiza reported a similar incident to her, Shirley questioned Arcely who finally confirmed that, indeed, her father had been sexually abusing her. Shirley, however, was afraid to confront her husband but when she later learned that Analiza herself was not spared from sexual molestation by appellant, Shirley reported the matter to the barangay captain of San Luis and then to the police. Analiza narrated how her father, at the point of a knife, had forced her to have sex with him. Medical examination conducted by Dr. Rosario Fider showed that twelve-year old Arcely Roque had been sexually molested but that her younger sister, Analiza Roque, was still a virgin.

On 26 October 1994, two Informations, docketed Criminal Case No. 8684 and Criminal Case No. 8685, were filed with the Regional Trial Court of Tarlac, Tarlac, against appellant; viz:

IN CRIMINAL CASE No. 8684—

"The undersigned Provincial Prosecutor, upon sworn complaint originally filed before the Municipal Trial Court of Tarlac, Tarlac by the offended party, Analiza P. Roque accuses ANTONIO ROQUE of Barangay San Luis, Tarlac, Tarlac of the crime of Rape, committed as follows:

"That sometime in 1992 and subsequent thereto in 1994, in the Municipality of Tarlac, province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused Antonio Roque who is the father of the complaining witness, did then and there willfully, unlawfully and feloniously and by means of force and intimidation have

carnal knowledge with his daughter Analiza P. Roque, 9 years of age, in their house, without her consent.”^[1]

IN CRIMINAL CASE No. 8685 -

“That sometime in 1992 and subsequent thereto in 1994, in the Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused Antonio Roque who is the father of the complaining witness, did then and there willfully, unlawfully and feloniously and by means of force and intimidation have carnal knowledge with his daughter Arcely P. Roque, 11 years of age, in their house without her consent.”^[2]

Following the arraignment of the accused, the two criminal cases were tried jointly.

Analiza Roque testified that, one night, when she was still in the second grade, the accused had knocked at the door of their house. As her brother Aldwin was already asleep, she opened the door herself. After letting her father in, she went upstairs to the second floor. Moments later, the accused ordered her to come down. When she did, he held her hands, pushed her to the sofa bed, removed her panty, held her vagina and licked it. Next, he touched her breasts and sucked them. He then placed himself on top of her and had sexual intercourse with her. The young girl felt pain. The accused, however, was not able to completely insert his organ into her vagina.

According to Arcely Roque, she had been staying at Carangian, Tarlac, with her grandmother. In her case, she recalled that the accused had first raped her during a school break when she went home to San Luis. At the time of the incident, only her sister Analiza was around. Arcely was sleeping on the sofa bed when she was suddenly awakened to see herself without her underwear and the accused, stripped off his trousers, already on top of her. He made push and pull movements with his penis inside her. Arcely decided to continue sleeping despite the pain in her vagina. The following day, and on subsequent and countless incidents, the exact dates of which she could no longer remember, the accused would similarly get back to her. At one time, while staying at Carangian, her father, who appeared to be drunk, arrived at her grandmother’s house and told her that they were going to San Luis to pay her mother and sister Analiza a visit. He took the route traversing the rice field. At a deserted path, the accused sexually molested Arcely while she helplessly lay against the dried rice stalks. The next incident occurred at their house in San Luis. Arcely was lying on the bed with her sister Analiza, when the accused again came visiting and told her that if she did not want to do “it,” he would kill her mother. Arcely testified that the accused did not spare her younger sister, then in grade one, from sexual abuse, and said that she saw appellant twice rape Analiza.

The accused put up the defense of denial and of *alibi*. A driver and a mechanic, Antonio Roque, was a stay-in employee of the Marsing Tongol Trucking Services at San Miguel, Tarlac, Tarlac, working from Monday through Saturday. He would go home to his family in San Luis three times a month, usually on a Sunday. On these occasions, he would also drop by Carangian to briefly see his daughter Arcely but only to hand over her allowance. In San Luis, he would spend Sunday nights with his family and would leave for work the next morning. He recalled having visited his family - his wife, Analiza and his two sons Arnold and Aldwin - only once in September 1994. In August 1994, he was not able to go home as he had to stay in Sta. Lucia for the entire month hauling “lahar.” The accused insisted that he could

not have raped his daughters whom he loved very much, and that the criminal cases were filed against him at the instigation of his wife so that she could live freely with her paramour. Although he did not know the man's name, he was certain of his wife's philandering. Once, on a Sunday night he said, her lover arrived at their house in San Luis aboard an owner-type jeepney, and he later saw them kissing inside the vehicle. He repeatedly warned his wife that if she did not stop her illicit relationship, he would take the children away from her. Shirley ignored him as well as his advice against working at the restaurant and to instead tend to their children.

Aldwin Roque, a son of the accused, discounted the charges against his father, saying that he was always home and could have easily noticed any unusual incident thereat had there really been one. Elizabeth Danganan, a sister of the accused, testified that Arcely Roque had used to stay with them since she was a year old. The accused would visit Arcely once or twice a month on weekends. In August 1994, appellant came to see his daughter but he immediately had to leave for San Luis. On that occasion, Elizabeth was certain that her brother did not bring Arcely with him to San Luis, and the claim that he raped her niece while crossing the rice field on the way to San Luis was preposterous. The witness viewed the charges as having been maliciously concocted by her sister-in-law.

