

## EN BANC

[ G.R. No. 140635, November 18, 2002 ]

### THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIO TERRIBLE Y OÑA, APPELLANT.

#### D E C I S I O N

##### CORONA, J.:

The Court is once again faced with the unpleasant task of reviewing a judgment of conviction imposing the supreme penalty of death for the commission of a crime so repulsive and despicable — incestuous rape.

Sometime in the afternoon of November 3, 1998, Gina Terrible was roused from her sleep by her 6-year-old daughter's muffled words which sounded like "*Mama si Papa yung titi niya pinasok sa bibig ko*".

Shocked and alarmed, Gina called her brother and asked him to talk to the victim, Katherine, to ascertain the truthfulness of what the child confided to her. To her mother's devastation, Katherine confirmed the tragic experience she endured in the hands of her very own father.

On December 12, 1998, appellant Mario Terrible y Oña was charged before the Regional Trial Court with the crime of rape defined under paragraph 2 of Article 266-A and penalized under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, in an information which reads:

"That on or about November 2, 1998, at Aquino Compound, Barangay San Cristobal, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and thru force and intimidation and with intent to satisfy his lust, did then and there willfully, unlawfully and feloniously insert his penis into the mouth of his daughter one KATHERINE TERRIBLE y CORNEJO, 6 years old, against her will and consent.

"CONTRARY TO LAW."<sup>[1]</sup>

Upon arraignment, appellant, assisted by counsel, pleaded not guilty. Thereafter trial ensued.

The prosecution's version of the events is based principally on the testimony of the victim Katherine Terrible, Gina Terrible, mother of the victim and wife of the accused, and Dr. Felimon Raymond P. Guerra III of the Jose P. Rizal Memorial Hospital.

Katherine testified that, on November 2, 1998, at around 2:30 in the afternoon, while she and her father, the appellant herein, were inside a room in their house, appellant kissed her lips and made her lick his nipples. Appellant then inserted his

penis into Katherine's mouth and a whitish substance came out of his sex organ. He then inserted his finger into Katherine's vagina.<sup>[2]</sup>

Gina Terrible, mother of the victim and wife of appellant, recounting her daughter's revelation of appellant's dastardly deed, testified that, at about 2:30 in the afternoon of November 3, 1998, she was awakened by Katherine who whispered to her "*Mama si Papa 'yung titi niya sinubo sa bibig ko.*" Gina then called her brother Noel Pinella and asked the latter to confirm her daughter's accusation against appellant. When asked by her uncle, Katherine confirmed what she had just told her mother. Gina immediately asked the assistance of her aunt and uncle in filing a complaint.<sup>[3]</sup>

The prosecution witness, Dr. Guerra III, the doctor who conducted the physical examination of Katherine on November 4, 1998, confirmed the claim of the victim that she was raped. Dr. Guerra III testified on the presence of an old genital laceration at 12:00 o'clock position which might have occurred seven or more days prior to the examination, and redness of the *labia minora*. Said findings are contained in the medico-legal certificate which was presented as evidence.<sup>[4]</sup>

Appellant denied the charge and testified that, on November 2, 1998, the time of the alleged rape, he was in his father's house in Barrio Bañadero, Calamba, Laguna which is three kilometers away from their house at Barangay San Cristobal, Calamba, Laguna; that he stayed there until November 3, 1998 and did not visit his family. Appellant's alibi was corroborated by his siblings Glecilda and Glen Terrible. Appellant further alleged that the crime was only imputed to him as his wife's way of exacting revenge because of their deteriorating relationship.

The trial court did not accord credence to the testimony of the appellant, pointing out that the defense of denial and alibi cannot prevail against the affirmative testimony of Katherine who was only 6 years old at the time she was subjected to appellant's sexual perversity. Furthermore Katherine's testimony was both impeccable and straightforward.

On October 20, 1999, the regional trial court rendered a decision finding appellant guilty as charged:

"ACCORDINGLY, this Court finds accused Mario Terrible y Oña GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-B, Chapter III of the Revised Penal Code, as amended by R.A. 8353, and hereby sentences him to suffer the penalty of DEATH.

"Accused is further directed to indemnify the victim Katherine Terrible the sum of Fifty Thousand Pesos (P50,000.00) as and for moral damages.

"With costs against the accused.

"SO ORDERED."<sup>[5]</sup>

Insisting on his innocence, appellant now attributes the following errors to the trial court:

I. THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE VICTIM, KATHERINE TERRIBLE.

II. THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT MARIO TERRIBLE GUILTY OF RAPE DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE THAT WOULD WARRANT A CONVICTION BEYOND A REASONABLE DOUBT.

III. THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE DEFENSE OF ALIBI INTERPOSED BY THE APPELLANT, WHICH IS MORE CREDIBLE.

Appellant questions the veracity of the victim's testimony and describes it as incredible. He cites the following circumstances as indicative of the lack of credibility. First, at the time of the alleged rape, the victim remained silent. According to appellant, Katherine should have cried aloud or shouted to catch the attention of her grandmother who was then at their house, stressing that neither was he armed nor did he threaten the victim. Second, Katherine's explanation of her failure to report the alleged rape to her mother for fear of her parents separating was unbelievable. To appellant, if that was really the case Katherine should have kept mum about what appellant did to her but the child eventually told her mother just the same. Appellant insists that the crime was only imputed to him as a revenge initiated by his wife, the victim's mother, whom appellant describes as an extremely jealous woman who would go to the extent of using her own child to exact revenge.<sup>[6]</sup>

In the prosecution for rape, the credibility of the complainant's testimony is the single most important issue. In the case at bar, appellant denies the rape and essentially raises the issue of credibility of witnesses. Well entrenched is the rule that the finding of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its reexamination, the reason being that the trial court is in a better position to hear firsthand and observe the deportment, conduct and attitude of the witnesses.<sup>[7]</sup> In the present case, the trial court declared the victim's testimony to be credible, stating that "despite her age, she testified in a categorical, frank and firm manner that, on the whole, the court found her story impeccable and unblemished." Thus we take a second look at Katherine's testimony:

"FISCAL

"Q. Do you believe in God?

"A. Yes, sir.

"Q. Do you know how to pray?

"A. Yes, sir.

"Q. Do you believe and do you know that telling a lie is a sin?

"A. Yes, sir.

"Q. So, you know that you are here because you are required to tell the truth and nothing but the truth?

"A. Yes, sir.

"Q. Attached to the record is a Certificate of Live Birth of Katherine Terrible already marked as Exhibit 'F' showing that she was born on?

"A. November 3, 1992, sir.

"Q. You said that you are already 6 years old, can you write your name?

"A. Yes, sir.

"Q. I am now showing to you a signature in the Complaint marked as Exhibit 'A' over the typewritten name Katherine Terrible, is that your signature?

"A. Yes, sir.

"Q. The accused here is your father?

"A. Yes, sir.

"Q. Is he in Court now?

"A. Yes, sir.

"Q. Now, will you kindly point to him?

"A. There, sir.

"INTERPRETER:

Witness pointed to the accused.

"FISCAL:

"Q. Now, there is here a statement attached to the record showing that you gave a statement to the police when you were investigated at around 3:20 in the afternoon of November 4, 1998, again there is a signature over the typewritten name Katherine Terrible at the bottom of the statement, is that your signature also?

"A. Yes, sir.

"Q. Now, you were asked this question: 'Ilang taon ka na?' 'Anim na po.' Is that your answer.

"A. Yes, sir.

"Q. You were also asked this question: 'Ano ang pangalan ng Papa mo?' 'Mario Terrible po.' Is that your answer?

"A. Yes, sir.

"Q. Now, you were also asked this question: 'Ano ang ginawa sa iyo ng Papa mo?'

"A. He inserted his private part into mine, sir.

"Q. What else did he do to you?

"A. Something white came out from his private part and then he inserted his finger into my private part and then he kissed my private part and he also have me licked his breast.

"Q. And then you were asked this question: 'Kailan ito ginawa ng iyong Papa?'

"A. November 2.

"Q. Why do you remember that date?

"A. It was my brother's birthday.

"Q. What is the name of your brother?

"A. Kuya Richard.

"Q. You were also asked this question: 'Ilang beses na bang ginagawa ito ng papa mo?'

"A. 'Marami na po.'

"Q. Then you were also asked this question: 'Saan ba ito ginagawa ng Papa mo?'

"A. In our room.

"Q. In your own house?

"A. Yes, sir.

"Q. At Aquino Compound, San Cristobal?

"A. That is correct?

"Q. Now, can you tell the Court where your mother is at that time when these things were done to you by your father?

"A. She attended the birthday party of my brother.

"Q. Where did your Kuya Richard celebrate his birthday?

"A. In their house.

"Q. How old is your Kuya Richard?

"A. I do not know.

"Q. Is he married already?

"A. No, sir.

"Q. Is he working?

"A. No, sir he is studying.

"Q. And where is your Kuya Richard living at the time these things were done to you by your father?

"A. In their house at Makati.

"xxx  
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