On 19 June 1997, the trial court rendered its decision finding Antonio Roque guilty beyond reasonable doubt of the accusations against him and sentencing him to suffer the penalty of death -

"IN VIEW OF THE FOREGOING, this Court finds the accused Antonio Roque guilty of the crime of rape as charged in the two informations and is hereby sentenced to suffer the penalty of death in each case, and to indemnify both Arcely and Analiza Roque in the amount of P50,000.00 each, as damages. Accused is hereby ordered to pay the costs of these proceedings."^[3]

In this automatic review of the decree of conviction, accused-appellant raised the following assignment of errors -

"I.

"THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE IN CRIMINAL CASES NOS. 8684 AND 8685 DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION

"II.

"ASSUMING IN ARGUENDO THAT THE ACCUSED IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY DESPITE THE FACT THAT THERE WAS NO CLEAR INDICATION ON THE EXACT DATE OF COMMISSION OF THE OFFENSE."^[4]

Unfortunately, for appellant, there is nothing much that the Court can do to sustain his plea of innocence.

Analiza Roque, still in her tender years, recounted before the trial court, with such forthrightness and clarity as a young girl possibly could, what her father had done to her -

"Q. Would you tell us what did your father do after 1992?

"A. At first, he knocked at the door. Then I opened the door. Then I ran upstairs. After that, I went to bed, but my father ordered me to come down. So I went down because he was pointing aiming at me a knife, sir.

"Q. When your father asked you to go down, what did he tell you?

"A. 'You come down or if you will not come down, I will stab you.'

"Q. And when your father told you that, what did you do, if any?

"A. I went down because I was afraid, sir.

"Q. That incident which you are now relating, at what time did it happen?

"A. In the evening, sir.

"Q. So, when your father asked you to go down of your house, were you with anyone else or were you alone then?

"A. My brothers were already sleeping, sir.

"xxx xxx xxx

"Q. When your father told you that he still stab you if you will not go down, what did you do?

"A. I came down, sir.

"Q. And, what did your father do?

"A. He held my hands and pushed me to the sofa bed, sir.

"Q. After that, what else (happened)?

"A. He removed my panty, he held my vagina and licked it.

"Q. And, after that, what else did he do?

"A. He held my breast and sucked it, sir.

"Q. When he held your breast, did he not remove your dress?

"A. No, sir. He just raised it up.

"Q. How about your panty, did he not remove your panty?

"A. He removed it, sir.

"Q. After licking your vagina, what else did he do?

"A. He had sexual intercourse, sir.

"Q. Could you tell us how he did have sexual intercourse with you?

"A. He was making push and pull movements.

"Q. When he did it, did he not go on top of you?

"A. He went on top of me, sir.

"Q. When he made push and pull movements, did you not experience any injury or pain?

"A. Slightly, sir.

"Q. When your father was doing this to you, did you not tell anything to your father.

"A. 'Father, I am being hurt,' sir.

"COURT TO WITNESS:

Was he able to put his private organ inside your vagina?

"A. No, sir. Slightly.

"FISCAL TO WITNESS:

How long was he doing this to you, the push and pull movement?

"A. For a short time only, sir.

"Q. Now for how many times did he do this to you?

"A. I cannot remember, sir."^[5]

Appellant would place much reliance on the testimony of examining physician Dr. Rosario Fider who found no hymenal laceration on the person of Analiza Roque. The trial court, nevertheless, concluded that there was penetration although, concededly, it was merely "slight." In her sworn statement before the authorities, introduced in evidence and affirmed by her at the witness stand, Analiza herself attested that appellant was able to penetrate, but not "completely," her vagina.^[6]

In *People vs. Tirona*,^[7] this Court has explained that a "broken hymen is not an essential element of rape, not even where the victim is an innocent child x x x [where] the penetration of the male organ could go only as deep as the labia. In any case, for rape to be committed, full penetration is not required. It is enough that there is proof of entrance of the male organ within the labia or *pudendum* of the female organ. **Even the slightest penetration is sufficient to consummate the crime of rape.** Perfect penetration, rupture of the hymen or laceration of the vagina are not essential for the offense of consummated rape. Entry, to the least extent, of the labia or lips of the female organ is sufficient. **Remaining a virgin does not negate rape.**"^[8]

Arcely Roque, in her case, was unequivocal on how appellant had defiled her not just once but a number of times—

"Q. Could you tell the Honorable Court what your father did to you in 1992?

"A. In 1992, I was abused by my father, sir.

"Q. Do you still recall the month?

"A. I cannot remember the month, sir.

"Q. What hour was it, was it in the morning, afternoon or evening?

"A. It was nighttime, sir.

"Q. Now at that time according to you when your father abused you, were you living with him?

"A. I was in Carangian, sir.

"xxx xxx xxx

"Q. At that time when it happened, was it vacation (time) or were you still going to school?

"A. It was vacation, sir.